

TENTATIVE AGENDA  
STATE WATER CONTROL BOARD MEETING

THURSDAY, AUGUST 25, 2022

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

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

Convene – 10:30 A.M

<b>Agenda Item</b>	<b>Presenter</b>	<b>Tab</b>
Minutes (June 22, 2022)	Porterfield	A
Errata to proposed Local and Regional Water Supply Planning-9VAC25-780	Porterfield	B
<b>Final exempt-</b> Revisions in response to CH 356 of the 2022 Acts of Assembly (Single presentation- regulations grouped by topic below)	Davenport	
<u>Chapter 31</u> -Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation		C
VPDES General Permit regulations		D
<u>Chapter 110</u> -Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day		
<u>Chapter 115</u> -Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities		
<u>Chapter 120</u> -Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests		
<u>Chapter 151</u> -Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity		
<u>Chapter 190</u> -Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining		
<u>Chapter 192</u> -Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management		
<u>Chapter 193</u> -Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concrete Products Facilities		
<u>Chapter 194</u> -Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities		
<u>Chapter 196</u> -Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less		

Agenda Item	Presenter	Tab
<p><u>Chapter 800</u> -Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters</p>		
<p><u>Chapter 820</u> -General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia</p>		
<p><u>Chapter 860</u> -Virginia Pollutant Discharge Elimination System General Permit for Potable Water Treatment Plants</p>		
<p><u>Chapter 880</u> -General VPDES Permit for Discharges of Stormwater from Construction Activities</p>		
<p><u>Chapter 890</u> -General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems</p>		
<p><u>Chapter 32</u> -Virginia Pollution Abatement (VPA) Permit Regulation  <u>Chapter 630</u> -Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management</p>		E
<p>Tank related regulations  <u>Chapter 91</u> -Facility and Aboveground Storage Tank (AST) Regulation  <u>Chapter 101</u> -Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Regulation  <u>Chapter 580</u> -Underground Storage Tanks: Technical Standards and Corrective Action Requirements  <u>Chapter 590</u> -Petroleum Underground Storage Tank Financial Responsibility Requirements  <u>Chapter 640</u> -Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements</p>		F
<p><u>Chapter 210</u> -Virginia Water Protection Permit Program Regulation</p>		G
<p>Virginia Water Protection General Permits  <u>Chapter 660</u> -Virginia Water Protection General Permit for Impacts Less Than One-Half Acre  <u>Chapter 670</u> -Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities  <u>Chapter 680</u> -Virginia Water Protection General Permit for Linear Transportation Projects  <u>Chapter 690</u> -Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities</p>		H
<p>Erosion and Sediment Control regulations  <u>Chapter 840</u> -Erosion and Sediment Control Regulations  <u>Chapter 850</u> -Erosion and Sediment Control and Stormwater Management Certification Regulations</p>		I

<b>Agenda Item</b>	<b>Presenter</b>	<b>Tab</b>
Groundwater regulations <u>Chapter 280</u> -Ground Water Standards <u>Chapter 610</u> -Groundwater Withdrawal Regulations		J
Other regulations <u>Chapter 20</u> -Fees for Permits and Certificates <u>Chapter 40</u> -Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed <u>Chapter 71</u> -Regulations Governing the Discharge of Sewage and Other Wastes from Boats <u>Chapter 200</u> -Water Withdrawal Reporting <u>Chapter 220</u> -Surface Water Management Area Regulation <u>Chapter 260</u> -Water Quality Standards <u>Chapter 370</u> -Policy for the Protection of Water Quality in Virginia's Shellfish Growing Waters <u>Chapter 380</u> -Wetlands Policy <u>Chapter 390</u> -Water Resources Policy <u>Chapter 650</u> -Closure Plans and Demonstration of Financial Capability <u>Chapter 720</u> -Water Quality Management Planning Regulation <u>Chapter 740</u> -Water Reclamation and Reuse Regulation <u>Chapter 770</u> -Virginia Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects <u>Chapter 780</u> -Local and Regional Water Supply Planning <u>Chapter 790</u> -Sewage Collection and Treatment Regulations		K
<b>Final Regulations</b> <i>Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges From Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests, 9VAC25-120</i>	Thompson	L
<i>Water Quality Standards- 9VAC25-260- Triennial review rulemaking to adopt new, update, or cancel existing water quality standards (2020)</i>	Thomas	M
<b>Proposed Regulations</b> <i>Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters 9VAC25-800</i>	Sherman	N
<b>Other Business</b> Future Meeting dates- November 29, 2022 Division Director's Report Mountain Valley Pipeline - Update Public Forum (time not to exceed 45 minutes - no public comment on Mountain Valley Pipeline)	Porterfield Davenport Davenport	

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## ADJOURN

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

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

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

For CASE DECISIONS (e.g., issuance and amendment of permits and enforcement orders), the Board adopts public participation procedures in the individual regulations which establish the permit programs. (Note: as of July 1, 2022, the Department takes final action on all case decisions.) As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held, usually 45 days.

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

**REGULATORY ACTIONS:** Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Also, public comment will be accepted for certain final exempt actions where there has been no public comment period. Persons are allowed up to 3 minutes to address the Board on the emergency regulation and final exempt actions under consideration.

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

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

**PUBLIC FORUM:** The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda or pending regulatory actions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less. Note, there is no pooling of minutes during the public forum.

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

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

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### **Additional Meeting Information:**

- Attendees may not erect any signage inside or outside the meeting room or building.
- Attendees are not entitled to be disorderly or disrupt the meeting from proceeding in an orderly, efficient, and effective fashion. Disruptive behavior may result in a recess or removal from the meeting.
- Possession or use of any device that may disrupt the conduct of business is prohibited, including but not limited to: voice-amplification equipment; bullhorns; blow horns; sirens, or other noise-producing devices; as well as signs on sticks, poles or stakes; or helium-filled balloons.
- All attendees are asked to be respectful of all speakers.
- Rules will be enforced fairly and impartially not only to ensure the efficient and effective conduct of business, but also to ensure no interference with the business of the complex, its employees and guests.
- Attendees wishing to record the proceedings are welcome to do so; however, you may not interfere with the business of the meeting, nor impede the view or participation of other meeting attendees and staff.
- No smoking is allowed unless in a designated outside space. This includes tobacco & e-cigarettes.
- No alcohol, fireworks, pyrotechnics, weapons, or any substances/items controlled by law are allowed.
- No firearms are allowed in the State's contracted spaces except for firearms carried by law-enforcement officers or authorized security personnel.
- All violators may be subject to removal from the meeting facility.
- Anyone removed from the facility may not reenter.
- Anyone who fails to comply with removal may be charged with trespass.



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Travis A. Voyles  
Acting Secretary of Natural and Historic Resources

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

**Memorandum**

To: State Water Control Board Members

From: Melissa Porterfield, Office of Regulatory Affairs

Date: August 1, 2022

Subject: Errata sheet for proposed amendments to Local and Regional Water Supply Planning regulation (9VAC25-780)

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At the June 22, 2022, meeting of the State Water Control Board (Board), DEQ staff presented proposed amendments to the Local and Regional Water Supply Planning regulation (9VAC25-780) to the Board. The Board voted to authorize a public comment period to be held on the proposed amendments to the regulation. Prior to submitting the regulatory package for executive review, DEQ staff identified proposed changes to the regulation that were inconsistent with statutory language found in Chapter 356 of the 2022 Acts of Assembly. (<https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0356> ). Staff have prepared an errata sheet that identifies the corrections that are needed to the proposed regulatory language to make the proposal consistent with current state law. In most cases, the errata sheet identifies where the term “board” should not be replaced with the term “department” in the proposed regulation.

**Staff recommendation**

Staff recommends the Board include the edits identified on the errata sheet for the Local and Regional Water Supply Planning regulation (9VAC25-780) in addition to the amendments previously authorized for public comment.

Attachment: Errata sheet to proposed amendments to 9VAC25-780 Local and Regional Water Supply Planning adopted by the board on June 22, 2022

For August 25, 2022 State Water Control Board Meeting

Errata sheet to proposed amendments to 9VAC25-780 Local and Regional Water Supply Planning adopted by the board on June 22, 2022

Changes are highlighted and enclosed in [ brackets ]

9VAC25-780-10. Application.

A. All counties, cities and towns (hereinafter "local governments") local governments in the Commonwealth of Virginia shall submit a local water supply plan or shall participate in a regional planning unit in the submittal of a regional water supply plan to the board in accordance with this chapter participate in cross-jurisdictional, coordinated water resource planning, and shall develop and submit, with the other local governments within a regional planning area, a single jointly produced regional water plan to the [ department board].

**9VAC25-780-30. Definitions.**

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

**9VAC25-780-50. Preparation of local information and regional water supply plan; submission of requirements for a program regional water supply plan.**

~~D]. All local programs shall be reviewed no later than five years after a compliance determination by the board~~ No later than 180 days before the five-year anniversary of the most recent compliance determination by the [ department board ] in accordance with 9VAC25-780-140 F. Revised plans shall be submitted when, each regional planning unit shall initiate a process to review the regional water supply plan. If this review indicates that circumstances have changed or new information has been made available that will result in impacts one or more local governments within a regional planning unit resulting in substantial changes in current or proposed sources, demands, or water demands demand deficits or water supply risks that will were not be met by alternatives contained considered in the regional water plan, the regional planning unit shall prepare a supplement to the regional water supply plan addressing such circumstances or changed information. The supplement shall be submitted to the department no later than 180 days after the five-year anniversary of the most recent compliance determination. These Such circumstances may be caused by include but are not limited to changes in demands, the availability of the anticipated source sources, cumulative impacts, in-stream beneficial uses, or other factors. In the case where the review by the local government or regional planning unit indicates that the circumstances have not changed sufficiently to warrant a revision of the water supply plan after five years, the locality regional planning unit shall notify the department that the information in the existing plan is still in effect the most current available on or before the five-year anniversary of the most recent compliance determination. The actions of each regional planning unit under this subsection shall reflect the consensus of its local governments. A supplement to a regional water supply plan need not be publicly noticed or approved by resolution of the local governments.

~~E]. Notwithstanding subsection D ] of this section, all local programs~~ regional water supply plans shall be reviewed, revised and resubmitted to the department every 10 years after the date of last approval in accordance with procedures and requirements set forth in this chapter. Except in regional planning areas for which notice has been provided by a planning district commission

in accordance with subsection B3 of this section, no later than 180 days before the ten-year anniversary of the most recent compliance determination by the [department board], the department shall schedule and convene a kickoff meeting to initiate the planning process for the development of the regional water supply plan. In regional planning areas for which notice has been provided by a planning district commission in accordance with subsection B3 of this section, the identified planning district commission shall convene a kickoff meeting no later than 180 days before the ten-year anniversary of the most recent compliance determination and shall invite the department to participate.

**9VAC25-780-100. Projected water demand information; Statement of need and alternatives.**

I. 3. For each alternative to which it applies, a statement of any potential water availability issues identified by the [department board] in the most recent review of the regional water supply plan or the State Water Resources and Supply Plan in accordance with 9VAC25-780-140 G, for each potential new source that any future water project will need to consider in its development; and

HJ. A regional water supply plan shall include address, if available, any cumulative demand, use conflict, or in-stream flow information developed-identified by the [department board] in the most recent review of the regional water supply plan or most recent version of the State Water Resources and Supply Plan pursuant to 9VAC25-780-140 G.

**9VAC25-780-140. Review of local programs regional water supply plans.**

A. The board [department board] shall review all programs regional water supply plans to determine compliance with this regulation and consistency with the State Water Resources and Supply Plan. The board [department board] will review adopted elements of a local program regional water supply plan according to review policies adopted by the board [department board]. Copies of the adopted local program regional water supply plan documents and subsequent changes thereto shall be provided to the board department.

B. To assist in the review of the program regional water supply plans, the board [department board] shall provide the Department of Health and other agencies listed in 9VAC25-780-150 B along with any other agency the board [department board] deems appropriate, 90 days to evaluate the program regional water supply plans. Comments must be received from the Department of Health or other agency by the deadline stipulated in the written notification from the board [department board].

C. The board [department board] will assess the compliance of submitted programs regional water supply plans with these regulations. The board [department board] shall prepare a tentative statement of findings on whether the program regional water supply plan has demonstrated compliance with the following:

1. All elements of a local program regional water supply plan identified in 9VAC25-780-50 have been submitted;
2. The program regional water supply plan was developed through a planning process consistent with this chapter;
3. The results of any evaluation conducted pursuant to subsection G of this section have been appropriately accommodated;
4. The existing sources information complies with 9VAC25-780-70;
5. The existing water use information complies with 9VAC25-780-80;
6. The existing resources information complies with 9VAC25-780-90;



7. The projected water demand is based on an accepted methodology and complies with 9VAC25-780-100;
8. The water demand management information complies with 9VAC25-780-110;
9. The drought response and contingency plan complies with 9VAC25-780-120;
10. The region's water supply risks have been identified and regional strategies to address those risks have been proposed and comply with 9VAC25-780-125;
- ~~1011.~~ The statement of need complies with ~~9VAC25-780-130 A~~9VAC25-780-100 H;
- ~~1112.~~ When required, the alternatives ~~comply~~ analysis complies with ~~9VAC25-780-130~~9VAC25-780-100;
13. The regional water supply plan demonstrates sufficient cross-jurisdictional coordination between local governments and consultation with stakeholders during regional water supply plan development in accordance with 9VAC25-780-50; and
- ~~1214.~~ The ~~local program~~ regional water supply plan is consistent with 9VAC25-390-20, § 62.1-11 of the Code of Virginia and Chapter 3.2 (§ 62.1-44.36 et seq.) of Title 62.1 of the Code of Virginia.

D. If the board's [department's board's] tentative decision is to find the ~~local program~~ regional water supply plan in compliance with subsection C of this section, the board [department board] shall provide public notice of its findings pursuant to 9VAC25-780-150.

E. If the tentative decision of the board [department board] is to find the ~~local program~~ regional water supply plan in noncompliance with ~~subsection C of this section~~this chapter, the board [department board] shall identify (i) the reason for the finding of noncompliance, (ii) ~~what is required for compliance,~~ and (iii) and the right to an informational proceeding under Article 3 (§ 2.2-4018 et seq.) of Chapter 40 of the Virginia Administrative Process Act.

F. The board [department board] shall make a final decision on whether the ~~local program~~ regional water supply plan is in compliance with this chapter after completing review of the submitted ~~program~~ regional water supply plan, any agency comments received, and any public comment received from a public meeting held pursuant to 9VAC25-780-160.

G. In conjunction with the compliance determination made by the board [department board], the state will develop additional information and conduct additional evaluation of local or regional alternatives in order to facilitate continuous planning. This additional information shall be included in the State Water Resources and Supply Plan and ~~used by~~ made available to localities for use in their ~~program~~ planning. This information, developed by the department, shall include:

- ~~1. A cumulative demand analysis, based upon information contained in the State Water Resources Plan and other sources.~~ An estimate of current water withdrawals and use for agriculture, domestic use, and other significant categories of water users;
- ~~2. The evaluation of alternatives prepared pursuant to 9VAC25-780-130 B and CA~~ projection of water withdrawals and use by agriculture, industry, domestic use, and other significant categories of water users;
- ~~3. The evaluation of potential use conflicts among projected water demand and estimates of requirements for in-stream flow; and~~ An estimate, for each major river and stream, of the minimum instream flows necessary during drought conditions to maintain water quality and avoid permanent damage to aquatic life in streams, bays and estuaries;
- ~~4. An evaluation of the relationship between the local plan and the State Water Resources Plan.~~ An evaluation, to the extent practicable, of the ability of existing subsurface and surface waters to meet current and future water uses, including minimum instream flows, during drought conditions;

5. An evaluation, in cooperation with the Virginia Department of Health and local water supply managers, of the current and future capability of public water systems to provide adequate quantity and quality of water;

6. An estimate, using a data-driven method that includes multiple reasonable assumptions about supply and demand over varying time frames, of the risk that each locality and region will experience water supply shortfalls; and

7. An evaluation, to the extent practicable, of hydrologic, environmental, economic, social, legal, and jurisdictional aspects identified.

H. The ~~board~~ department may facilitate information sharing and discussion among localities when potential conflicts arise with regard to demands upon a source.

I. A ~~local program's~~ regional water supply plan's information shall be included in the State Water Resource and Supply Plan when determined to be in compliance by the ~~board~~ [department board].

**9VAC25-780-150. Public notice and public comment period.**

A. The ~~board~~ [department board] shall give public notice on the department website for every tentative and final decision to determine ~~local program~~ regional water supply plan compliance.

B. The ~~board~~ [department board] shall give public notice to the Department of Health, the Department of Conservation and Recreation, the Marine Resources Commission, the Department of Historic Resources, and the Department of ~~Game and Inland Fisheries~~ Wildlife Resources for every tentative and final decision on ~~program~~ regional water supply plan compliance. The agencies shall have 90 days to submit written comment. At the request of the applicant, the ~~board~~ [department board] will convene a technical evaluation committee meeting to facilitate receipt of these comments.

C. The ~~board~~ [department board] shall provide a comment period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative or final decision. All written comments submitted during the comment period shall be retained by the ~~board~~ [department board] and considered during its final decision.

D. Commenters may request a public meeting when submitting comments. In order for the ~~board~~ [department board] to grant a public meeting, there must be a substantial public interest and a factual basis upon which the commenter believes that the proposed ~~program~~ regional water supply plan might be contrary to the purposes stated in 9VAC25-780-20.



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Travis A. Voyles  
Acting Secretary of Natural and Historic Resources

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

**MEMORANDUM**

To: State Water Control Board Members

From: Melanie Davenport, Director Water Permitting Division 

Date: August 5, 2022

Subject: Regulatory amendments to incorporate changes to regulations in response to Chapter 356 of the 2022 Acts of Assembly- Final exempt Action

During the 2022 Session of the General Assembly, SB 657 was passed. This bill limits the authority of the State Water Control Board (Board) under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations and transfers the Board’s existing authority to issue permits and orders to the Department of Environmental Quality. Governor Youngkin signed this bill into law on April 11, 2022, (Chapter 356 of the 2022 Acts of Assembly) and these changes to state law became effective July 1, 2022. A copy of Chapter 356 of the 2022 Acts of Assembly can be accessed through the following link: <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0356+pdf>

Changes made to the regulations include changing the definition of “Board” to the statutory definition found in § 62.1-44.3 of the Code of Virginia. As of July 1, 2022, the term "Board" means “the State Water Control Board.” However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "Board" means “the Department of Environmental Quality.” Where appropriate, the term “board” within the regulations is being updated with the term “department.” Delegation of authority sections of the regulations have also been removed where appropriate, since the Board will no longer delegate the issuance of permits or enforcement actions to the Department.

Changes are also being made to the regulations in response to Enactment clause 6 of Chapter 356 of the 2022 Acts of Assembly. Enactment clause 6 directs the regulations to be revised to include criteria for requesting and granting a public hearing on a permit action during a public comment

State Water Control Board Members

Regulatory amendments to incorporate changes to regulations in response to Chapter 356 of the 2022 Acts of Assembly- Final exempt Action  
August 5, 2022

period in those instances where a public hearing is not mandatory under state or federal law or regulation. These changes have been included where appropriate in permit regulations.

At the August 25, 2022, State Water Control Board meeting, the Department will request that the Board adopt these amendments as final regulations, and affirm that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Regulatory amendments to the regulations listed below are presented to the Board for your consideration as final regulations as allowed by § 2.2- 4006 A 4 a of the Code of Virginia. The regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law.

**Tab C- VPDES regulation**

Chapter 31 -Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation

**Tab D- VPDES General Permit regulations**

Chapter 110 -Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day

Chapter 115 -Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities

Chapter 120 -Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests

Chapter 151 -Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity

Chapter 190 -Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining

Chapter 192 -Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management

Chapter 193 -Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concrete Products Facilities

Chapter 194 -Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities

Chapter 196 -Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less

Chapter 800 -Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters

Chapter 820 -General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia

Chapter 860 -Virginia Pollutant Discharge Elimination System General Permit for Potable Water Treatment Plants

Chapter 880 -General VPDES Permit for Discharges of Stormwater from Construction Activities

State Water Control Board Members

Regulatory amendments to incorporate changes to regulations in response to Chapter 356 of the 2022 Acts of Assembly- Final exempt Action  
August 5, 2022

Chapter 890 -General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems

**Tab E- VPA regulations**

Chapter 32 -Virginia Pollution Abatement (VPA) Permit Regulation  
Chapter 630 -Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management

**Tab F- Tank related regulations**

Chapter 91 -Facility and Aboveground Storage Tank (AST) Regulation  
Chapter 101 -Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Regulation  
Chapter 580 -Underground Storage Tanks: Technical Standards and Corrective Action Requirements  
Chapter 590 -Petroleum Underground Storage Tank Financial Responsibility Requirements  
Chapter 640 -Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements

**Tab G- Chapter 210 -Virginia Water Protection Permit Program Regulation**

**Tab H- Virginia Water Protection General Permits**

Chapter 660 -Virginia Water Protection General Permit for Impacts Less Than One-Half Acre  
Chapter 670 -Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities  
Chapter 680 -Virginia Water Protection General Permit for Linear Transportation Projects  
Chapter 690 -Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities

**Tab I- Erosion and Sediment Control**

Chapter 840 -Erosion and Sediment Control Regulations  
Chapter 850 -Erosion and Sediment Control and Stormwater Management Certification Regulations

**Tab J- Groundwater**

Chapter 280 -Ground Water Standards  
Chapter 610 -Groundwater Withdrawal Regulations

**Tab K- Other regulations**

Chapter 20 -Fees for Permits and Certificates  
Chapter 40 -Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed  
Chapter 71 -Regulations Governing the Discharge of Sewage and Other Wastes from Boats  
Chapter 200 -Water Withdrawal Reporting

State Water Control Board Members

Regulatory amendments to incorporate changes to regulations in response to Chapter 356 of the 2022 Acts of Assembly- Final exempt Action

August 5, 2022

Chapter 220 -Surface Water Management Area Regulation

Chapter 260 -Water Quality Standards

Chapter 370 -Policy for the Protection of Water Quality in Virginia's Shellfish Growing Waters

Chapter 380 -Wetlands Policy

Chapter 390 -Water Resources Policy

Chapter 650 -Closure Plans and Demonstration of Financial Capability

Chapter 720 -Water Quality Management Planning Regulation

Chapter 740 -Water Reclamation and Reuse Regulation

Chapter 770 -Virginia Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects

Chapter 780 -Local and Regional Water Supply Planning

Chapter 790 -Sewage Collection and Treatment Regulations

Attachments:

Town Hall documents and RIS projects for all regulations listed in the memo



[townhall.virginia.gov](http://townhall.virginia.gov)

## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-31
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation
<b>Action title</b>	Final Exempt CH 31 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-31) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”, the addition of language establishing “permit rationale”; the addition of language establishing “criteria for requesting and granting a public hearing in a permit action”; the addition of language related to “controversial permits” and “controversial permits reporting”; the repeal of the delegation of authority provisions, and the correction of Code references where necessary to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

**Mandate and Impetus**

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board’s existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

**Statement of Final Agency Action**

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-31 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.



**1 Project 7260 - Exempt Final**

**2 State Water Control Board**

**3 Final exempt CH 31 changes in response to 2022 Board Bill**

**4 9VAC25-31-10. Definitions.**

5 "Act" means Federal Water Pollution Control Act, also known as the Clean Water Act (CWA),  
6 as amended, 33 USC § 1251 et seq.

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

9 "Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal  
10 production facility) where the following conditions are met: (i) animals (other than aquatic animals)  
11 have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more  
12 in any 12-month period, and (ii) crops, vegetation forage growth, or post-harvest residues are not  
13 sustained in the normal growing season over any portion of the lot or facility.

14 "Applicable standards and limitations" means all state, interstate, and federal standards and  
15 limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is  
16 subject under the CWA (33 USC § 1251 et seq.) and the law, including effluent limitations, water  
17 quality standards, standards of performance, toxic effluent standards or prohibitions, best  
18 management practices, pretreatment standards, and standards for sewage sludge use or disposal  
19 under §§ 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

20 "Approval authority" means the Director of the Department of Environmental Quality.

21 "Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program"  
22 means a program administered by a POTW that meets the criteria established in Part VII  
23 (9VAC25-31-730 et seq.) of this chapter and which has been approved by the director or by the  
24 administrator in accordance with 9VAC25-31-830.

25 "Approved program" or "approved state" means a state or interstate program that has been  
26 approved or authorized by EPA under 40 CFR Part 123.

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

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

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

36 "Best management practices" or "BMPs" means schedules of activities, prohibitions of  
37 practices, maintenance procedures, and other management practices to implement the  
38 prohibitions listed in 9VAC25-31-770 and to prevent or reduce the pollution of surface waters.  
39 BMPs also include treatment requirements, operating procedures, and practices to control plant  
40 site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

41 "Biosolids" means a sewage sludge that has received an established treatment and is  
42 managed in a manner to meet the required pathogen control and vector attraction reduction, and  
43 contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part  
44 503 and 9VAC25-31-540, such that it meets the standards established for use of biosolids for  
45 land application, marketing, or distribution in accordance with this chapter. Liquid biosolids

46 contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry  
47 residue by weight.

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

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

53 "Class I sludge management facility" means any POTW identified under Part VII (9VAC25-  
54 31-730 et seq.) of this chapter as being required to have an approved pretreatment program and  
55 any other treatment works treating domestic sewage classified as a Class I sludge management  
56 facility by the regional administrator, in conjunction with the director, because of the potential for  
57 its sludge use or disposal practices to adversely affect public health and the environment.

58 "Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a Large  
59 CAFO or as a Medium CAFO, or that is designated as a Medium CAFO or a Small CAFO. Any  
60 AFO may be designated as a CAFO by the director in accordance with the provisions of 9VAC25-  
61 31-130 B.

62 1. "Large CAFO." An AFO is defined as a Large CAFO if it stables or confines as many or  
63 more than the numbers of animals specified in any of the following categories:

- 64 a. 700 mature dairy cows, whether milked or dry;
- 65 b. 1,000 veal calves;
- 66 c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers,  
67 steers, bulls and cow/calf pairs;
- 68 d. 2,500 swine each weighing 55 pounds or more;
- 69 e. 10,000 swine each weighing less than 55 pounds;
- 70 f. 500 horses;
- 71 g. 10,000 sheep or lambs;
- 72 h. 55,000 turkeys;
- 73 i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- 74 j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid  
75 manure handling system;
- 76 k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- 77 l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or
- 78 m. 5,000 ducks if the AFO uses a liquid manure handling system.

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

- 82 a. The type and number of animals that it stables or confines falls within any of the  
83 following ranges:
  - 84 (1) 200 to 699 mature dairy cattle, whether milked or dry;
  - 85 (2) 300 to 999 veal calves;
  - 86 (3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes  
87 heifers, steers, bulls and cow/calf pairs;
  - 88 (4) 750 to 2,499 swine each weighing 55 pounds or more;
  - 89 (5) 3,000 to 9,999 swine each weighing less than 55 pounds;
  - 90 (6) 150 to 499 horses;

91 (7) 3,000 to 9,999 sheep or lambs;  
92 (8) 16,500 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling  
93 system;  
94 (9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a  
95 liquid manure handling system;  
96 (10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling  
97 system;  
98 (11) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling  
99 system;  
100 (12) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and  
101 b. Either one of the following conditions are met:  
102 (1) Pollutants are discharged into surface waters of the state through a man-made  
103 ditch, flushing system, or other similar man-made device; or  
104 (2) Pollutants are discharged directly into surface waters of the state that originate  
105 outside of and pass over, across, or through the facility or otherwise come into direct  
106 contact with the animals confined in the operation.

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

108 "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility  
109 that meets the criteria of this definition, or that the ~~board~~ department designates under 9VAC25-  
110 31-140. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility  
111 if it contains, grows, or holds aquatic animals in either of the following categories:

112 1. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other  
113 similar structures which discharge at least 30 days per year but does not include:  
114 a. Facilities which produce less than 9,090 harvest weight kilograms (approximately  
115 20,000 pounds) of aquatic animals per year; and  
116 b. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of  
117 food during the calendar month of maximum feeding; or

118 2. Warm water fish species or other warm water aquatic animals in ponds, raceways, or  
119 other similar structures which discharge at least 30 days per year, but does not include:  
120 a. Closed ponds which discharge only during periods of excess run-off; or  
121 b. Facilities which produce less than 45,454 harvest weight kilograms (approximately  
122 100,000 pounds) of aquatic animals per year.

123 Cold water aquatic animals include the Salmonidae family of fish (e.g., trout and salmon).

124 Warm water aquatic animals include the Ictaluridae, Centrarchidae and Cyprinidae families of  
125 fish (e.g., respectively, catfish, sunfish and minnows).

126 "Contiguous zone" means the entire zone established by the United States under Article 24  
127 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906).

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

131 "Control authority" refers to the POTW if the POTW's pretreatment program submission has  
132 been approved in accordance with the requirements of 9VAC25-31-830 or the approval authority  
133 if the submission has not been approved.

134 "Controversial permit" means a water permitting action for which a public hearing has been  
135 granted pursuant to 9VAC-31-315.

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

138 "CWA" means the Clean Water Act (33 USC § 1251 et seq.) (formerly referred to as the  
139 Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972)  
140 Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483,  
141 Public Law 97-117, and Public Law 100-4.

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

144 "Daily discharge" means the discharge of a pollutant measured during a calendar day or any  
145 24-hour period that reasonably represents the calendar day for purposes of sampling. For  
146 pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total  
147 mass of the pollutant discharged over the day. For pollutants with limitations expressed in other  
148 units of measurement, the daily discharge is calculated as the average measurement of the  
149 pollutant over the day.

150 "Department" or "DEQ" means the ~~Virginia~~ Department of Environmental Quality.

151 "Designated project area" means the portions of surface within which the permittee or permit  
152 applicant plans to confine the cultivated species, using a method or plan or operation (including  
153 physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure  
154 that specific individual organisms comprising an aquaculture crop will enjoy increased growth  
155 attributable to the discharge of pollutants and be harvested within a defined geographic area.

156 "Direct discharge" means the discharge of a pollutant.

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

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

160 "Discharge," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means "indirect  
161 discharge" as defined in this section.

162 "Discharge of a pollutant" means:

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

168 This definition includes additions of pollutants into surface waters from: surface run-off that is  
169 collected or channeled by man; discharges through pipes, sewers, or other conveyances owned  
170 by a state, municipality, or other person that do not lead to a treatment works; and discharges  
171 through pipes, sewers, or other conveyances, leading into privately owned treatment works. This  
172 term does not include an addition of pollutants by any indirect discharger.

173 "Discharge Monitoring Report" or "DMR" means the form supplied by the department or an  
174 equivalent form developed by the permittee and approved by the ~~board~~ department, for the  
175 reporting of self-monitoring results by permittees.

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

181 "Effluent limitation" means any restriction imposed by the board or department on quantities,  
182 discharge rates, and concentrations of pollutants that are discharged from point sources into  
183 surface waters, the waters of the contiguous zone, or the ocean.

184 "Effluent limitations guidelines" means a regulation published by the administrator under §  
185 304(b) of the CWA to adopt or revise effluent limitations.

186 "Environmental Protection Agency" or "EPA" means the United States Environmental  
187 Protection Agency.

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

189 "Facilities or equipment" means buildings, structures, process or production equipment or  
190 machinery that form a permanent part of a new source and that will be used in its operation, if  
191 these facilities or equipment are of such value as to represent a substantial commitment to  
192 construct. It excludes facilities or equipment used in connection with feasibility, engineering, and  
193 design studies regarding the new source or water pollution treatment for the new source.

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

197 "General permit" means a VPDES permit authorizing a category of discharges under the CWA  
198 and the law within a geographical area.

199 "Hazardous substance" means any substance designated under the Code of Virginia and 40  
200 CFR Part 116 pursuant to § 311 of the CWA.

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

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

209 "Indirect discharge" means the introduction of pollutants into a POTW from any nondomestic  
210 source regulated under § 307(b), (c) or (d) of the CWA and the law.

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

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

216 "Industrial residual" means solid or semisolid industrial waste including solids, residues, and  
217 precipitates separated or created by the unit processes of a device or system used to treat  
218 industrial wastes.

219 "Industrial user" or "user" means a source of indirect discharge.

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

222 "Interference" means an indirect discharge that, alone or in conjunction with an indirect  
223 discharge or discharges from other sources, both: (i) inhibits or disrupts the POTW, its treatment  
224 processes or operations, or its sludge processes, use, or disposal; and (ii) therefore is a cause of  
225 a violation of any requirement of the POTW's VPDES permit (including an increase in the  
226 magnitude or duration of a violation) or of the prevention of biosolids use or sewage sludge  
227 disposal in compliance with the following statutory provisions and regulations or permits issued

228 thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the  
229 Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource  
230 Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.), and including state regulations  
231 contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA)  
232 the Clean Air Act (42 USC § 701 et seq.), the Toxic Substances Control Act (15 USC § 2601 et  
233 seq.), and the Marine Protection, Research and Sanctuaries Act (33 USC § 1401 et seq.).

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

238 "Land application" means, in regard to sewage, biosolids, and industrial residuals, the  
239 distribution of treated wastewater of acceptable quality, referred to as effluent, or stabilized  
240 sewage sludge of acceptable quality, referred to as biosolids, or industrial residuals by spreading  
241 or spraying on the surface of the land, injecting below the surface of the land, or incorporating into  
242 the soil with a uniform application rate for the purpose of fertilizing crops or vegetation or  
243 conditioning the soil. Sites approved for land application of biosolids in accordance with this  
244 chapter are not considered to be treatment works. Bulk disposal of stabilized sludge or industrial  
245 residuals in a confined area, such as in landfills, is not land application. For the purpose of this  
246 chapter, the use of biosolids in agricultural research and the distribution and marketing of  
247 exceptional quality biosolids are not land application.

248 "Land application area" means, in regard to an AFO, land under the control of an AFO owner  
249 or operator that is owned, rented, or leased to which manure, litter, or process wastewater from  
250 the production area may be applied.

251 "Land application area" means, in regard to biosolids, the area in the permitted field, excluding  
252 the setback area, where biosolids may be applied.

253 "Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance  
254 with § 62.1-44.16 or 62.1-44.19:3 of the Code of Virginia.

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

259 "Major facility" means any VPDES facility or activity classified as such by the regional  
260 administrator in conjunction with the ~~board~~ department.

261 "Malodor" means an unusually strong or offensive odor associated with biosolids or sewage  
262 sludge as distinguished from odors normally associated with biosolids or sewage sludge.

263 "Man-made" means constructed by man and used for the purpose of transporting wastes.

264 "Manure" means manure, bedding, compost and raw materials or other materials commingled  
265 with manure or set aside for disposal.

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

267 "Municipal separate storm sewer" means a conveyance or system of conveyances (including  
268 roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made  
269 channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish,  
270 district, association, or other public body (created by or pursuant to state law) having jurisdiction  
271 over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts  
272 under state law, such as a sewer district, flood control district or drainage district, or similar entity,  
273 or an Indian tribe or an authorized Indian tribal organization, or a designated and approved  
274 management agency under § 208 of the CWA that discharges to surface waters of the state; (ii)

275 designed or used for collecting or conveying stormwater; (iii) that is not a combined sewer; and  
276 (iv) that is not part of a publicly owned treatment works (POTW).

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

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

285 "National pretreatment standard," "pretreatment standard," or "standard," when used in Part  
286 VII (9VAC25-31-730 et seq.) of this chapter, means any regulation containing pollutant discharge  
287 limits promulgated by EPA in accordance with § 307(b) and (c) of the CWA, which applies to  
288 industrial users. This term includes prohibitive discharge limits established pursuant to 9VAC25-  
289 31-770.

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

- 291 1. From which there is or may be a discharge of pollutants;
- 292 2. That did not commence the discharge of pollutants at a particular site prior to August  
293 13, 1979;
- 294 3. That is not a new source; and
- 295 4. That has never received a finally effective VPDES permit for discharges at that site.

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

303 "New source," except when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means  
304 any building, structure, facility, or installation from which there is or may be a discharge of  
305 pollutants, the construction of which commenced:

- 306 1. After promulgation of standards of performance under § 306 of the CWA that are  
307 applicable to such source; or
- 308 2. After proposal of standards of performance in accordance with § 306 of the CWA that  
309 are applicable to such source, but only if the standards are promulgated in accordance  
310 with § 306 of the CWA within 120 days of their proposal.

311 "New source," when used in Part VII of this chapter, means any building, structure, facility, or  
312 installation from which there is or may be a discharge of pollutants, the construction of which  
313 commenced after the publication of proposed pretreatment standards under § 307(c) of the CWA  
314 that will be applicable to such source if such standards are thereafter promulgated in accordance  
315 with that section, provided that:

- 316 1. a. The building, structure, facility, or installation is constructed at a site at which no other  
317 source is located;
- 318 b. The building, structure, facility, or installation totally replaces the process or  
319 production equipment that causes the discharge of pollutants at an existing source; or
- 320 c. The production of wastewater generating processes of the building, structure,  
321 facility, or installation are substantially independent of an existing source at the same

322 site. In determining whether these are substantially independent, factors such as the  
323 extent to which the new facility is integrated with the existing plant, and the extent to  
324 which the new facility is engaged in the same general type of activity as the existing  
325 source should be considered.

326 2. Construction on a site at which an existing source is located results in a modification  
327 rather than a new source if the construction does not create a new building, structure,  
328 facility, or installation meeting the criteria of subdivision 1 b or c of this definition but  
329 otherwise alters, replaces, or adds to existing process or production equipment.

330 3. Construction of a new source as defined under this subdivision has commenced if the  
331 owner or operator has:

332 a. Begun, or caused to begin, as part of a continuous on-site construction program:

333 (1) Any placement, assembly, or installation of facilities or equipment; or

334 (2) Significant site preparation work including clearing, excavation, or removal of  
335 existing buildings, structures, or facilities that is necessary for the placement,  
336 assembly, or installation of new source facilities or equipment; or

337 b. Entered into a binding contractual obligation for the purchase of facilities or  
338 equipment that are intended to be used in its operation within a reasonable time.  
339 Options to purchase or contracts that can be terminated or modified without substantial  
340 loss, and contracts for feasibility, engineering, and design studies do not constitute a  
341 contractual obligation under this subdivision.

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

345 "Owner" means the Commonwealth or any of its political subdivisions including sanitation  
346 district commissions and authorities, and any public or private institution, corporation, association,  
347 firm or company organized or existing under the laws of this or any other state or country, or any  
348 officer or agency of the United States, or any person or group of persons acting individually or as  
349 a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible  
350 for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters,  
351 or any facility or operation that has the capability to alter the physical, chemical, or biological  
352 properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia.

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

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

359 "Permit" means an authorization, certificate, license, or equivalent control document issued  
360 by the ~~board~~ department to implement the requirements of this chapter. Permit includes a VPDES  
361 general permit issued as a regulation adopted by the board. Permit does not include any permit  
362 that has not yet been the subject of final agency action, such as a draft permit or a proposed  
363 permit.

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

366 "Point source" means any discernible, confined, and discrete conveyance including any pipe,  
367 ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal  
368 feeding operation, landfill leachate collection system, vessel, or other floating craft from which



369 pollutants are or may be discharged. This term does not include return flows from irrigated  
370 agriculture or agricultural stormwater run-off.

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

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

382 "POTW treatment plant" means that portion of the POTW that is designed to provide treatment  
383 (including recycling and reclamation) of municipal sewage and industrial waste.

384 "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants,  
385 or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging  
386 or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained  
387 by physical, chemical, or biological processes, process changes or by other means, except as  
388 prohibited in Part VII of this chapter. Appropriate pretreatment technology includes control  
389 equipment, such as equalization tanks or facilities, for protection against surges or slug loadings  
390 that might interfere with or otherwise be incompatible with the POTW. However, where  
391 wastewater from a regulated process is mixed in an equalization facility with unregulated  
392 wastewater or with wastewater from another regulated process, the effluent from the equalization  
393 facility must meet an adjusted pretreatment limit calculated in accordance with Part VII of this  
394 chapter.

395 "Pretreatment requirements" means any requirements arising under Part VII (9VAC25-31-730  
396 et seq.) of this chapter including the duty to allow or carry out inspections, entry or monitoring  
397 activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment  
398 works; or any reporting requirements imposed by the owner of a publicly owned treatment works  
399 or by the regulations of the board. Pretreatment requirements do not include the requirements of  
400 a national pretreatment standard.

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

404 "Privately owned treatment works" or "PVOTW" means any device or system that is (i) used  
405 to treat wastes from any facility whose operator is not the operator of the treatment works and (ii)  
406 not a POTW.

407 "Process wastewater" means any water that, during manufacturing or processing, comes into  
408 direct contact with or results from the production or use of any raw material, intermediate product,  
409 finished product, byproduct, or waste product. Process wastewater from an AFO means water  
410 directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow  
411 from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits,  
412 or other AFO facilities; direct contact swimming, washing, or spray cooling of the animals; or dust  
413 control. Process wastewater from an AFO also includes any water that comes into contact with  
414 any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

415 "Production area" means that part of an AFO that includes the animal confinement area, the  
416 manure storage area, the raw materials storage area, and the waste containment areas. The

417 animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall  
418 barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens,  
419 walkers, animal walkways, and stables. The manure storage area includes lagoons, runoff ponds,  
420 storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and  
421 composting piles. The raw materials storage areas include feed silos, silage bunkers, and bedding  
422 materials. The waste containment area includes settling basins, and areas within berms and  
423 diversions that separate uncontaminated stormwater. Also included in the definition of production  
424 area is any egg washing or egg processing facility, and any area used in the storage, handling,  
425 treatment, or disposal of mortalities.

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

429 "Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212  
430 of the CWA, which is owned by a state or municipality (as defined by § 502(4) of the CWA). This  
431 definition includes any devices and systems used in the storage, treatment, recycling, and  
432 reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers,  
433 pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The  
434 term also means the municipality as defined in § 502(4) of the CWA, which has jurisdiction over  
435 the indirect discharges to and the discharges from such a treatment works.

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

438 "Regional administrator" means the Regional Administrator of Region III of the Environmental  
439 Protection Agency or the authorized representative of the regional administrator.

440 "Rock crushing and gravel washing facilities" means facilities that process crushed and broken  
441 stone, gravel, and riprap.

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

445 "Secondary industry category" means any industry category that is not a primary industry  
446 category.

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

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

450 "Setback area" means the area of land between the boundary of the land application area and  
451 adjacent features where biosolids or other managed pollutants may not be land applied.

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

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

459 "Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment  
460 of municipal wastewater or domestic sewage. Sewage sludge includes solids removed during  
461 primary, secondary, or advanced wastewater treatment, scum, domestic septage, portable toilet  
462 pumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage  
463 sludge does not include grit or screenings, or ash generated during the incineration of sewage  
464 sludge.

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

467 "Significant industrial user" or "SIU" means:

468 1. Except as provided in subdivisions 2 and 3 of this definition:

469 a. All industrial users subject to categorical pretreatment standards under 9VAC25-  
470 31-780 and incorporated by reference in 9VAC25-31-30; and

471 b. Any other industrial user that: discharges an average of 25,000 gallons per day or  
472 more of process wastewater to the POTW (excluding sanitary, noncontact cooling and  
473 boiler blowdown wastewater); contributes a process wastestream which makes up  
474 5.0% or more of the average dry weather hydraulic or organic capacity of the POTW  
475 treatment plant; or is designated as such by the control authority, on the basis that the  
476 industrial user has a reasonable potential for adversely affecting the POTW's operation  
477 or for violating any pretreatment standard or requirement.

478 2. The control authority may determine that an industrial user subject to categorical  
479 pretreatment standards under 9VAC25-31-780 and 40 CFR Chapter I, Subchapter N is a  
480 nonsignificant categorical industrial user rather than a significant industrial user on a  
481 finding that the industrial user never discharges more than 100 gallons per day (gpd) of  
482 total categorical wastewater (excluding sanitary, noncontact cooling and boiler blowdown  
483 wastewater, unless specifically included in the pretreatment standard) and the following  
484 conditions are met:

485 a. The industrial user, prior to control authority's finding, has consistently complied with  
486 all applicable categorical pretreatment standards and requirements;

487 b. The industrial user annually submits the certification statement required in 9VAC25-  
488 31-840 together with any additional information necessary to support the certification  
489 statement; and

490 c. The industrial user never discharges any untreated concentrated wastewater.

491 3. Upon a finding that an industrial user meeting the criteria in subdivision 1 b of this  
492 definition has no reasonable potential for adversely affecting the POTW's operation or for  
493 violating any pretreatment standard or requirement, the control authority may at any time,  
494 on its own initiative or in response to a petition received from an industrial user or POTW,  
495 and in accordance with Part VII (9VAC25-31-730 et seq.) of this chapter, determine that  
496 such industrial user is not a significant industrial user.

497 "Significant materials" means, but is not limited to: raw materials; fuels; materials such as  
498 solvents, detergents, and plastic pellets; finished materials such as metallic products; raw  
499 materials used in food processing or production; hazardous substances designated under §  
500 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant  
501 to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as  
502 ashes, slag and sludge that have the potential to be released with stormwater discharges.

503 "Silvicultural point source" means any discernible, confined and discrete conveyance related  
504 to rock crushing, gravel washing, log sorting, or log storage facilities that are operated in  
505 connection with silvicultural activities and from which pollutants are discharged into surface  
506 waters. The term does not include nonpoint source silvicultural activities such as nursery  
507 operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed  
508 burning, pest and fire control, harvesting operations, surface drainage, or road construction and  
509 maintenance from which there is natural run-off. However, some of these activities (such as  
510 stream crossing for roads) may involve point source discharges of dredged or fill material which  
511 may require a CWA § 404 permit.

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

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

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

519 "Standards for biosolids use or sewage sludge disposal" means the regulations promulgated  
520 pursuant to the law and § 405(d) of the CWA that govern minimum requirements for sludge quality,  
521 management practices, and monitoring and reporting applicable to sewage sludge or the use of  
522 biosolids or disposal of sewage sludge by any person.

523 "State" means the Commonwealth of Virginia.

524 "State/EPA agreement" means an agreement between the regional administrator and the  
525 state which coordinates EPA and state activities, responsibilities and programs including those  
526 under the CWA and the law.

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

529 "Stormwater" means stormwater run-off, snow melt run-off, and surface run-off and drainage.

530 "Stormwater" discharge associated with industrial activity" means the discharge from any  
531 conveyance that is used for collecting and conveying stormwater and that is directly related to  
532 manufacturing, processing or raw materials storage areas at an industrial plant. The term does  
533 not include discharges from facilities or activities excluded from the VPDES program under  
534 9VAC25-31. For the categories of industries identified in this definition, the term includes  
535 stormwater discharges from industrial plant yards; immediate access roads and rail lines used or  
536 traveled by carriers of raw materials, manufactured products, waste material, or byproducts used  
537 or created by the facility; material handling sites; refuse sites; sites used for the application or  
538 disposal of process wastewaters; sites used for the storage and maintenance of material handling  
539 equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas;  
540 manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate  
541 and final products; and areas where industrial activity has taken place in the past and significant  
542 materials remain and are exposed to stormwater. For the purposes of this definition, material  
543 handling activities include the storage, loading and unloading, transportation, or conveyance of  
544 any raw material, intermediate product, final product, byproduct, or waste product. The term  
545 excludes areas located on plant lands separate from the plant's industrial activities, such as office  
546 buildings and accompanying parking lots, as long as the drainage from the excluded areas is not  
547 mixed with stormwater drained from the above described areas. Industrial facilities (including  
548 industrial facilities that are federally, state, or municipally owned or operated that meet the  
549 description of the facilities listed in subdivisions 1 through 10 of this definition) include those  
550 facilities designated under the provisions of 9VAC25-31-120 A 1 c or under 9VAC25-31-120 A 7  
551 a (1) or (2) of the VPDES Permit Regulation. The following categories of facilities are considered  
552 to be engaging in industrial activity for purposes of this subsection:

553 1. Facilities subject to stormwater effluent limitations guidelines, new source performance  
554 standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except  
555 facilities with toxic pollutant effluent standards that are exempted under category 10 of this  
556 definition);

557 2. Facilities classified as Standard Industrial Classifications (SIC) 24 (except 2434), 26  
558 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373  
559 (Office of Management and Budget (OMB) SIC Manual, 1987);

- 560 3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987)  
561 including active or inactive mining operations (except for areas of coal mining operations  
562 no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because  
563 the performance bond issued to the facility by the appropriate Surface Mining Control and  
564 Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) authority has been released,  
565 or except for areas of non-coal mining operations that have been released from applicable  
566 state or federal reclamation requirements after December 17, 1990) and oil and gas  
567 exploration, production, processing, or treatment operations, or transmission facilities that  
568 discharge stormwater contaminated by contact with or that has come into contact with,  
569 any overburden, raw material, intermediate products, finished products, byproducts, or  
570 waste products located on the site of such operations (inactive mining operations are  
571 mining sites that are not being actively mined, but which have an identifiable owner or  
572 operator; inactive mining sites do not include sites where mining claims are being  
573 maintained prior to disturbances associated with the extraction, beneficiation, or  
574 processing of mined materials, nor sites where minimal activities are undertaken for the  
575 sole purpose of maintaining a mining claim);
- 576 4. Hazardous waste treatment, storage, or disposal facilities, including those that are  
577 operating under interim status or a permit under Subtitle C of RCRA (42 USC § 6901 et  
578 seq.);
- 579 5. Landfills, land application sites, and open dumps that receive or have received any  
580 industrial wastes (waste that is received from any of the facilities described under this  
581 subsection) including those that are subject to regulation under Subtitle D of RCRA;
- 582 6. Facilities involved in the recycling of materials, including metal scrapyards, battery  
583 reclaimers, salvage yards, and automobile junkyards, including but limited to those  
584 classified as SIC 5015 and 5093;
- 585 7. Steam electric power generating facilities, including coal handling sites;
- 586 8. Transportation facilities classified as SIC 40, 41, 42 (except 4221-25), 43, 44, 45, and  
587 5171 that have vehicle maintenance shops, equipment cleaning operations, or airport  
588 deicing operations. Only those portions of the facility that are either involved in vehicle  
589 maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and  
590 lubrication), equipment cleaning operations, airport deicing operations, or that are  
591 otherwise identified under subdivisions 1 through 7 or 9 and 10 of this definition are  
592 associated with industrial activity;
- 593 9. Treatment works treating domestic sewage or any other sewage sludge or wastewater  
594 treatment device or system, used in the storage treatment, recycling, and reclamation of  
595 municipal or domestic sewage, including land dedicated to the disposal of sewage sludge  
596 that are located within the confines of the facility, with a design flow of 1.0 mgd or more,  
597 or required to have an approved pretreatment program. Not included are farm lands,  
598 domestic gardens, or lands used for sludge management where sludge is beneficially  
599 reused and which are not physically located in the confines of the facility, or areas that are  
600 in compliance with § 405 of the CWA; and
- 601 10. Facilities under SIC 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311),  
602 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25.

603 "Submission" means: (i) a request by a POTW for approval of a pretreatment program to the  
604 regional administrator or the director; (ii) a request by POTW to the regional administrator or the  
605 director for authority to revise the discharge limits in categorical pretreatment standards to reflect  
606 POTW pollutant removals; or (iii) a request to EPA by the director for approval of the Virginia  
607 pretreatment program.

608 "Surface waters" means:

- 609 1. All waters which are currently used, were used in the past, or may be susceptible to use  
610 in interstate or foreign commerce, including all waters that are subject to the ebb and flow  
611 of the tide;
- 612 2. All interstate waters, including interstate wetlands;
- 613 3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams),  
614 mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or  
615 natural ponds the use, degradation, or destruction of which would affect or could affect  
616 interstate or foreign commerce including any such waters:
- 617 a. That are or could be used by interstate or foreign travelers for recreational or other  
618 purposes;
- 619 b. From which fish or shellfish are or could be taken and sold in interstate or foreign  
620 commerce; or
- 621 c. That are used or could be used for industrial purposes by industries in interstate  
622 commerce;
- 623 4. All impoundments of waters otherwise defined as surface waters under this definition;
- 624 5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
- 625 6. The territorial sea; and
- 626 7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified  
627 in subdivisions 1 through 6 of this definition.

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

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

635 "Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the  
636 case of sludge use or disposal practices, any pollutant identified in regulations implementing §  
637 405(d) of the CWA.

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

640 "Treatment works" means any devices and systems used for the storage, treatment, recycling  
641 or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or  
642 reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual  
643 systems, pumping, power and other equipment and their appurtenances; extensions,  
644 improvements, remodeling, additions, or alterations thereof; and any works, including land that  
645 will be an integral part of the treatment process or is used for ultimate disposal of residues  
646 resulting from such treatment; or any other method or system used for preventing, abating,  
647 reducing, storing, treating, separating, or disposing of municipal waste or industrial waste,  
648 including waste in combined sewer water and sanitary sewer systems.

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

656 "TWTDS" means treatment works treating domestic sewage.

657 "Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed,  
658 that does not meet the requirements for run-on or run-off controls established pursuant to subtitle  
659 D of the Solid Waste Disposal Act (42 USC § 6901 et seq.).

660 "Upset," except when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means an  
661 exceptional incident in which there is unintentional and temporary noncompliance with technology  
662 based permit effluent limitations because of factors beyond the reasonable control of the  
663 permittee. An upset does not include noncompliance to the extent caused by operational error,  
664 improperly designed treatment facilities, inadequate treatment facilities, lack of preventive  
665 maintenance, or careless or improper operation.

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

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

675 "Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a  
676 individual permit issued by the department, or a document general permit issued as a regulation  
677 adopted issued by the board pursuant to this chapter authorizing, under prescribed conditions,  
678 the potential or actual discharge of pollutants from a point source to surface waters and the use  
679 of biosolids or disposal of sewage sludge. Under the approved state program, a VPDES permit is  
680 equivalent to an NPDES permit.

681 "VPDES application" or "application" means the standard form or forms, including any  
682 additions, revisions or modifications to the forms, approved by the administrator and the ~~board~~  
683 department for applying for a VPDES permit.

684 "Wastewater," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means liquid  
685 and water carried industrial wastes and domestic sewage from residential dwellings, commercial  
686 buildings, industrial and manufacturing facilities and institutions, whether treated or untreated,  
687 that are contributed to the POTW.

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

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

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

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

703 **9VAC25-31-15. Permit Rationale.**

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

711 **9VAC25-31-20. Purpose.**

712 This chapter delineates the procedures and requirements to be followed in connection with  
713 VPDES permits issued by the ~~board~~ department or a general permit issued as a regulation  
714 adopted by the board pursuant to the Clean Water Act and the State Water Control Law.

715 **9VAC25-31-40. Exclusions.**

716 The following discharges do not require VPDES permits:

- 717 1. Any discharge of sewage from vessels, effluent from properly functioning marine  
718 engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the  
719 normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or  
720 other such materials discharged overboard; nor to other discharges when the vessel is  
721 operating in a capacity other than as a means of transportation such as when used as an  
722 energy or mining facility, a storage facility or a seafood processing facility, or when secured  
723 to a storage facility or a seafood processing facility, or when secured to the bed of the  
724 ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or  
725 development.
- 726 2. Discharges of dredged or fill material into surface waters which are regulated under §  
727 404 of the CWA.
- 728 3. The introduction of sewage, industrial wastes or other pollutants into publicly owned  
729 treatment works by indirect dischargers. Plans or agreements to switch to this method of  
730 disposal in the future do not relieve dischargers of the obligation to have and comply with  
731 permits until all discharges of pollutants to surface waters are eliminated. This exclusion  
732 does not apply to the introduction of pollutants to privately owned treatment works or to  
733 other discharges through pipes, sewers, or other conveyances owned by a state,  
734 municipality, or other party not leading to treatment works.
- 735 4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant  
736 to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency  
737 Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).
- 738 5. Any introduction of pollutants from nonpoint source agricultural and silvicultural  
739 activities, including stormwater run-off from orchards, cultivated crops, pastures, range  
740 lands, and forest lands, but not discharges from concentrated animal feeding operations,  
741 discharges from concentrated aquatic animal production facilities, discharges to  
742 aquaculture projects, and discharges from silvicultural point sources.
- 743 6. Return flows from irrigated agriculture.
- 744 7. Discharges into a privately owned treatment works, except as the board and department  
745 may otherwise require.

746 **9VAC25-31-50. Prohibitions.**

747 A. Except in compliance with a VPDES permit, or another permit, issued by the ~~board~~  
748 department or a general permit issued as a regulation adopted by the board or other entity  
749 authorized by the board or department, it shall be unlawful for any person to:



750 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or  
751 deleterious substances;

752 2. Otherwise alter the physical, chemical or biological properties of such state waters and  
753 make them detrimental to the public health, or to animal or aquatic life, or to the use of  
754 such waters for domestic or industrial consumption, or for recreation, or for other uses; or  
755 3. Discharge stormwater into state waters from municipal separate storm sewer systems  
756 or land disturbing activities.

757 B. Any person in violation of subsection A of this section, who discharges or causes or allows  
758 a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance  
759 into or upon state waters; or who discharges or causes or allows a discharge that may reasonably  
760 be expected to enter state waters in violation of subsection A of this section shall notify the  
761 department of the discharge, immediately upon discovery of the discharge but in no case later  
762 than 24 hours after said discovery. A written report of the unauthorized discharge shall be  
763 submitted by the owner, to the department, within five days of discovery of the discharge. The  
764 written report shall contain:

765 1. A description of the nature and location of the discharge;

766 2. The cause of the discharge;

767 3. The date on which the discharge occurred;

768 4. The length of time that the discharge continued;

769 5. The volume of the discharge;

770 6. If the discharge is continuing, how long it is expected to continue;

771 7. If the discharge is continuing, what the expected total volume of the discharge will be;  
772 and

773 8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present  
774 discharge or any future discharges not authorized by the permit.

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

777 C. No permit may be issued:

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

781 2. When the applicant is required to obtain a state or other appropriate certification under  
782 § 401 of the CWA and that certification has not been obtained or waived;

783 3. When the regional administrator has objected to issuance of the permit;

784 4. When the imposition of conditions cannot ensure compliance with the applicable water  
785 quality requirements of all affected states;

786 5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on  
787 any of the waters of the United States would be substantially impaired by the discharge;

788 6. For the discharge of any radiological, chemical, or biological warfare agent or high-level  
789 radioactive waste;

790 7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b)  
791 of the CWA;

792 8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans  
793 in the following circumstances:

794 a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining  
795 degradation of the waters of the territorial seas, the contiguous zone, and the oceans)

796 unless the board or department determines permit issuance to be in the public interest;  
797 or

798 b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient  
799 information exists to make a reasonable judgment whether the discharge complies  
800 with them.

801 9. To a new source or a new discharger, if the discharge from its construction or operation  
802 will cause or contribute to the violation of water quality standards. The owner or operator  
803 of a new source or new discharger proposing to discharge into a water segment which  
804 does not meet applicable water quality standards or is not expected to meet those  
805 standards even after the application of the effluent limitations required by the law and §§  
806 301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the department has performed  
807 a pollutants load allocation for the pollutant to be discharged, must demonstrate, before  
808 the close of the public comment period, that:

809 a. There are sufficient remaining pollutant load allocations to allow for the discharge;  
810 and

811 b. The existing dischargers into that segment are subject to compliance schedules  
812 designed to bring the segment into compliance with applicable water quality standards.  
813 The ~~board~~ department may waive the submission of information by the new source or  
814 new discharger required by this subdivision if the ~~board~~ department determines that it  
815 already has adequate information to evaluate the request. An explanation of the  
816 development of limitations to meet the criteria of this paragraph is to be included in the  
817 fact sheet to the permit under 9VAC25-31-280.

818 **9VAC25-31-70. Continuation of expiring permits.**

819 A. The permit shall expire at the end of its term, except that the conditions of an expired permit  
820 continue in force until the effective date of a new permit if:

821 1. The permittee has submitted a timely application as required by this chapter, which is  
822 a complete application for a new permit; and

823 2. The ~~board~~ department, through no fault of the permittee, does not issue a new permit  
824 or the board, through no fault of the permittee, does not issue a new general permit as a  
825 regulation adopted by the board with an effective date on or before the expiration date of  
826 the previous permit.

827 B. Permits continued under this section remain fully effective and enforceable.

828 C. When the permittee is not in compliance with the conditions of the expiring or expired permit  
829 the ~~board~~ department may choose to do any or all of the following:

830 1. Initiate enforcement action based upon the permit which has been continued;

831 2. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or  
832 operator would then be required to cease the activities authorized by the continued permit  
833 or be subject to enforcement action for operating without a permit;

834 3. Issue a new permit with appropriate conditions; or

835 4. Take other actions authorized by this chapter.

836 **9VAC25-31-90. Guidance documents.**

837 The ~~board~~ department may develop and use guidance, as appropriate, to implement technical  
838 and regulatory details of the VPDES permit program. Such guidance is distinguished from  
839 regulation by the fact that it is not binding on either the ~~board~~ department or permittees. If a more  
840 appropriate methodology than that called for in guidance is available in a given situation, the more  
841 appropriate methodology shall be used to the extent it is consistent with applicable regulations  
842 and the State Water Control Law.

843 **9VAC25-31-100. Application for a permit.**

844 A. Duty to apply. The following shall submit a complete application to the department in  
845 accordance with this section. The requirements for concentrated animal feeding operations are  
846 described in subdivisions C 1 and 2 of 9VAC25-31-130.

- 847 1. Any person who discharges or proposes to discharge pollutants; and  
848 2. Any person who owns or operates a sludge-only facility whose biosolids use or sewage  
849 sludge disposal practice is regulated by 9VAC25-31-420 through 9VAC25-31-720 and  
850 who does not have an effective permit.

851 B. Exceptions. The following are not required to submit a complete application to the  
852 department in accordance with this section unless the ~~board~~ department requires otherwise:

- 853 1. Persons covered by general permits;  
854 2. Persons excluded from the requirement for a permit by this chapter; or  
855 3. A user of a privately owned treatment works.

856 C. Who applies.

- 857 1. The owner of the facility or operation.  
858 2. When a facility or activity is owned by one person but is operated by another person, it  
859 is the operator's duty to obtain a permit.  
860 3. Notwithstanding the requirements of subdivision 2 of this subsection, biosolids land  
861 application by the operator may be authorized by the owner's permit.

862 D. Time to apply.

863 1. Any person proposing a new discharge shall submit an application at least 180 days  
864 before the date on which the discharge is to commence, unless permission for a later date  
865 has been granted by the ~~board~~ department. Facilities proposing a new discharge of  
866 stormwater associated with industrial activity shall submit an application 180 days before  
867 that facility commences industrial activity which may result in a discharge of stormwater  
868 associated with that industrial activity. Different submittal dates may be required under the  
869 terms of applicable general permits. Persons proposing a new discharge are encouraged  
870 to submit their applications well in advance of the 180-day requirement to avoid delay.  
871 New discharges composed entirely of stormwater, other than those dischargers identified  
872 in 9VAC25-31-120 A 1, shall apply for and obtain a permit according to the application  
873 requirements in 9VAC25-31-120 B.

874 2. All TWTDS whose biosolids use or sewage sludge disposal practices are regulated by  
875 9VAC25-31-420 through 9VAC25-31-720 must submit permit applications according to  
876 the applicable schedule in subdivision 2 a or b of this subsection.

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

880 b. Any other TWTDS not addressed under subdivision 2 a of this subsection must  
881 submit the information listed in subdivisions 2 b (1) through (5) of this subsection to  
882 the department within one year after publication of a standard applicable to its biosolids  
883 use or sewage sludge disposal practice or practices, using a form provided by the  
884 department. The ~~board~~ department will determine when such TWTDS must submit a  
885 full permit application.

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

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

890 (3) A description of the biosolids use or sewage sludge disposal practices. Unless the  
891 biosolids meets the requirements of subdivision Q 9 d of this section, the description  
892 must include the name and address of any facility where biosolids or sewage sludge  
893 is sent for treatment or disposal and the location of any land application sites;

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

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

898 c. Notwithstanding subdivision 2 a or b of this subsection, the ~~board~~ department may  
899 require permit applications from any TWTDS at any time if the ~~board~~ department  
900 determines that a permit is necessary to protect public health and the environment  
901 from any potential adverse effects that may occur from toxic pollutants in sewage  
902 sludge.

903 d. Any TWTDS that commences operations after promulgation of an applicable  
904 standard for biosolids use or sewage sludge disposal shall submit an application to  
905 the department at least 180 days prior to the date proposed for commencing  
906 operations.

907 E. Duty to reapply. All permittees with a currently effective permit shall submit a new  
908 application at least 180 days before the expiration date of the existing permit, unless permission  
909 for a later date has been granted by the ~~board~~ department. The ~~board~~ department shall not grant  
910 permission for applications to be submitted later than the expiration date of the existing permit.

911 F. Completeness.

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

918 2. No application for a VPDES permit to discharge sewage into or adjacent to state waters  
919 from a privately owned treatment works serving, or designed to serve, 50 or more  
920 residences shall be considered complete unless the applicant has provided the  
921 department with notification from the State Corporation Commission that the applicant is  
922 incorporated in the Commonwealth and is in compliance with all regulations and relevant  
923 orders of the State Corporation Commission.

924 3. No application for a new individual VPDES permit authorizing a new discharge of  
925 sewage, industrial wastes, or other wastes shall be considered complete unless it contains  
926 notification from the county, city, or town in which the discharge is to take place that the  
927 location and operation of the discharging facility are consistent with applicable ordinances  
928 adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.  
929 The county, city, or town shall inform in writing the applicant and the ~~board~~ department of  
930 the discharging facility's compliance or noncompliance not more than 30 days from receipt  
931 by the chief administrative officer, or his agent, of a request from the applicant. Should the  
932 county, city, or town fail to provide such written notification within 30 days, the requirement  
933 for such notification is waived. The provisions of this subsection shall not apply to any  
934 discharge for which a valid VPDES permit had been issued prior to March 10, 2000.

935 4. A permit application shall not be considered complete if the ~~board~~ department has  
936 waived application requirements under subsection K or Q of this section and EPA has  
937 disapproved the waiver application. If a waiver request has been submitted to EPA more  
938 than 210 days prior to permit expiration and EPA has not disapproved the waiver  
939 application 181 days prior to permit expiration, the permit application lacking the  
940 information subject to the waiver application shall be considered complete.

941 5. Except as specified in subdivision 5 a of this subsection, a permit application shall not  
942 be considered complete unless all required quantitative data are collected in accordance  
943 with sufficiently sensitive analytical methods approved under 40 CFR Part 136 or required  
944 under 40 CFR Chapter I, Subchapter N (Effluent Guidelines and Standards) or O (Sewage  
945 Sludge).

946 a. For the purposes of this requirement, a method approved under 40 CFR Part 136  
947 or required under 40 CFR Chapter I, Subchapter N or O is "sufficiently sensitive" when:

948 (1) The method minimum level (ML) is at or below the level of the applicable water  
949 quality criterion for the measured pollutant or pollutant parameter;

950 (2) The method ML is above the applicable water quality criterion, but the amount of  
951 the pollutant or pollutant parameter in a facility's discharge is high enough that the  
952 method detects and quantifies the level of the pollutant or pollutant parameter in the  
953 discharge; or

954 (3) The method has the lowest ML of the analytical methods approved under 40 CFR  
955 Part 136 or required under 40 CFR Chapter I, Subchapter N or O for the measured  
956 pollutant or pollutant parameter.

957 b. When there is no analytical method that has been approved under 40 CFR 136,  
958 required under 40 CFR Chapter I, Subchapter N or O, and is not otherwise required  
959 by the director, the applicant may use any suitable method but shall provide a  
960 description of the method. When selecting a suitable method, other factors such as a  
961 method's precision, accuracy, or resolution, may be considered when assessing the  
962 performance of the method.

963 6. In accordance with § 62.1-44.19:3 A of the Code of Virginia, no application for a permit  
964 or variance to authorize the storage of biosolids shall be complete unless it contains  
965 certification from the governing body of the locality in which the biosolids is to be stored  
966 that the storage site is consistent with all applicable ordinances. The governing body shall  
967 confirm or deny consistency within 30 days of receiving a request for certification. If the  
968 governing body does not so respond, the site shall be deemed consistent.

969 7. No application for a permit to land apply biosolids in accordance with Part VI (9VAC25-  
970 31-420 et seq.) of this chapter shall be complete unless it includes the written consent of  
971 the landowner to apply biosolids on his property.

972 G. Information requirements. All applicants for VPDES permits, other than POTWs and other  
973 TWTDS, shall provide the following information to the department, using the application form  
974 provided by the department (additional information required of applicants is set forth in  
975 subsections H through L and Q through R of this section).

976 1. The activities conducted by the applicant that require it to obtain a VPDES permit;

977 2. Name, mailing address, and location of the facility for which the application is submitted;

978 3. Up to four SIC and NAICS codes that best reflect the principal products or services  
979 provided by the facility;

980 4. The operator's name, address, telephone number, electronic mail address, ownership  
981 status, and status as federal, state, private, public, or other entity;

- 982 5. Whether the facility is located on Indian lands;
- 983 6. A listing of all permits or construction approvals received or applied for under any of the
- 984 following programs:
- 985 a. Hazardous Waste Management program under RCRA (42 USC § 6921);
- 986 b. UIC program under SDWA (42 USC § 300h);
- 987 c. VPDES program under the CWA and the law;
- 988 d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42
- 989 USC § 4701 et seq.);
- 990 e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);
- 991 f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction
- 992 approval under the Clean Air Act (42 USC § 4701 et seq.);
- 993 g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act
- 994 (33 USC § 14 et seq.);
- 995 h. Dredge or fill permits under § 404 of the CWA; and
- 996 i. Other relevant environmental permits, including state permits;
- 997 7. A topographic map (or other map if a topographic map is unavailable) extending one
- 998 mile beyond the property boundaries of the source, depicting the facility and each of its
- 999 intake and discharge structures; each of its hazardous waste treatment, storage, or
- 1000 disposal facilities; each well where fluids from the facility are injected underground; and
- 1001 those wells, springs, other surface water bodies, and drinking water wells listed in public
- 1002 records or otherwise known to the applicant in the map area;
- 1003 8. A brief description of the nature of the business;
- 1004 9. An indication of whether the facility uses cooling water and the source of the cooling
- 1005 water; and
- 1006 10. An indication of whether the facility is requesting any of the variances in subsection M
- 1007 of this section, if known at the time of application.
- 1008 H. Application requirements for existing manufacturing, commercial, mining, and silvicultural
- 1009 dischargers. Existing manufacturing, commercial mining, and silvicultural dischargers applying for
- 1010 VPDES permits, except for those facilities subject to the requirements of subsection I of this
- 1011 section, shall provide the following information to the department, using application forms
- 1012 provided by the department.
- 1013 1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of
- 1014 the receiving water.
- 1015 2. A line drawing of the water flow through the facility with a water balance, showing
- 1016 operations contributing wastewater to the effluent and treatment units. Similar processes,
- 1017 operations, or production areas may be indicated as a single unit, labeled to correspond
- 1018 to the more detailed identification under subdivision 3 of this subsection. The water
- 1019 balance must show approximate average flows at intake and discharge points and
- 1020 between units, including treatment units. If a water balance cannot be determined (for
- 1021 example, for certain mining activities), the applicant may provide instead a pictorial
- 1022 description of the nature and amount of any sources of water and any collection and
- 1023 treatment measures.
- 1024 3. A narrative identification of each type of process, operation, or production area that
- 1025 contributes wastewater to the effluent for each outfall, including process wastewater,
- 1026 cooling water, and stormwater run-off; the average flow that each process contributes;
- 1027 and a description of the treatment the wastewater receives, including the ultimate disposal

1028 of any solid or fluid wastes other than by discharge. Processes, operations, or production  
1029 areas may be described in general terms (for example, dye-making reactor, distillation  
1030 tower). For a privately owned treatment works, this information shall include the identity of  
1031 each user of the treatment works. The average flow of point sources composed of  
1032 stormwater may be estimated. The basis for the rainfall event and the method of estimation  
1033 must be indicated.

1034 4. If any of the discharges described in subdivision 3 of this subsection are intermittent or  
1035 seasonal, a description of the frequency, duration and flow rate of each discharge  
1036 occurrence (except for stormwater run-off, spillage or leaks).

1037 5. If an effluent guideline promulgated under § 304 of the CWA applies to the applicant  
1038 and is expressed in terms of production (or other measure of operation), a reasonable  
1039 measure of the applicant's actual production reported in the units used in the applicable  
1040 effluent guideline. The reported measure must reflect the actual production of the facility  
1041 as required by 9VAC25-31-230 B 2.

1042 6. If the applicant is subject to any present requirements or compliance schedules for  
1043 construction, upgrading or operation of waste treatment equipment, an identification of the  
1044 abatement requirement, a description of the abatement project, and a listing of the  
1045 required and projected final compliance dates.

1046 7. Information on the discharge of pollutants specified in this subdivision (except  
1047 information on stormwater discharges that is to be provided as specified in 9VAC25-31-  
1048 120).

1049 a. When quantitative data for a pollutant are required, the applicant must collect a  
1050 sample of effluent and analyze it for the pollutant in accordance with analytical  
1051 methods approved under 40 CFR Part 136 unless use of another method is required  
1052 under 40 CFR Subchapter N or O. When no analytical method is approved, the  
1053 applicant may use any suitable method but must provide a description of the method.  
1054 When an applicant has two or more outfalls with substantially identical effluents, the  
1055 ~~board~~ department may allow the applicant to test only one outfall and report that the  
1056 quantitative data also apply to the substantially identical outfalls. The requirements in  
1057 subdivisions 7 e and f of this subsection that an applicant must provide quantitative  
1058 data for certain pollutants known or believed to be present do not apply to pollutants  
1059 present in a discharge solely as the result of their presence in intake water; however,  
1060 an applicant must report such pollutants as present. When this subdivision requires  
1061 analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease,  
1062 fecal coliform (including E. coli) and Enterococci (previously known as fecal  
1063 streptococcus at 40 CFR 122.26 (d)(2)(iii)(A)(3)), or volatile organics, grab samples  
1064 must be collected for those pollutants. For all other pollutants, a 24-hour composite  
1065 sample, using a minimum of four grab samples, must be used unless specified  
1066 otherwise at 40 CFR 136. However, a minimum of one grab sample may be taken for  
1067 effluents from holding ponds or other impoundments with a retention period greater  
1068 than 24 hours. In addition, for discharges other than stormwater discharges, the ~~board~~  
1069 department may waive composite sampling for any outfall for which the applicant  
1070 demonstrates that the use of an automatic sampler is infeasible and that the minimum  
1071 of four grab samples will be a representative sample of the effluent being discharged.  
1072 Results of analyses of individual grab samples for any parameter may be averaged to  
1073 obtain the daily average. Grab samples that are not required to be analyzed  
1074 immediately (see Table II at 40 CFR 136.3 (e)) may be composited in the laboratory,  
1075 provided that container, preservation, and holding time requirements are met (see  
1076 Table II at 40 CFR 136.3(e)) and that sample integrity is not compromised by  
1077 compositing.

1078 b. For stormwater discharges, all samples shall be collected from the discharge  
1079 resulting from a storm event that is greater than 0.1 inch and at least 72 hours from  
1080 the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible,  
1081 the variance in the duration of the event and the total rainfall of the event should not  
1082 exceed 50% from the average or median rainfall event in that area. For all applicants,  
1083 a flow-weighted composite shall be taken for either the entire discharge or for the first  
1084 three hours of the discharge. The flow-weighted composite sample for a stormwater  
1085 discharge may be taken with a continuous sampler or as a combination of a minimum  
1086 of three sample aliquots taken in each hour of discharge for the entire discharge or for  
1087 the first three hours of the discharge, with each aliquot being separated by a minimum  
1088 period of 15 minutes (applicants submitting permit applications for stormwater  
1089 discharges under 9VAC25-31-120 C may collect flow-weighted composite samples  
1090 using different protocols with respect to the time duration between the collection of  
1091 sample aliquots, subject to the approval of the ~~board~~ department). However, a  
1092 minimum of one grab sample may be taken for stormwater discharges from holding  
1093 ponds or other impoundments with a retention period greater than 24 hours. For a  
1094 flow-weighted composite sample, only one analysis of the composite of aliquots is  
1095 required. For stormwater discharge samples taken from discharges associated with  
1096 industrial activities, quantitative data must be reported for the grab sample taken  
1097 during the first 30 minutes (or as soon thereafter as practicable) of the discharge for  
1098 all pollutants specified in 9VAC25-31-120 B 1. For all stormwater permit applicants  
1099 taking flow-weighted composites, quantitative data must be reported for all pollutants  
1100 specified in 9VAC25-31-120 except pH, temperature, cyanide, total phenols, residual  
1101 chlorine, oil and grease, fecal coliform, and fecal streptococcus. The ~~board~~ department  
1102 may allow or establish appropriate site-specific sampling procedures or requirements,  
1103 including sampling locations, the season in which the sampling takes place, the  
1104 minimum duration between the previous measurable storm event and the storm event  
1105 sampled, the minimum or maximum level of precipitation required for an appropriate  
1106 storm event, the form of precipitation sampled (snow melt or rain fall), protocols for  
1107 collecting samples under 40 CFR Part 136, and additional time for submitting data on  
1108 a case-by-case basis. An applicant is expected to know or have reason to believe that  
1109 a pollutant is present in an effluent based on an evaluation of the expected use,  
1110 production, or storage of the pollutant, or on any previous analyses for the pollutant.  
1111 (For example, any pesticide manufactured by a facility may be expected to be present  
1112 in contaminated stormwater run-off from the facility.)

1113 c. Every applicant must report quantitative data for every outfall for the following  
1114 pollutants:

- 1115 (1) Biochemical oxygen demand (BOD<sub>5</sub>);
- 1116 (2) Chemical oxygen demand;
- 1117 (3) Total organic carbon;
- 1118 (4) Total suspended solids;
- 1119 (5) Ammonia (as N);
- 1120 (6) Temperature (both winter and summer); and
- 1121 (7) pH.

1122 d. The ~~board~~ department may waive the reporting requirements for individual point  
1123 sources or for a particular industry category for one or more of the pollutants listed in  
1124 subdivision 7 c of this subsection if the applicant has demonstrated that such a waiver  
1125 is appropriate because information adequate to support issuance of a permit can be  
1126 obtained with less stringent requirements.



1127 e. Each applicant with processes in one or more primary industry category (see 40  
1128 CFR Part 122 Appendix A) contributing to a discharge must report quantitative data  
1129 for the following pollutants in each outfall containing process wastewater, except as  
1130 indicated in subdivisions 7 e (3), (4), and (5) of this subsection:

1131 (1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part  
1132 122 Appendix D for the applicant's industrial category or categories unless the  
1133 applicant qualifies as a small business under subdivision 8 of this subsection. Table II  
1134 of 40 CFR Part 122 Appendix D lists the organic toxic pollutants in each fraction. The  
1135 fractions result from the sample preparation required by the analytical procedure which  
1136 uses gas chromatography/mass spectrometry. A determination that an applicant falls  
1137 within a particular industrial category for the purposes of selecting fractions for testing  
1138 is not conclusive as to the applicant's inclusion in that category for any other purposes.

1139 (2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals,  
1140 cyanide, and total phenols).

1141 (3) Subdivision H 7 e (1) of this section and the corresponding portions of the VPDES  
1142 Application Form 2C are suspended as they apply to coal mines.

1143 (4) Subdivision H 7 e (1) of this section and the corresponding portions of Item V-C of  
1144 the VPDES Application Form 2C are suspended as they apply to:

1145 (a) Testing and reporting for all four organic fractions in the Greige Mills Subcategory  
1146 of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410),  
1147 and testing and reporting for the pesticide fraction in all other subcategories of this  
1148 industrial category.

1149 (b) Testing and reporting for the volatile, base/neutral and pesticide fractions in the  
1150 Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (40  
1151 CFR Part 440, Subpart B) and testing and reporting for all four fractions in all other  
1152 subcategories of this industrial category.

1153 (c) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling  
1154 industry.

1155 (5) Subdivision H 7 e (1) of this section and the corresponding portions of Item V-C of  
1156 the VPDES Application Form 2C are suspended as they apply to:

1157 (a) Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory  
1158 (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and  
1159 Wood Chemicals industry (40 CFR Part 454), and testing and reporting for the  
1160 pesticide and base-neutral fractions in all other subcategories of this industrial  
1161 category.

1162 (b) Testing and reporting for the pesticide fraction in the leather tanning and finishing,  
1163 paint and ink formulation, and photographic supplies industrial categories.

1164 (c) Testing and reporting for the acid, base/neutral, and pesticide fractions in the  
1165 petroleum refining industrial category.

1166 (d) Testing and reporting for the pesticide fraction in the Papergrade Sulfite  
1167 Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430);  
1168 testing and reporting for the base/neutral and pesticide fractions in the following  
1169 subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from  
1170 Waste Paper (subpart E); testing and reporting for the volatile, base/neutral, and  
1171 pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H),  
1172 Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and  
1173 testing and reporting for the acid, base/neutral, and pesticide fractions in the following  
1174 subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K),

1175 Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue  
1176 from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

1177 (e) Testing and reporting for the base/neutral fraction in the Once-Through Cooling  
1178 Water, Fly Ash and Bottom Ash Transport Water process waste streams of the Steam  
1179 Electric Power Plant industrial category.

1180 f. Each applicant must indicate whether it knows or has reason to believe that any of  
1181 the pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and  
1182 nonconventional pollutants) is discharged from each outfall. If an applicable effluent  
1183 limitations guideline either directly limits the pollutant or, by its express terms, indirectly  
1184 limits the pollutant through limitations on an indicator, the applicant must report  
1185 quantitative data. For every pollutant discharged that is not so limited in an effluent  
1186 limitations guideline, the applicant must either report quantitative data or briefly  
1187 describe the reasons the pollutant is expected to be discharged.

1188 g. Each applicant must indicate whether it knows or has reason to believe that any of  
1189 the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (the toxic  
1190 pollutants and total phenols) for which quantitative data are not otherwise required  
1191 under subdivision 7 e of this subsection, is discharged from each outfall. For every  
1192 pollutant expected to be discharged in concentrations of 10 ppb or greater the  
1193 applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol,  
1194 and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be  
1195 discharged in concentrations of 100 ppb or greater the applicant must report  
1196 quantitative data. For every pollutant expected to be discharged in concentrations less  
1197 than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-  
1198 4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit  
1199 quantitative data or briefly describe the reasons the pollutant is expected to be  
1200 discharged. An applicant qualifying as a small business under subdivision 8 of this  
1201 subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part  
1202 122 Appendix D (the organic toxic pollutants).

1203 h. Each applicant must indicate whether it knows or has reason to believe that any of  
1204 the pollutants in Table V of 40 CFR Part 122 Appendix D (certain hazardous  
1205 substances and asbestos) are discharged from each outfall. For every pollutant  
1206 expected to be discharged, the applicant must briefly describe the reasons the  
1207 pollutant is expected to be discharged, and report any quantitative data it has for any  
1208 pollutant.

1209 i. Each applicant must report qualitative data, generated using a screening procedure  
1210 not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin  
1211 (TCDD) if it:

1212 (1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-  
1213 trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl,  
1214 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl)  
1215 phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP);  
1216 or

1217 (2) Knows or has reason to believe that TCDD is or may be present in an effluent.

1218 j. Where quantitative data are required in subdivisions H 7 a through i of this section,  
1219 existing data may be used, if available, in lieu of sampling done solely for the purpose  
1220 of the application, provided that all data requirements are met; sampling was  
1221 performed, collected, and analyzed no more than four and one-half years prior to  
1222 submission; all data are representative of the discharge; and all available  
1223 representative data are considered in the values reported.

- 1224 8. An applicant which qualifies as a small business under one of the following criteria is  
1225 exempt from the requirements in subdivision 7 e (1) or 7 f of this subsection to submit  
1226 quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (the  
1227 organic toxic pollutants):
- 1228 a. For coal mines, a probable total annual production of less than 100,000 tons per  
1229 year; or
  - 1230 b. For all other applicants, gross total annual sales averaging less than \$100,000 per  
1231 year (in second quarter 1980 dollars).
- 1232 9. A listing of any toxic pollutant that the applicant currently uses or manufactures as an  
1233 intermediate or final product or byproduct. The ~~board~~ department may waive or modify this  
1234 requirement for any applicant if the applicant demonstrates that it would be unduly  
1235 burdensome to identify each toxic pollutant and the ~~board~~ department has adequate  
1236 information to issue the permit.
- 1237 10. Reserved.
- 1238 11. An identification of any biological toxicity tests that the applicant knows or has reason  
1239 to believe have been made within the last three years on any of the applicant's discharges  
1240 or on a receiving water in relation to a discharge.
- 1241 12. If a contract laboratory or consulting firm performed any of the analyses required by  
1242 subdivision 7 of this subsection, the identity of each laboratory or firm and the analyses  
1243 performed.
- 1244 13. In addition to the information reported on the application form, applicants shall provide  
1245 to the ~~board~~ department, at its request, such other information, including pertinent plans,  
1246 specifications, maps and such other relevant information as may be required, in scope  
1247 and details satisfactory to the ~~board~~ department, as the ~~board~~ department may reasonably  
1248 require to assess the discharges of the facility and to determine whether to issue a VPDES  
1249 permit. The additional information may include additional quantitative data and bioassays  
1250 to assess the relative toxicity of discharges to aquatic life and requirements to determine  
1251 the cause of the toxicity.
- 1252 I. Application requirements for manufacturing, commercial, mining and silvicultural facilities  
1253 which discharge only nonprocess wastewater. Except for stormwater discharges, all  
1254 manufacturing, commercial, mining, and silvicultural dischargers applying for VPDES permits that  
1255 discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new  
1256 source performance standard shall provide the following information to the department using  
1257 application forms provided by the department:
- 1258 1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the  
1259 receiving water;
  - 1260 2. Date of expected commencement of discharge;
  - 1261 3. An identification of the general type of waste discharged, or expected to be discharged  
1262 upon commencement of operations, including sanitary wastes, restaurant or cafeteria  
1263 wastes, or noncontact cooling water. An identification of cooling water additives (if any)  
1264 that are used or expected to be used upon commencement of operations, along with their  
1265 composition if existing composition is available;
  - 1266 4. a. Quantitative data for the pollutants or parameters listed below, unless testing is  
1267 waived by the ~~board~~ department. The quantitative data may be data collected over the  
1268 past 365 days, if they remain representative of current operations, and must include  
1269 maximum daily value, average daily value, and number of measurements taken. The  
1270 applicant must collect and analyze samples in accordance with 40 CFR Part 136. When  
1271 analysis of pH, temperature, residual chlorine, oil and grease, or fecal coliform (including

- 1272 E. coli), and Enterococci (previously known as fecal streptococcus) and volatile organics  
 1273 is required in subdivisions I 4 a (1) through (11) of this section, grab samples must be  
 1274 collected for those pollutants. For all other pollutants, a 24-hour composite sample, using  
 1275 a minimum of four grab samples, must be used unless specified otherwise at 40 CFR Part  
 1276 136. For a composite sample, only one analysis of the composite of aliquots is required.  
 1277 New dischargers must include estimates for the pollutants or parameters listed below  
 1278 instead of actual sampling data, along with the source of each estimate. All levels must be  
 1279 reported or estimated as concentration and as total mass, except for flow, pH, and  
 1280 temperature.
- 1281 (1) Biochemical oxygen demand (BOD<sub>5</sub>).
  - 1282 (2) Total suspended solids (TSS).
  - 1283 (3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).
  - 1284 (4) Total residual chlorine (if chlorine is used).
  - 1285 (5) Oil and grease.
  - 1286 (6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be  
 1287 discharged).
  - 1288 (7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).
  - 1289 (8) Ammonia (as N).
  - 1290 (9) Discharge flow.
  - 1291 (10) pH.
  - 1292 (11) Temperature (winter and summer).
- 1293 b. The ~~board~~ department may waive the testing and reporting requirements for any of  
 1294 the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits  
 1295 a request for such a waiver before or with his application that demonstrates that  
 1296 information adequate to support issuance of a permit can be obtained through less  
 1297 stringent requirements.
- 1298 c. If the applicant is a new discharger, he must submit the information required in  
 1299 subdivision 4 a of this subsection by providing quantitative data in accordance with  
 1300 that section no later than two years after commencement of discharge. However, the  
 1301 applicant need not submit testing results that he has already performed and reported  
 1302 under the discharge monitoring requirements of his VPDES permit.
- 1303 d. The requirements of subdivisions 4 a and 4 c of this subsection that an applicant  
 1304 must provide quantitative data or estimates of certain pollutants do not apply to  
 1305 pollutants present in a discharge solely as a result of their presence in intake water.  
 1306 However, an applicant must report such pollutants as present. Net credit may be  
 1307 provided for the presence of pollutants in intake water if the requirements of 9VAC25-  
 1308 31-230 G are met;
- 1309 5. A description of the frequency of flow and duration of any seasonal or intermittent  
 1310 discharge (except for stormwater run-off, leaks, or spills);
  - 1311 6. A brief description of any treatment system used or to be used;
  - 1312 7. Any additional information the applicant wishes to be considered, such as influent data  
 1313 for the purpose of obtaining net credits pursuant to 9VAC25-31-230 G;
  - 1314 8. Signature of certifying official under 9VAC25-31-110; and
  - 1315 9. Pertinent plans, specifications, maps and such other relevant information as may be  
 1316 required, in scope and details satisfactory to the ~~board~~ department.

1317 J. Application requirements for new and existing concentrated animal feeding operations and  
1318 aquatic animal production facilities. New and existing concentrated animal feeding operations and  
1319 concentrated aquatic animal production facilities shall provide the following information to the  
1320 department, using the application form provided by the department:

- 1321 1. For concentrated animal feeding operations:
- 1322 a. The name of the owner or operator;
  - 1323 b. The facility location and mailing address;
  - 1324 c. Latitude and longitude of the production area (entrance to the production area);
  - 1325 d. A topographic map of the geographic area in which the CAFO is located showing  
1326 the specific location of the production area, in lieu of the requirements of subdivision  
1327 G 7 of this section;
  - 1328 e. Specific information about the number and type of animals, whether in open  
1329 confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55  
1330 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers,  
1331 veal calves, sheep and lambs, horses, ducks, turkeys, other);
  - 1332 f. The type of containment and storage (anaerobic lagoon, roofed storage shed,  
1333 storage ponds, underfloor pits, above ground storage tanks, below ground storage  
1334 tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter,  
1335 and process wastewater storage (tons/gallons);
  - 1336 g. The total number of acres under control of the applicant available for land application  
1337 of manure, litter, or process wastewater;
  - 1338 h. Estimated amounts of manure, litter, and process wastewater generated per year  
1339 (tons/gallons); and
  - 1340 i. For CAFOs required to seek coverage under a permit after December 31, 2009, a  
1341 nutrient management plan that at a minimum satisfies the requirements specified in  
1342 subsection E of 9VAC25-31-200 and subdivision C 5 of 9VAC25-31-130, including, for  
1343 all CAFOs subject to 40 CFR Part 412 Subpart C or Subpart D, the requirements of  
1344 40 CFR 412.4(c), as applicable.
- 1345 2. For concentrated aquatic animal production facilities:
- 1346 a. The maximum daily and average monthly flow from each outfall;
  - 1347 b. The number of ponds, raceways, and similar structures;
  - 1348 c. The name of the receiving water and the source of intake water;
  - 1349 d. For each species of aquatic animals, the total yearly and maximum harvestable  
1350 weight;
  - 1351 e. The calendar month of maximum feeding and the total mass of food fed during that  
1352 month; and
  - 1353 f. Pertinent plans, specifications, maps and such other relevant information as may be  
1354 required, in scope and details satisfactory to the ~~board~~ department.

1355 K. Application requirements for new and existing POTWs and treatment works treating  
1356 domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by  
1357 the ~~board~~ department must provide to the department, at a minimum, the information in this  
1358 subsection using an application form provided by the department. Permit applicants must submit  
1359 all information available at the time of permit application. The information may be provided by  
1360 referencing information previously submitted to the department. The ~~board~~ department may waive  
1361 any requirement of this subsection if it has access to substantially identical information. The ~~board~~  
1362 department may also waive any requirement of this subsection that is not of material concern for

1363 a specific permit, if approved by the regional administrator. The waiver request to the regional  
1364 administrator must include the ~~board's~~ department's justification for the waiver. A regional  
1365 administrator's disapproval of the ~~board's~~ department's proposed waiver does not constitute final  
1366 agency action but does provide notice to the ~~board~~ department and permit applicant that EPA  
1367 may object to any ~~board~~ department-issued permit issued in the absence of the required  
1368 information.

- 1369 1. All applicants must provide the following information:
- 1370 a. Name, mailing address, and location of the facility for which the application is  
1371 submitted;
  - 1372 b. Name, mailing address, telephone number, and electronic mail address of the  
1373 applicant and indication as to whether the applicant is the facility's owner, operator, or  
1374 both;
  - 1375 c. Identification of all environmental permits or construction approvals received or  
1376 applied for (including dates) under any of the following programs:
    - 1377 (1) Hazardous Waste Management program under the Resource Conservation and  
1378 Recovery Act (RCRA), Subpart C;
    - 1379 (2) Underground Injection Control program under the Safe Drinking Water Act  
1380 (SDWA);
    - 1381 (3) NPDES program under the Clean Water Act (CWA);
    - 1382 (4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
    - 1383 (5) Nonattainment program under the Clean Air Act;
    - 1384 (6) National Emission Standards for Hazardous Air Pollutants (NESHAPS)  
1385 preconstruction approval under the Clean Air Act;
    - 1386 (7) Ocean dumping permits under the Marine Protection Research and Sanctuaries  
1387 Act;
    - 1388 (8) Dredge or fill permits under § 404 of the CWA; and
    - 1389 (9) Other relevant environmental permits, including state permits;
  - 1390 d. The name and population of each municipal entity served by the facility, including  
1391 unincorporated connector districts. Indicate whether each municipal entity owns or  
1392 maintains the collection system and whether the collection system is separate sanitary  
1393 or combined storm and sanitary, if known;
  - 1394 e. Information concerning whether the facility is located in Indian country and whether  
1395 the facility discharges to a receiving stream that flows through Indian country;
  - 1396 f. The facility's design flow rate (the wastewater flow rate the plant was built to handle),  
1397 annual average daily flow rate, and maximum daily flow rate for each of the previous  
1398 three years;
  - 1399 g. Identification of types of collection systems used by the treatment works (i.e.,  
1400 separate sanitary sewers or combined storm and sanitary sewers) and an estimate of  
1401 the percent of sewer line that each type comprises;
  - 1402 h. The following information for outfalls to surface waters and other discharge or  
1403 disposal methods:
    - 1404 (1) For effluent discharges to surface waters, the total number and types of outfalls  
1405 (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency  
1406 overflows);
    - 1407 (2) For wastewater discharged to surface impoundments:
      - 1408 (a) The location of each surface impoundment;

- 1409 (b) The average daily volume discharged to each surface impoundment; and  
 1410 (c) Whether the discharge is continuous or intermittent;  
 1411 (3) For wastewater applied to the land:  
 1412 (a) The location of each land application site;  
 1413 (b) The size of each land application site, in acres;  
 1414 (c) The average daily volume applied to each land application site, in gallons per day;  
 1415 and  
 1416 (d) Whether land application is continuous or intermittent;  
 1417 (4) For effluent sent to another facility for treatment prior to discharge:  
 1418 (a) The means by which the effluent is transported;  
 1419 (b) The name, mailing address, contact person, phone number, and electronic mail  
 1420 address of the organization transporting the discharge, if the transport is provided by  
 1421 a party other than the applicant;  
 1422 (c) The name, mailing address, contact person, phone number, electronic mail  
 1423 address, and VPDES permit number (if any) of the receiving facility; and  
 1424 (d) The average daily flow rate from this facility into the receiving facility, in millions of  
 1425 gallons per day; and  
 1426 (5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through  
 1427 (4) of this subsection (e.g., underground percolation, underground injection):  
 1428 (a) A description of the disposal method, including the location and size of each  
 1429 disposal site, if applicable;  
 1430 (b) The annual average daily volume disposed of by this method, in gallons per day;  
 1431 and  
 1432 (c) Whether disposal through this method is continuous or intermittent; and  
 1433 i. An indication of whether applicant is operating under or requesting to operate under  
 1434 a variance as specified in subsection N of this section, if known at the time of  
 1435 application.
- 1436 2. All applicants with a design flow greater than or equal to 0.1 mgd must provide the  
 1437 following information:  
 1438 a. The current average daily volume of inflow and infiltration, in gallons per day, and  
 1439 steps the facility is taking to minimize inflow and infiltration;  
 1440 b. A topographic map (or other map if a topographic map is unavailable) extending at  
 1441 least one mile beyond property boundaries of the treatment plant, including all unit  
 1442 processes, and showing:  
 1443 (1) Treatment plant area and unit processes;  
 1444 (2) The major pipes or other structures through which wastewater enters the treatment  
 1445 plant and the pipes or other structures through which treated wastewater is discharged  
 1446 from the treatment plant. Include outfalls from bypass piping, if applicable;  
 1447 (3) Each well where fluids from the treatment plant are injected underground;  
 1448 (4) Wells, springs, and other surface water bodies listed in public records or otherwise  
 1449 known to the applicant within 1/4 mile of the treatment works' property boundaries;  
 1450 (5) Sewage sludge management facilities (including on-site treatment, storage, and  
 1451 disposal sites); and  
 1452 (6) Location at which waste classified as hazardous under RCRA enters the treatment  
 1453 plant by truck, rail, or dedicated pipe;

- 1454 c. Process flow diagram or schematic:
- 1455 (1) A diagram showing the processes of the treatment plant, including all bypass piping
- 1456 and all backup power sources or redundancy in the system. This includes a water
- 1457 balance showing all treatment units, including disinfection, and showing daily average
- 1458 flow rates at influent and discharge points, and approximate daily flow rates between
- 1459 treatment units; and
- 1460 (2) A narrative description of the diagram; and
- 1461 d. The following information regarding scheduled improvements:
- 1462 (1) The outfall number of each outfall affected;
- 1463 (2) A narrative description of each required improvement;
- 1464 (3) Scheduled or actual dates of completion for the following:
- 1465 (a) Commencement of construction;
- 1466 (b) Completion of construction;
- 1467 (c) Commencement of discharge; and
- 1468 (d) Attainment of operational level; and
- 1469 (4) A description of permits and clearances concerning other federal or state
- 1470 requirements.
- 1471 3. Each applicant must provide the following information for each outfall, including bypass
- 1472 points, through which effluent is discharged, as applicable:
- 1473 a. The following information about each outfall:
- 1474 (1) Outfall number;
- 1475 (2) State, county, and city or town in which outfall is located;
- 1476 (3) Latitude and longitude, to the nearest second;
- 1477 (4) Distance from shore and depth below surface;
- 1478 (5) Average daily flow rate, in million gallons per day;
- 1479 (6) The following information for each outfall with a seasonal or periodic discharge:
- 1480 (a) Number of times per year the discharge occurs;
- 1481 (b) Duration of each discharge;
- 1482 (c) Flow of each discharge; and
- 1483 (d) Months in which discharge occurs; and
- 1484 (7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of
- 1485 diffuser used.
- 1486 b. The following information, if known, for each outfall through which effluent is
- 1487 discharged to surface waters:
- 1488 (1) Name of receiving water;
- 1489 (2) Name of watershed/river/stream system and United States Soil Conservation
- 1490 Service 14-digit watershed code;
- 1491 (3) Name of State Management/River Basin and United States Geological Survey 8-
- 1492 digit hydrologic cataloging unit code; and
- 1493 (4) Critical flow of receiving stream and total hardness of receiving stream at critical
- 1494 low flow (if applicable).
- 1495 c. The following information describing the treatment provided for discharges from
- 1496 each outfall to surface waters:



- 1497 (1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary,  
1498 advanced, other) that is provided for the discharge for each outfall and:
- 1499 (a) Design biochemical oxygen demand (BOD<sub>5</sub> or CBOD<sub>5</sub>) removal (percent);  
1500 (b) Design suspended solids (SS) removal (percent); and, where applicable;  
1501 (c) Design phosphorus (P) removal (percent);  
1502 (d) Design nitrogen (N) removal (percent); and  
1503 (e) Any other removals that an advanced treatment system is designed to achieve.
- 1504 (2) A description of the type of disinfection used, and whether the treatment plant  
1505 dechlorinates (if disinfection is accomplished through chlorination).
- 1506 4. Effluent monitoring for specific parameters.
- 1507 a. As provided in subdivisions 4 b through 4 k of this subsection, all applicants must  
1508 submit to the department effluent monitoring information for samples taken from each  
1509 outfall through which effluent is discharged to surface waters, except for CSOs. The  
1510 ~~board~~ department may allow applicants to submit sampling data for only one outfall on  
1511 a case-by-case basis, where the applicant has two or more outfalls with substantially  
1512 identical effluent. The ~~board~~ department may also allow applicants to composite  
1513 samples from one or more outfalls that discharge into the same mixing zone. For  
1514 POTWs applying prior to commencement of discharge, data shall be submitted no  
1515 later than 24 months after the commencement of discharge;
- 1516 b. All applicants must sample and analyze for the following pollutants:
- 1517 (1) Biochemical oxygen demand (BOD<sub>5</sub> or CBOD<sub>5</sub>);  
1518 (2) Fecal coliform;  
1519 (3) Design flow rate;  
1520 (4) pH;  
1521 (5) Temperature; and  
1522 (6) Total suspended solids.
- 1523 c. All applicants with a design flow greater than or equal to 0.1 mgd must sample and  
1524 analyze for the following pollutants:
- 1525 (1) Ammonia (as N);  
1526 (2) Chlorine (total residual, TRC);  
1527 (3) Dissolved oxygen;  
1528 (4) Nitrate/Nitrite;  
1529 (5) Kjeldahl nitrogen;  
1530 (6) Oil and grease;  
1531 (7) Phosphorus; and  
1532 (8) Total dissolved solids.
- 1533 d. Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in  
1534 the treatment process, and have no reasonable potential to discharge chlorine in their  
1535 effluent may delete chlorine.
- 1536 e. All POTWs with a design flow rate equal to or greater than one million gallons per  
1537 day, all POTWs with approved pretreatment programs or POTWs required to develop  
1538 a pretreatment program, and other POTWs, as required by the ~~board~~ department must  
1539 sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix  
1540 J, and for any other pollutants for which the ~~board~~ department or EPA have established  
1541 water quality standards applicable to the receiving waters.

- 1542 f. The ~~board~~ department may require sampling for additional pollutants, as appropriate,  
1543 on a case-by-case basis.
- 1544 g. Applicants must provide data from a minimum of three samples taken within 4-1/2  
1545 years prior to the date of the permit application. Samples must be representative of  
1546 the seasonal variation in the discharge from each outfall. Existing data may be used,  
1547 if available, in lieu of sampling done solely for the purpose of this application. The  
1548 ~~board~~ department may require additional samples, as appropriate, on a case-by-case  
1549 basis.
- 1550 h. All existing data for pollutants specified in subdivisions 4 b through 4 f of this  
1551 subsection that is collected within 4-1/2 years of the application must be included in  
1552 the pollutant data summary submitted by the applicant. If, however, the applicant  
1553 samples for a specific pollutant on a monthly or more frequent basis, it is only  
1554 necessary, for such pollutant, to summarize all data collected within one year of the  
1555 application.
- 1556 i. Applicants must collect samples of effluent and analyze such samples for pollutants  
1557 in accordance with analytical methods approved under 40 CFR Part 136 unless an  
1558 alternative is specified in the existing VPDES permit. When analysis of pH,  
1559 temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform  
1560 (including E. coli), or volatile organics is required in subdivisions K 4 b, c, and e of this  
1561 section, grab samples must be collected for those pollutants. For all other pollutants,  
1562 24-hour composite samples must be used. For a composite sample, only one analysis  
1563 of the composite of aliquots is required.
- 1564 j. The effluent monitoring data provided must include at least the following information  
1565 for each parameter:
- 1566 (1) Maximum daily discharge, expressed as concentration or mass, based upon actual  
1567 sample values;
- 1568 (2) Average daily discharge for all samples, expressed as concentration or mass, and  
1569 the number of samples used to obtain this value;
- 1570 (3) The analytical method used; and
- 1571 (4) The threshold level (i.e., method detection limit, minimum level, or other designated  
1572 method endpoints) for the analytical method used.
- 1573 k. Unless otherwise required by the ~~board~~ department, metals must be reported as  
1574 total recoverable.
- 1575 5. Effluent monitoring for whole effluent toxicity.
- 1576 a. All applicants must provide an identification of any whole effluent toxicity tests  
1577 conducted during the 4-1/2 years prior to the date of the application on any of the  
1578 applicant's discharges or on any receiving water near the discharge. For POTWs  
1579 applying prior to commencement of discharge, data shall be submitted no later than  
1580 24 months after the commencement of discharge.
- 1581 b. As provided in subdivisions 5 c through i of this subsection, the following applicants  
1582 must submit to the department the results of valid whole effluent toxicity tests for acute  
1583 or chronic toxicity for samples taken from each outfall through which effluent is  
1584 discharged to surface waters, except for combined sewer overflows:
- 1585 (1) All POTWs with design flow rates greater than or equal to one million gallons per  
1586 day;
- 1587 (2) All POTWs with approved pretreatment programs or POTWs required to develop  
1588 a pretreatment program;

1589 (3) Other POTWs, as required by the ~~board~~ department, based on consideration of the  
1590 following factors:

1591 (a) The variability of the pollutants or pollutant parameters in the POTW effluent (based  
1592 on chemical-specific information, the type of treatment plant, and types of industrial  
1593 contributors);

1594 (b) The ratio of effluent flow to receiving stream flow;

1595 (c) Existing controls on point or nonpoint sources, including total maximum daily load  
1596 calculations for the receiving stream segment and the relative contribution of the  
1597 POTW;

1598 (d) Receiving stream characteristics, including possible or known water quality  
1599 impairment, and whether the POTW discharges to a coastal water, or a water  
1600 designated as an outstanding natural resource water; or

1601 (e) Other considerations (including the history of toxic impacts and compliance  
1602 problems at the POTW) that the ~~board~~ department determines could cause or  
1603 contribute to adverse water quality impacts.

1604 c. Where the POTW has two or more outfalls with substantially identical effluent  
1605 discharging to the same receiving stream segment, the ~~board~~ department may allow  
1606 applicants to submit whole effluent toxicity data for only one outfall on a case-by-case  
1607 basis. The ~~board~~ department may also allow applicants to composite samples from  
1608 one or more outfalls that discharge into the same mixing zone.

1609 d. Each applicant required to perform whole effluent toxicity testing pursuant to  
1610 subdivision 5 b of this subsection must provide:

1611 (1) Results of a minimum of four quarterly tests for a year, from the year preceding the  
1612 permit application; or

1613 (2) Results from four tests performed at least annually in the 4-1/2 year period prior to  
1614 the application, provided the results show no appreciable toxicity using a safety factor  
1615 determined by the ~~board~~ department.

1616 e. Applicants must conduct tests with multiple species (no less than two species, e.g.,  
1617 fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the range  
1618 of receiving water dilution. The ~~board~~ department recommends that applicants conduct  
1619 acute or chronic testing based on the following dilutions: (i) acute toxicity testing if the  
1620 dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii) chronic  
1621 toxicity testing if the dilution of the effluent is less than or equal to 100:1 at the edge of  
1622 the mixing zone.

1623 f. Each applicant required to perform whole effluent toxicity testing pursuant to  
1624 subdivision 5 b of this subsection must provide the number of chronic or acute whole  
1625 effluent toxicity tests that have been conducted since the last permit reissuance.

1626 g. Applicants must provide the results using the form provided by the department, or  
1627 test summaries if available and comprehensive, for each whole effluent toxicity test  
1628 conducted pursuant to subdivision 5 b of this subsection for which such information  
1629 has not been reported previously to the department.

1630 h. Whole effluent toxicity testing conducted pursuant to subdivision 5 b of this  
1631 subsection must be conducted using methods approved under 40 CFR Part 136, as  
1632 directed by the ~~board~~ department.

1633 i. For whole effluent toxicity data submitted to the department within 4-1/2 years prior  
1634 to the date of the application, applicants must provide the dates on which the data  
1635 were submitted and a summary of the results.

1636 j. Each POTW required to perform whole effluent toxicity testing pursuant to  
1637 subdivision 5 b of this subsection must provide any information on the cause of toxicity  
1638 and written details of any toxicity reduction evaluation conducted, if any whole effluent  
1639 toxicity test conducted within the past 4-1/2 years revealed toxicity.

1640 6. Applicants must submit the following information about industrial discharges to the  
1641 POTW:

1642 a. Number of significant industrial users (SIUs) and nonsignificant categorical  
1643 industrial users (NSCIUs), including SIUs and NSCIUs that truck or haul waste,  
1644 discharging to the POTW; and

1645 b. POTWs with one or more SIUs shall provide the following information for each SIU,  
1646 as defined in 9VAC25-31-10, that discharges to the POTW:

1647 (1) Name and mailing address;

1648 (2) Description of all industrial processes that affect or contribute to the SIU's  
1649 discharge;

1650 (3) Principal products and raw materials of the SIU that affect or contribute to the SIU's  
1651 discharge;

1652 (4) Average daily volume of wastewater discharged, indicating the amount attributable  
1653 to process flow and nonprocess flow;

1654 (5) Whether the SIU is subject to local limits;

1655 (6) Whether the SIU is subject to categorical standards and, if so, under which  
1656 category and subcategory; and

1657 (7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have  
1658 been attributed to the SIU in the past 4-1/2 years.

1659 c. The information required in subdivisions 6 a and b of this subsection may be waived  
1660 by the ~~board~~ department for POTWs with pretreatment programs if the applicant has  
1661 submitted either of the following that contain information substantially identical to that  
1662 required in subdivisions 6 a and b of this subsection:

1663 (1) An annual report submitted within one year of the application; or  
1664 (2) A pretreatment program.

1665 7. Discharges from hazardous waste generators and from waste cleanup or remediation  
1666 sites. POTWs receiving Resource Conservation and Recovery Act (RCRA),  
1667 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or  
1668 RCRA Corrective Action wastes or wastes generated at another type of cleanup or  
1669 remediation site must provide the following information:

1670 a. If the POTW receives, or has been notified that it will receive, by truck, rail, or  
1671 dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to  
1672 40 CFR Part 261, the applicant must report the following:

1673 (1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated  
1674 pipe); and

1675 (2) The hazardous waste number and amount received annually of each hazardous  
1676 waste.

1677 b. If the POTW receives, or has been notified that it will receive, wastewaters that  
1678 originate from remedial activities, including those undertaken pursuant to CERCLA  
1679 and § 3004(u) or 3008(h) of RCRA, the applicant must report the following:

1680 (1) The identity and description of the site or facility at which the wastewater originates;

1681 (2) The identities of the wastewater's hazardous constituents, as listed in Appendix  
1682 VIII of 40 CFR Part 261, if known; and

1683 (3) The extent of treatment, if any, the wastewater receives or will receive before  
1684 entering the POTW.

1685 c. Applicants are exempt from the requirements of subdivision 7 b of this subsection if  
1686 they receive no more than 15 kilograms per month of hazardous wastes, unless the  
1687 wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e).

1688 8. Each applicant with combined sewer systems must provide the following information:

1689 a. The following information regarding the combined sewer system:

1690 (1) A map indicating the location of the following:

1691 (a) All CSO discharge points;

1692 (b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water  
1693 supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national  
1694 resource waters); and

1695 (c) Waters supporting threatened and endangered species potentially affected by  
1696 CSOs; and

1697 (2) A diagram of the combined sewer collection system that includes the following  
1698 information:

1699 (a) The location of major sewer trunk lines, both combined and separate sanitary;

1700 (b) The locations of points where separate sanitary sewers feed into the combined  
1701 sewer system;

1702 (c) In-line and off-line storage structures;

1703 (d) The locations of flow-regulating devices; and

1704 (e) The locations of pump stations.

1705 b. The following information for each CSO discharge point covered by the permit  
1706 application:

1707 (1) The following information on each outfall:

1708 (a) Outfall number;

1709 (b) State, county, and city or town in which outfall is located;

1710 (c) Latitude and longitude, to the nearest second;

1711 (d) Distance from shore and depth below surface;

1712 (e) Whether the applicant monitored any of the following in the past year for this CSO:  
1713 (i) rainfall, (ii) CSO flow volume, (iii) CSO pollutant concentrations, (iv) receiving water  
1714 quality, or (v) CSO frequency; and

1715 (f) The number of storm events monitored in the past year;

1716 (2) The following information about CSO overflows from each outfall:

1717 (a) The number of events in the past year;

1718 (b) The average duration per event, if available;

1719 (c) The average volume per CSO event, if available; and

1720 (d) The minimum rainfall that caused a CSO event, if available, in the last year;

1721 (3) The following information about receiving waters:

1722 (a) Name of receiving water;

1723 (b) Name of watershed/stream system and the United States Soil Conservation  
1724 Service watershed (14-digit) code, if known; and

- 1725 (c) Name of State Management/River Basin and the United States Geological Survey  
1726 hydrologic cataloging unit (8-digit) code, if known; and
- 1727 (4) A description of any known water quality impacts on the receiving water caused by  
1728 the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent  
1729 shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance  
1730 of any applicable state water quality standard).
- 1731 9. All applicants must provide the name, mailing address, telephone number, electronic  
1732 mail address, and responsibilities of all contractors responsible for any operational or  
1733 maintenance aspects of the facility.
- 1734 10. All applications must be signed by a certifying official in compliance with 9VAC25-31-  
1735 110.
- 1736 11. Pertinent plans, specifications, maps and such other relevant information as may be  
1737 required, in scope and details satisfactory to the ~~board~~ department.
- 1738 L. Application requirements for new sources and new discharges. New manufacturing,  
1739 commercial, mining and silvicultural dischargers applying for VPDES permits (except for new  
1740 discharges of facilities subject to the requirements of subsection I of this section or new  
1741 discharges of stormwater associated with industrial activity that are subject to the requirements  
1742 of 9VAC25-31-120 B 1 and this subsection) shall provide the following information to the  
1743 department, using the application forms provided by the department:
- 1744 1. The expected outfall location in latitude and longitude to the nearest 15 seconds and  
1745 the name of the receiving water;
- 1746 2. The expected date of commencement of discharge;
- 1747 3. a. Description of the treatment that the wastewater will receive, along with all operations  
1748 contributing wastewater to the effluent, average flow contributed by each operation, and  
1749 the ultimate disposal of any solid or liquid wastes not discharged;
- 1750 b. A line drawing of the water flow through the facility with a water balance as described  
1751 in subdivision H 2;
- 1752 c. If any of the expected discharges will be intermittent or seasonal, a description of  
1753 the frequency, duration and maximum daily flow rate of each discharge occurrence  
1754 (except for stormwater run-off, spillage, or leaks);
- 1755 4. If a new source performance standard promulgated under § 306 of the CWA or an  
1756 effluent limitation guideline applies to the applicant and is expressed in terms of production  
1757 (or other measure of operation), a reasonable measure of the applicant's expected actual  
1758 production reported in the units used in the applicable effluent guideline or new source  
1759 performance standard for each of the first three years. Alternative estimates may also be  
1760 submitted if production is likely to vary;
- 1761 5. The requirements in subdivisions I 4 a, b, and c of this section that an applicant must  
1762 provide estimates of certain pollutants expected to be present do not apply to pollutants  
1763 present in a discharge solely as a result of their presence in intake water; however, an  
1764 applicant must report such pollutants as present. Net credits may be provided for the  
1765 presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met.  
1766 All levels (except for discharge flow, temperature, and pH) must be estimated as  
1767 concentration and as total mass.
- 1768 a. Each applicant must report estimated daily maximum, daily average, and source of  
1769 information for each outfall for the following pollutants or parameters. The ~~board~~  
1770 department may waive the reporting requirements for any of these pollutants and  
1771 parameters if the applicant submits a request for such a waiver before or with his

1772 application which demonstrates that information adequate to support issuance of the  
1773 permit can be obtained through less stringent reporting requirements:

1774 (1) Biochemical oxygen demand (BOD).  
1775 (2) Chemical oxygen demand (COD).  
1776 (3) Total organic carbon (TOC).  
1777 (4) Total suspended solids (TSS).  
1778 (5) Flow.  
1779 (6) Ammonia (as N).  
1780 (7) Temperature (winter and summer).  
1781 (8) pH.

1782 b. Each applicant must report estimated daily maximum, daily average, and source of  
1783 information for each outfall for the following pollutants, if the applicant knows or has  
1784 reason to believe they will be present or if they are limited by an effluent limitation  
1785 guideline or new source performance standard either directly or indirectly through  
1786 limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122  
1787 Appendix D (certain conventional and nonconventional pollutants).

1788 c. Each applicant must report estimated daily maximum, daily average and source of  
1789 information for the following pollutants if he knows or has reason to believe that they  
1790 will be present in the discharges from any outfall:

1791 (1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals,  
1792 in the discharge from any outfall, Total cyanide, and total phenols);

1793 (2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (except bis  
1794 (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This  
1795 requirement is waived for applicants with expected gross sales of less than \$100,000  
1796 per year for the next three years, and for coal mines with expected average production  
1797 of less than 100,000 tons of coal per year.

1798 d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD)  
1799 may be discharged if he uses or manufactures one of the following compounds, or if  
1800 he knows or has reason to believe that TCDD will or may be present in an effluent:

1801 (1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);  
1802 (2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);  
1803 (3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);  
1804 (4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-  
1805 3);  
1806 (5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or  
1807 (6) Hexachlorophene (HCP) (CAS #70-30-4);

1808 e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122  
1809 Appendix D (certain hazardous substances) if he believes they will be present in any  
1810 outfall (no quantitative estimates are required unless they are already available).

1811 f. No later than 24 months after the commencement of discharge from the proposed  
1812 facility, the applicant is required to submit the information required in subsection H of  
1813 this section. However, the applicant need not complete those portions of subsection H  
1814 of this section requiring tests that have already been performed and reported under  
1815 the discharge monitoring requirements of the VPDES permit;

- 1816 6. Each applicant must report the existence of any technical evaluation concerning his  
1817 wastewater treatment, along with the name and location of similar plants of which he has  
1818 knowledge;
- 1819 7. Any optional information the permittee wishes to have considered;
- 1820 8. Signature of certifying official under 9VAC25-31-110; and
- 1821 9. Pertinent plans, specifications, maps, and such other relevant information as may be  
1822 required, in scope and details satisfactory to the ~~board~~ department.
- 1823 M. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment  
1824 works (POTW) may request a variance from otherwise applicable effluent limitations under any  
1825 of the following statutory or regulatory provisions within the times specified in this subsection:
- 1826 1. Fundamentally different factors.
- 1827 a. A request for a variance based on the presence of fundamentally different factors  
1828 from those on which the effluent limitations guideline was based shall be filed as  
1829 follows:
- 1830 (1) For a request from best practicable control technology currently available (BPT),  
1831 by the close of the public comment period for the draft permit; or
- 1832 (2) For a request from best available technology economically achievable (BAT) or  
1833 best conventional pollutant control technology (BCT), by no later than:
- 1834 (a) July 3, 1989, for a request based on an effluent limitation guideline promulgated  
1835 before February 4, 1987, to the extent July 3, 1989, is not later than that provided  
1836 under previously promulgated regulations; or
- 1837 (b) 180 days after the date on which an effluent limitation guideline is published in the  
1838 Federal Register for a request based on an effluent limitation guideline promulgated  
1839 on or after February 4, 1987.
- 1840 b. The request shall explain how the requirements of the applicable regulatory or  
1841 statutory criteria have been met.
- 1842 2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants  
1843 (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because  
1844 of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA  
1845 (provided however that a § 301(g) variance may only be requested for ammonia; chlorine;  
1846 color; iron; total phenols (when determined by the administrator to be a pollutant covered  
1847 by § 301(b)(2)(F) of the CWA) and any other pollutant which the administrator lists under  
1848 § 301(g)(4) of the CWA) must be made as follows:
- 1849 a. For those requests for a variance from an effluent limitation based upon an effluent  
1850 limitation guideline by:
- 1851 (1) Submitting an initial request to the regional administrator, as well as to the  
1852 department, stating the name of the discharger, the permit number, the outfall number,  
1853 the applicable effluent guideline, and whether the discharger is requesting a § 301(c)  
1854 or 301(g) of the CWA modification, or both. This request must have been filed not later  
1855 than 270 days after promulgation of an applicable effluent limitation guideline; and
- 1856 (2) Submitting a completed request no later than the close of the public comment  
1857 period for the draft permit demonstrating that: (i) all reasonable ascertainable issues  
1858 have been raised and all reasonably available arguments and materials supporting  
1859 their position have been submitted; and (ii) that the applicable requirements of 40 CFR  
1860 Part 125 have been met. Notwithstanding this provision, the complete application for  
1861 a request under § 301(g) of the CWA shall be filed 180 days before EPA must make



1862 a decision (unless the Regional Division Director establishes a shorter or longer  
1863 period); or

1864 b. For those requests for a variance from effluent limitations not based on effluent  
1865 limitation guidelines, the request need only comply with subdivision 2 a (2) of this  
1866 subsection and need not be preceded by an initial request under subdivision 2 a (1) of  
1867 this subsection.

1868 3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the  
1869 CWA for achieving water quality related effluent limitations may be requested no later than  
1870 the close of the public comment period for the draft permit on the permit from which the  
1871 modification is sought.

1872 4. A variance for alternate effluent limitations for the thermal component of any discharge  
1873 must be filed with a timely application for a permit under this section, except that if thermal  
1874 effluent limitations are established on a case-by-case basis or are based on water quality  
1875 standards the request for a variance may be filed by the close of the public comment  
1876 period for the draft permit. A copy of the request shall be sent simultaneously to the  
1877 department.

1878 N. Variance requests by POTWs. A discharger which is a publicly owned treatment works  
1879 (POTW) may request a variance from otherwise applicable effluent limitations under any of the  
1880 following statutory provisions as specified in this paragraph:

1881 1. A request for a modification under § 301(h) of the CWA of requirements of §  
1882 301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance  
1883 with the requirements of 40 CFR Part 125, Subpart G.

1884 2. A modification under § 302(b)(2) of the CWA of the requirements under § 302(a) of the  
1885 CWA for achieving water quality based effluent limitations shall be requested no later than  
1886 the close of the public comment period for the draft permit on the permit from which the  
1887 modification is sought.

1888 O. Expedited variance procedures and time extensions.

1889 1. Notwithstanding the time requirements in subsections M and N of this section, the ~~board~~  
1890 department may notify a permit applicant before a draft permit is issued that the draft  
1891 permit will likely contain limitations which are eligible for variances. In the notice the ~~board~~  
1892 department may require the applicant as a condition of consideration of any potential  
1893 variance request to submit a request explaining how the requirements of 40 CFR Part 125  
1894 applicable to the variance have been met and may require its submission within a specified  
1895 reasonable time after receipt of the notice. The notice may be sent before the permit  
1896 application has been submitted. The draft or final permit may contain the alternative  
1897 limitations that may become effective upon final grant of the variance.

1898 2. A discharger who cannot file a timely complete request required under subdivisions M  
1899 2 a (2) or M 2 b of this section may request an extension. The extension may be granted  
1900 or denied at the discretion of the ~~board~~ department. Extensions shall be no more than six  
1901 months in duration.

1902 P. Recordkeeping. Except for information required by subdivision D 2 of this section, which  
1903 shall be retained for a period of at least five years from the date the application is signed (or longer  
1904 as required by Part VI (9VAC25-31-420 et seq.) of this chapter), applicants shall keep records of  
1905 all data used to complete permit applications and any supplemental information submitted under  
1906 this section for a period of at least three years from the date the application is signed.

1907 Q. Sewage sludge management. All TWTDS subject to subdivision D 2 a of this section must  
1908 provide the information in this subsection to the department using an application form approved  
1909 by the department. New applicants must submit all information available at the time of permit

1910 application. The information may be provided by referencing information previously submitted to  
1911 the department. The ~~board~~ department may waive any requirement of this subsection if it has  
1912 access to substantially identical information. The ~~board~~ department may also waive any  
1913 requirement of this subsection that is not of material concern for a specific permit, if approved by  
1914 the regional administrator. The waiver request to the regional administrator must include the  
1915 ~~board's~~ department's justification for the waiver. A regional administrator's disapproval of the  
1916 ~~board's~~ department's proposed waiver does not constitute final agency action, but does provide  
1917 notice to the ~~board~~ department and the permit applicant that EPA may object to any ~~board~~  
1918 department issued permit issued in the absence of the required information.

- 1919 1. All applicants must submit the following information:
- 1920 a. The name, mailing address, and location of the TWTDS for which the application is  
1921 submitted;
- 1922 b. Whether the facility is a Class I Sludge Management Facility;
- 1923 c. The design flow rate (in million gallons per day);
- 1924 d. The total population served;
- 1925 e. The TWTDS's status as federal, state, private, public, or other entity;
- 1926 f. The name, mailing address, telephone number, and electronic mail address of the  
1927 applicant; and
- 1928 g. Indication whether the applicant is the owner, operator, or both.
- 1929 2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing  
1930 of all other federal, state, and local permits or construction approvals received or applied  
1931 for under any of the following programs:
- 1932 a. Hazardous Waste Management program under the Resource Conservation and  
1933 Recovery Act (RCRA);
- 1934 b. UIC program under the Safe Drinking Water Act (SDWA);
- 1935 c. NPDES program under the Clean Water Act (CWA);
- 1936 d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
- 1937 e. Nonattainment program under the Clean Air Act;
- 1938 f. National Emission Standards for Hazardous Air Pollutants (NESHAPS)  
1939 preconstruction approval under the Clean Air Act;
- 1940 g. Dredge or fill permits under § 404 of the CWA;
- 1941 h. Other relevant environmental permits, including state or local permits.
- 1942 3. All applicants must identify any generation, treatment, storage, land application of  
1943 biosolids, or disposal of sewage sludge that occurs in Indian country.
- 1944 4. All applicants must submit a topographic map (or other map if a topographic map is  
1945 unavailable) extending one mile beyond property boundaries of the facility and showing  
1946 the following information:
- 1947 a. All sewage sludge management facilities, including on-site treatment, storage, and  
1948 disposal sites; and
- 1949 b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property  
1950 boundaries and listed in public records or otherwise known to the applicant.
- 1951 5. All applicants must submit a line drawing or a narrative description that identifies all  
1952 sewage sludge management practices employed during the term of the permit, including  
1953 all units used for collecting, dewatering, storing, or treating sewage sludge; the destination  
1954 of all liquids and solids leaving each such unit; and all processes used for pathogen  
1955 reduction and vector attraction reduction.

- 1956 6. All applicants must submit an odor control plan that contains at minimum:
- 1957 a. Methods used to minimize odor in producing biosolids;
- 1958 b. Methods used to identify malodorous biosolids before land application (at the
- 1959 generating facility);
- 1960 c. Methods used to identify and abate malodorous biosolids that have been delivered
- 1961 to the field, prior to land application; and
- 1962 d. Methods used to abate malodor from biosolids if land applied.
- 1963 7. The applicant must submit biosolids monitoring data for the pollutants for which limits
- 1964 in biosolids have been established in Part VI (9VAC25-31-420 et seq.) of this chapter for
- 1965 the applicant's use or disposal practices on the date of permit application with the following
- 1966 conditions:
- 1967 a. When applying for authorization to land apply a biosolids source not previously
- 1968 included in a VPDES or Virginia Pollution Abatement Permit, the biosolids shall be
- 1969 sampled and analyzed for PCBs. The sample results shall be submitted with the permit
- 1970 application or request to add the source.
- 1971 b. The ~~board~~ department may require sampling for additional pollutants, as
- 1972 appropriate, on a case-by-case basis.
- 1973 c. Applicants must provide data from a minimum of three samples taken within 4-1/2
- 1974 years prior to the date of the permit application. Samples must be representative of
- 1975 the biosolids and should be taken at least one month apart. Existing data may be used
- 1976 in lieu of sampling done solely for the purpose of this application.
- 1977 d. Applicants must collect and analyze samples in accordance with analytical methods
- 1978 specified in 9VAC25-31-490, 40 CFR Part 503 (March 26, 2007), and 40 CFR Part
- 1979 136 (March 26, 2007).
- 1980 e. The monitoring data provided must include at least the following information for each
- 1981 parameter:
- 1982 (1) Average monthly concentration for all samples (mg/kg dry weight), based upon
- 1983 actual sample values;
- 1984 (2) The analytical method used; and
- 1985 (3) The method detection level.
- 1986 8. If the applicant is a person who prepares biosolids or sewage sludge, as defined in
- 1987 9VAC25-31-500, the applicant must provide the following information:
- 1988 a. If the applicant's facility generates biosolids or sewage sludge, the total dry metric
- 1989 tons per 365-day period generated at the facility.
- 1990 b. If the applicant's facility receives biosolids or sewage sludge from another facility,
- 1991 the following information for each facility from which biosolids or sewage sludge is
- 1992 received:
- 1993 (1) The name, mailing address, and location of the other facility;
- 1994 (2) The total dry metric tons per 365-day period received from the other facility; and
- 1995 (3) A description of any treatment processes occurring at the other facility, including
- 1996 blending activities and treatment to reduce pathogens or vector attraction
- 1997 characteristics.
- 1998 c. If the applicant's facility changes the quality of biosolids or sewage sludge through
- 1999 blending, treatment, or other activities, the following information:

2000 (1) Whether the Class A pathogen reduction requirements in 9VAC25-31-710 A or the  
2001 Class B pathogen reduction requirements in 9VAC25-31-710 B are met, and a  
2002 description of any treatment processes used to reduce pathogens in sewage sludge;  
2003 (2) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 1  
2004 through 8 are met, and a description of any treatment processes used to reduce vector  
2005 attraction properties in sewage sludge; and  
2006 (3) A description of any other blending, treatment, or other activities that change the  
2007 quality of sewage sludge.  
2008 d. If biosolids from the applicant's facility meets the ceiling concentrations in 9VAC25-  
2009 31-540 B Table 1, the pollutant concentrations in 9VAC25-31-540 B Table 3, the Class  
2010 A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction  
2011 reduction requirements in 9VAC25-31-720 B 1 through 8, and if the biosolids is applied  
2012 to the land, the applicant must provide the total dry metric tons per 365-day period of  
2013 sewage sludge subject to this subsection that is applied to the land.  
2014 e. If biosolids from the applicant's facility is sold or given away in a bag or other  
2015 container for application to the land, and the biosolids is not subject to subdivision 8 d  
2016 of this subsection, the applicant must provide the following information:  
2017 (1) The total dry metric tons per 365-day period of biosolids subject to this subsection  
2018 that is sold or given away in a bag or other container for application to the land; and  
2019 (2) A copy of all labels or notices that accompany the biosolids being sold or given  
2020 away.  
2021 f. If biosolids or sewage sludge from the applicant's facility is provided to another  
2022 person who prepares biosolids, as defined in 9VAC25-31-500, and the biosolids is not  
2023 subject to subdivision 8 d of this subsection, the applicant must provide the following  
2024 information for each facility receiving the biosolids or sewage sludge:  
2025 (1) The name, mailing address, and electronic mail address of the receiving facility;  
2026 (2) The total dry metric tons per 365-day period of biosolids or sewage sludge subject  
2027 to this subsection that the applicant provides to the receiving facility;  
2028 (3) A description of any treatment processes occurring at the receiving facility,  
2029 including blending activities and treatment to reduce pathogens or vector attraction  
2030 characteristic;  
2031 (4) A copy of the notice and necessary information that the applicant is required to  
2032 provide the receiving facility under 9VAC25-31-530 G; and  
2033 (5) If the receiving facility places biosolids in bags or containers for sale or give-away  
2034 for application to the land, a copy of any labels or notices that accompany the biosolids.  
2035 9. If biosolids from the applicant's facility is applied to the land in bulk form and is not  
2036 subject to subdivision 8 d, e, or f of this subsection, the applicant must provide the following  
2037 information:  
2038 a. Written permission of landowners on the most current form approved by the ~~board~~  
2039 department.  
2040 b. The total dry metric tons per 365-day period of biosolids subject to this subsection  
2041 that is applied to the land.  
2042 c. If any land application sites are located in states other than the state where the  
2043 biosolids is prepared, a description of how the applicant will notify the permitting  
2044 authority for the state where the land application sites are located.  
2045 d. The following information for each land application site that has been identified at  
2046 the time of permit application:

- 2047 (1) The DEQ control number, if previously assigned, identifying the land application  
2048 field or site. If a DEQ control number has not been assigned, provide the site  
2049 identification code used by the permit applicant to report activities and the site's  
2050 location;
- 2051 (2) The site's latitude and longitude in decimal degrees to three decimal places and  
2052 method of determination;
- 2053 (3) A legible topographic map and aerial photograph, including legend, of proposed  
2054 application areas to scale as needed to depict the following features:
- 2055 (a) Property boundaries;
- 2056 (b) Surface water courses;
- 2057 (c) Water supply wells and springs;
- 2058 (d) Roadways;
- 2059 (e) Rock outcrops;
- 2060 (f) Slopes;
- 2061 (g) Frequently flooded areas (National Resources Conservation Service (NRCS)  
2062 designation);
- 2063 (h) Occupied dwellings within 400 feet of the property boundaries and all existing  
2064 extended dwelling and property line setback distances;
- 2065 (i) Publicly accessible properties and occupied buildings within 400 feet of the property  
2066 boundaries and the associated extended setback distances; and
- 2067 (j) The gross acreage of the fields where biosolids will be applied;
- 2068 (4) County map or other map of sufficient detail to show general location of the site  
2069 and proposed transport vehicle haul routes to be utilized from the treatment plant;
- 2070 (5) County tax maps labeled with Tax Parcel ID or IDs for each farm to be included in  
2071 the permit, which may include multiple fields, to depict properties within 400 feet of the  
2072 field boundaries;
- 2073 (6) A USDA soil survey map, if available, of proposed sites for land application of  
2074 biosolids;
- 2075 (7) The name, mailing address, telephone number, and electronic mail address of each  
2076 site owner, if different from the applicant;
- 2077 (8) The name, mailing address, telephone number, and electronic mail address of the  
2078 person who applies biosolids to the site, if different from the applicant;
- 2079 (9) Whether the site is agricultural land, forest, a public contact site, or a reclamation  
2080 site, as such site types are defined in 9VAC25-31-500;
- 2081 (10) Description of agricultural practices including a list of proposed crops to be grown;
- 2082 (11) Whether either of the vector attraction reduction options of 9VAC25-31-720 B 9  
2083 or 10 is met at the site, and a description of any procedures employed at the time of  
2084 use to reduce vector attraction properties in biosolids;
- 2085 (12) Pertinent calculations justifying storage and land area requirements for biosolids  
2086 application including an annual biosolids balance incorporating such factors as  
2087 precipitation, evapotranspiration, soil percolation rates, wastewater loading, and  
2088 monthly storage (input and drawdown); and
- 2089 (13) Other information that describes how the site will be managed, as specified by  
2090 the board department.

- 2091 e. The following information for each land application site that has been identified at  
2092 the time of permit application, if the applicant intends to apply bulk biosolids subject to  
2093 the cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 to the site:
- 2094 (1) Whether the applicant has contacted the permitting authority in the state where the  
2095 bulk biosolids subject to 9VAC25-31-540 B Table 2 will be applied, to ascertain  
2096 whether bulk biosolids subject to 9VAC25-31-540 B Table 2 has been applied to the  
2097 site on or since July 20, 1993, and if so, the name of the permitting authority and the  
2098 name, phone number, and electronic mail address, if available, of a contact person at  
2099 the permitting authority; and
- 2100 (2) Identification of facilities other than the applicant's facility that have sent, or are  
2101 sending, biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540  
2102 B Table 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 9 e (1)  
2103 of this subsection, bulk biosolids subject to cumulative pollutant loading rates in  
2104 9VAC25-31-540 B Table 2 has been applied to the site since July 20, 1993.
- 2105 10. Biosolids storage facilities not located at the site of the wastewater treatment plant.  
2106 Plans and specifications for biosolids storage facilities not located at the site of the  
2107 wastewater treatment plant generating the biosolids, including routine and on-site storage,  
2108 shall be submitted for issuance of a certificate to construct and a certificate to operate in  
2109 accordance with the Sewage Collection and Treatment Regulations (9VAC25-790) and  
2110 shall depict the following information:
- 2111 a. Site layout on a recent 7.5 minute topographic quadrangle or other appropriate  
2112 scaled map;
- 2113 b. Location of any required soil, geologic, and hydrologic test holes or borings;
- 2114 c. Location of the following field features within 0.25 miles of the site boundary (indicate  
2115 on map) with the approximate distances from the site boundary:
- 2116 (1) Water wells (operating or abandoned);
- 2117 (2) Surface waters;
- 2118 (3) Springs;
- 2119 (4) Public water supplies;
- 2120 (5) Sinkholes;
- 2121 (6) Underground and surface mines;
- 2122 (7) Mine pool (or other) surface water discharge points;
- 2123 (8) Mining spoil piles and mine dumps;
- 2124 (9) Quarries;
- 2125 (10) Sand and gravel pits;
- 2126 (11) Gas and oil wells;
- 2127 (12) Diversion ditches;
- 2128 (13) Occupied dwellings, including industrial and commercial establishments;
- 2129 (14) Landfills and dumps;
- 2130 (15) Other unlined impoundments;
- 2131 (16) Septic tanks and drainfields; and
- 2132 (17) Injection wells;
- 2133 d. Topographic map (10-foot contour preferred) of sufficient detail to clearly show the  
2134 following information:
- 2135 (1) Maximum and minimum percent slopes;

- 2136 (2) Depressions on the site that may collect water;
- 2137 (3) Drainage ways that may attribute to rainfall run-on to or run-off from this site; and
- 2138 (4) Portions of the site, if any, that are located within the 100-year floodplain;
- 2139 e. Data and specifications for the liner proposed for seepage control;
- 2140 f. Scaled plan view and cross-sectional view of the facilities showing inside and outside
- 2141 slopes of all embankments and details of all appurtenances;
- 2142 g. Calculations justifying impoundment capacity; and
- 2143 h. Groundwater monitoring plans for the facilities if required by the department. The
- 2144 groundwater monitoring plan shall include pertinent geohydrological data to justify
- 2145 upgradient and downgradient well location and depth.
- 2146 11. Staging. Generic plans are required for staging of biosolids.
- 2147 12. A biosolids management plan shall be provided that includes the following minimum
- 2148 site specific information at the time of permit application:
- 2149 a. A comprehensive, general description of the operation shall be provided, including
- 2150 biosolids source or sources, quantities, flow diagram illustrating treatment works
- 2151 biosolids flows and solids handling units, site description, methodology of biosolids
- 2152 handling for application periods, including storage and nonapplication period storage,
- 2153 and alternative management methods when storage is not provided.
- 2154 b. A nutrient management plan approved by the Department of Conservation and
- 2155 Recreation as required for application sites prior to ~~board~~ department authorization
- 2156 under the following conditions:
- 2157 (1) Sites operated by an owner or lessee of a confined animal feeding operation, as
- 2158 defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry
- 2159 feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of
- 2160 Virginia;
- 2161 (2) Sites where land application is proposed more frequently than once every three
- 2162 years at greater than 50% of the annual agronomic rate;
- 2163 (3) Mined or disturbed land sites where land application is proposed at greater than
- 2164 agronomic rates; or
- 2165 (4) Other sites based on site-specific conditions that increase the risk that land
- 2166 application may adversely impact state waters.
- 2167 13. Biosolids transport.
- 2168 a. General description of transport vehicles to be used;
- 2169 b. Procedures for biosolids offloading at the biosolids facilities and the land application
- 2170 site together with spill prevention, cleanup (including vehicle cleaning), field
- 2171 reclamation, and emergency spill notification and cleanup measures; and
- 2172 c. Voucher system used for documentation and recordkeeping.
- 2173 14. Field operations.
- 2174 a. Storage.
- 2175 (1) Routine storage at facilities not located at the site of the wastewater treatment plant
- 2176 – supernatant handling and disposal, biosolids handling, and loading of transport
- 2177 vehicles, equipment cleaning, freeboard maintenance, and inspections for structural
- 2178 integrity;
- 2179 (2) On-site storage – procedures for department ~~board~~ approval and implementation;

- 2180 (3) Staging – procedures to be followed including either designated site locations  
2181 provided in the "Design Information" or the specific site criteria for such locations  
2182 including the liner/cover requirements and the time limit assigned to such use; and  
2183 (4) Field reestablishment of offloading (staging) areas.
- 2184 b. Application methodology.
- 2185 (1) Description and specifications on spreader vehicles;  
2186 (2) Procedures for calibrating equipment for various biosolids contents to ensure  
2187 uniform distribution and appropriate loading rates on a day-to-day basis; and  
2188 (3) Procedures used to ensure that operations address the following constraints:  
2189 application of biosolids to frozen ground, pasture/hay fields, crops for direct human  
2190 consumption and saturated or ice-covered or snow-covered ground; establishment of  
2191 setback distances, slopes, prohibited access for beef and dairy animals, and soil pH  
2192 requirements; and proper site specific biosolids loading rates on a field-by-field basis.
- 2193 15. An applicant for a permit authorizing the land application of biosolids shall provide to  
2194 the department, and to each locality in which the applicant proposes to land apply  
2195 biosolids, written evidence of financial responsibility. Evidence of financial responsibility  
2196 shall be provided in accordance with requirements specified in Article 6 (9VAC25-32-770  
2197 et seq.) of Part IX (9VAC25-32-303 et seq.) of the Virginia Pollution Abatement (VPA)  
2198 Permit Regulation.
- 2199 16. If sewage sludge from the applicant's facility is placed on a surface disposal site, the  
2200 applicant must provide the following information:
- 2201 a. The total dry metric tons of sewage sludge from the applicant's facility that is placed  
2202 on surface disposal sites per 365-day period.
- 2203 b. The following information for each surface disposal site receiving sewage sludge  
2204 from the applicant's facility that the applicant does not own or operate:
- 2205 (1) The site name or number, contact person, mailing address, telephone number, and  
2206 electronic mail address for the surface disposal site; and  
2207 (2) The total dry metric tons from the applicant's facility per 365-day period placed on  
2208 the surface disposal site.
- 2209 c. The following information for each active sewage sludge unit at each surface  
2210 disposal site that the applicant owns or operates:
- 2211 (1) The name or number and the location of the active sewage sludge unit;  
2212 (2) The unit's latitude and longitude to the nearest second, and method of  
2213 determination;  
2214 (3) If not already provided, a topographic map (or other map if a topographic map is  
2215 unavailable) that shows the unit's location;  
2216 (4) The total dry metric tons placed on the active sewage sludge unit per 365-day  
2217 period;  
2218 (5) The total dry metric tons placed on the active sewage sludge unit over the life of  
2219 the unit;  
2220 (6) A description of any liner for the active sewage sludge unit, including whether it  
2221 has a maximum permeability of  $1 \times 10^{-7}$  cm/sec;  
2222 (7) A description of any leachate collection system for the active sewage sludge unit,  
2223 including the method used for leachate disposal, and any federal, state, and local  
2224 permit number(s) for leachate disposal;



- 2225 (8) If the active sewage sludge unit is less than 150 meters from the property line of  
2226 the surface disposal site, the actual distance from the unit boundary to the site property  
2227 line;
- 2228 (9) The remaining capacity (dry metric tons) for the active sewage sludge unit;
- 2229 (10) The date on which the active sewage sludge unit is expected to close, if such a  
2230 date has been identified;
- 2231 (11) The following information for any other facility that sends sewage sludge to the  
2232 active sewage sludge unit:
- 2233 (a) The name, contact person, mailing address, and electronic mail address of the  
2234 facility; and
- 2235 (b) Available information regarding the quality of the sewage sludge received from the  
2236 facility, including any treatment at the facility to reduce pathogens or vector attraction  
2237 characteristics;
- 2238 (12) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 9  
2239 through 11 is met at the active sewage sludge unit, and a description of any  
2240 procedures employed at the time of disposal to reduce vector attraction properties in  
2241 sewage sludge;
- 2242 (13) The following information, as applicable to any groundwater monitoring occurring  
2243 at the active sewage sludge unit:
- 2244 (a) A description of any groundwater monitoring occurring at the active sewage sludge  
2245 unit;
- 2246 (b) Any available groundwater monitoring data, with a description of the well locations  
2247 and approximate depth to groundwater;
- 2248 (c) A copy of any groundwater monitoring plan that has been prepared for the active  
2249 sewage sludge unit;
- 2250 (d) A copy of any certification that has been obtained from a qualified groundwater  
2251 scientist that the aquifer has not been contaminated; and
- 2252 (14) If site-specific pollutant limits are being sought for the sewage sludge placed on  
2253 this active sewage sludge unit, information to support such a request.
- 2254 17. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator,  
2255 the applicant must provide the following information:
- 2256 a. The total dry metric tons of sewage sludge from the applicant's facility that is fired  
2257 in sewage sludge incinerators per 365-day period.
- 2258 b. The following information for each sewage sludge incinerator firing the applicant's  
2259 sewage sludge that the applicant does not own or operate:
- 2260 (1) The name or number, contact person, mailing address, telephone number, and  
2261 electronic mail address of the sewage sludge incinerator; and
- 2262 (2) The total dry metric tons from the applicant's facility per 365-day period fired in the  
2263 sewage sludge incinerator.
- 2264 18. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill  
2265 (MSWLF), the applicant must provide the following information for each MSWLF to which  
2266 sewage sludge is sent:
- 2267 a. The name, contact person, mailing address, electronic mail address, location, and  
2268 all applicable permit numbers of the MSWLF;
- 2269 b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;

- 2270 c. A determination of whether the sewage sludge meets applicable requirements for  
 2271 disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids  
 2272 test and any additional requirements that apply on a site-specific basis; and
- 2273 d. Information, if known, indicating whether the MSWLF complies with criteria set forth  
 2274 in the Solid Waste Management Regulations, 9VAC20-81.
- 2275 19. All applicants must provide the name, mailing address, telephone number, electronic  
 2276 mail address, and responsibilities of all contractors responsible for any operational or  
 2277 maintenance aspects of the facility related to biosolids or sewage sludge generation,  
 2278 treatment, use, or disposal.
- 2279 20. At the request of the ~~board~~ department, the applicant must provide any other  
 2280 information necessary to determine the appropriate standards for permitting under Part VI  
 2281 (9VAC25-31-420 et seq.) of this chapter, and must provide any other information  
 2282 necessary to assess the biosolids use and sewage sludge disposal practices, determine  
 2283 whether to issue a permit, or identify appropriate permit requirements; and pertinent plans,  
 2284 specifications, maps and such other relevant information as may be required, in scope  
 2285 and details satisfactory to the ~~board~~ department.
- 2286 21. All applications must be signed by a certifying official in compliance with 9VAC25-31-  
 2287 110.
- 2288 R. Applications for facilities with cooling water intake structures.
- 2289 1. Application requirements. New facilities with new or modified cooling water intake  
 2290 structures. New facilities with cooling water intake structures as defined in 9VAC25-31-  
 2291 165 must report the information required under subdivisions 2, 3, and 4 of this subsection  
 2292 and under 9VAC25-31-165. Requests for alternative requirements under 9VAC25-31-165  
 2293 must be submitted with the permit application.
- 2294 2. Source water physical data. These include:
- 2295 a. A narrative description and scaled drawings showing the physical configuration of  
 2296 all source water bodies used by the facility, including area dimensions, depths, salinity  
 2297 and temperature regimes, and other documentation that supports the determination of  
 2298 the water body type where each cooling water intake structure is located;
- 2299 b. Identification and characterization of the source water body's hydrological and  
 2300 geomorphologic features, as well as the methods used to conduct any physical studies  
 2301 to determine the intake's area of influence within the water body and the results of  
 2302 such studies; and
- 2303 c. Location maps.
- 2304 3. Cooling water intake structure data. These include:
- 2305 a. A narrative description of the configuration of each cooling water intake structure  
 2306 and where it is located in the water body and in the water column;
- 2307 b. Latitude and longitude in degrees, minutes, and seconds for each cooling water  
 2308 intake structure;
- 2309 c. A narrative description of the operation of each cooling water intake structure,  
 2310 including design intake flow, daily hours of operation, number of days of the year in  
 2311 operation and seasonal changes, if applicable;
- 2312 d. A flow distribution and water balance diagram that includes all sources of water to  
 2313 the facility, recirculation flows and discharges; and
- 2314 e. Engineering drawings of the cooling water intake structure.
- 2315 4. Source water baseline biological characterization data. This information is required to  
 2316 characterize the biological community in the vicinity of the cooling water intake structure

2317 and to characterize the operation of the cooling water intake structures. The department  
2318 may also use this information in subsequent permit renewal proceedings to determine if  
2319 the design and construction technology plan as required in 9VAC25-31-165 should be  
2320 revised. This supporting information must include existing data if available. Existing data  
2321 may be supplemented with data from newly conducted field studies. The information must  
2322 include:

2323 a. A list of the data in subdivisions 4 b through 4 f of this subsection that is not available  
2324 and efforts made to identify sources of the data;

2325 b. A list of species (or relevant taxa) for all life stages and their relative abundance in  
2326 the vicinity of the cooling water intake structure;

2327 c. Identification of the species and life stages that would be most susceptible to  
2328 impingement and entrainment. Species evaluated should include the forage base as  
2329 well as those most important in terms of significance to commercial and recreational  
2330 fisheries;

2331 d. Identification and evaluation of the primary period of reproduction, larval  
2332 recruitment, and period of peak abundance for relevant taxa;

2333 e. Data representative of the seasonal and daily activities (e.g., feeding and water  
2334 column migration) of biological organisms in the vicinity of the cooling water intake  
2335 structure;

2336 f. Identification of all threatened, endangered, and other protected species that might  
2337 be susceptible to impingement and entrainment at the cooling water intake structures;

2338 g. Documentation of any public participation or consultation with federal or state  
2339 agencies undertaken in development of the plan; and

2340 h. If information requested in this subdivision 4 is supplemented with data collected  
2341 using field studies, supporting documentation for the source water baseline biological  
2342 characterization must include a description of all methods and quality assurance  
2343 procedures for sampling, and data analysis including a description of the study area;  
2344 taxonomic identification of sampled and evaluated biological assemblages (including  
2345 all life stages of fish and shellfish); and sampling and data analysis methods. The  
2346 sampling and/or data analysis methods used must be appropriate for a quantitative  
2347 survey and based on consideration of methods used in other biological studies  
2348 performed within the same source water body. The study area should include, at a  
2349 minimum, the area of influence of the cooling water intake structure.

2350 **9VAC25-31-110. Signatories to permit applications and reports.**

2351 A. All permit applications shall be signed as follows:

2352 1. For a corporation: by a responsible corporate officer. For the purpose of this section, a  
2353 responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president  
2354 of the corporation in charge of a principal business function, or any other person who  
2355 performs similar policy-making or decision-making functions for the corporation, or (ii) the  
2356 manager of one or more manufacturing, production, or operating facilities, provided the  
2357 manager is authorized to make management decisions that govern the operation of the  
2358 regulated facility, including having the explicit or implicit duty of making major capital  
2359 investment recommendations, and initiating and directing other comprehensive measures  
2360 to assure long-term environmental compliance with environmental laws and regulations;  
2361 the manager can ensure that the necessary systems are established or actions taken to  
2362 gather complete and accurate information for permit application requirements; and where  
2363 authority to sign documents has been assigned or delegated to the manager in  
2364 accordance with corporate procedures;

- 2365 2. For a partnership or sole proprietorship: by a general partner or the proprietor,  
2366 respectively; or
- 2367 3. For a municipality, state, federal, or other public agency: by either a principal executive  
2368 officer or ranking elected official. For purposes of this section, a principal executive officer  
2369 of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior  
2370 executive officer having responsibility for the overall operations of a principal geographic  
2371 unit of the agency.

2372 B. All reports required by permits, and other information requested by the ~~board~~ department  
2373 shall be signed by a person described in subsection A of this section, or by a duly authorized  
2374 representative of that person. A person is a duly authorized representative only if:

- 2375 1. The authorization is made in writing by a person described in subsection A of this  
2376 section;
- 2377 2. The authorization specifies either an individual or a position having responsibility for the  
2378 overall operation of the regulated facility or activity such as the position of plant manager,  
2379 operator of a well or a well field, superintendent, position of equivalent responsibility, or  
2380 an individual or position having overall responsibility for environmental matters for the  
2381 company. (A duly authorized representative may thus be either a named individual or any  
2382 individual occupying a named position.); and
- 2383 3. The written authorization is submitted to the department.

2384 C. If an authorization under subsection B of this section is no longer accurate because a  
2385 different individual or position has responsibility for the overall operation of the facility, a new  
2386 authorization satisfying the requirements of subsection B of this section must be submitted to the  
2387 department prior to or together with any reports, or information to be signed by an authorized  
2388 representative.

2389 D. Any person signing a document under subsection A or B of this section shall make the  
2390 following certification:

2391 "I certify under penalty of law that this document and all attachments were prepared under  
2392 my direction or supervision in accordance with a system designed to assure that qualified  
2393 personnel properly gather and evaluate the information submitted. Based on my inquiry of  
2394 the person or persons who manage the system, or those persons directly responsible for  
2395 gathering the information, the information submitted is, to the best of my knowledge and  
2396 belief, true, accurate, and complete. I am aware that there are significant penalties for  
2397 submitting false information, including the possibility of fine and imprisonment for knowing  
2398 violations."

2399 E. Electronic reporting. If documents described in subsection A or B of this section are  
2400 submitted electronically by or on behalf of the VPDES-regulated facility, any person providing the  
2401 electronic signature for such documents shall meet all relevant requirements of this section and  
2402 shall ensure that all of the relevant requirements of Part XI (9VAC25-31-950 et seq.) of this  
2403 chapter and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D are met for that  
2404 submission).

#### 2405 **9VAC25-31-120. Stormwater discharges.**

2406 A. Permit requirements.

- 2407 1. Prior to October 1, 1994, discharges composed entirely of stormwater shall not be  
2408 required to obtain a VPDES permit except:
- 2409 a. A discharge with respect to which a permit has been issued prior to February 4,  
2410 1987;
- 2411 b. A discharge associated with industrial activity; or

2412 c. A discharge which either the ~~board~~ department or the regional administrator  
2413 determines to contribute to a violation of a water quality standard or is a significant  
2414 contributor of pollutants to surface waters. This designation may include a discharge  
2415 from any conveyance or system of conveyances used for collecting and conveying  
2416 stormwater run-off, except for those discharges from conveyances which do not  
2417 require a permit under subdivision 2 of this subsection or agricultural stormwater run-  
2418 off which is exempted from the definition of point source.

2419 2. The board or department may not require a permit for discharges of stormwater run-off  
2420 from mining operations or oil and gas exploration, production, processing or treatment  
2421 operations, or transmission facilities, composed entirely of flows which are from  
2422 conveyances or systems of conveyances (including pipes, conduits, ditches, and  
2423 channels) used for collecting and conveying precipitation run-off and which are not  
2424 contaminated by contact with or that has not come into contact with, any overburden, raw  
2425 material, intermediate products, finished product, by-product or waste products located on  
2426 the site of such operations.

2427 3. In addition to meeting the requirements of subsection B of this section, an operator of  
2428 a stormwater discharge associated with industrial activity which discharges through a  
2429 large or medium municipal separate storm sewer system shall submit, to the operator of  
2430 the municipal separate storm sewer system receiving the discharge no later than May 15,  
2431 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact  
2432 person and phone number; the location of the discharge; a description, including Standard  
2433 Industrial Classification, which best reflects the principal products or services provided by  
2434 each facility; and any existing VPDES permit number.

2435 4. For stormwater discharges associated with industrial activity from point sources which  
2436 discharge through a nonmunicipal or nonpublicly owned separate storm sewer system,  
2437 the ~~board~~ department, in its discretion, may issue: a single VPDES permit, with each  
2438 discharger a co-permittee to a permit issued to the operator of the portion of the system  
2439 that discharges into surface waters; or, individual permits to each discharger of stormwater  
2440 associated with industrial activity through the nonmunicipal conveyance system.

2441 a. All stormwater discharges associated with industrial activity that discharge through  
2442 a stormwater discharge system that is not a municipal separate storm sewer must be  
2443 covered by an individual permit, or a permit issued to the operator of the portion of the  
2444 system that discharges to surface waters, with each discharger to the nonmunicipal  
2445 conveyance a co-permittee to that permit.

2446 b. Where there is more than one operator of a single system of such conveyances, all  
2447 operators of stormwater discharges associated with industrial activity must submit  
2448 applications.

2449 c. Any permit covering more than one operator shall identify the effluent limitations, or  
2450 other permit conditions, if any, that apply to each operator.

2451 5. Conveyances that discharge stormwater run-off combined with municipal sewage are  
2452 point sources that must obtain VPDES permits in accordance with the procedures of  
2453 9VAC25-31-100 and are not subject to the provisions of this section.

2454 6. Whether a discharge from a municipal separate storm sewer is or is not subject to  
2455 VPDES regulation shall have no bearing on whether the owner or operator of the  
2456 discharge is eligible for funding under Title II, Title III or Title VI of the CWA.

2457 7. a. On and after October 1, 1994, for discharges composed entirely of stormwater, that  
2458 are not required by subdivision 1 of this subsection to obtain a permit, operators shall be  
2459 required to obtain a VPDES permit only if:

2460 (1) The ~~board~~ department or the EPA regional administrator determines that  
2461 stormwater controls are needed for the discharge based on wasteload allocations that  
2462 are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of  
2463 concern; or

2464 (2) The ~~board~~ department or the EPA regional administrator determines that the  
2465 discharge, or category of discharges within a geographic area, contributes to a  
2466 violation of a water quality standard or is a significant contributor of pollutants to  
2467 surface waters.

2468 b. Operators of nonmunicipal sources designated pursuant to subdivisions 7 a (1) and  
2469 (2) of this subsection shall seek coverage under a VPDES permit in accordance with  
2470 subdivision B 1 of this section.

2471 c. Operators of stormwater discharges designated pursuant to subdivisions 7 a (1) and  
2472 (2) of this subsection shall apply to the ~~board~~ department for a permit within 180 days  
2473 of receipt of notice, unless permission for a later date is granted by the ~~board~~  
2474 department.

2475 B. Application requirements for stormwater discharges associated with industrial activity.

2476 1. Dischargers of stormwater associated with industrial activity are required to apply for  
2477 an individual permit or seek coverage under a promulgated stormwater general permit.  
2478 Facilities that are required to obtain an individual permit, or any discharge of stormwater  
2479 which the ~~board~~ department is evaluating for designation under subdivision A 1 c of this  
2480 section, shall submit a VPDES application in accordance with the requirements of  
2481 9VAC25-31-100 as modified and supplemented by the provisions of this subsection.

2482 a. Except as provided in subdivisions 1 b and c of this subsection, the operator of a  
2483 stormwater discharge associated with industrial activity subject to this section shall  
2484 provide:

2485 (1) A site map showing topography (or indicating the outline of drainage areas served  
2486 by the outfall or outfalls covered in the application if a topographic map is unavailable)  
2487 of the facility including: each of its drainage and discharge structures; the drainage  
2488 area of each stormwater outfall; paved areas and buildings within the drainage area of  
2489 each stormwater outfall, each past or present area used for outdoor storage or  
2490 disposal of significant materials, each existing structural control measure to reduce  
2491 pollutants in stormwater run-off, materials loading and access areas, areas where  
2492 pesticides, herbicides, soil conditioners and fertilizers are applied, each of its  
2493 hazardous waste treatment, storage or disposal facilities (including each area not  
2494 required to have a RCRA permit that is used for accumulating hazardous waste under  
2495 40 CFR 262.34); each well where fluids from the facility are injected underground;  
2496 springs, and other surface water bodies which receive stormwater discharges from the  
2497 facility;

2498 (2) An estimate of the area of impervious surfaces (including paved areas and building  
2499 roofs) and the total area drained by each outfall (within a mile radius of the facility) and  
2500 a narrative description of the following: Significant materials that in the three years  
2501 prior to the submittal of this application have been treated, stored or disposed in a  
2502 manner to allow exposure to stormwater; method of treatment, storage or disposal of  
2503 such materials; materials management practices employed, in the three years prior to  
2504 the submittal of this application, to minimize contact by these materials with stormwater  
2505 runoff; materials loading and access areas; the location, manner and frequency in  
2506 which pesticides, herbicides, soil conditioners and fertilizers are applied; the location  
2507 and a description of existing structural and nonstructural control measures to reduce  
2508 pollutants in stormwater runoff; and a description of the treatment the stormwater

2509 receives, including the ultimate disposal of any solid or fluid wastes other than by  
2510 discharge;

2511 (3) A certification that all outfalls that should contain stormwater discharges associated  
2512 with industrial activity have been tested or evaluated for the presence of  
2513 nonstormwater discharges that are not covered by a VPDES permit; tests for such  
2514 nonstormwater discharges may include smoke tests, fluorometric dye tests, analysis  
2515 of accurate schematics, as well as other appropriate tests. The certification shall  
2516 include a description of the method used, the date of any testing, and the onsite  
2517 drainage points that were directly observed during a test;

2518 (4) Existing information regarding significant leaks or spills of toxic or hazardous  
2519 pollutants at the facility that have taken place within the three years prior to the  
2520 submittal of this application;

2521 (5) Quantitative data based on samples collected during storm events and collected in  
2522 accordance with 9VAC25-31-100 of this part from all outfalls containing a stormwater  
2523 discharge associated with industrial activity for the following parameters:

2524 (a) Any pollutant limited in an effluent guideline to which the facility is subject;

2525 (b) Any pollutant listed in the facility's VPDES permit for its process wastewater (if the  
2526 facility is operating under an existing VPDES permit);

2527 (c) Oil and grease, pH, BOD<sub>5</sub>, COD, TSS, total phosphorus, total Kjeldahl nitrogen,  
2528 and nitrate plus nitrite nitrogen;

2529 (d) Any information on the discharge required under 9VAC25-31-100 G 7 f and g;

2530 (e) Flow measurements or estimates of the flow rate, and the total amount of discharge  
2531 for the storm event or events sampled, and the method of flow measurement or  
2532 estimation; and

2533 (f) The date and duration (in hours) of the storm event or events sampled, rainfall  
2534 measurements or estimates of the storm event (in inches) which generated the  
2535 sampled run-off and the duration between the storm event sampled and the end of the  
2536 previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

2537 (6) Operators of a discharge which is composed entirely of stormwater are exempt  
2538 from the requirements of 9VAC25-31-100 G 2, G 3, G 4, G 5, G 7 c, G 7 d, G 7 e, and  
2539 G 7 h; and

2540 (7) Operators of new sources or new discharges that are composed in part or entirely  
2541 of stormwater must include estimates for the pollutants or parameters listed in  
2542 subdivision 1 a (5) of this subsection instead of actual sampling data, along with the  
2543 source of each estimate. Operators of new sources or new discharges composed in  
2544 part or entirely of stormwater must provide quantitative data for the parameters listed  
2545 in subdivision 1 a (5) of this subsection within two years after commencement of  
2546 discharge, unless such data has already been reported under the monitoring  
2547 requirements of the VPDES permit for the discharge. Operators of a new source or  
2548 new discharge that is composed entirely of stormwater are exempt from the  
2549 requirements of 9VAC25-31-100 K 3 b, K 3 c, and K 5.

2550 b. The operator of an existing or new discharge composed entirely of stormwater from  
2551 an oil or gas exploration, production, processing, or treatment operation, or  
2552 transmission facility is not required to submit a permit application in accordance with  
2553 subdivision 1 a of this subsection, unless the facility:

2554 (1) Has had a discharge of stormwater resulting in the discharge of a reportable  
2555 quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR  
2556 302.6 at any time since November 16, 1987;

2557 (2) Has had a discharge of stormwater resulting in the discharge of a reportable  
2558 quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time  
2559 since November 16, 1987; or

2560 (3) Contributes to a violation of a water quality standard.

2561 c. The operator of an existing or new discharge composed entirely of stormwater from  
2562 a mining operation is not required to submit a permit application unless the discharge  
2563 has come into contact with any overburden, raw material, intermediate products,  
2564 finished product, byproduct, or waste products located on the site of such operations.

2565 d. Applicants shall provide such other information the ~~board~~ department may  
2566 reasonably require to determine whether to issue a permit.

2567 2. No application for a VPDES permit authorizing direct or indirect discharge of stormwater  
2568 runoff from a new municipal solid waste landfill into a local watershed protection district  
2569 established and designated as such by city ordinance prior to January 1, 2006, shall be  
2570 considered complete unless it contains certification from the local governing body of the  
2571 city in which the discharge is to take place, that the discharge is consistent with the city's  
2572 ordinance establishing and designating the local watershed protection district. This  
2573 requirement shall apply to applications for new or modified individual VPDES permits and  
2574 for new or modified coverage under general VPDES permits. This requirement does not  
2575 apply to any municipal solid waste landfill in operation on or before January 1, 2006.

2576 C. Application deadlines. Any operator of a point source required to obtain a permit under this  
2577 section that does not have an effective VPDES permit authorizing discharges from its stormwater  
2578 outfalls shall submit an application in accordance with the following deadlines:

2579 1. Individual applications.

2580 a. Except as provided in subdivision 1 b of this subsection, for any stormwater  
2581 discharge associated with industrial activity as defined in this chapter which is not  
2582 authorized by a stormwater general permit, a permit application made pursuant to  
2583 subsection B of this section shall be submitted to the department by October 1, 1992;

2584 b. For any stormwater discharge associated with industrial activity from a facility that  
2585 is owned or operated by a municipality with a population of less than 100,000 that is  
2586 not authorized by a general or individual permit, other than an airport, powerplant, or  
2587 uncontrolled sanitary landfill, permit applications must be submitted to the department  
2588 by March 10, 2003;

2589 2. A permit application shall be submitted to the department within 180 days of notice,  
2590 unless permission for a later date is granted by the ~~board~~ department, for:

2591 a. A stormwater discharge which either the ~~board~~ department or the regional  
2592 administrator, determines that the discharge contributes to a violation of a water quality  
2593 standard or is a significant contributor of pollutants to surface waters; or

2594 b. A stormwater discharge subject to subdivision B 1 d of this section;

2595 3. Facilities with existing VPDES permits for stormwater discharges associated with  
2596 industrial activity shall maintain existing permits. Facilities with permits for stormwater  
2597 discharges associated with industrial activity which expire on or after May 18, 1992, shall  
2598 submit a new application in accordance with the requirements of 9VAC25-31-100 and  
2599 9VAC25-31-120 B (Form 1, Form 2F, and other applicable forms) 180 days before the  
2600 expiration of such permits.

2601 D. Petitions.



- 2602 1. Any person may petition the ~~board~~ department to require a VPDES permit for a  
2603 discharge that is composed entirely of stormwater which contributes to a violation of a  
2604 water quality standard or is a significant contributor of pollutants to surface waters.
- 2605 2. The ~~board~~ department shall make a final determination on any petition received under  
2606 this section within 90 days after receiving the petition.
- 2607 E. Conditional exclusion for no exposure of industrial activities and materials to stormwater.  
2608 Discharges composed entirely of stormwater are not stormwater discharges associated with  
2609 industrial activity if there is no exposure of industrial materials and activities to rain, snow,  
2610 snowmelt or run-off and the discharger satisfies the conditions in subdivisions 1 through 4 of this  
2611 subsection. No exposure means that all industrial materials and activities are protected by a storm  
2612 resistant shelter to prevent exposure to rain, snow, snowmelt, and run-off. Industrial materials or  
2613 activities include material handling equipment or activities, industrial machinery, raw materials,  
2614 intermediate products, by-products, final products, or waste products. Material handling activities  
2615 include the storage, loading and unloading, transportation, or conveyance of any raw material,  
2616 intermediate product, final product or waste product.
- 2617 1. To qualify for this exclusion, the operator of the discharge must:
- 2618 a. Provide a storm resistant shelter to protect industrial materials and activities from  
2619 exposure to rain, snow, snow melt, and run-off;
- 2620 b. Complete and sign (according to 9VAC25-31-110) a certification that there are no  
2621 discharges of stormwater contaminated by exposure to industrial materials and  
2622 activities from the entire facility, except as provided in subdivision 2 of this subsection;
- 2623 c. Submit the signed certification to the department once every five years. As of the  
2624 start date in Table 1 of 9VAC25-31-1020, all certifications submitted in compliance  
2625 with this section shall be submitted electronically by the owner or operator to the  
2626 department in compliance with this section and 40 CFR Part 3 (including, in all cases,  
2627 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of  
2628 this chapter. Part XI of this chapter is not intended to undo existing requirements for  
2629 electronic reporting. Prior to this date, and independent of Part XI of this chapter,  
2630 owners or operators may be required to report electronically if specified by a particular  
2631 permit;
- 2632 d. Allow the department to inspect the facility to determine compliance with the no  
2633 exposure conditions;
- 2634 e. Allow the department to make any no exposure inspection reports available to the  
2635 public upon request; and
- 2636 f. For facilities that discharge through an MS4, upon request, submit a copy of the  
2637 certification of no exposure to the MS4 operator, as well as allow inspection and public  
2638 reporting by the MS4 operator.
- 2639 2. Storm resistant shelter is not required for:
- 2640 a. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those  
2641 containers are not deteriorated and do not leak ("sealed" means banded or otherwise  
2642 secured and without operational taps or valves);
- 2643 b. Adequately maintained vehicles used in material handling; and
- 2644 c. Final products, other than products that would be mobilized in stormwater discharge  
2645 (e.g., rock salt).
- 2646 3. a. This conditional exclusion from the requirement for a VPDES permit is available on  
2647 a facility-wide basis only, not for individual outfalls. If a facility has some discharges of

2648 stormwater that would otherwise be no exposure discharges, individual permit  
2649 requirements should be adjusted accordingly.

2650 b. If circumstances change and industrial materials or activities become exposed to  
2651 rain, snow, snow melt, or run-off, the conditions for this exclusion no longer apply. In  
2652 such cases, the discharge becomes subject to enforcement for unpermitted discharge.  
2653 Any conditionally exempt discharger who anticipates changes in circumstances should  
2654 apply for and obtain permit authorization prior to the change of circumstances.

2655 c. Notwithstanding the provisions of this subsection, the ~~board~~ department retains the  
2656 authority to require permit authorization (and deny this exclusion) upon making a  
2657 determination that the discharge causes, has a reasonable potential to cause, or  
2658 contributes to an instream excursion above an applicable water quality standard,  
2659 including designated uses.

2660 4. The no exposure certification requires the submission of the following information, at a  
2661 minimum, to aid the ~~board~~ department in determining if the facility qualifies for the no  
2662 exposure exclusion:

2663 a. The legal name, address, and phone number of the discharger.

2664 b. The facility name and address, the county name and the latitude and longitude  
2665 where the facility is located.

2666 c. Certification that indicates that none of the following materials or activities are, or  
2667 will be in the foreseeable future, exposed to precipitation:

2668 (1) Using, storing, or cleaning industrial machinery or equipment, and areas where  
2669 residuals from using, storing, or cleaning industrial machinery or equipment remain  
2670 and are exposed to stormwater;

2671 (2) Materials or residuals on the ground or in stormwater inlets from spills/leaks;

2672 (3) Materials or products from past industrial activity;

2673 (4) Material handling equipment (except adequately maintained vehicles);

2674 (5) Materials or products during loading/unloading or transporting activities;

2675 (6) Materials or products stored outdoors (except final products intended for outside  
2676 use, e.g., new cars, where exposure to stormwater does not result in the discharge of  
2677 pollutants);

2678 (7) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks,  
2679 and similar containers;

2680 (8) Materials or products handled/stored on roads or railways owned or maintained by  
2681 the discharger;

2682 (9) Waste material (except waste in covered, nonleaking containers, e.g., dumpsters);

2683 (10) Application or disposal of process wastewater (unless otherwise permitted); and

2684 (11) Particulate matter or visible deposits of residuals from roof stacks/vents not  
2685 otherwise regulated, i.e., under an air quality control permit, and evident in the  
2686 stormwater outflow.

2687 d. All no exposure certifications must include the following certification statement and  
2688 be signed in accordance with the signatory requirements of 9VAC25-31-110: "I certify  
2689 under penalty of law that I have read and understand the eligibility requirements for  
2690 claiming a condition of no exposure and obtaining an exclusion from VPDES  
2691 stormwater permitting; and that there are no discharges of stormwater contaminated  
2692 by exposure to industrial activities or materials from the industrial facility identified in  
2693 this document (except as allowed under 9VAC25-31-120 E 2). I understand that I am

2694 obligated to submit a no exposure certification form once every five years to the  
2695 Department of Environmental Quality and, if requested, to the operator of the local  
2696 MS4 into which this facility discharges (where applicable). I understand that I must  
2697 allow the department, or MS4 operator where the discharge is into the local MS4, to  
2698 perform inspections to confirm the condition of no exposure and to make such  
2699 inspection reports publicly available upon request. I understand that I must obtain  
2700 coverage under a VPDES permit prior to any point source discharge of stormwater  
2701 associated with industrial activity from the facility. I certify under penalty of law that this  
2702 document and all attachments were prepared under my direction or supervision in  
2703 accordance with a system designed to assure that qualified personnel properly  
2704 gathered and evaluated the information submitted. Based upon my inquiry of the  
2705 person or persons who manage the system, or those persons directly involved in  
2706 gathering the information, the information submitted is to the best of my knowledge  
2707 and belief true, accurate and complete. I am aware there are significant penalties for  
2708 submitting false information, including the possibility of fine and imprisonment for  
2709 knowing violations."

2710 **9VAC25-31-130. Concentrated animal feeding operations.**

2711 A. Permit requirement for CAFOs.

2712 1. Concentrated animal feeding operations as defined in 9VAC25-31-10 or designated in  
2713 accordance with subsection B of this section are point sources that require VPDES permits  
2714 for discharges. Once an operation is defined as a CAFO, the VPDES requirements for  
2715 CAFOs apply with respect to all animals in confinement at the operation and all manure,  
2716 litter and process wastewater generated by those animals or the production of those  
2717 animals, regardless of the type of animal.

2718 2. Two or more animal feeding operations under common ownership are considered, for  
2719 the purposes of this chapter, to be a single animal feeding operation if they adjoin each  
2720 other or if they use a common area or system for the disposal of wastes.

2721 B. Case-by-case designations. The ~~board~~ department may designate any animal feeding  
2722 operation as a concentrated animal feeding operation upon determining that it is a significant  
2723 contributor of pollution to surface waters.

2724 1. In making this designation the ~~board~~ department shall consider the following factors:

2725 a. The size of the animal feeding operation and the amount of wastes reaching surface  
2726 waters;

2727 b. The location of the animal feeding operation relative to surface waters;

2728 c. The means of conveyance of animal wastes and process wastewaters into surface  
2729 waters;

2730 d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency  
2731 of discharge of animal wastes and process wastewaters into surface waters; and

2732 e. Other relevant factors.

2733 2. No animal feeding operation with less than the numbers of animals set forth in the  
2734 definition of Medium CAFO in this regulation shall be designated as a concentrated animal  
2735 feeding operation unless:

2736 a. Pollutants are discharged into surface waters through a manmade ditch, flushing  
2737 system, or other similar manmade device; or

2738 b. Pollutants are discharged directly into surface waters which originate outside of the  
2739 facility and pass over, across, or through the facility or otherwise come into direct  
2740 contact with the animals confined in the operation.

2741 3. A permit application shall not be required from a concentrated animal feeding operation  
2742 designated under this subsection until the ~~board~~ department has conducted an on-site  
2743 inspection of the operation and determined that the operation should and could be  
2744 regulated under the VPDES permit program.

2745 C. VPDES permit authorization.

2746 1. Permit requirement. The owners or operators of a CAFO shall not discharge unless the  
2747 discharge is authorized by a VPDES permit. In order to obtain authorization under a  
2748 VPDES permit, the CAFO owner or operator shall either apply for an individual VPDES  
2749 permit or apply for coverage under a VPDES general permit. The owners or operators of  
2750 a CAFO must have obtained authorization under the VPDES permit at the time that the  
2751 CAFO discharges.

2752 2. Information to submit with permit application. A permit application for an individual  
2753 permit must include the information specified in 9VAC25-31-100 J. A notice of intent for a  
2754 general permit must include the information specified in 9VAC25-31-100 J and 9VAC25-  
2755 31-170.

2756 3. Land application discharges from a CAFO are subject to VPDES requirements. The  
2757 discharge of manure, litter or process wastewater to surface waters from a CAFO as the  
2758 result of the application of that manure, litter or process wastewater by the CAFO to land  
2759 areas under its control is a discharge from that CAFO subject to VPDES requirements,  
2760 except where it is an agricultural stormwater discharge as provided in 33 USC § 1362(14).  
2761 For purposes of this subdivision, where the manure, litter or process wastewater has been  
2762 applied in accordance with a nutrient management plan approved by the Department of  
2763 Conservation and Recreation and in accordance with site specific nutrient management  
2764 practices that ensure appropriate agricultural utilization of the nutrients in the manure,  
2765 litter, or process wastewater, as specified in subdivisions E 1 f through i of 9VAC25-31-  
2766 200, a precipitation-related discharge of manure, litter or process wastewater from land  
2767 areas under the control of a CAFO is an agricultural stormwater discharge.

2768 a. For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or  
2769 process wastewater from land areas under the control of a CAFO shall be considered  
2770 an agricultural stormwater discharge only where the manure, litter, or process  
2771 wastewater has been land applied in accordance with site-specific nutrient  
2772 management practices that ensure appropriate agricultural utilization of the nutrients  
2773 in the manure, litter, or process wastewater, as specified in subdivisions E 1 f through  
2774 i of 9VAC25-31-200.

2775 b. Unpermitted Large CAFOs shall maintain documentation specified in subdivision E  
2776 1 i of 9VAC25-31-200 either on site or at a nearby office, or otherwise make such  
2777 documentation readily available to department staff upon request.

2778 4. Procedures for CAFOs seeking coverage under a general permit. CAFO owners or  
2779 operators shall submit a registration statement when seeking authorization to discharge  
2780 under a general permit in accordance with subsection B of 9VAC25-31-170. The ~~board~~  
2781 department will review registration statements submitted by CAFO owners or operators to  
2782 ensure that the registration statement includes the information required by subsection J of  
2783 9VAC25-31-100, including a nutrient management plan that meets the requirements of  
2784 subsection E of 9VAC25-31-200 and applicable effluent limitations and standards,  
2785 including those specified in 40 CFR Part 412. When additional information is necessary to  
2786 complete the registration statement or clarify, modify, or supplement previously submitted  
2787 material, the ~~board~~ department may request such information from the owner or operator.  
2788 If the ~~board~~ department makes a preliminary determination that the registration statement  
2789 meets the requirements of subsection J of 9VAC25-31-100 and subsection E of 9VAC25-

2790 31-200, the ~~board~~ department will notify the public of the ~~board's~~ department's proposal  
2791 to grant coverage under the permit to the CAFO and make available for public review and  
2792 comment the registration statement submitted by the CAFO, including the CAFO's nutrient  
2793 management plan, and the draft terms of the nutrient management plan to be incorporated  
2794 into the permit. The process for submitting public comments and public hearing requests,  
2795 and the public hearing process if a request for a public hearing is granted, shall follow the  
2796 procedures applicable to draft permits set forth in 9VAC25-31-300, 9VAC25-31-310, and  
2797 40 CFR 124.13. The board may establish, either by regulation or in the general permit, an  
2798 appropriate period of time for the public to comment and request a public hearing that  
2799 differs from the time period specified in 9VAC25-31-290. The ~~board's~~ department's  
2800 response to significant comments received during the comment period is governed by  
2801 9VAC25-31-320, and, if necessary, the ~~board~~ department will require the CAFO owner or  
2802 operator to revise the nutrient management plan in order to be granted permit coverage.  
2803 When the ~~board~~ department authorizes coverage for the CAFO owner or operator under  
2804 the general permit, the terms of the nutrient management plan shall become incorporated  
2805 as terms and conditions of the permit for the CAFO. The ~~board~~ department will notify the  
2806 CAFO owner or operator and inform the public that coverage has been authorized and of  
2807 the terms of the nutrient management plan incorporated as terms and conditions of the  
2808 permit applicable to the CAFO.

2809 5. Changes to a nutrient management plan. Any permit issued to a CAFO shall require the  
2810 following procedures to apply when a CAFO owner or operator makes changes to the  
2811 CAFO's nutrient management plan previously submitted to the ~~board~~ department:

2812 a. The CAFO owner or operator shall provide the ~~board~~ department with the most  
2813 current version of the CAFO's nutrient management plan and identify changes from  
2814 the previous version, except that the results of calculations made in accordance with  
2815 the requirements of subdivisions E 5 a (2) and E 5 b (4) of 9VAC25-31-200 are not  
2816 subject to the requirements of this subdivision 5.

2817 b. The ~~board~~ department will review the revised nutrient management plan to ensure  
2818 that it meets the requirements of this section and applicable effluent limitations and  
2819 standards, including those specified in 40 CFR Part 412, and will determine whether  
2820 the changes to the nutrient management plan necessitate revision to the terms of the  
2821 nutrient management plan incorporated into the permit issued to the CAFO. If revision  
2822 to the terms of the nutrient management plan is not necessary, the ~~board~~ department  
2823 will notify the CAFO owner or operator and upon such notification the CAFO may  
2824 implement the revised nutrient management plan. If revision to the terms of the nutrient  
2825 management plan is necessary, the ~~board~~ department will determine whether such  
2826 changes are substantial changes as described in subdivision 5 c of this subsection.

2827 (1) If the ~~board~~ department determines that the changes to the terms of the nutrient  
2828 management plan are not substantial, the ~~board~~ department will make the revised  
2829 nutrient management plan publicly available and include it in the permit record, revise  
2830 the terms of the nutrient management plan incorporated into the permit, and notify the  
2831 owner or operator and inform the public of any changes to the terms of the nutrient  
2832 management plan that are incorporated into the permit.

2833 (2) If the ~~board~~ department determines that the changes to the terms of the nutrient  
2834 management plan are substantial, the ~~board~~ department will notify the public and make  
2835 the proposed changes and the information submitted by the CAFO owner or operator  
2836 available for public review and comment. The process for public comments, public  
2837 hearing requests, and the public hearing process if a public hearing is held shall follow  
2838 the procedures applicable to draft permits set forth in 9VAC25-31-300, 9VAC25-31-  
2839 310, and 40 CFR 124.13. The board may establish, either by regulation or the

2840 department may establish in the CAFO's permit, an appropriate period of time for the  
2841 public to comment and request a public hearing on the proposed changes that differs  
2842 from the time period specified in 9VAC25-31-290. The ~~board~~ department will respond  
2843 to all significant comments received during the comment period as provided in  
2844 9VAC25-31-320, and require the CAFO owner or operator to further revise the nutrient  
2845 management plan if necessary, in order to approve the revision to the terms of the  
2846 nutrient management plan incorporated into the CAFO's permit. Once the ~~board~~  
2847 department incorporates the revised terms of the nutrient management plan into the  
2848 permit, the ~~board~~ department will notify the owner or operator and inform the public of  
2849 the final decision concerning revisions to the terms and conditions of the permit.

2850 c. Substantial changes to the terms of a nutrient management plan incorporated as  
2851 terms and conditions of a permit include:

2852 (1) Addition of new land application areas not previously included in the CAFO's  
2853 nutrient management plan. Except that if the land application area that is being added  
2854 to the nutrient management plan is covered by terms of a nutrient management plan  
2855 incorporated into an existing VPDES permit in accordance with the requirements of  
2856 subdivision E 5 of 9VAC25-31-200, and the CAFO owner or operator applies manure,  
2857 litter, or process wastewater on the newly added land application area in accordance  
2858 with the existing field-specific permit terms applicable to the newly added land  
2859 application area, such addition of new land would be a change to the new CAFO owner  
2860 or operator's nutrient management plan but not a substantial change for purposes of  
2861 this section;

2862 (2) Any changes to the field-specific maximum annual rates for land application, as set  
2863 forth in subdivision E 5 a of 9VAC25-31-200, and to the maximum amounts of nitrogen  
2864 and phosphorus derived from all sources for each crop, as set forth in subdivision E 5  
2865 b of 9VAC25-31-200;

2866 (3) Addition of any crop or other uses not included in the terms of the CAFO's nutrient  
2867 management plan and corresponding field-specific rates of application expressed in  
2868 accordance with subdivision E 5 of 9VAC25-31-200; and

2869 (4) Changes to site-specific components of the CAFO's nutrient management plan,  
2870 where such changes are likely to increase the risk of nitrogen and phosphorus  
2871 transport to state waters.

2872 6. Causes for modification of nutrient management plans. The incorporation of the terms  
2873 of a CAFO's nutrient management plan into the terms and conditions of a general permit  
2874 when a CAFO obtains coverage under a general permit in accordance with subdivision C  
2875 4 of 9VAC25-31-130 and 9VAC25-31-170 is not a cause for modification pursuant to the  
2876 requirements of 9VAC25-31-370.

2877 **9VAC25-31-140. Concentrated aquatic animal production facilities.**

2878 A. Concentrated aquatic animal production facilities, as defined in this chapter, are point  
2879 sources subject to the VPDES permit program.

2880 B. Case-by-case designations. The ~~board~~ department may designate any warm or cold water  
2881 aquatic animal production facility as a concentrated aquatic animal production facility upon  
2882 determining that it is a significant contributor of pollution to surface waters.

2883 1. In making this designation the ~~board~~ department shall consider the following factors:

2884 a. The location and quality of the receiving surface waters;

2885 b. The holding, feeding, and production capacities of the facility;

2886 c. The quantity and nature of the pollutants reaching surface waters; and

2887 d. Other relevant factors.

2888 2. A permit application shall not be required from a concentrated aquatic animal production

2889 facility designated under this subsection until the department has conducted on-site

2890 inspection of the facility and has determined that the facility should and could be regulated

2891 under the VPDES permit program.

2892 **9VAC25-31-165. Requirements applicable to cooling water intake structures.**

2893 A. Definitions. The following definitions apply specifically to this section:

2894 "Annual mean flow" means the average of daily flows over a calendar year.

2895 "Closed-cycle recirculating system" means a system designed, using minimized makeup and

2896 blowdown flows, to withdraw water from a natural or other water source to support contact and/or

2897 noncontact cooling uses within a facility. The water is usually sent to a cooling canal or channel,

2898 lake, pond, or tower to allow waste heat to be dissipated to the atmosphere and then is returned

2899 to the system. (Some facilities divert the waste heat to other process operations.) New source

2900 water (make-up water) is added to the system to replenish losses that have occurred due to

2901 blowdown, drift, and evaporation.

2902 "Cooling water" means water used for contact or noncontact cooling, including water used for

2903 equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The

2904 intended use of the cooling water is to absorb waste heat rejected from the process or processes

2905 used, or from auxiliary operations on the facility's premises. Cooling water that is used in a

2906 manufacturing process either before or after it is used for cooling is considered process water for

2907 the purposes of calculating the percentage of a new facility's intake flow that is used for cooling

2908 purposes.

2909 "Cooling water intake structure" means the total physical structure and any associated

2910 constructed waterways used to withdraw cooling water from state waters. The cooling water

2911 intake structure extends from the point at which water is withdrawn from the surface water source

2912 up to, and including, the intake pumps.

2913 "Design intake flow" means the value assigned (during the facility's design) to the total volume

2914 of water withdrawn from a source water body over a specific time period.

2915 "Design intake velocity" means the value assigned (during the design of a cooling water intake

2916 structure) to the average speed at which intake water passes through the open area of the intake

2917 screen (or other device) against which organisms might be impinged or through which they might

2918 be entrained.

2919 "Entrainment" means the incorporation of all life stages of fish and shellfish with intake water

2920 flow entering and passing through a cooling water intake structure and into a cooling water

2921 system.

2922 "Estuary" means a semi-enclosed body of water that has a free connection with open seas

2923 and within which the seawater is measurably diluted with fresh water derived from land drainage.

2924 The salinity of an estuary exceeds 0.5 parts per thousand (by mass) but is typically less than 30

2925 parts per thousand (by mass).

2926 "Existing facility" means any facility that is not a new facility.

2927 "Freshwater river or stream" means a lotic (free-flowing) system that does not receive

2928 significant inflows of water from oceans or bays due to tidal action. For the purposes of this

2929 section, a flow-through reservoir with a retention time of seven days or less will be considered a

2930 freshwater river or stream.

2931 "Hydraulic zone of influence" means that portion of the source water body hydraulically

2932 affected by the cooling water intake structure withdrawal of water.

2933 "Impingement" means the entrapment of all life stages of fish and shellfish on the outer part  
2934 of an intake structure or against a screening device during periods of intake water withdrawal.

2935 "Lake or reservoir" means any inland body of open water with some minimum surface area  
2936 free of rooted vegetation and with an average hydraulic retention time of more than seven days.  
2937 Lakes or reservoirs might be natural water bodies or impounded streams, usually fresh,  
2938 surrounded by land or by land and a man-made retainer (e.g., a dam). Lakes or reservoirs might  
2939 be fed by rivers, streams, springs, and/or local precipitation. Flow-through reservoirs with an  
2940 average hydraulic retention time of seven days or less should be considered a freshwater river or  
2941 stream.

2942 "Maximize" means to increase to the greatest amount, extent, or degree reasonably possible.

2943 "Minimize" means to reduce to the smallest amount, extent, or degree reasonably possible.

2944 "Natural thermal stratification" means the naturally-occurring division of a water body into  
2945 horizontal layers of differing densities as a result of variations in temperature at different depths.

2946 "New facility" means any building, structure, facility, or installation that meets the definition of  
2947 a "new source" or "new discharger" and is a greenfield or stand-alone facility that commences  
2948 construction after January 17, 2002, and uses either a newly constructed cooling water intake  
2949 structure, or an existing cooling water intake structure whose design capacity is increased to  
2950 accommodate the intake of additional cooling water. A greenfield facility is a facility that is  
2951 constructed at a site at which no other source is located, or that totally replaces the process or  
2952 production equipment at an existing facility. A stand-alone facility is a new, separate facility that  
2953 is constructed on property where an existing facility is located and whose processes are  
2954 substantially independent of the existing facility at the same site. New facility does not include  
2955 new units that are added to a facility for purposes of the same general industrial operation (for  
2956 example, a new peaking unit at an electrical generating station).

2957 "Ocean" means marine open coastal waters with a salinity greater than or equal to 30 parts  
2958 per thousand (by mass).

2959 "Source water" means the water body from which the cooling water is withdrawn.

2960 "Thermocline" means the middle layer of a thermally stratified lake or reservoir. In this layer,  
2961 there is a rapid decrease in temperatures.

2962 "Tidal excursion" means the horizontal distance along the estuary or tidal river that a particle  
2963 moves during one tidal cycle of ebb and flow.

2964 "Tidal river" means the most seaward reach of a river or stream where the salinity is typically  
2965 less than or equal to 0.5 parts per thousand (by mass) at a time of annual low flow and whose  
2966 surface elevation responds to the effects of coastal lunar tides.

2967 B. Cooling water intake structures for new facilities.

2968 1. Applicability.

2969 a. This section applies to a new facility if it:

2970 (1) Is a point source that uses or proposes to use a cooling water intake structure;

2971 (2) Has at least one cooling water intake structure that uses at least 25% of the water  
2972 it withdraws for cooling purposes as specified in subdivision 1 c of this subsection; and

2973 (3) Has a design intake flow greater than two million gallons per day (MGD).

2974 b. Use of a cooling water intake structure includes obtaining cooling water by any sort  
2975 of contract or arrangement with an independent supplier (or multiple suppliers) of  
2976 cooling water if the supplier or suppliers withdraw(s) water from waters of the United  
2977 States. Use of cooling water does not include obtaining cooling water from a public  
2978 water system or the use of treated effluent that otherwise would be discharged to state  
2979 waters. This provision is intended to prevent circumvention of these requirements by



2980 creating arrangements to receive cooling water from an entity that is not itself a point  
2981 source.

2982 c. The threshold requirement that at least 25% of water withdrawn be used for cooling  
2983 purposes must be measured on an average monthly basis. A new facility meets the  
2984 25% cooling water threshold if, based on the new facility's design, any monthly  
2985 average over a year for the percentage of cooling water withdrawn is expected to equal  
2986 or exceed 25% of the total water withdrawn.

2987 d. This section does not apply to facilities that employ cooling water intake structures  
2988 in the offshore and coastal subcategories of the oil and gas extraction point source  
2989 category as defined under 40 CFR 435.10 and 40 CFR 435.40.

2990 2. Compliance.

2991 a. The owner or operator of a new facility must comply with either Track I in subdivision  
2992 2 b or c of this subsection or Track II in subdivision 2 d of this subsection. In addition  
2993 to meeting the requirements in subdivision 2 b, c or d of this subsection, the owner or  
2994 operator of a new facility may be required to comply with subdivision 2 e of this  
2995 subsection.

2996 b. Track I requirements for new facilities that withdraw equal to or greater than 10  
2997 MGD. Facilities must comply with all of the following requirements:

2998 (1) Reduce intake flow, at a minimum, to a level commensurate with that which can be  
2999 attained by a closed-cycle recirculating cooling water system;

3000 (2) Design and construct each cooling water intake structure to a maximum through-  
3001 screen design intake velocity of 0.5 ft/s;

3002 (3) Design and construct the cooling water intake structure such that the total design  
3003 intake flow from all cooling water intake structures meets the following requirements:

3004 (a) For cooling water intake structures located in a freshwater river or stream, the total  
3005 design intake flow must be no greater than 5.0% of the source water annual mean  
3006 flow;

3007 (b) For cooling water intake structures located in a lake or reservoir, the total design  
3008 intake flow must not disrupt the natural thermal stratification or turnover pattern (where  
3009 present) of the source water except in cases where the disruption is determined to be  
3010 beneficial to the management of fisheries for fish and shellfish by any fishery  
3011 management agency(ies);

3012 (c) For cooling water intake structures located in an estuary or tidal river, the total  
3013 design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0%  
3014 of the volume of the water column within the area centered about the opening of the  
3015 intake with a diameter defined by the distance of one tidal excursion at the mean low  
3016 water level;

3017 (4) Select and implement design and construction technologies or operational  
3018 measures for minimizing impingement mortality of fish and shellfish if:

3019 (a) There are threatened or endangered or otherwise protected federal, state, or tribal  
3020 species, or critical habitat for these species, within the hydraulic zone of influence of  
3021 the cooling water intake structure; or

3022 (b) Based on information submitted by any fishery management agency(ies) or other  
3023 relevant information, there are migratory and/or sport or commercial species of  
3024 impingement concern to the ~~board~~ department that pass through the hydraulic zone of  
3025 influence of the cooling water intake structure; or

3026 (c) It is determined by the ~~board~~ department, based on information submitted by any  
3027 fishery management agency(ies) or other relevant information that the proposed  
3028 facility, after meeting the technology-based performance requirements in subdivision  
3029 2 b (1), (2), and (3) of this subsection, would still contribute unacceptable stress to the  
3030 protected species, critical habitat of those species, or species of concern;

3031 (5) Select and implement design and construction technologies or operational  
3032 measures for minimizing entrainment of entrainable life stages of fish and shellfish if:

3033 (a) There are threatened or endangered or otherwise protected federal, state, or tribal  
3034 species, or critical habitat for these species, within the hydraulic zone of influence of  
3035 the cooling water intake structure; or

3036 (b) Based on information submitted by any fishery management agency(ies) or other  
3037 relevant information, there are or would be undesirable cumulative stressors affecting  
3038 entrainable life stages of species of concern to the ~~board~~ department, and the ~~board~~  
3039 department determines that the proposed facility, after meeting the technology-based  
3040 performance requirements in subdivision 2 b (1), (2), and (3) of this subsection, would  
3041 contribute unacceptable stress to these species of concern;

3042 (6) Submit the application information required in 9VAC25-31-100 Q and subdivision  
3043 4 b of this subsection;

3044 (7) Implement the monitoring requirements specified in subdivision 5 of this  
3045 subsection;

3046 (8) Implement the record-keeping requirements specified in subdivision 6 of this  
3047 subsection.

3048 c. Track I requirements for new facilities that withdraw equal to or greater than two  
3049 MGD and less than 10 MGD and that choose not to comply with subdivision 2 b of this  
3050 subsection. Facilities must comply with all of the following requirements:

3051 (1) Design and construct each cooling water intake structure at the facility to a  
3052 maximum through-screen design intake velocity of 0.5 ft/s;

3053 (2) Design and construct the cooling water intake structure such that the total design  
3054 intake flow from all cooling water intake structures at the facility meets the following  
3055 requirements:

3056 (a) For cooling water intake structures located in a freshwater river or stream, the total  
3057 design intake flow must be no greater than 5.0% of the source water annual mean  
3058 flow;

3059 (b) For cooling water intake structures located in a lake or reservoir, the total design  
3060 intake flow must not disrupt the natural thermal stratification or turnover pattern (where  
3061 present) of the source water except in cases where the disruption is determined to be  
3062 beneficial to the management of fisheries for fish and shellfish by any fishery  
3063 management agency(ies);

3064 (c) For cooling water intake structures located in an estuary or tidal river, the total  
3065 design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0%  
3066 of the volume of the water column within the area centered about the opening of the  
3067 intake with a diameter defined by the distance of one tidal excursion at the mean low  
3068 water level;

3069 (3) Select and implement design and construction technologies or operational  
3070 measures for minimizing impingement mortality of fish and shellfish if:

- 3071 (a) There are threatened or endangered or otherwise protected federal, state, or tribal  
3072 species, or critical habitat for these species, within the hydraulic zone of influence of  
3073 the cooling water intake structure; or
- 3074 (b) Based on information submitted by any fishery management agency(ies) or other  
3075 relevant information there are migratory and/or sport or commercial species of  
3076 impingement concern to the board department that pass through the hydraulic zone of  
3077 influence of the cooling water intake structure; or
- 3078 (c) It is determined by the board department, based on information submitted by any  
3079 fishery management agency(ies) or other relevant information that the proposed  
3080 facility, after meeting the technology-based performance requirements in subdivisions  
3081 2 c (1) and (2) of this subsection, would still contribute unacceptable stress to the  
3082 protected species, critical habitat of those species, or species of concern;
- 3083 (4) Select and implement design and construction technologies or operational  
3084 measures for minimizing entrainment of entrainable life stages of fish and shellfish;
- 3085 (5) Submit the application information required in 9VAC25-31-100 Q and 9VAC25-31-  
3086 165 B 4;
- 3087 (6) Implement the monitoring requirements specified in 9VAC25-31-165 B 5;
- 3088 (7) Implement the recordkeeping requirements specified in 9VAC25-31-165 B 6.
- 3089 d. Track II. The owner or operator of a new facility that chooses to comply under Track  
3090 II must comply with the following requirements:
- 3091 (1) Demonstrate to the board department that the technologies employed will reduce  
3092 the level of adverse environmental impact from cooling water intake structures to a  
3093 comparable level to that which would be achieved using the requirements of  
3094 subdivision 3 b (1) and (2) of this subsection. This demonstration must include a  
3095 showing that the impacts to fish and shellfish, including important forage and predator  
3096 species, within the watershed will be comparable to those that would result  
3097 implementing the requirements of subdivisions 3 b (1) and (2) of this subsection. This  
3098 showing may include consideration of impacts other than impingement mortality and  
3099 entrainment, including measures that will result in increases in fish and shellfish, but it  
3100 must demonstrate comparable performance for species that the board department  
3101 identifies as species of concern. In identifying such species the board department may  
3102 consider information provided by fishery management agencies with responsibility for  
3103 fisheries potentially affected by the cooling water intake structure along with data and  
3104 information from other sources.
- 3105 (2) Design and construct the cooling water intake structure such that the total design  
3106 intake flow from all cooling water intake structures at the facility meet the following  
3107 requirements:
- 3108 (a) For cooling water intake structures located in a freshwater river or stream, the total  
3109 design intake flow must be no greater than 5.0% of the source water annual mean  
3110 flow;
- 3111 (b) For cooling water intake structures located in a lake or reservoir, the total design  
3112 intake flow must not disrupt the natural thermal stratification or turnover pattern (where  
3113 present) of the source water except in cases where the disruption is determined to be  
3114 beneficial to the management of fisheries for fish and shellfish by any fishery  
3115 management agency(ies);
- 3116 (c) For cooling water intake structures located in an estuary or tidal river, the total  
3117 design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0%  
3118 of the volume of the water column within the area centered about the opening of the

3119 intake with a diameter defined by the distance of one tidal excursion at the mean low  
3120 water level.

3121 (3) Submit the application information required in 9VAC25-31-100 Q and 9VAC25-31-  
3122 165 B 4 c.

3123 (4) Implement the monitoring requirements specified in 9VAC25-31-165 B 5.

3124 (5) Implement the record-keeping requirements specified in 9VAC25-31-165 B 6.

3125 e. The owner or operator of a new facility must comply with any more stringent  
3126 requirements relating to the location, design, construction, and capacity of a cooling  
3127 water intake structure or monitoring requirements at a new facility that the ~~board~~  
3128 department deems are reasonably necessary to comply with any provision of state  
3129 law, including compliance with state water quality standards (including designated  
3130 uses, criteria, and antidegradation requirements).

3131 3. Alternative requirements.

3132 a. Any interested person may request that alternative requirements less stringent than  
3133 those specified in 9VAC25-31-165 B 2 a through e be imposed in the permit. The  
3134 ~~board~~ department may establish alternative requirements less stringent than the  
3135 requirements of 9VAC25-31-165 B 2 a through e only if:

3136 (1) There is an applicable requirement under 9VAC25-31-165 B 2 a through e;

3137 (2) The ~~board~~ department determines that data specific to the facility indicate that  
3138 compliance with the requirement at issue would result in compliance costs wholly out  
3139 of proportion to those EPA considered in establishing the requirement at issue or  
3140 would result in significant adverse impacts on local air quality, significant adverse  
3141 impacts on local water resources other than impingement or entrainment, or significant  
3142 adverse impacts on local energy markets;

3143 (3) The alternative requirement requested is no less stringent than justified by the  
3144 wholly out of proportion cost or the significant adverse impacts on local air quality,  
3145 significant adverse impacts on local water resources other than impingement or  
3146 entrainment, or significant adverse impacts on local energy markets; and

3147 (4) The alternative requirement will ensure compliance with other applicable provisions  
3148 of the Clean Water Act and state law.

3149 b. The burden is on the person requesting the alternative requirement to demonstrate  
3150 that alternative requirements should be authorized.

3151 4. Application information requirements.

3152 a. The owner or operator of a new facility must submit to the department:

3153 (1) A statement of intention to comply with either:

3154 (a) The Track I requirements for new facilities that withdraw equal to or greater than  
3155 10 MGD in 9VAC25-31-165 B 2 b;

3156 (b) The Track I requirements for new facilities that withdraw equal to or greater than 2  
3157 MGD and less than 10 MGD in 9VAC25-31-165 B 2 c or;

3158 (c) The requirements for Track II in 9VAC25-31-165 B 2 d.

3159 (2) The owner or operator must also submit the application information required by  
3160 9VAC25-31-100 Q and the information required in either subdivision 4 b of this  
3161 subsection for Track I or subdivision 4 c of this section for Track II when application is  
3162 made for a new or reissued VPDES permit.

3163 b. Track I application requirements. To demonstrate compliance with Track I  
3164 requirements in 9VAC25-31-165 B 2 b or c, collect and submit to the department the  
3165 information in subdivision 4 b (1) through (4) of this subsection.

3166 (1) Flow reduction information. To comply with the flow reduction requirements in  
3167 9VAC25-31-165 B 2 b (1), submit the following information to demonstrate reduction  
3168 of flow to a level commensurate with that which can be attained by a closed-cycle  
3169 recirculating cooling water system:

3170 (a) A narrative description of the system that has been designed to reduce intake flow  
3171 to a level commensurate with that which can be attained by a closed-cycle recirculating  
3172 cooling water system and any engineering calculations, including documentation  
3173 demonstrating that make-up and blowdown flows have been minimized; and

3174 (b) If the flow reduction requirement is met entirely, or in part, by reusing or recycling  
3175 water withdrawn for cooling purposes in subsequent industrial processes, provide  
3176 documentation that the amount of cooling water that is not reused or recycled has  
3177 been minimized.

3178 (2) Velocity information. Submit the following information to demonstrate compliance  
3179 with the requirement to meet a maximum through-screen design intake velocity of no  
3180 more than 0.5 ft/s at each cooling water intake structure:

3181 (a) A narrative description of the design, structure, equipment, and operation used to  
3182 meet the velocity requirement; and

3183 (b) Design calculations showing that the velocity requirement will be met at minimum  
3184 ambient source water surface elevations (based on best professional judgment using  
3185 available hydrological data) and maximum head loss across the screens or other  
3186 device.

3187 (3) Source water body flow information. Submit the following information to  
3188 demonstrate that the cooling water intake structure meets the flow requirements in  
3189 9VAC25-31-165 B 2 b (3) and c (2):

3190 (a) If the cooling water intake structure is located in a freshwater river or stream,  
3191 provide the annual mean flow and any supporting documentation and engineering  
3192 calculations to show that the cooling water intake structure meets the flow  
3193 requirements;

3194 (b) If the cooling water intake structure is located in an estuary or tidal river, provide  
3195 the mean low water tidal excursion distance and any supporting documentation and  
3196 engineering calculations to show that the cooling water intake structure facility meets  
3197 the flow requirements; and

3198 (c) If the cooling water intake structure is located in a lake or reservoir, provide a  
3199 narrative description of the water body thermal stratification, and any supporting  
3200 documentation and engineering calculations to show that the natural thermal  
3201 stratification and turnover pattern will not be disrupted by the total design intake flow.  
3202 In cases where the disruption is determined to be beneficial to the management of  
3203 fisheries for fish and shellfish provide supporting documentation and include a written  
3204 concurrence from any fisheries management agency(ies) with responsibility for  
3205 fisheries potentially affected by the cooling water intake structure(s).

3206 (4) Design and Construction Technology Plan. To comply with 9VAC25-31-165 B 2 b  
3207 (4) and (5), or 9VAC25-31-165 B 2 c (3) and (4), submit the following information in a  
3208 Design and Construction Technology Plan:

3209 (a) Information to demonstrate whether or not the criteria in 9VAC25-31-165 B 2 b (4)  
3210 and b (5), or 9VAC25-31-165 B 2 c (3) and c (4) are met;

3211 (b) Delineation of the hydraulic zone of influence for the cooling water intake structure;  
3212 (c) New facilities required to install design and construction technologies and/or  
3213 operational measures must develop a plan explaining the technologies and measures  
3214 selected based on information collected for the Source Water Biological Baseline  
3215 Characterization required by 9VAC25-31-100 Q. (Examples of appropriate  
3216 technologies include, but are not limited to, wedgewire screens, fine mesh screens,  
3217 fish handling and return systems, barrier nets, aquatic filter barrier systems, etc.  
3218 Examples of appropriate operational measures include, but are not limited to, seasonal  
3219 shutdowns or reductions in flow, continuous operations of screens, etc.) The plan must  
3220 contain the following information:  
3221 (i) A narrative description of the design and operation of the design and construction  
3222 technologies, including fish-handling and return systems, that will be used to maximize  
3223 the survival of those species expected to be most susceptible to impingement. Provide  
3224 species-specific information that demonstrates the efficacy of the technology;  
3225 (ii) A narrative description of the design and operation of the design and construction  
3226 technologies that will be used to minimize entrainment of those species expected to  
3227 be the most susceptible to entrainment. Provide species-specific information that  
3228 demonstrates the efficacy of the technology; and  
3229 (iii) Design calculations, drawings, and estimates to support the descriptions provided  
3230 in 9VAC25-31-165 B 4 b (4) (c) (i) and (ii).  
3231 c. Application requirements for Track II. In order to with the requirements of Track II in  
3232 9VAC25-31-165 B 2 d collect and submit the following information:  
3233 (1) Source water body flow information. Submit to the department the following  
3234 information to demonstrate that the cooling water intake structure meets the source  
3235 water body requirements in 9VAC25-31-165 B 2 d (2):  
3236 (a) If the cooling water intake structure is located in a freshwater river or stream,  
3237 provide the annual mean flow and any supporting documentation and engineering  
3238 calculations to show that the cooling water intake structure meets the flow  
3239 requirements;  
3240 (b) If the cooling water intake structure is located in an estuary or tidal river, provide  
3241 the mean low water tidal excursion distance and any supporting documentation and  
3242 engineering calculations to show that the cooling water intake structure facility meets  
3243 the flow requirements; and  
3244 (c) If the cooling water intake structure is located in a lake or reservoir, provide a  
3245 narrative description of the water body thermal stratification, and any supporting  
3246 documentation and engineering calculations to show that the natural thermal  
3247 stratification and thermal or turnover pattern will not be disrupted by the total design  
3248 intake flow. In cases where the disruption is determined to be beneficial to the  
3249 management of fisheries for fish and shellfish provide supporting documentation and  
3250 include a written concurrence from any fisheries management agency(ies) with  
3251 responsibility for fisheries potentially affected by the cooling water intake structure(s).  
3252 (2) Track II Comprehensive Demonstration Study. Perform and submit the results of a  
3253 Comprehensive Demonstration Study (study). This information is required to  
3254 characterize the source water baseline in the vicinity of the cooling water intake  
3255 structure(s), characterize operation of the cooling water intake(s), and to confirm that  
3256 the technology(ies) proposed and/or implemented at the cooling water intake structure  
3257 reduce the impacts to fish and shellfish to levels comparable to those achieved by

3258 implementation of the requirements in 9VAC25-31-165 B 2 b (1) and (2) of Track I. To  
3259 demonstrate the "comparable level" requirement, include information showing that:

3260 (a) Both impingement mortality and entrainment of all life stages of fish and shellfish  
3261 are reduced by 90% or greater of the reduction that would be achieved through  
3262 9VAC25-31-165 B 2 b (1) and (2); or

3263 (b) If the demonstration includes consideration of impacts other than impingement  
3264 mortality and entrainment, that the measures taken will maintain the fish and shellfish  
3265 in the water body at a substantially similar level to that which would be achieved  
3266 through 9VAC25-31-165 B 2 b (1) and (2); and

3267 (c) Develop and submit a plan to the department containing a proposal for how  
3268 information will be collected to support the study. The plan must include:

3269 (i) A description of the proposed and/or implemented technology(ies) to be evaluated  
3270 in the study;

3271 (ii) A list and description of any historical studies characterizing the physical and  
3272 biological conditions in the vicinity of the proposed or actual intakes and their relevancy  
3273 to the proposed study. If existing source water body data is used, it must be no more  
3274 than five years old, demonstrated sufficient to develop a scientifically valid estimate of  
3275 potential impingement and entrainment impacts, and include documentation that the  
3276 data were collected using appropriate quality assurance/quality control procedures;

3277 (iii) Any public participation or consultation with federal or state agencies undertaken  
3278 in developing the plan; and

3279 (iv) A sampling plan for data that will be collected using actual field studies in the  
3280 source water body. The sampling plan must document all methods and quality  
3281 assurance procedures for sampling, and data analysis. The sampling and data  
3282 analysis methods proposed must be appropriate for a quantitative survey and based  
3283 on consideration of methods used in other studies performed in the source water body.  
3284 The sampling plan must include a description of the study area (including the area of  
3285 influence of the cooling water intake structure and at least 100 meters beyond);  
3286 taxonomic identification of the sampled or evaluated biological assemblages (including  
3287 all life stages of fish and shellfish); and sampling and data analysis methods; and

3288 (d) Submit documentation of the results of the study to the director. Documentation of  
3289 the results of the study must include:

3290 (i) Source Water Biological Study. The Source Water Biological Study must include a  
3291 taxonomic identification and characterization of aquatic biological resources including  
3292 a summary of historical and contemporary aquatic biological resources; determination  
3293 and description of the target populations of concern (those species of fish and shellfish  
3294 and all life stages that are most susceptible to impingement and entrainment); and a  
3295 description of the abundance and temporal/spatial characterization of the target  
3296 populations based on the collection of multiple years of data to capture the seasonal  
3297 and daily activities (e.g., spawning, feeding and water column migration) of all life  
3298 stages of fish and shellfish found in the vicinity of the cooling water intake structure;  
3299 an identification of all threatened or endangered species that might be susceptible to  
3300 impingement and entrainment by the proposed cooling water intake structure(s); and  
3301 a description of additional chemical, water quality, and other anthropogenic stresses  
3302 on the source water body.

3303 (ii) Evaluation of potential cooling water intake structure effects. This evaluation will  
3304 include calculations of the reduction in impingement mortality and entrainment of all  
3305 life stages of fish and shellfish that would need to be achieved by the technologies

3306 selected to implement requirements under Track II and an engineering estimate of  
3307 efficacy for the proposed and/or implemented technologies used to minimize  
3308 impingement mortality and entrainment of all life stages of fish and shellfish and  
3309 maximize survival of impinged life stages of fish and shellfish, demonstrating that the  
3310 technologies reduce impingement mortality and entrainment of all life stages of fish  
3311 and shellfish to a comparable level to that which would be achieved implementing the  
3312 requirements in 9VAC25-31-165 B 2 b (1) and (2) of Track I. The efficacy projection  
3313 must include a site-specific evaluation of technology(ies) suitability for reducing  
3314 impingement mortality and entrainment based on the results of the Source Water  
3315 Biological Study. Efficacy estimates may be determined based on case studies that  
3316 have been conducted in the vicinity of the cooling water intake structure and/or site-  
3317 specific technology prototype studies.

3318 (iii) Evaluation of proposed restoration measures. If restoration measures are  
3319 proposed to maintain the fish and shellfish provide information and data to show  
3320 coordination with the appropriate fishery management agency(ies) and a plan that  
3321 provides a list of the measures to implement to demonstrate and continue to ensure  
3322 that restoration measures will maintain the fish and shellfish in the water body to a  
3323 substantially similar level to that which would be achieved through 9VAC25-31-165 B  
3324 2 b (1) and (2).

3325 (iv) Verification monitoring plan. Include in the study a plan to conduct, at a minimum,  
3326 two years of monitoring to verify the full-scale performance of the proposed or  
3327 implemented technologies or operational measures. The verification study must begin  
3328 at the start of operations of the cooling water intake structure and continue for a  
3329 sufficient period of time to demonstrate that the facility is reducing the level of  
3330 impingement and entrainment to the level documented in 9VAC25-31-165 B 4 c (2)  
3331 (d) (ii). The plan must describe the frequency of monitoring and the parameters to be  
3332 monitored. The department will use the verification monitoring to confirm that the level  
3333 of impingement mortality and entrainment reduction required in is met and that the  
3334 operation of the technology has been optimized. Include a plan to conduct monitoring  
3335 to verify that restoration measures will maintain the fish and shellfish in the water body  
3336 to a substantially similar level as that which would be achieved through 9VAC25-31-  
3337 165 B 2 b (1) and (2).

3338 5. Monitoring. The owner or operator of a new facility will be required to perform monitoring  
3339 to demonstrate compliance with the requirements specified in 9VAC25-31-165 B 2.

3340 a. Biological monitoring. Monitor both impingement and entrainment of the  
3341 commercial, recreational, and forage base fish and shellfish species identified in either  
3342 the Source Water Baseline Biological Characterization data or the Comprehensive  
3343 Demonstration Study, depending on whether compliance with Track I or Track II was  
3344 chosen. The monitoring methods used must be consistent with those used for the  
3345 Source Water Baseline Biological Characterization or the Comprehensive  
3346 Demonstration Study. Follow the monitoring frequencies identified below for at least  
3347 two years after the initial permit issuance.

3348 (1) Impingement sampling. Collect samples to monitor impingement rates (simple  
3349 enumeration) for each species over a 24-hour period and no less than once per month  
3350 when the cooling water intake structure is in operation.

3351 (2) Entrainment sampling. Collect samples to monitor entrainment rates (simple  
3352 enumeration) for each species over a 24-hour period and no less than biweekly during  
3353 the primary period of reproduction, larval recruitment, and peak abundance identified  
3354 during the Source Water Baseline Biological Characterization or the Comprehensive



3355 Demonstration Study. Collect samples only when the cooling water intake structure is  
3356 in operation.

3357 b. Velocity monitoring. If the facility uses surface intake screen systems, monitor head  
3358 loss across the screens and correlate the measured value with the design intake  
3359 velocity. The head loss across the intake screen must be measured at the minimum  
3360 ambient source water surface elevation (best professional judgment based on  
3361 available hydrological data). The maximum head loss across the screen for each  
3362 cooling water intake structure must be used to determine compliance with the velocity  
3363 requirement in 9VAC25-31-165 B 2 b (2) or c (1). If the facility uses devices other than  
3364 surface intake screens, monitor velocity at the point of entry through the device.  
3365 Monitor head loss or velocity during initial facility startup, and thereafter, at the  
3366 frequency specified in the VPDES permit.

3367 c. Visual or remote inspections. Conduct visual inspections or employ remote  
3368 monitoring devices during the period the cooling water intake structure is in operation.  
3369 Conduct visual inspections at least weekly to ensure that any design and construction  
3370 technologies are maintained and operated to ensure that they will continue to function  
3371 as designed. Alternatively, inspect via remote monitoring devices to ensure that the  
3372 impingement and entrainment technologies are functioning as designed.

3373 6. Records and reporting. The owner or operator of a new facility is required to keep  
3374 records and report information and data to the department as follows:

3375 a. Keep records of all the data used to complete the permit application and show  
3376 compliance with the requirements, any supplemental information developed under  
3377 9VAC25-31-165 B 4, and any compliance monitoring data submitted under 9VAC25-  
3378 31-165 B 5, for a period of at least three years from the date of permit issuance. The  
3379 department may require that these records be kept for a longer period.

3380 b. Provide the following to the department in a yearly status report:

3381 (1) Biological monitoring records for each cooling water intake structure as required  
3382 by 9VAC25-31-165 B 5 a;

3383 (2) Velocity and head loss monitoring records for each cooling water intake structure  
3384 as required by 9VAC25-31-165 B 5 b; and

3385 (3) Records of visual or remote inspections as required in 9VAC25-31-165 B 5 c.

3386 C. Cooling water intake structures for existing facilities.

3387 Existing facilities that are not subject to requirements under this section must meet  
3388 requirements under section 316(b) of the Clean Water Act determined by the department on a  
3389 case-by-case, best professional judgment (BPJ) basis.

3390 **9VAC25-31-170. General permits.**

3391 A. The board may issue a general permit in accordance with the following:

3392 1. The general permit shall be written to cover one or more categories or subcategories of  
3393 discharges or sludge use or disposal practices or facilities described in the permit under  
3394 subdivision 2 b of this subsection, except those covered by individual permits, within a  
3395 geographic area. The area should correspond to existing geographic or political  
3396 boundaries, such as:

3397 a. Designated planning areas under §§ 208 and 303 of the CWA;

3398 b. Sewer districts or sewer authorities;

3399 c. City, county, or state political boundaries;

3400 d. State highway systems;

3401 e. Standard metropolitan statistical areas as defined by the Office of Management and  
3402 Budget;

3403 f. Urbanized areas as designated by the Bureau of the Census according to criteria in  
3404 30 FR 15202 (May 1, 1974); or

3405 g. Any other appropriate division or combination of boundaries.

3406 2. The general permit may be written to regulate one or more categories or subcategories  
3407 of discharges or sludge use or disposal practices or facilities, within the area described in  
3408 subdivision 1 of this subsection, where the sources within a covered subcategory of  
3409 discharges are either:

3410 a. Stormwater point sources; or

3411 b. One or more categories or subcategories of point sources other than stormwater  
3412 point sources, or one or more categories or subcategories of treatment works treating  
3413 domestic sewage, if the sources or treatment works treating domestic sewage within  
3414 each category or subcategory all:

3415 (1) Involve the same or substantially similar types of operations;

3416 (2) Discharge the same types of wastes or engage in the same types of sludge use or  
3417 disposal practices;

3418 (3) Require the same effluent limitations, operating conditions, or standards for  
3419 sewage sludge use or disposal;

3420 (4) Require the same or similar monitoring; and

3421 (5) In the opinion of the board, are more appropriately controlled under a general  
3422 permit than under individual permits.

3423 3. Where sources within a specific category of dischargers are subject to water quality-  
3424 based limits imposed pursuant to 9VAC25-31-220, the sources in that specific category  
3425 or subcategory shall be subject to the same water quality-based effluent limitations.

3426 4. The general permit must clearly identify the applicable conditions for each category or  
3427 subcategory of dischargers or treatment works treating domestic sewage covered by the  
3428 permit.

3429 5. The general permit may exclude specified sources or areas from coverage.

3430 B. Administration.

3431 1. General permits may be issued, modified, revoked and reissued, or terminated in  
3432 accordance with applicable requirements of this chapter.

3433 2. Authorization to discharge, or authorization to engage in sludge use and disposal  
3434 practices.

3435 a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers (or  
3436 treatment works treating domestic sewage) seeking coverage under a general permit  
3437 shall submit to the department a written notice of intent to be covered by the general  
3438 permit. A discharger (or treatment works treating domestic sewage) who fails to submit  
3439 a notice of intent in accordance with the terms of the permit is not authorized to  
3440 discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or  
3441 disposal practice), under the terms of the general permit unless the general permit, in  
3442 accordance with subdivision 2 e of this subsection, contains a provision that a notice  
3443 of intent is not required or the ~~board~~ department notifies a discharger (or treatment  
3444 works treating domestic sewage) that it is covered by a general permit in accordance  
3445 with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to  
3446 be covered in accordance with general permit requirements fulfills the requirements  
3447 for permit applications for the purposes of this chapter. As of the start date in Table 1

3448 of 9VAC25-31-1020, all notices of intent submitted in compliance with this subsection  
3449 shall be submitted electronically by the discharger (or treatment works treating  
3450 domestic sewage) to the department in compliance with this subsection and 40 CFR  
3451 Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part  
3452 XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to  
3453 undo existing requirements for electronic reporting. Prior to this date, and independent  
3454 of Part XI of this chapter, dischargers (or treatment works treating domestic sewage)  
3455 may be required to report electronically if specified by a particular permit.

3456 b. The contents of the notice of intent shall be specified in the general permit and shall  
3457 require the submission of information necessary for adequate program  
3458 implementation, including at a minimum, the legal name and address of the owner or  
3459 operator, the facility name and address, type of facility or discharges, and the receiving  
3460 stream or streams and other required data elements as identified in Appendix A to 40  
3461 CFR Part 127, as adopted by reference in 9VAC25-31-1030. General permits for  
3462 stormwater discharges associated with industrial activity from inactive mining, inactive  
3463 oil and gas operations, or inactive landfills occurring on federal lands where an  
3464 operator cannot be identified may contain alternative notice of intent requirements.  
3465 Notices of intent for coverage under a general permit for concentrated animal feeding  
3466 operations must include the information specified in 9VAC25-31-100 J 1, including a  
3467 topographic map. All notices of intent shall be signed in accordance with 9VAC25-31-  
3468 110.

3469 c. General permits shall specify the deadlines for submitting notices of intent to be  
3470 covered and the date or dates when a discharger is authorized to discharge under the  
3471 permit.

3472 d. General permits shall specify whether a discharger (or treatment works treating  
3473 domestic sewage) that has submitted a complete and timely notice of intent to be  
3474 covered in accordance with the general permit and that is eligible for coverage under  
3475 the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to  
3476 engage in a sludge use or disposal practice), in accordance with the permit either upon  
3477 receipt of the notice of intent by the department, after a waiting period specified in the  
3478 general permit, on a date specified in the general permit, or upon receipt of notification  
3479 of inclusion by the ~~board~~ department. Coverage may be terminated or revoked in  
3480 accordance with subdivision 3 of this subsection.

3481 e. Discharges other than discharges from publicly owned treatment works, combined  
3482 sewer overflows, primary industrial facilities, and stormwater discharges associated  
3483 with industrial activity, may, at the discretion of the ~~board~~ department, be authorized  
3484 to discharge under a general permit without submitting a notice of intent where the  
3485 ~~board~~ department finds that a notice of intent requirement would be inappropriate. In  
3486 making such a finding, the ~~board~~ department shall consider: the type of discharge; the  
3487 expected nature of the discharge; the potential for toxic and conventional pollutants in  
3488 the discharges; the expected volume of the discharges; other means of identifying  
3489 discharges covered by the permit; and the estimated number of discharges to be  
3490 covered by the permit. The ~~board~~ department shall provide in the public notice of the  
3491 general permit the reasons for not requiring a notice of intent.

3492 f. The ~~board~~ department may notify a discharger (or treatment works treating domestic  
3493 sewage) that it is covered by a general permit, even if the discharger (or treatment  
3494 works treating domestic sewage) has not submitted a notice of intent to be covered. A  
3495 discharger (or treatment works treating domestic sewage) so notified may request an  
3496 individual permit under subdivision 3 c of this subsection.

3497 g. A CAFO owner or operator may be authorized to discharge under a general permit  
3498 only in accordance with the process described in subdivision C 4 of 9VAC25-31-130.

3499 3. Requiring an individual permit.

3500 a. The ~~board~~ department may require any discharger authorized by a general permit  
3501 to apply for and obtain an individual VPDES permit. Any interested person may request  
3502 the ~~board~~ department to take action under this subdivision. Cases where an individual  
3503 VPDES permit may be required include the following:

3504 (1) The discharger or treatment works treating domestic sewage is not in compliance  
3505 with the conditions of the general VPDES permit;

3506 (2) A change has occurred in the availability of demonstrated technology or practices  
3507 for the control or abatement of pollutants applicable to the point source or treatment  
3508 works treating domestic sewage;

3509 (3) Effluent limitation guidelines are promulgated for point sources covered by the  
3510 general VPDES permit;

3511 (4) A water quality management plan containing requirements applicable to such point  
3512 sources is approved;

3513 (5) Circumstances have changed since the time of the request to be covered so that  
3514 the discharger is no longer appropriately controlled under the general permit, or either  
3515 a temporary or permanent reduction or elimination of the authorized discharge is  
3516 necessary;

3517 (6) Standards for sewage sludge use or disposal have been promulgated for the  
3518 sludge use and disposal practice covered by the general VPDES permit; or

3519 (7) The discharge is a significant contributor of pollutants. In making this determination,  
3520 the ~~board~~ department may consider the following factors:

3521 (a) The location of the discharge with respect to surface waters;

3522 (b) The size of the discharge;

3523 (c) The quantity and nature of the pollutants discharged to surface waters; and

3524 (d) Other relevant factors.

3525 b. Permits required on a case-by-case basis.

3526 (1) The ~~board~~ department may determine, on a case-by-case basis, that certain  
3527 concentrated animal feeding operations, concentrated aquatic animal production  
3528 facilities, stormwater discharges, and certain other facilities covered by general  
3529 permits that do not generally require an individual permit may be required to obtain an  
3530 individual permit because of their contributions to water pollution.

3531 (2) Whenever the ~~board~~ department decides that an individual permit is required under  
3532 this subsection, except as provided in subdivision 3 b (3) of this subsection, the ~~board~~  
3533 department shall notify the discharger in writing of that decision and the reasons for it,  
3534 and shall send an application form with the notice. The discharger must apply for a  
3535 permit within 60 days of notice, unless permission for a later date is granted by the  
3536 ~~board~~ department. The question whether the designation was proper will remain open  
3537 for consideration during the public comment period for the draft permit and in any  
3538 subsequent public hearing.

3539 (3) Prior to a case-by-case determination that an individual permit is required for a  
3540 stormwater discharge under this subsection, the ~~board~~ department may require the  
3541 discharger to submit a permit application or other information regarding the discharge  
3542 under the law and § 308 of the CWA. In requiring such information, the ~~board~~  
3543 department shall notify the discharger in writing and shall send an application form

3544 with the notice. The discharger must apply for a permit under 9VAC25-31-120 A 1  
3545 within 60 days of notice or under 9VAC25-31-120 A 7 within 180 days of notice, unless  
3546 permission for a later date is granted by the ~~board~~ department. The question whether  
3547 the initial designation was proper will remain open for consideration during the public  
3548 comment period for the draft permit and in any subsequent public hearing.

3549 c. Any owner or operator authorized by a general permit may request to be excluded  
3550 from the coverage of the general permit by applying for an individual permit. The owner  
3551 or operator shall submit an application under 9VAC25-31-100 with reasons supporting  
3552 the request. The request shall be processed under the applicable parts of this chapter.  
3553 The request shall be granted by issuing of an individual permit if the reasons cited by  
3554 the owner or operator are adequate to support the request.

3555 d. When an individual VPDES permit is issued to an owner or operator otherwise  
3556 subject to a general VPDES permit, the applicability of the general permit to the  
3557 individual VPDES permittee is automatically terminated on the effective date of the  
3558 individual permit.

3559 e. A source excluded from a general permit solely because it already has an individual  
3560 permit may request that the individual permit be revoked, and that it be covered by the  
3561 general permit. Upon revocation of the individual permit, the general permit shall apply  
3562 to the source.

3563 **9VAC25-31-180. New sources and new dischargers.**

3564 A. Criteria for new source determination.

3565 1. Except as otherwise provided in an applicable new source performance standard, a  
3566 source is a new source if it meets the definition of new source in this chapter, and

3567 a. It is constructed at a site at which no other source is located; or

3568 b. It totally replaces the process or production equipment that causes the discharge of  
3569 pollutants at an existing source; or

3570 c. Its processes are substantially independent of an existing source at the same site.  
3571 In determining whether these processes are substantially independent, the ~~board~~  
3572 department shall consider such factors as the extent to which the new facility is  
3573 integrated with the existing plant; and the extent to which the new facility is engaged  
3574 in the same general type of activity as the existing source.

3575 2. A source meeting the requirements of subdivisions 1 a, b, or c of this subsection is a  
3576 new source only if a new source performance standard is independently applicable to it.  
3577 If there is no such independently applicable standard, the source is a new discharger.

3578 3. Construction on a site at which an existing source is located results in a permit  
3579 modification subject to 9VAC25-31-390 rather than a new source (or a new discharger) if  
3580 the construction does not create a new building, structure, facility, or installation meeting  
3581 the criteria of subdivisions 1 b or c of this subsection but otherwise alters, replaces, or  
3582 adds to existing process or production equipment.

3583 4. Construction of a new source has commenced if the owner or operator has:

3584 a. Begun, or caused to begin as part of a continuous on-site construction program:

3585 (1) Any placement, assembly, or installation of facilities or equipment; or

3586 (2) Significant site preparation work including clearing, excavation or removal of  
3587 existing buildings, structures, or facilities which is necessary for the placement,  
3588 assembly, or installation of new source facilities or equipment; or

3589 b. Entered into a binding contractual obligation for the purchase of facilities or  
3590 equipment which are intended to be used in its operation within a reasonable time.

3591 Options to purchase or contracts which can be terminated or modified without  
3592 substantial loss, and contracts for feasibility engineering, and design studies do not  
3593 constitute a contractual obligation under the paragraph.

3594 B. Effect of compliance with new source performance standards. The provisions of this  
3595 subsection do not apply to existing sources which modify their pollution control facilities or  
3596 construct new pollution control facilities and achieve performance standards, but which are neither  
3597 new sources or new dischargers or otherwise do not meet the requirements of this subdivision.

3598 1. Except as provided in subdivision 2 of this subsection, any new discharger, the  
3599 construction of which commenced after October 18, 1972, or new source which meets the  
3600 applicable promulgated new source performance standards before the commencement of  
3601 discharge, may not be subject to any more stringent new source performance standards  
3602 or to any more stringent technology-based standards under § 301(b)(2) of the CWA for  
3603 the soonest ending of the following periods:

3604 a. Ten years from the date that construction is completed;

3605 b. Ten years from the date the source begins to discharge process or other  
3606 nonconstruction related wastewater; or

3607 c. The period of depreciation or amortization of the facility for the purposes of §§ 167  
3608 or 169 (or both) of the Internal Revenue Code of 1954 (26 USC 167 and 26 USC 169,  
3609 respectively).

3610 2. The protection from more stringent standards of performance afforded by subdivision 1  
3611 of this subsection does not apply to:

3612 a. Additional or more stringent permit conditions which are not technology based; for  
3613 example, conditions based on water quality standards, or toxic effluent standards or  
3614 prohibitions under the law and § 307(a) of the CWA; or

3615 b. Additional permit conditions controlling toxic pollutants or hazardous substances  
3616 which are not controlled by new source performance standards. This includes permit  
3617 conditions controlling pollutants other than those identified as toxic pollutants or  
3618 hazardous substances when control of these pollutants has been specifically identified  
3619 as the method to control the toxic pollutants or hazardous substances.

3620 3. When a VPDES permit issued to a source with a protection period under subdivision 1  
3621 of this subsection will expire on or after the expiration of the protection period, that permit  
3622 shall require the owner or operator of the source to comply with the requirements of § 301  
3623 of the CWA and any other then applicable requirements of the CWA and the law  
3624 immediately upon the expiration of the protection period. No additional period for achieving  
3625 compliance with these requirements may be allowed except when necessary to achieve  
3626 compliance with requirements promulgated less than three years before the expiration of  
3627 the protection period.

3628 4. The owner or operator of a new source, a new discharger which commenced discharge  
3629 after August 13, 1979, or a recommencing discharger shall install and have in operating  
3630 condition, and shall start-up all pollution control equipment required to meet the conditions  
3631 of its permits before beginning to discharge. Within the shortest feasible time (not to  
3632 exceed 90 days), the owner or operator must meet all permit conditions. The requirements  
3633 of this paragraph do not apply if the owner or operator is issued a permit containing a  
3634 compliance schedule under 9VAC25-31-250 A 2.

3635 5. After the effective date of new source performance standards, it shall be unlawful for  
3636 any owner or operator of any new source to operate the source in violation of those  
3637 standards applicable to the source.

**3638 9VAC25-31-190. Conditions applicable to all permits.**

**3639** The following conditions apply to all VPDES permits. Additional conditions applicable to  
**3640** VPDES permits are in 9VAC25-31-200. All conditions applicable to VPDES permits shall be  
**3641** incorporated into the permits either expressly or by reference. If incorporated by reference, a  
**3642** specific citation to this regulation must be given in the permit.

**3643** A. The permittee must comply with all conditions of the permit. Any permit noncompliance  
**3644** constitutes a violation of the law and the CWA, except that noncompliance with certain provisions  
**3645** of the permit may constitute a violation of the law but not the CWA. Permit noncompliance is  
**3646** grounds for enforcement action; for permit termination, revocation and reissuance, or  
**3647** modification; or denial of a permit renewal application.

**3648** The permittee shall comply with effluent standards or prohibitions established under § 307(a)  
**3649** of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established  
**3650** under § 405(d) of the CWA within the time provided in the chapters that establish these standards  
**3651** or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been  
**3652** modified to incorporate the requirement.

**3653** B. If the permittee wishes to continue an activity regulated by the permit after the expiration  
**3654** date of the permit, the permittee must apply for and obtain a new permit.

**3655** C. It shall not be a defense for a permittee in an enforcement action that it would have been  
**3656** necessary to halt or reduce the permitted activity in order to maintain compliance with the  
**3657** conditions of the permit.

**3658** D. The permittee shall take all reasonable steps to minimize or prevent any discharge or  
**3659** sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely  
**3660** affecting human health or the environment.

**3661** E. The permittee shall at all times properly operate and maintain all facilities and systems of  
**3662** treatment and control (and related appurtenances) that are installed or used by the permittee to  
**3663** achieve compliance with the conditions of the permit. Proper operation and maintenance also  
**3664** includes adequate laboratory controls and appropriate quality assurance procedures. This  
**3665** provision requires the operation of back-up or auxiliary facilities or similar systems that are  
**3666** installed by a permittee only when the operation is necessary to achieve compliance with the  
**3667** conditions of the permit.

**3668** F. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a  
**3669** request by the permittee for a permit modification, revocation and reissuance, or termination, or  
**3670** a notification of planned changes or anticipated noncompliance does not stay any permit  
**3671** condition.

**3672** G. Permits do not convey any property rights of any sort, or any exclusive privilege.

**3673** H. The permittee shall furnish to the department, within a reasonable time, any information  
**3674** that the ~~board~~ department may request to determine whether cause exists for modifying, revoking  
**3675** and reissuing, or terminating the permit or to determine compliance with the permit. The ~~board~~  
**3676** department may require the permittee to furnish, upon request, such plans, specifications, and  
**3677** other pertinent information as may be necessary to determine the effect of the wastes from the  
**3678** permittee's discharge on the quality of state waters, or such other information as may be  
**3679** necessary to accomplish the purposes of the law. The permittee shall also furnish to the  
**3680** department upon request, copies of records required to be kept by the permit.

**3681** I. The permittee shall allow the director, or an authorized representative (including an  
**3682** authorized contractor acting as a representative of the administrator), upon presentation of  
**3683** credentials and other documents as may be required by law, to:

**3684** 1. Enter upon the permittee's premises where a regulated facility or activity is located or  
**3685** conducted, or where records must be kept under the conditions of the permit;

- 3686 2. Have access to and copy, at reasonable times, any records that must be kept under the  
3687 conditions of the permit;
- 3688 3. Inspect at reasonable times any facilities, equipment (including monitoring and control  
3689 equipment), practices, or operations regulated or required under the permit; and
- 3690 4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance  
3691 or as otherwise authorized by the CWA and the law, any substances or parameters at any  
3692 location.

3693 J. Monitoring and records.

3694 1. Samples and measurements taken for the purpose of monitoring shall be representative  
3695 of the monitored activity.

3696 2. Except for records of monitoring information required by the permit related to the  
3697 permittee's sewage sludge use and disposal activities, which shall be retained for a period  
3698 of at least five years (or longer as required by Part VI (9VAC25-31-420 et seq.) of this  
3699 chapter), the permittee shall retain records of all monitoring information, including all  
3700 calibration and maintenance records and all original strip chart recordings for continuous  
3701 monitoring instrumentation, copies of all reports required by the permit, and records of all  
3702 data used to complete the application for the permit, for a period of at least three years  
3703 from the date of the sample, measurement, report or application. This period of retention  
3704 shall be extended automatically during the course of any unresolved litigation regarding  
3705 the regulated activity or regarding control standards applicable to the permittee, or as  
3706 requested by the ~~board~~ department.

3707 3. Records of monitoring information shall include:

- 3708 a. The date, exact place, and time of sampling or measurements;
- 3709 b. The individual who performed the sampling or measurements;
- 3710 c. The date analyses were performed;
- 3711 d. The individual who performed the analyses;
- 3712 e. The analytical techniques or methods used; and
- 3713 f. The results of such analyses.

3714 4. Monitoring results must be conducted according to test procedures approved under 40  
3715 CFR Part 136 or alternative EPA approved methods; or, in the case of sludge use or  
3716 disposal, approved under 40 CFR Part 136 unless otherwise specified in Part VI of this  
3717 chapter, unless other test procedures have been specified in the permit.

3718 5. Samples taken shall be analyzed by a laboratory certified under 1VAC30-45,  
3719 Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation  
3720 for Commercial Environmental Laboratories.

3721 K. All applications, reports, or information submitted to the department shall be signed and  
3722 certified as required by 9VAC25-31-110.

3723 L. Reporting requirements.

3724 1. The permittee shall give notice to the department as soon as possible of any planned  
3725 physical alterations or additions to the permitted facility. Notice is required only when:

- 3726 a. The alteration or addition to a permitted facility may meet one of the criteria for  
3727 determining whether a facility is a new source in 9VAC25-31-180 A;
- 3728 b. The alteration or addition could significantly change the nature or increase the  
3729 quantity of pollutants discharged. This notification applies to pollutants which are  
3730 subject neither to effluent limitations in the permit, nor to notification requirements  
3731 under 9VAC25-31-200 A 1; or



3732 c. The alteration or addition results in a significant change in the permittee's sludge  
3733 use or disposal practices, and such alteration, addition, or change may justify the  
3734 application of permit conditions that are different from or absent in the existing permit,  
3735 including notification of additional use or disposal sites not reported during the permit  
3736 application process or not reported pursuant to an approved land application plan.

3737 2. The permittee shall give advance notice to the department of any planned changes in  
3738 the permitted facility or activity which may result in noncompliance with permit  
3739 requirements.

3740 3. Permits are not transferable to any person except after notice to the department. The  
3741 ~~board~~ department may require modification or revocation and reissuance of permits to  
3742 change the name of the permittee and incorporate such other requirements as may be  
3743 necessary under the law or the CWA.

3744 4. Monitoring results shall be reported at the intervals specified in the permit.

3745 a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or  
3746 forms provided or specified by the department for reporting results of monitoring of  
3747 sludge use or disposal practices. As of the start date in Table 1 of 9VAC25-31-1020,  
3748 all reports and forms submitted in compliance with this subdivision 4 shall be submitted  
3749 electronically by the permittee to the department in compliance with this subdivision 4  
3750 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-  
3751 110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not  
3752 intended to undo existing requirements for electronic reporting. Prior to this date, and  
3753 independent of Part XI of this chapter, permittees may be required to report  
3754 electronically if specified by a particular permit.

3755 b. If the permittee monitors any pollutant specifically addressed by the permit more  
3756 frequently than required by the permit using test procedures approved under 40 CFR  
3757 Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136  
3758 unless otherwise specified in Part VI of this chapter, or as specified in the permit, the  
3759 results of this monitoring shall be included in the calculation and reporting of the data  
3760 submitted in the DMR or sludge reporting form specified by the department.

3761 c. Calculations for all limitations which require averaging of measurements shall utilize  
3762 an arithmetic mean unless otherwise specified in the permit.

3763 5. Reports of compliance or noncompliance with, or any progress reports on, interim and  
3764 final requirements contained in any compliance schedule of the permit shall be submitted  
3765 no later than 14 days following each schedule date.

3766 6. If any unusual or extraordinary discharge including a bypass or upset should occur from  
3767 a facility and such discharge enters or could be expected to enter state waters, the owner  
3768 shall promptly notify, in no case later than 24 hours, the department by telephone after the  
3769 discovery of such discharge. This notification shall provide all available details of the  
3770 incident, including any adverse effects on aquatic life and the known number of fish killed.  
3771 The permittee shall reduce the report to writing and shall submit it to the department within  
3772 five days of discovery of the discharge in accordance with subdivision 7 a of this  
3773 subsection. Unusual and extraordinary discharges include but are not limited to any  
3774 discharge resulting from:

3775 a. Unusual spillage of materials resulting directly or indirectly from processing  
3776 operations;

3777 b. Breakdown of processing or accessory equipment;

3778 c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as  
3779 sewer lines or wastewater pump stations); and

3780 d. Flooding or other acts of nature.

3781 7. Twenty-four hour and five-day reporting.

3782 a. The permittee shall report any noncompliance that may endanger health or the

3783 environment. Any information shall be provided orally within 24 hours from the time

3784 the permittee becomes aware of the circumstances. A report in a format required by

3785 the department shall also be provided within five days of the time the permittee

3786 becomes aware of the circumstances. The five-day report shall contain a description

3787 of the noncompliance and its cause; the period of noncompliance, including exact

3788 dates and times, and if the noncompliance has not been corrected, the anticipated

3789 time it is expected to continue; and steps taken or planned to reduce, eliminate, and

3790 prevent reoccurrence of the noncompliance.

3791 (1) For noncompliance events related to combined sewer overflows, sanitary sewer

3792 overflows, or bypass events, these reports must include the data described in

3793 subdivision 7 a of this subsection with the exception of time of discovery, as well as

3794 the type of event (i.e., combined sewer overflows, sanitary sewer overflows, or bypass

3795 events); type of sewer overflow structure (e.g., manhole, combine sewer overflow

3796 outfall); discharge volumes untreated by the treatment works treating domestic

3797 sewage; types of human health and environmental impacts of the sewer overflow

3798 event; and whether the noncompliance was related to wet weather.

3799 (2) As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined

3800 sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance

3801 with this subdivision 7 shall be submitted electronically by the permittee to the

3802 department in compliance with this subdivision 7 and 40 CFR Part 3 (including, in all

3803 cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et

3804 seq.) of this chapter. Part XI of this chapter is not intended to undo existing

3805 requirements for electronic reporting. Prior to this date, and independent of Part XI of

3806 this chapter, permittees may be required to electronically submit reports related to

3807 combined sewer overflows, sanitary sewer overflows, or bypass events under this

3808 subdivision by a particular permit.

3809 (3) The director may also require permittees to electronically submit reports not related

3810 to combined sewer overflows, sanitary sewer overflows, or bypass events under this

3811 subdivision.

3812 b. The following shall be reported within 24 hours under this subdivision:

3813 (1) Any unanticipated bypass that exceeds any effluent limitation in the permit.

3814 (2) Any upset that exceeds any effluent limitation in the permit.

3815 (3) Violation of a maximum daily discharge limitation for any of the pollutants listed in

3816 the permit to be reported within 24 hours.

3817 c. The ~~board~~ department may waive the five-day report on a case-by-case basis for

3818 reports under this subdivision if the oral report has been received within 24 hours.

3819 8. The permittee shall report all instances of noncompliance not reported under

3820 subdivisions 4, 5, 6, and 7 of this subsection, in a format required by the department at

3821 the time the next monitoring reports are submitted. The reports shall contain the

3822 information listed in subdivision 7 of this subsection.

3823 a. For noncompliance events related to combined sewer overflows, sanitary sewer

3824 overflows, or bypass events, these reports shall contain the information described in

3825 subdivision 7 a of this subsection and the applicable required data in Appendix A to

3826 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

3827 b. As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined  
3828 sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance  
3829 with this subdivision 8 shall be submitted electronically by the permittee to the  
3830 department in compliance with this subdivision 8 and 40 CFR Part 3 (including, in all  
3831 cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et  
3832 seq.) of this chapter. Part XI of this chapter is not intended to undo existing  
3833 requirements for electronic reporting. Prior to this date, and independent of Part XI of  
3834 this chapter, permittees may be required to electronically submit reports related to  
3835 combined sewer overflows, sanitary sewer overflows, or bypass events under this  
3836 section by a particular permit.

3837 c. The director may also require permittees to electronically submit reports not related  
3838 to combined sewer overflows, sanitary sewer overflows, or bypass events under this  
3839 section.

3840 9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit  
3841 application, or submitted incorrect information in a permit application or in any report to  
3842 the department, it shall promptly submit such facts or information.

3843 10. The owner, operator, or the duly authorized representative of an VPDES-regulated  
3844 entity is required to electronically submit the required information, as specified in Appendix  
3845 A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, to the department.

3846 M. Bypass.

3847 1. The permittee may allow any bypass to occur which does not cause effluent limitations  
3848 to be exceeded, but only if it also is for essential maintenance to assure efficient operation.  
3849 These bypasses are not subject to the provisions of subdivisions 2 and 3 of this  
3850 subsection.

3851 2. Notice.

3852 a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it  
3853 shall submit prior notice, if possible at least 10 days before the date of the bypass. As  
3854 of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance  
3855 with this subdivision shall be submitted electronically by the permittee to the  
3856 department in compliance with this subdivision and 40 CFR Part 3 (including, in all  
3857 cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et  
3858 seq.) of this chapter. Part XI of this chapter is not intended to undo existing  
3859 requirements for electronic reporting. Prior to this date, and independent of Part XI of  
3860 this chapter, permittees may be required to report electronically if specified by a  
3861 particular permit.

3862 b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass  
3863 as required in subdivision L 7 of this section. As of the start date in Table 1 of 9VAC25-  
3864 31-1020, all notices submitted in compliance with this subdivision shall be submitted  
3865 electronically by the permittee to the department in compliance with this subdivision  
3866 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-  
3867 110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not  
3868 intended to undo existing requirements for electronic reporting. Prior to this date, and  
3869 independent of Part XI of this chapter, permittees may be required to report  
3870 electronically if specified by a particular permit.

3871 3. Prohibition of bypass.

3872 a. Bypass is prohibited, and the ~~board~~ department may take enforcement action  
3873 against a permittee for bypass, unless:

- 3874 (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property  
3875 damage;
- 3876 (2) There were no feasible alternatives to the bypass, such as the use of auxiliary  
3877 treatment facilities, retention of untreated wastes, or maintenance during normal  
3878 periods of equipment downtime. This condition is not satisfied if adequate back-up  
3879 equipment should have been installed in the exercise of reasonable engineering  
3880 judgment to prevent a bypass which occurred during normal periods of equipment  
3881 downtime or preventive maintenance; and
- 3882 (3) The permittee submitted notices as required under subdivision 2 of this subsection.
- 3883 b. The ~~board~~ department may approve an anticipated bypass, after considering its  
3884 adverse effects, if the ~~board~~ department determines that it will meet the three  
3885 conditions listed above in subdivision 3 a of this subsection.

3886 N. Upset.

- 3887 1. An upset constitutes an affirmative defense to an action brought for noncompliance with  
3888 such technology based permit effluent limitations if the requirements of subdivision 2 of  
3889 this subsection are met. No determination made during administrative review of claims  
3890 that noncompliance was caused by upset, and before an action for noncompliance, is final  
3891 administrative action subject to judicial review.
- 3892 2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate,  
3893 through properly signed, contemporaneous operating logs, or other relevant evidence  
3894 that:
- 3895 a. An upset occurred and that the permittee can identify the cause or causes of the  
3896 upset;
- 3897 b. The permitted facility was at the time being properly operated;
- 3898 c. The permittee submitted notice of the upset as required in subdivision L 7 b (2) of  
3899 this section (24-hour notice); and
- 3900 d. The permittee complied with any remedial measures required under subsection D  
3901 of this section.
- 3902 3. In any enforcement proceeding the permittee seeking to establish the occurrence of an  
3903 upset has the burden of proof.

3904 **9VAC25-31-200. Additional conditions applicable to specified categories of VPDES**  
3905 **permits.**

3906 The following conditions, in addition to those set forth in 9VAC25-31-190, apply to all VPDES  
3907 permits within the categories specified below:

3908 A. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing  
3909 manufacturing, commercial, mining, and silvicultural dischargers must notify the department as  
3910 soon as they know or have reason to believe:

- 3911 1. That any activity has occurred or will occur which would result in the discharge, on a  
3912 routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that  
3913 discharge will exceed the highest of the following notification levels:
- 3914 a. One hundred micrograms per liter (100 µg/l);
- 3915 b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five  
3916 hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-  
3917 dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- 3918 c. Five times the maximum concentration value reported for that pollutant in the permit  
3919 application; or

3920 d. The level established by the ~~board~~ department in accordance with 9VAC25-31-220  
3921 F.

3922 2. That any activity has occurred or will occur which would result in any discharge, on a  
3923 nonroutine or infrequent basis, of a toxic pollutant that is not limited in the permit, if that  
3924 discharge will exceed the highest of the following notification levels:

3925 a. Five hundred micrograms per liter (500 µg/l);

3926 b. One milligram per liter (1 mg/l) for antimony;

3927 c. Ten times the maximum concentration value reported for that pollutant in the permit  
3928 application; or

3929 d. The level established by the ~~board~~ department in accordance with 9VAC25-31-220  
3930 F.

3931 B. Publicly and privately owned treatment works. All POTWs and PVOTWs must provide  
3932 adequate notice to the department of the following:

3933 1. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger  
3934 that would be subject to § 301 or 306 of the CWA and the law if it were directly discharging  
3935 those pollutants; and

3936 2. Any substantial change in the volume or character of pollutants being introduced into  
3937 that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at  
3938 the time of issuance of the permit.

3939 3. For purposes of this subsection, adequate notice shall include information on (i) the  
3940 quality and quantity of effluent introduced into the POTW or PVOTW, and (ii) any  
3941 anticipated impact of the change on the quantity or quality of effluent to be discharged  
3942 from the POTW or PVOTW.

3943 4. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the  
3944 design capacity authorized by the VPDES permit for each month of any three-month  
3945 period, the owner shall within 30 days notify the department in writing and within 90 days  
3946 submit a plan of action for ensuring continued compliance with the terms of the permit.

3947 a. The plan shall include the necessary steps and a prompt schedule of  
3948 implementation for controlling any current problem, or any problem which could be  
3949 reasonably anticipated, resulting from high influent flows.

3950 b. Upon receipt of the owner's plan of action, the ~~board~~ department shall notify the  
3951 owner whether the plan is approved or disapproved. If the plan is disapproved, such  
3952 notification shall state the reasons and specify the actions necessary to obtain  
3953 approval of the plan.

3954 c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.

3955 d. Nothing herein shall in any way impair the authority of the ~~board~~ department to take  
3956 enforcement action under § 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of  
3957 Virginia.

3958 C. Wastewater works operator requirements.

3959 1. The permittee shall employ or contract at least one wastewater works operator who  
3960 holds a current wastewater license appropriate for the permitted facility. The license shall  
3961 be issued in accordance with Title 54.1 of the Code of Virginia and Wastewater Works and  
3962 Wastewater Works Operators Licensing Regulations (18VAC160-30). Notwithstanding the  
3963 foregoing requirement, unless the discharge is determined by the ~~board~~ department on a  
3964 case-by-case basis to be a potential contributor of pollution, no licensed operator is  
3965 required for wastewater treatment works:

3966 a. That have a design hydraulic capacity equal to or less than 0.04 mgd;

3967 b. That discharge industrial waste or other waste from coal mining operations; or  
3968 c. That do not utilize biological or physical/chemical treatment.

3969 2. In making this case-by-case determination, the ~~board~~ department shall consider the  
3970 location of the discharge with respect to state waters, the size of the discharge, the  
3971 quantity and nature of pollutants reaching state waters and the treatment methods used  
3972 at the wastewater works.

3973 3. The permittee shall notify the department in writing whenever he is not complying, or  
3974 has grounds for anticipating he will not comply with the requirements of subdivision 1 of  
3975 this subsection. The notification shall include a statement of reasons and a prompt  
3976 schedule for achieving compliance.

3977 D. Lake level contingency plans. Any VPDES permit issued for a surface water impoundment  
3978 whose primary purpose is to provide cooling water to power generators shall include a lake level  
3979 contingency plan to allow specific reductions in the flow required to be released when the water  
3980 level above the dam drops below designated levels due to drought conditions, and such plan shall  
3981 take into account and minimize any adverse effects of any release reduction requirements on  
3982 downstream users. This subsection shall not apply to any such facility that addresses releases  
3983 and flow requirements during drought conditions in a Virginia Water Protection Permit.

3984 E. Concentrated animal feeding operations (CAFOs). The activities of the CAFO shall not  
3985 contravene the Water Quality Standards, as amended and adopted by the board, or any provision  
3986 of the State Water Control Law. There shall be no point source discharge of manure, litter or  
3987 process wastewater to surface waters of the state except in the case of an overflow caused by a  
3988 storm event greater than the 25-year, 24-hour storm. Agricultural stormwater discharges as  
3989 defined in subdivision C 3 of 9VAC25-31-130 are permitted. Domestic sewage or industrial waste  
3990 shall not be managed under the Virginia Pollutant Discharge Elimination System General Permit  
3991 for CAFOs (9VAC25-191). Any permit issued to a CAFO shall include:

3992 1. Requirements to develop, implement and comply with a nutrient management plan. At  
3993 a minimum, a nutrient management plan shall include best management practices and  
3994 procedures necessary to implement applicable effluent limitations and standards.  
3995 Permitted CAFOs must have their nutrient management plans developed and  
3996 implemented and be in compliance with the nutrient management plan as a requirement  
3997 of the permit. The nutrient management plan must, to the extent applicable:

3998 a. Ensure adequate storage of manure, litter, and process wastewater, including  
3999 procedures to ensure proper operation and maintenance of the storage facilities;

4000 b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they  
4001 are not disposed of in a liquid manure, stormwater, or process wastewater storage or  
4002 treatment system that is not specifically designed to treat animal mortalities;

4003 c. Ensure that clean water is diverted, as appropriate, from the production area;

4004 d. Prevent direct contact of confined animals with surface waters of the state;

4005 e. Ensure that chemicals and other contaminants handled on site are not disposed of  
4006 in any manure, litter, process wastewater, or stormwater storage or treatment system  
4007 unless specifically designed to treat such chemicals and other contaminants;

4008 f. Identify appropriate site specific conservation practices to be implemented, including  
4009 as appropriate buffers or equivalent practices, to control runoff of pollutants to surface  
4010 waters of the state;

4011 g. Identify protocols for appropriate testing of manure, litter, process wastewater and  
4012 soil;

4013 h. Establish protocols to land apply manure, litter or process wastewater in accordance  
4014 with site specific nutrient management practices that ensure appropriate agricultural  
4015 utilization of the nutrients in the manure, litter or process wastewater; and  
4016 i. Identify specific records that will be maintained to document the implementation and  
4017 management of the minimum elements described above.

4018 2. Recordkeeping requirements. The permittee must create, maintain for five years, and  
4019 make available to the director upon request the following records:

4020 a. All applicable records identified pursuant to subdivision 1 i of this subsection;  
4021 b. In addition, all CAFOs subject to EPA Effluent Guidelines for Feedlots (40 CFR Part  
4022 412) must comply with recordkeeping requirements as specified in 40 CFR 412.37(b)  
4023 and (c) and 40 CFR 412.47(b) and (c);

4024 A copy of the CAFO's site-specific nutrient management plan must be maintained on site  
4025 and made available to the director upon request.

4026 3. Requirements relating to transfer of manure or process wastewater to other persons.  
4027 Prior to transferring manure, litter or process wastewater to other persons, large CAFOs  
4028 must provide the recipient of the manure, litter or process wastewater with the most current  
4029 nutrient analysis. The analysis provided must be consistent with the requirements of EPA  
4030 Effluent Guidelines for Feedlots (40 CFR Part 412). Large CAFOs must retain for five  
4031 years records of the date, recipient name and address, and approximate amount of  
4032 manure, litter, or process wastewater transferred to another person.

4033 4. Annual reporting requirements for CAFOs. The permittee must submit an annual report  
4034 to the director. As of the start date in Table 1 of 9VAC25-31-1020, all annual reports  
4035 submitted in compliance with this subsection shall be submitted electronically by the  
4036 permittee to the department in compliance with this subsection and 40 CFR Part 3  
4037 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-  
4038 31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing  
4039 requirements for electronic reporting. Prior to this date, and independent of Part XI of this  
4040 chapter, the permittee may be required to report electronically if specified by a particular  
4041 permit. The annual report must include:

4042 a. The number and type of animals, whether in open confinement or housed under  
4043 roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing  
4044 less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs,  
4045 horses, ducks, turkeys, other);

4046 b. Estimated amount of total manure, litter and process wastewater generated by the  
4047 CAFO in the previous 12 months (tons/gallons);

4048 c. Estimated amount of total manure, litter and process wastewater transferred to other  
4049 persons by the CAFO in the previous 12 months (tons/gallons);

4050 d. Total number of acres for land application covered by the nutrient management plan  
4051 developed in accordance with subdivision 1 of this subsection;

4052 e. Total number of acres under control of the CAFO that were used for land application  
4053 of manure, litter and process wastewater in the previous 12 months;

4054 f. Summary of all manure, litter, and process wastewater discharges from the  
4055 production area that occurred in the previous 12 months including for each discharge  
4056 the date of discovery, duration of discharge, and approximate volume;

4057 g. A statement indicating whether the current version of the CAFO's nutrient  
4058 management plan was developed or approved by a certified nutrient management  
4059 planner; and

4060 h. The actual crops planted and actual yield for each field, the actual nitrogen and  
4061 phosphorus content of the manure, litter, and process wastewater, the results of  
4062 calculations conducted in accordance with subdivisions 5 a (2) and 5 b (4) of this  
4063 subsection, and the amount of manure, litter, and process wastewater applied to each  
4064 field during the previous 12 months; and, for any CAFO that implements a nutrient  
4065 management plan that addresses rates of application in accordance with subdivision  
4066 5 b of this subsection, the results of any soil testing for nitrogen and phosphorus taken  
4067 during the preceding 12 months, the data used in calculations conducted in  
4068 accordance with subdivision 5 b (4) of this subsection, and the amount of any  
4069 supplemental fertilizer applied during the previous 12 months.

4070 5. Terms of the nutrient management plan. Any permit issued to a CAFO shall require  
4071 compliance with the terms of the CAFO's site-specific nutrient management plan. The  
4072 terms of the nutrient management plan are the information, protocols, best management  
4073 practices, and other conditions in the nutrient management plan determined by the ~~board~~  
4074 department to be necessary to meet the requirements of subdivision 1 of this subsection.  
4075 The terms of the nutrient management plan, with respect to protocols for land application  
4076 of manure, litter, or process wastewater required by subdivision 4 h of this subsection and,  
4077 as applicable, 40 CFR 412.4(c), shall include the fields available for land application; field-  
4078 specific rates of application properly developed, as specified in subdivisions 5 a and b of  
4079 this subsection, to ensure appropriate agricultural utilization of the nutrients in the manure,  
4080 litter, or process wastewater; and any timing limitations identified in the nutrient  
4081 management plan concerning land application on the fields available for land application.  
4082 The terms shall address rates of application using one of the following two approaches,  
4083 unless the ~~board~~ department specifies that only one of these approaches may be used:

4084 a. Linear approach. An approach that expresses rates of application as pounds of  
4085 nitrogen and phosphorus, according to the following specifications:

4086 (1) The terms include maximum application rates from manure, litter, and process  
4087 wastewater for each year of permit coverage, for each crop identified in the nutrient  
4088 management plan, in chemical forms determined to be acceptable to the ~~board~~  
4089 department, in pounds per acre, per year, for each field to be used for land application,  
4090 and certain factors necessary to determine such rates. At a minimum, the factors that  
4091 are terms shall include: the outcome of the field-specific assessment of the potential  
4092 for nitrogen and phosphorus transport from each field; the crops to be planted in each  
4093 field or any other uses of a field such as pasture or fallow fields; the realistic yield goal  
4094 for each crop or use identified for each field; the nitrogen and phosphorus  
4095 recommendations from sources specified by the ~~board~~ department for each crop or  
4096 use identified for each field; credits for all nitrogen in the field that will be plant  
4097 available; consideration of multi-year phosphorus application; and accounting for all  
4098 other additions of plant available nitrogen and phosphorus to the field. In addition, the  
4099 terms include the form and source of manure, litter, and process wastewater to be  
4100 land-applied; the timing and method of land application; and the methodology by which  
4101 the nutrient management plan accounts for the amount of nitrogen and phosphorus in  
4102 the manure, litter, and process wastewater to be applied.

4103 (2) Large CAFOs that use this approach shall calculate the maximum amount of  
4104 manure, litter, and process wastewater to be land applied at least once each year  
4105 using the results of the most recent representative manure, litter, and process  
4106 wastewater tests for nitrogen and phosphorus taken within 12 months of the date of  
4107 land application; or

4108 b. Narrative rate approach. An approach that expresses rates of application as a  
4109 narrative rate of application that results in the amount, in tons or gallons, of manure,



4110 litter, and process wastewater to be land applied, according to the following  
4111 specifications:

4112 (1) The terms include maximum amounts of nitrogen and phosphorus derived from all  
4113 sources of nutrients, for each crop identified in the nutrient management plan, in  
4114 chemical forms determined to be acceptable to the ~~board~~ department, in pounds per  
4115 acre, for each field, and certain factors necessary to determine such amounts. At a  
4116 minimum, the factors that are terms shall include: the outcome of the field-specific  
4117 assessment of the potential for nitrogen and phosphorus transport from each field; the  
4118 crops to be planted in each field or any other uses such as pasture or fallow fields  
4119 (including alternative crops identified in accordance with subdivision 5 b (2) of this  
4120 subsection); the realistic yield goal for each crop or use identified for each field; and  
4121 the nitrogen and phosphorus recommendations from sources specified by the ~~board~~  
4122 department for each crop or use identified for each field. In addition, the terms include  
4123 the methodology by which the nutrient management plan accounts for the following  
4124 factors when calculating the amounts of manure, litter, and process wastewater to be  
4125 land applied: results of soil tests conducted in accordance with protocols identified in  
4126 the nutrient management plan, as required by subdivision 1 g of this subsection;  
4127 credits for all nitrogen in the field that will be plant available; the amount of nitrogen  
4128 and phosphorus in the manure, litter, and process wastewater to be applied;  
4129 consideration of multi-year phosphorus application; accounting for all other additions  
4130 of plant available nitrogen and phosphorus to the field; the form and source of manure,  
4131 litter, and process wastewater; the timing and method of land application; and  
4132 volatilization of nitrogen and mineralization of organic nitrogen.

4133 (2) The terms of the nutrient management plan include alternative crops identified in  
4134 the CAFO's nutrient management plan that are not in the planned crop rotation. Where  
4135 a CAFO includes alternative crops in its nutrient management plan, the crops shall be  
4136 listed by field, in addition to the crops identified in the planned crop rotation for that  
4137 field, and the nutrient management plan shall include realistic crop yield goals and the  
4138 nitrogen and phosphorus recommendations from sources specified by the ~~board~~  
4139 department for each crop. Maximum amounts of nitrogen and phosphorus from all  
4140 sources of nutrients and the amounts of manure, litter, and process wastewater to be  
4141 applied shall be determined in accordance with the methodology described in  
4142 subdivision 5 b (1) of this subsection.

4143 (3) For CAFOs using this approach, the following projections shall be included in the  
4144 nutrient management plan submitted to the ~~board~~ department, but are not terms of the  
4145 nutrient management plan: the CAFO's planned crop rotations for each field for the  
4146 period of permit coverage; the projected amount of manure, litter, or process  
4147 wastewater to be applied; projected credits for all nitrogen in the field that will be plant  
4148 available; consideration of multi-year phosphorus application; accounting for all other  
4149 additions of plant available nitrogen and phosphorus to the field; and the predicted  
4150 form, source, and method of application of manure, litter, and process wastewater for  
4151 each crop. Timing of application for each field, insofar as it concerns the calculation of  
4152 rates of application, is not a term of the nutrient management plan.

4153 (4) CAFOs that use this approach shall calculate maximum amounts of manure, litter,  
4154 and process wastewater to be land applied at least once each year using the  
4155 methodology required in subdivision 5 b (1) of this subsection before land applying  
4156 manure, litter, and process wastewater and shall rely on the following data:

4157 (a) A field-specific determination of soil levels of nitrogen and phosphorus, including,  
4158 for nitrogen, a concurrent determination of nitrogen that will be plant available  
4159 consistent with the methodology required by subdivision 5 b (1) of this subsection, and

4160 for phosphorus, the results of the most recent soil test conducted in accordance with  
4161 soil testing requirements approved by the ~~board~~ department; and

4162 (b) The results of most recent representative manure, litter, and process wastewater  
4163 tests for nitrogen and phosphorus taken within 12 months of the date of land  
4164 application, in order to determine the amount of nitrogen and phosphorus in the  
4165 manure, litter, and process wastewater to be applied.

4166 **9VAC25-31-210. Establishing permit conditions.**

4167 A. In addition to conditions required in all permits, the ~~board~~ department shall establish  
4168 conditions, as required on a case-by-case basis, to provide for and assure compliance with all  
4169 applicable requirements of the law, the CWA and regulations. These shall include conditions  
4170 under 9VAC25-31-240 (duration of permits), 9VAC25-31-250 (schedules of compliance),  
4171 9VAC25-31-220 (monitoring), electronic reporting requirements of 40 CFR Part 3 and Part XI  
4172 (9VAC25-31-950 et seq.) of this chapter.

4173 B. 1. An applicable requirement is a state statutory or regulatory requirement which takes  
4174 effect prior to final administrative disposition of a permit. An applicable requirement is also any  
4175 requirement which takes effect prior to the modification or revocation and reissuance of a permit,  
4176 to the extent allowed in Part V of this chapter.

4177 2. New or reissued permits, and to the extent allowed under Part V of this chapter modified  
4178 or revoked and reissued permits, shall incorporate each of the applicable requirements  
4179 referenced in 9VAC25-31-220 and 9VAC25-31-230.

4180 C. All permit conditions shall be incorporated either expressly or by reference. If incorporated  
4181 by reference, a specific citation to the applicable regulations or requirements must be given in the  
4182 permit.

4183 **9VAC25-31-220. Establishing limitations, standards, and other permit conditions.**

4184 In addition to the conditions established under 9VAC25-31-210 A, each VPDES permit shall  
4185 include conditions meeting the following requirements when applicable.

4186 A. 1. Technology-based effluent limitations and standards based on effluent limitations and  
4187 standards promulgated under § 301 of the CWA, on new source performance standards  
4188 promulgated under § 306 of CWA, on case-by-case effluent limitations determined under §  
4189 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these  
4190 technology-based limitations and standards are subject to the provisions of 9VAC25-31-180 B  
4191 (protection period).

4192 2. The ~~board~~ department may authorize a discharger subject to technology-based effluent  
4193 limitations guidelines and standards in a VPDES permit to forego sampling of a pollutant  
4194 found at 40 CFR Subchapter N if the discharger has demonstrated through sampling and  
4195 other technical factors that the pollutant is not present in the discharge or is present only  
4196 at background levels from intake water and without any increase in the pollutant due to  
4197 activities of the discharger. This waiver is good only for the term of the permit and is not  
4198 available during the term of the first permit issued to a discharger. Any request for this  
4199 waiver must be submitted when applying for a reissued permit or modification of a reissued  
4200 permit. The request must demonstrate through sampling or other technical information,  
4201 including information generated during an earlier permit term, that the pollutant is not  
4202 present in the discharge or is present only at background levels from intake water and  
4203 without any increase in the pollutant due to activities of the discharger. Any grant of the  
4204 monitoring waiver must be included in the permit as an express permit condition and the  
4205 reasons supporting the grant must be documented in the permit's fact sheet or statement  
4206 of basis. This provision does not supersede certification processes and requirements  
4207 already established in existing effluent limitations guidelines and standards.

- 4208 B. Other effluent limitations and standards.
- 4209 1. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318, and 405 of
- 4210 the CWA. If any applicable toxic effluent standard or prohibition (including any schedule
- 4211 of compliance specified in such effluent standard or prohibition) is promulgated under §
- 4212 307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent
- 4213 than any limitation on the pollutant in the permit, the ~~board~~ department shall institute
- 4214 proceedings under this chapter to modify or revoke and reissue the permit to conform to
- 4215 the toxic effluent standard or prohibition.
- 4216 2. Standards for sewage sludge use or disposal under § 405(d) of the CWA and Part VI
- 4217 (9VAC25-31-420 et seq.) of this chapter unless those standards have been included in a
- 4218 permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal
- 4219 Act (42 USC § 6901 et seq.), Part C of Safe Drinking Water Act (42 USC § 300f et seq.),
- 4220 the Marine Protection, Research, and Sanctuaries Act of 1972 (33 USC § 1401 et seq.),
- 4221 or the Clean Air Act (42 USC § 4701 et seq.), or in another permit issued by the
- 4222 Department of Environmental Quality or any other appropriate state agency under another
- 4223 permit program approved by the administrator. When there are no applicable standards
- 4224 for sewage sludge use or disposal, the permit may include requirements developed on a
- 4225 case-by-case basis to protect public health and the environment from any adverse effects
- 4226 which may occur from toxic pollutants in sewage sludge. If any applicable standard for
- 4227 sewage sludge use or disposal is promulgated under § 405(d) of the CWA and that
- 4228 standard is more stringent than any limitation on the pollutant or practice in the permit, the
- 4229 ~~board~~ department may initiate proceedings under this chapter to modify or revoke and
- 4230 reissue the permit to conform to the standard for sewage sludge use or disposal.
- 4231 3. Requirements applicable to cooling water intake structures at new facilities under § 316
- 4232 (b) of the CWA, in accordance with 9VAC25-31-165.
- 4233 C. Reopener clause. For any permit issued to a treatment works treating domestic sewage
- 4234 (including sludge-only facilities), the ~~board~~ department shall include a reopener clause to
- 4235 incorporate any applicable standard for sewage sludge use or disposal promulgated under §
- 4236 405(d) of the CWA. The ~~board~~ department may promptly modify or revoke and reissue any permit
- 4237 containing the reopener clause required by this subdivision if the standard for sewage sludge use
- 4238 or disposal is more stringent than any requirements for sludge use or disposal in the permit, or
- 4239 controls a pollutant or practice not limited in the permit.
- 4240 D. Water quality standards and state requirements. Any requirements in addition to or more
- 4241 stringent than promulgated effluent limitations guidelines or standards under §§ 301, 304, 306,
- 4242 307, 318, and 405 of the CWA necessary to:
- 4243 1. Achieve water quality standards established under the law and § 303 of the CWA,
- 4244 including state narrative criteria for water quality.
- 4245 a. Limitations must control all pollutants or pollutant parameters (either conventional,
- 4246 nonconventional, or toxic pollutants) which the ~~board~~ department determines are or
- 4247 may be discharged at a level which will cause, have the reasonable potential to cause,
- 4248 or contribute to an excursion above any Virginia water quality standard, including
- 4249 Virginia narrative criteria for water quality.
- 4250 b. When determining whether a discharge causes, has the reasonable potential to
- 4251 cause, or contributes to an in-stream excursion above a narrative or numeric criteria
- 4252 within a Virginia water quality standard, the ~~board~~ department shall use procedures
- 4253 which account for existing controls on point and nonpoint sources of pollution, the
- 4254 variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the
- 4255 species to toxicity testing (when evaluating whole effluent toxicity), and where
- 4256 appropriate, the dilution of the effluent in the receiving water.

4257 c. When the ~~board~~ department determines, using the procedures in subdivision 1 b of  
4258 this subsection, that a discharge causes, has the reasonable potential to cause, or  
4259 contributes to an in-stream excursion above the allowable ambient concentration of a  
4260 Virginia numeric criteria within a Virginia water quality standard for an individual  
4261 pollutant, the permit must contain effluent limits for that pollutant.

4262 d. Except as provided in this subdivision, when the ~~board~~ department determines,  
4263 using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other  
4264 information, that a discharge causes, has the reasonable potential to cause, or  
4265 contributes to an in-stream excursion above a narrative criterion within an applicable  
4266 Virginia water quality standard, the permit must contain effluent limits for whole effluent  
4267 toxicity. Limits on whole effluent toxicity are not necessary where the ~~board~~ department  
4268 demonstrates in the fact sheet or statement of basis of the VPDES permit, using the  
4269 procedures in subdivision 1 b of this subsection, that chemical-specific limits for the  
4270 effluent are sufficient to attain and maintain applicable numeric and narrative Virginia  
4271 water quality standards.

4272 e. Where Virginia has not established a water quality criterion for a specific chemical  
4273 pollutant that is present in an effluent at a concentration that causes, has the  
4274 reasonable potential to cause, or contributes to an excursion above a narrative  
4275 criterion within an applicable Virginia water quality standard, the ~~board~~ department  
4276 must establish effluent limits using one or more of the following options:

4277 (1) Establish effluent limits using a calculated numeric water quality criterion for the  
4278 pollutant which the ~~board~~ department demonstrates will attain and maintain applicable  
4279 narrative water quality criteria and will fully protect the designated use. Such a criterion  
4280 may be derived using a proposed Virginia criterion, or an explicit policy or regulation  
4281 interpreting Virginia's narrative water quality criterion, supplemented with other  
4282 relevant information which may include: EPA's Water Quality Standards Handbook,  
4283 August 1994, risk assessment data, exposure data, information about the pollutant  
4284 from the Food and Drug Administration, and current EPA criteria documents;

4285 (2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria,  
4286 published under § 307(a) of the CWA, supplemented where necessary by other  
4287 relevant information; or

4288 (3) Establish effluent limitations on an indicator parameter for the pollutant of concern,  
4289 provided:

4290 (a) The permit identifies which pollutants are intended to be controlled by the use of  
4291 the effluent limitation;

4292 (b) The fact sheet required by 9VAC25-31-280 sets forth the basis for the limit,  
4293 including a finding that compliance with the effluent limit on the indicator parameter  
4294 will result in controls on the pollutant of concern which are sufficient to attain and  
4295 maintain applicable water quality standards;

4296 (c) The permit requires all effluent and ambient monitoring necessary to show that  
4297 during the term of the permit the limit on the indicator parameter continues to attain  
4298 and maintain applicable water quality standards; and

4299 (d) The permit contains a reopener clause allowing the ~~board~~ department to modify or  
4300 revoke and reissue the permit if the limits on the indicator parameter no longer attain  
4301 and maintain applicable water quality standards.

4302 f. When developing water quality-based effluent limits under this subdivision the ~~board~~  
4303 department shall ensure that:

- 4304 (1) The level of water quality to be achieved by limits on point sources established  
4305 under this subsection is derived from, and complies with all applicable water quality  
4306 standards; and
- 4307 (2) Effluent limits developed to protect a narrative water quality criterion, a numeric  
4308 water quality criterion, or both, are consistent with the assumptions and requirements  
4309 of any available wasteload allocation for the discharge prepared by Virginia and  
4310 approved by EPA pursuant to 40 CFR 130.7;
- 4311 2. Attain or maintain a specified water quality through water quality related effluent limits  
4312 established under the law and § 302 of the CWA;
- 4313 3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under  
4314 the law and § 401 of the CWA;
- 4315 4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when  
4316 the discharge affects a state other than Virginia;
- 4317 5. Incorporate any more stringent limitations, treatment standards, or schedule of  
4318 compliance requirements established under the law or regulations in accordance with §  
4319 301(b)(1)(C) of the CWA;
- 4320 6. Ensure consistency with the requirements of a Water Quality Management plan  
4321 approved by EPA under § 208(b) of the CWA;
- 4322 7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M, for ocean discharges;  
4323 or
- 4324 8. Incorporate alternative effluent limitations or standards where warranted by  
4325 fundamentally different factors, under 40 the CFR Part 125, Subpart D.
- 4326 E. Technology-based controls for toxic pollutants. Limitations established under subsection  
4327 A, B, or D of this section, to control pollutants meeting the criteria listed in subdivision 1 of this  
4328 subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An  
4329 explanation of the development of these limitations shall be included in the fact sheet.
- 4330 1. Limitations must control all toxic pollutants which the ~~board~~ department determines  
4331 (based on information reported in a permit application or in a notification required by the  
4332 permit or on other information) are or may be discharged at a level greater than the level  
4333 which can be achieved by the technology-based treatment requirements appropriate to  
4334 the permittee; or
- 4335 2. The requirement that the limitations control the pollutants meeting the criteria of  
4336 subdivision 1 of this subsection will be satisfied by:
- 4337 a. Limitations on those pollutants; or
- 4338 b. Limitations on other pollutants which, in the judgment of the ~~board~~ department, will  
4339 provide treatment of the pollutants under subdivision 1 of this subsection to the levels  
4340 required by the law and 40 CFR Part 125, Subpart A.
- 4341 F. A notification level which exceeds the notification level of 9VAC25-31-200 A 1 a, b, or c,  
4342 upon a petition from the permittee or on the ~~board's~~ department's initiative. This new notification  
4343 level may not exceed the level which can be achieved by the technology-based treatment  
4344 requirements appropriate to the permittee.
- 4345 G. Twenty-four-hour reporting. Pollutants for which the permittee must report violations of  
4346 maximum daily discharge limitations under 9VAC25-31-190 L 7 b (3) (24-hour reporting) shall be  
4347 listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any  
4348 pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.
- 4349 H. Durations for permits, as set forth in 9VAC25-31-240.
- 4350 I. Monitoring requirements. The following monitoring requirements:

- 4351 1. Requirements concerning the proper use, maintenance, and installation, when  
4352 appropriate, of monitoring equipment or methods (including biological monitoring methods  
4353 when appropriate);
- 4354 2. Required monitoring including type, intervals, and frequency sufficient to yield data  
4355 which are representative of the monitored activity including, when appropriate, continuous  
4356 monitoring;
- 4357 3. Applicable reporting requirements based upon the impact of the regulated activity and  
4358 as specified in 9VAC25-31-190, subdivisions 5 through 8 of this subsection, and Part XI  
4359 (9VAC25-31-950 et seq.) of this chapter. Reporting shall be no less frequent than specified  
4360 in the above regulation;
- 4361 4. To assure compliance with permit limitations, requirements to monitor:
- 4362 a. The mass (or other measurement specified in the permit) for each pollutant limited  
4363 in the permit;
- 4364 b. The volume of effluent discharged from each outfall;
- 4365 c. Other measurements as appropriate including pollutants in internal waste streams;  
4366 pollutants in intake water for net limitations; frequency, rate of discharge, etc., for  
4367 noncontinuous discharges; pollutants subject to notification requirements; and  
4368 pollutants in sewage sludge or other monitoring as specified in Part VI (9VAC25-31-  
4369 420 et seq.) of this chapter; or as determined to be necessary on a case-by-case basis  
4370 pursuant to the law and § 405(d)(4) of the CWA; and
- 4371 d. According to sufficiently sensitive test procedures (i.e., methods) approved under  
4372 40 CFR Part 136 for the analysis of pollutants or pollutant parameters or required  
4373 under 40 CFR Chapter I, Subchapter N or O.
- 4374 (1) For the purposes of this subdivision, a method is "sufficiently sensitive" when:
- 4375 (a) The method minimum level (ML) is at or below the level of the effluent limit  
4376 established in the permit for the measured pollutant or pollutant parameter; or
- 4377 (b) The method has the lowest ML of the analytical methods approved under 40 CFR  
4378 Part 136 or required under 40 CFR Chapter I, Subchapter N or O for the measured  
4379 pollutant or pollutant parameter.
- 4380 (2) In the case of pollutants or pollutant parameters for which there are no approved  
4381 methods under 40 CFR Part 136 or methods are not otherwise required under 40 CFR  
4382 Chapter I, Subchapter N or O, monitoring shall be conducted according to a test  
4383 procedure specified in the permit for such pollutants or pollutant parameters;
- 4384 5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report  
4385 monitoring results shall be established on a case-by-case basis with a frequency  
4386 dependent on the nature and effect of the discharge, but in no case less than once a year.  
4387 For sewage sludge use or disposal practices, requirements to monitor and report results  
4388 shall be established on a case-by-case basis with a frequency dependent on the nature  
4389 and effect of the sewage sludge use or disposal practice; minimally this shall be as  
4390 specified in Part VI (9VAC25-31-420 et seq.) of this chapter (where applicable), but in no  
4391 case less than once a year. All results shall be electronically reported in compliance with  
4392 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and  
4393 Part XI (9VAC25-31-950 et seq.) of this chapter;
- 4394 6. Requirements to report monitoring results for stormwater discharges associated with  
4395 industrial activity which are subject to an effluent limitation guideline shall be established  
4396 on a case-by-case basis with a frequency dependent on the nature and effect of the  
4397 discharge, but in no case less than once a year;

- 4398 7. Requirements to report monitoring results for stormwater discharges associated with  
4399 industrial activity (other than those addressed in subdivision 6 of this subsection) shall be  
4400 established on a case-by-case basis with a frequency dependent on the nature and effect  
4401 of the discharge. At a minimum, a permit for such a discharge must require:
- 4402 a. The discharger to conduct an annual inspection of the facility site to identify areas  
4403 contributing to a stormwater discharge associated with industrial activity and evaluate  
4404 whether measures to reduce pollutant loading identified in a stormwater pollution  
4405 prevention plan are adequate and properly implemented in accordance with the terms  
4406 of the permit or whether additional control measures are needed;
  - 4407 b. The discharger to maintain for a period of three years a record summarizing the  
4408 results of the inspection and a certification that the facility is in compliance with the  
4409 plan and the permit, and identifying any incidents of noncompliance;
  - 4410 c. Such report and certification be signed in accordance with 9VAC25-31-110; and
  - 4411 d. Permits for stormwater discharges associated with industrial activity from inactive  
4412 mining operations may, where annual inspections are impracticable, require  
4413 certification once every three years by a Registered Professional Engineer that the  
4414 facility is in compliance with the permit, or alternative requirements; and
- 4415 8. Permits that do not require the submittal of monitoring result reports at least annually  
4416 shall require that the permittee report all instances of noncompliance not reported under  
4417 9VAC25-31-190 L 1, 4, 5, 6, and 7 at least annually.
- 4418 J. Pretreatment program for POTWs. Requirements for POTWs to:
- 4419 1. Identify, in terms of character and volume of pollutants, any significant indirect  
4420 dischargers into the POTW subject to pretreatment standards under § 307(b) of the CWA  
4421 and Part VII (9VAC25-31-730 et seq.) of this chapter;
  - 4422 2. Submit a local program when required by and in accordance with Part VII of this chapter  
4423 to assure compliance with pretreatment standards to the extent applicable under § 307(b)  
4424 of the CWA. The local program shall be incorporated into the permit as described in Part  
4425 VII of this chapter. The program shall require all indirect dischargers to the POTW to  
4426 comply with the reporting requirements of Part VII of this chapter;
  - 4427 3. Provide a written technical evaluation of the need to revise local limits under Part VII of  
4428 this chapter following permit issuance or reissuance; and
  - 4429 4. For POTWs that are sludge-only facilities, a requirement to develop a pretreatment  
4430 program under Part VII of this chapter when the ~~board~~ department determines that a  
4431 pretreatment program is necessary to assure compliance with Part VI of this chapter.
- 4432 K. Best management practices to control or abate the discharge of pollutants when:
- 4433 1. Authorized under § 304(e) of the CWA for the control of toxic pollutants and hazardous  
4434 substances from ancillary industrial activities;
  - 4435 2. Authorized under § 402(p) of the CWA for the control of stormwater discharges;
  - 4436 3. Numeric effluent limitations are infeasible; or
  - 4437 4. The practices are reasonably necessary to achieve effluent limitations and standards  
4438 or to carry out the purposes and intent of the law and the CWA.
- 4439 L. Reissued permits.
- 4440 1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA,  
4441 a permit may not be renewed, reissued, or modified on the basis of effluent guidelines  
4442 promulgated under § 304(b) of the CWA subsequent to the original issuance of such  
4443 permit, to contain effluent limitations which are less stringent than the comparable effluent  
4444 limitations in the previous permit. In the case of effluent limitations established on the basis

4445 of § 301(b)(1)(C) or 303(d) or (e) of the CWA, a permit may not be renewed, reissued, or  
4446 modified to contain effluent limitations that are less stringent than the comparable effluent  
4447 limitations in the previous permit except in compliance with § 303(d)(4) of the CWA.

4448 2. Exceptions. A permit with respect to which subdivision 1 of this subsection applies may  
4449 be renewed, reissued, or modified to contain a less stringent effluent limitation applicable  
4450 to a pollutant, if:

4451 a. Material and substantial alterations or additions to the permitted facility occurred  
4452 after permit issuance which justify the application of a less stringent effluent limitation;

4453 b. (1) Information is available that was not available at the time of permit issuance  
4454 (other than revised regulations, guidance, or test methods) and that would have  
4455 justified the application of a less stringent effluent limitation at the time of permit  
4456 issuance; or

4457 (2) The ~~board~~ department determines that technical mistakes or mistaken  
4458 interpretations of law were made in issuing the permit under § 402(a)(1)(B) of the  
4459 CWA;

4460 c. A less stringent effluent limitation is necessary because of events over which the  
4461 permittee has no control and for which there is no reasonably available remedy;

4462 d. The permittee has received a permit modification under the law and § 301(c),  
4463 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or

4464 e. The permittee has installed the treatment facilities required to meet the effluent  
4465 limitations in the previous permit and has properly operated and maintained the  
4466 facilities but has nevertheless been unable to achieve the previous effluent limitations,  
4467 in which case the limitations in the reviewed, reissued, or modified permit may reflect  
4468 the level of pollutant control actually achieved (but shall not be less stringent than  
4469 required by effluent guidelines in effect at the time of permit renewal, reissuance, or  
4470 modification).

4471 Subdivision 2 b of this subsection shall not apply to any revised waste load allocations  
4472 or any alternative grounds for translating water quality standards into effluent  
4473 limitations, except where the cumulative effect of such revised allocations results in a  
4474 decrease in the amount of pollutants discharged into the concerned waters, and such  
4475 revised allocations are not the result of a discharger eliminating or substantially  
4476 reducing its discharge of pollutants due to complying with the requirements of the law  
4477 or the CWA or for reasons otherwise unrelated to water quality.

4478 3. In no event may a permit with respect to which subdivision 2 of this subsection applies  
4479 be renewed, reissued, or modified to contain an effluent limitation that is less stringent  
4480 than required by effluent guidelines in effect at the time the permit is renewed, reissued,  
4481 or modified. In no event may such a permit to discharge into waters be renewed, issued,  
4482 or modified to contain a less stringent effluent limitation if the implementation of such  
4483 limitation would result in a violation of a Virginia water quality standard applicable to such  
4484 waters.

4485 M. For a privately owned treatment works, any conditions expressly applicable to any user,  
4486 as a limited co-permittee, that may be necessary in the permit issued to the treatment works to  
4487 ensure compliance with applicable requirements under this part. Alternatively, the ~~board~~  
4488 department may issue separate permits to the treatment works and to its users, or may require a  
4489 separate permit application from any user. The ~~board's~~ department's decision to issue a permit  
4490 with no conditions applicable to any user, to impose conditions on one or more users, to issue  
4491 separate permits, or to require separate applications, and the basis for that decision, shall be  
4492 stated in the fact sheet for the draft permit for the treatment works.



4493 N. Any conditions imposed in grants made by the ~~board~~ department to POTWs under §§ 201  
4494 and 204 of the CWA that are reasonably necessary for the achievement of effluent limitations  
4495 under § 301 of the CWA and the law.

4496 O. Requirements governing the disposal of sewage sludge from publicly owned treatment  
4497 works or any other treatment works treating domestic sewage for any use regulated by Part VI of  
4498 this chapter.

4499 P. When a permit is issued to a facility that may operate at certain times as a means of  
4500 transportation over water, a condition that the discharge shall comply with any applicable  
4501 regulations promulgated by the secretary of the department in which the Coast Guard is operating,  
4502 that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

4503 Q. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure  
4504 that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-31-  
4505 330.

4506 **9VAC25-31-230. Calculating VPDES permit conditions.**

4507 A. Permit effluent limitations, monitoring requirements, standards and prohibitions shall be  
4508 established for each outfall or discharge point of the permitted facility, except as otherwise  
4509 provided under 9VAC25-31-220 and subsection H of this section (limitations on internal waste  
4510 streams).

4511 B. Production-based limitations.

4512 1. In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be  
4513 calculated based on design flow.

4514 2. a. Except in the case of POTWs or as provided in subdivision 2 b of this subsection,  
4515 calculation of any permit limitations, standards, or prohibitions which are based on  
4516 production (or other measure of operation) shall be based not upon the designed  
4517 production capacity but rather upon a reasonable measure of actual production of the  
4518 facility. For new sources or new dischargers, actual production shall be estimated using  
4519 projected production. The time period of the measure of production shall correspond to  
4520 the time period of the calculated permit limitations; for example, monthly production shall  
4521 be used to calculate average monthly discharge limitations.

4522 b. (1) (a) The ~~board~~ department may include a condition establishing alternate permit  
4523 limitations, standards, or prohibitions based upon anticipated increased (not to exceed  
4524 maximum production capability) or decreased production levels.

4525 (b) For the automotive manufacturing industry only, the ~~board~~ department may  
4526 establish a condition under subdivision 2 b (1) (a) of this subsection if the applicant  
4527 satisfactorily demonstrates to the ~~board~~ department at the time the application is  
4528 submitted that its actual production, as indicated in subdivision 2 a of this subsection,  
4529 is substantially below maximum production capability and that there is a reasonable  
4530 potential for an increase above actual production during the duration of the permit.

4531 (2) If the ~~board~~ department establishes permit conditions under subdivision 2 b (1) of  
4532 this subsection:

4533 (a) The permit shall require the permittee to notify the department at least two business  
4534 days prior to a month in which the permittee expects to operate at a level higher than  
4535 the lowest production level identified in the permit. The notice shall specify the  
4536 anticipated level and the period during which the permittee expects to operate at the  
4537 alternate level. If the notice covers more than one month, the notice shall specify the  
4538 reasons for the anticipated production level increase. New notice of discharge at  
4539 alternate levels is required to cover a period or production level not covered by prior  
4540 notice or, if during two consecutive months otherwise covered by a notice, the

4541 production level at the permitted facility does not in fact meet the higher level  
4542 designated in the notice;

4543 (b) The permittee shall comply with the limitations, standards, or prohibitions that  
4544 correspond to the lowest level of production specified in the permit, unless the  
4545 permittee has notified the department under subdivision 2 b (2) (a) of this subsection,  
4546 in which case the permittee shall comply with the lower of the actual level of production  
4547 during each month or the level specified in the notice; and

4548 (c) The permittee shall submit with the DMR the level of production that actually  
4549 occurred during each month and the limitations, standards, or prohibitions applicable  
4550 to that level of production.

4551 C. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in  
4552 terms of total recoverable metal as defined in 40 CFR Part 136 unless:

4553 1. An applicable effluent standard or limitation has been promulgated under the CWA and  
4554 specifies the limitation for the metal in the dissolved or valent or total form; or

4555 2. In establishing permit limitations on a case-by-case basis under 40 CFR 125.3, it is  
4556 necessary to express the limitation on the metal in the dissolved or valent or total form to  
4557 carry out the provisions of the CWA and the law; or

4558 3. All approved analytical methods for the metal inherently measure only its dissolved form  
4559 (e.g., hexavalent chromium).

4560 D. For continuous discharges all permit effluent limitations, standards, and prohibitions,  
4561 including those necessary to achieve water quality standards, shall unless impracticable be stated  
4562 as:

4563 1. Maximum daily and average monthly discharge limitations for all dischargers other than  
4564 publicly owned treatment works; and

4565 2. Average weekly and average monthly discharge limitations for POTWs.

4566 E. Discharges which are not continuous, as defined in 9VAC25-31-10, shall be particularly  
4567 described and limited, considering the following factors, as appropriate:

4568 1. Frequency;

4569 2. Total mass;

4570 3. Maximum rate of discharge of pollutants during the discharge; and

4571 4. Prohibition or limitation of specified pollutants by mass, concentration, or other  
4572 appropriate measure.

4573 F. Mass Limitations.

4574 1. All pollutants limited in permits shall have limitations, standards or prohibitions  
4575 expressed in terms of mass except:

4576 a. For pH, temperature, radiation, or other pollutants which cannot appropriately be  
4577 expressed by mass;

4578 b. When applicable standards and limitations are expressed in terms of other units of  
4579 measurement; or

4580 c. If in establishing technology-based permit limitations on a case-by-case basis,  
4581 limitations expressed in terms of mass are infeasible because the mass of the pollutant  
4582 discharged cannot be related to a measure of operation (for example, discharges of  
4583 TSS from certain mining operations), and permit conditions ensure that dilution will not  
4584 be used as a substitute for treatment.

4585 2. Pollutants limited in terms of mass additionally may be limited in terms of other units of  
4586 measurement, and the permit shall require the permittee to comply with both limitations.

4587 G. Pollutants in intake water.

4588 1. Upon request of the discharger, technology-based effluent limitations or standards shall

4589 be adjusted to reflect credit for pollutants in the discharger's intake water to the extent

4590 necessary to meet the applicable technology-based limitation or standard, up to a

4591 maximum value equal to the influent value. Credit shall be granted only if:

4592 a. The applicable effluent limitations and standards contained in the regulations

4593 incorporated by reference in 9VAC25-31-30 specifically provide that they shall be

4594 applied on a net basis; or

4595 b. The discharger demonstrates that the control system it proposes or uses to meet

4596 applicable technology-based limitations and standards would, if properly installed and

4597 operated, meets the limitations and standards in the absence of pollutants in the intake

4598 waters.

4599 2. Credit for generic pollutants such as biochemical oxygen demand (BOD) or total

4600 suspended solids (TSS) should not be granted unless the permittee demonstrates that the

4601 constituents of the generic measure in the effluent are substantially similar to the

4602 constituents of the generic measure in the intake water or unless appropriate additional

4603 limits are placed on process water pollutants either at the outfall or elsewhere.

4604 3. Credit for the level of pollutants in the intake water may be considered in setting water

4605 quality-based effluent limitations according to 9VAC25-31-220 D. Where a total maximum

4606 daily load has been established for the receiving waterbody and it is applicable to the

4607 discharge, it shall be considered when such effluent limitations are developed. The ~~board~~

4608 department may consider the presence of intake pollutants when determining either that

4609 water quality-based effluent limitations are not necessary under 9VAC25-31-220 D or that

4610 any water quality-based effluent limitations justified by 9VAC25-31-220 D will be

4611 established in a manner that does not hold the permittee responsible for removing

4612 pollutants originating in its intake water.

4613 4. Additional monitoring may be necessary to determine eligibility for any credits and

4614 compliance with permit limits.

4615 5. Credits shall be granted only if the discharger demonstrates that the intake water is

4616 drawn from the same body of water into which the discharge is made. The ~~board~~

4617 department may waive this requirement for technology-based effluent limitations,

4618 standards, and prohibitions if he finds that no environmental degradation will result.

4619 a. An intake pollutant is considered to be from the same body of water as the discharge

4620 if the ~~board~~ department finds that the intake pollutant would have reached the vicinity

4621 of the outfall point in the receiving water within a reasonable period had it not been

4622 removed by the permittee. This finding may be deemed established if:

4623 (1) The background concentration of the pollutant in the receiving water (excluding any

4624 amount of the pollutant in the facility's discharge) is similar to that in the intake water;

4625 (2) There is direct hydrological connection between the intake and discharge points;

4626 and

4627 (3) Water quality characteristics (e.g., temperature, pH, hardness) are similar in the

4628 intake and receiving waters.

4629 Other site-specific factors relevant to the transport and fate of the pollutant may be

4630 considered in making this finding.

4631 b. An intake pollutant from groundwater may be considered to be from the same body

4632 of water if the ~~board~~ department determines that the pollutant would have reached the

4633 vicinity of the outfall point in the receiving water within a reasonable period had it not

4634 been removed by the permittee, except that such a pollutant is not from the same body

4635 of water if the groundwater contains the pollutant partially or entirely due to human  
4636 activity, such as industrial, commercial, or municipal operations, disposal actions or  
4637 treatment processes.

4638 c. For pollutants in intake water provided by a water supply system, where the raw  
4639 water supply is removed from the same body of water as the discharge, the  
4640 concentration of the intake pollutant shall be determined at the point where the water  
4641 enters the water supplier's distribution system.

4642 d. Where a facility discharges intake pollutants that originate in part from the same  
4643 body of water and in part from a different body of water, the effluent limitation may  
4644 provide for intake credits for the portion of the pollutants derived from the same body  
4645 of water, provided that adequate monitoring to determine compliance can be  
4646 established and is included in the permit.

4647 6. Credits shall not be granted if the discharger contributes to the level of the pollutant in  
4648 the intake water prior to the intake.

4649 7. Credits for intake pollutants do not apply to technology-based limitations on the  
4650 discharge of raw water clarifier sludge generated from the treatment of intake water.

4651 H. Internal waste streams.

4652 1. When permit effluent limitations or standards imposed at the point of discharge are  
4653 impractical or infeasible, effluent limitations or standards for discharges of pollutants may  
4654 be imposed on internal waste streams before mixing with other waste streams or cooling  
4655 water streams. In those instances, the monitoring required by 9VAC25-31-220 I shall also  
4656 be applied to the internal waste streams.

4657 2. Limits on internal waste streams will be imposed only when the fact sheet sets forth the  
4658 exceptional circumstances which make such limitations necessary, such as when the final  
4659 discharge point is inaccessible, the wastes at the point of discharge are so diluted as to  
4660 make monitoring impracticable, or the interferences among pollutants at the point of  
4661 discharge would make detection or analysis impracticable.

4662 I. Disposal of pollutants into wells, POTWs or by land application.

4663 1. When part of a discharger's process wastewater is not being discharged into surface  
4664 waters or into the contiguous zone because it is disposed into a well, into a POTW, or by  
4665 land application thereby reducing the flow or level of pollutants being discharged into  
4666 surface waters, applicable effluent standards and limitations for the discharge in a VPDES  
4667 permit shall be adjusted to reflect the reduced raw waste resulting from such disposal.  
4668 Effluent limitations and standards in the permit shall be calculated by one of the following  
4669 methods:

4670 a. If none of the waste from a particular process is discharged into surface waters, and  
4671 effluent limitations guidelines provide separate allocation for wastes from that process,  
4672 all allocations for the process shall be eliminated from calculation of permit effluent  
4673 limitations or standards.

4674 b. In all cases other than those described in subdivision 1 a of this subsection, effluent  
4675 limitations shall be adjusted by multiplying the effluent limitation derived by applying  
4676 effluent limitation guidelines to the total waste stream by the amount of wastewater  
4677 flow to be treated and discharged into surface waters, and dividing the result by the  
4678 total wastewater flow. Effluent limitations and standards so calculated may be further  
4679 adjusted to make them more or less stringent if discharges to wells, publicly owned  
4680 treatment works, or by land application change the character or treatability of the  
4681 pollutants being discharged to receiving waters. This method may be algebraically  
4682 expressed as:

$$P = \frac{E \times N}{T}$$

4683 where P is the permit effluent limitation, E is the limitation derived by applying effluent  
 4684 guidelines to the total wastestream, N is the wastewater flow to be treated and  
 4685 discharged to surface waters, and T is the total wastewater flow.

4686 2. Subdivision 1 of this subsection does not apply to the extent that promulgated effluent  
 4687 limitations guidelines:

- 4688 a. Control concentrations of pollutants discharged but not mass; or
- 4689 b. Specify a different specific technique for adjusting effluent limitations to account for
- 4690 well injection, land application, or disposal into POTWs.

4691 3. Subdivision 1 of this subsection does not alter a discharger's obligation to meet any  
 4692 more stringent requirements established in the permit.

4693 **9VAC25-31-240. Duration of permits.**

4694 A. VPDES permits shall be effective for a fixed term not to exceed five years.

4695 B. Except as provided in 9VAC25-31-70, the term of a permit shall not be extended by  
 4696 modification beyond the maximum duration specified in this section.

4697 C. The ~~board~~ department may issue any permit for a duration that is less than the full allowable  
 4698 term under this section.

4699 D. A permit may be issued to expire on or after the statutory deadline set forth in §§ 301(b)(2)  
 4700 (A), (C), and (E) of the CWA, if the permit includes effluent limitations to meet the requirements  
 4701 of §§ 301(b)(2) (A), (C), (D), (E) and (F) of the CWA, whether or not applicable effluent limitations  
 4702 guidelines have been promulgated or approved.

4703 E. A determination that a particular discharger falls within a given industrial category for  
 4704 purposes of setting a permit expiration date under subsection D of this section is not conclusive  
 4705 as to the discharger's inclusion in that industrial category for any other purposes, and does not  
 4706 prejudice any rights to challenge or change that inclusion at the time that a permit based on that  
 4707 determination is formulated.

4708 **9VAC25-31-250. Schedules of compliance.**

4709 A. The permit may, when appropriate, specify a schedule of compliance leading to compliance  
 4710 with the law, the CWA, and regulations.

4711 1. Any schedules of compliance under this section shall require compliance as soon as  
 4712 possible, but not later than the applicable statutory deadline under the CWA.

4713 2. The first VPDES permit issued to a new source or a new discharger shall contain a  
 4714 schedule of compliance only when necessary to allow a reasonable opportunity to attain  
 4715 compliance with requirements issued or revised after commencement of construction but  
 4716 less than three years before commencement of the relevant discharge. For recommencing  
 4717 dischargers, a schedule of compliance shall be available only when necessary to allow a  
 4718 reasonable opportunity to attain compliance with requirements issued or revised less than  
 4719 three years before recommencement of discharge.

4720 3. Schedules of compliance may be established in permits for existing sources which are  
 4721 reissued or modified to contain new or more restrictive water quality-based effluent  
 4722 limitations. The schedule may allow a reasonable period of time for the discharger to attain  
 4723 compliance with the water quality-based limitations.

4724 4. Except as provided in subdivision B 1 b of this section, if a permit establishes a schedule  
 4725 of compliance which exceeds one year from the date of permit issuance, the schedule  
 4726 shall set forth interim requirements and the dates for their achievement.

- 4727 a. The time between interim dates shall not exceed one year, except that in the case  
4728 of a schedule for compliance with standards for sewage sludge use and disposal, the  
4729 time between interim dates shall not exceed six months.
- 4730 b. If the time necessary for completion of any interim requirement is more than one  
4731 year and is not readily divisible into stages for completion, the permit shall specify  
4732 interim dates for the submission of reports of progress toward completion of the interim  
4733 requirements and indicate a projected completion date.
- 4734 5. The permit shall be written to require that no later than 14 days following each interim  
4735 date and the final date of compliance, the permittee shall notify the department in writing  
4736 of its compliance or noncompliance with the interim or final requirements, or submit  
4737 progress reports if subdivision 4 b of this subsection is applicable.
- 4738 B. A VPDES permit applicant or permittee may cease conducting regulated activities (by  
4739 terminating of direct discharge for VPDES sources) rather than continuing to operate and meet  
4740 permit requirements as follows:
- 4741 1. If the permittee decides to cease conducting regulated activities at a given time within  
4742 the term of a permit which has already been issued:
- 4743 a. The permit may be modified to contain a new or additional schedule leading to timely  
4744 cessation of activities; or
- 4745 b. The permittee shall cease conducting permitted activities before noncompliance  
4746 with any interim or final compliance schedule requirement already specified in the  
4747 permit;
- 4748 2. If the decision to cease conducting regulated activities is made before issuance of a  
4749 permit whose term will include the termination date, the permit shall contain a schedule  
4750 leading to termination which will ensure timely compliance with applicable requirements  
4751 no later than the statutory deadline;
- 4752 3. If the permittee is undecided whether to cease conducting regulated activities, the ~~board~~  
4753 department may issue or modify a permit to contain two schedules as follows:
- 4754 a. Both schedules shall contain an identical interim deadline requiring a final decision  
4755 on whether to cease conducting regulated activities no later than a date which ensures  
4756 sufficient time to comply with applicable requirements in a timely manner if the decision  
4757 is to continue conducting regulated activities;
- 4758 b. One schedule shall lead to timely compliance with applicable requirements, no later  
4759 than the statutory deadline;
- 4760 c. The second schedule shall lead to cessation of regulated activities by a date which  
4761 will ensure timely compliance with applicable requirements no later than the statutory  
4762 deadline; and
- 4763 d. Each permit containing two schedules shall include a requirement that after the  
4764 permittee has made a final decision under subdivision 3 a of this subsection it shall  
4765 follow the schedule leading to compliance if the decision is to continue conducting  
4766 regulated activities, and follow the schedule leading to termination if the decision is to  
4767 cease conducting regulated activities; and
- 4768 4. The applicant's or permittee's decision to cease conducting regulated activities shall be  
4769 evidenced by a firm public commitment satisfactory to the ~~board~~ department, such as a  
4770 resolution of the board of directors of a corporation.
- 4771 **9VAC25-31-260. Draft permits.**
- 4772 A. Once an application is complete, the ~~board~~ department shall tentatively decide whether to  
4773 prepare a draft permit or to deny the application.

4774 B. If the ~~board~~ department tentatively decides to deny the permit application, the owner shall  
4775 be advised of that decision and of the changes necessary to obtain approval. The owner may  
4776 withdraw the application prior to ~~board~~ department action. If the application is not withdrawn or  
4777 modified to obtain the tentative approval to issue, the ~~board~~ department shall provide public notice  
4778 and opportunity for a public hearing prior to ~~board~~ department action on the application.

4779 C. If the ~~board~~ department tentatively decides to issue a VPDES general permit, a draft  
4780 general permit shall be prepared under subsection D of this section.

4781 D. If the ~~board~~ department decides to prepare a draft permit, the draft permit shall contain the  
4782 following information:

- 4783 1. All conditions under 9VAC25-31-190 and 9VAC25-31-210;
- 4784 2. All compliance schedules under 9VAC25-31-250;
- 4785 3. All monitoring requirements under 9VAC25-31-220; and
- 4786 4. Effluent limitations, standards, prohibitions, standards for biosolids use or sewage  
4787 sludge disposal, and conditions under 9VAC25-31-190, 9VAC25-31-200, 9VAC25-31-  
4788 220, and Part VI (9VAC25-31-370 et seq.), and all variances that are to be included.

4789 **9VAC25-31-280. Fact sheet.**

4790 A. A fact sheet shall be prepared for every draft permit for a major VPDES facility or activity,  
4791 for every Class I sludge management facility, for every VPDES general permit, for every VPDES  
4792 draft permit that incorporates a variance or requires an explanation under subsection B 8 of this  
4793 section, for every draft permit that includes a biosolids land application under 9VAC25-31-100 D  
4794 2, and for every draft permit which the ~~board~~ department finds is the subject of wide-spread public  
4795 interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the  
4796 significant factual, legal, methodological and policy questions considered in preparing the draft  
4797 permit. The ~~board~~ department shall send this fact sheet to the applicant and, on request, to any  
4798 other person.

4799 B. The fact sheet shall include, when applicable:

- 4800 1. A brief description of the type of facility or activity that is the subject of the draft permit;
- 4801 2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are  
4802 being treated, stored, disposed of, injected, emitted, or discharged;
- 4803 3. A brief summary of the basis for the draft permit conditions including references to  
4804 applicable statutory or regulatory provisions;
- 4805 4. Reasons why any requested variances or alternatives to required standards do or do  
4806 not appear justified;
- 4807 5. A description of the procedures for reaching a final decision on the draft permit including:
  - 4808 a. The beginning and ending dates of the comment period for the draft permit and the  
4809 address where comments will be received;
  - 4810 b. Procedures for requesting a public hearing and the nature of that hearing; and
  - 4811 c. Any other procedures by which the public may participate in the final decision;
- 4812 6. Name and telephone number of a person to contact for additional information;
- 4813 7. Any calculations or other necessary explanation of the derivation of specific effluent  
4814 limitations and conditions or standards for biosolids use or sewage sludge disposal,  
4815 including a citation to the applicable effluent limitation guideline, performance standard, or  
4816 standard for biosolids use or sewage sludge disposal and reasons why they are applicable  
4817 or an explanation of how the alternate effluent limitations were developed;
- 4818 8. When the draft permit contains any of the following conditions, an explanation of the  
4819 reasons why such conditions are applicable:

- 4820 a. Limitations to control toxic pollutants;  
4821 b. Limitations on internal waste streams;  
4822 c. Limitations on indicator pollutants;  
4823 d. Technology-based or sewage sludge disposal limitations set on a case-by-case  
4824 basis;  
4825 e. Limitations to meet the criteria for permit issuance under 9VAC25-31-50; or  
4826 f. Waivers from monitoring requirements granted under 9VAC25-31-220 A;
- 4827 9. For every permit to be issued to a treatment works owned by a person other than a  
4828 state or municipality, an explanation of the ~~board's~~ department's decision on regulation of  
4829 users;
- 4830 10. When appropriate, a sketch or detailed description of the location of the discharge or  
4831 regulated activity described in the application; and
- 4832 11. Justification of waiver of any application requirements under 9VAC25-31-100 K or Q.
- 4833 **9VAC25-31-290. Public notice of permit actions and public comment period.**
- 4834 A. Scope.
- 4835 1. The department shall give public notice that the following actions have occurred:
- 4836 a. A draft permit has been prepared under 9VAC25-31-260 D;  
4837 b. A public hearing has been scheduled under 9VAC25-31-310; or  
4838 c. A VPDES new source determination has been made under 9VAC25-31-180.
- 4839 2. No public notice is required when a request for permit modification, revocation and  
4840 reissuance, or termination is denied under 9VAC25-31-370 B. Written notice of that denial  
4841 shall be given to the requester and to the permittee.
- 4842 3. Public notice shall not be required for submission or approval of plans and specifications  
4843 or conceptual engineering reports not required to be submitted as part of the application.
- 4844 4. Public notices may describe more than one permit or permit actions.
- 4845 B. Timing.
- 4846 1. Public notice of the preparation of a draft permit required under subsection A of this  
4847 section shall allow at least 30 days for public comment.
- 4848 2. Public notice of a public hearing shall be given at least 30 days before the hearing.  
4849 (Public notice of the hearing may be given at the same time as public notice of the draft  
4850 permit and the two notices may be combined.)
- 4851 C. Methods. Public notice of activities described in subdivision A 1 of this section shall be  
4852 given by the following methods:
- 4853 1. By mailing, either by electronic or postal delivery, a copy of a notice to the following  
4854 persons (any person otherwise entitled to receive notice under this subdivision may waive  
4855 his rights to receive notice for any classes and categories of permits):
- 4856 a. The applicant (except for VPDES general permits when there is no applicant);  
4857 b. Any other agency which the department knows has issued or is required to issue a  
4858 VPDES, biosolids management permit;
- 4859 c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife  
4860 resources and over coastal zone management plans, the Advisory Council on Historic  
4861 Preservation, State Historic Preservation Officers, including any affected states (Indian  
4862 Tribes);



- 4863 d. Any state agency responsible for plan development under § 208(b)(2), § 208(b)(4)  
4864 or § 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and  
4865 Wildlife Service, and the National Marine Fisheries Service;
- 4866 e. Any user identified in the permit application of a privately owned treatment works;
- 4867 f. Persons on a mailing list developed by:
- 4868 (1) Including those who request in writing to be on the list;
- 4869 (2) Soliciting persons for area lists from participants in past permit proceedings in that  
4870 area; and
- 4871 (3) Notifying the public of the opportunity to be put on the mailing list through periodic  
4872 publication in the public press and in such publications as EPA regional and state  
4873 funded newsletters, environmental bulletins, or state law journals. (The department  
4874 may update the mailing list from time to time by requesting written indication of  
4875 continued interest from those listed. The department may delete from the list the name  
4876 of any person who fails to respond to such a request.);
- 4877 g. Any unit of local government having jurisdiction over the area where the facility is  
4878 proposed to be located; and
- 4879 h. Each state agency having any authority under state law with respect to the  
4880 construction or operation of such facility;
- 4881 2. Except for permits for concentrated animal feeding operations as defined in 9VAC25-  
4882 31-10 or designated in accordance with 9VAC25-31-130 B, by publication once a week  
4883 for two successive weeks in a newspaper of general circulation in the area affected by the  
4884 discharge. However, if the applicant so chooses for industrial minor permit actions, an  
4885 abbreviated public notice shall be published in such newspaper, listing the name of the  
4886 permitted facility, the type of discharge, and a link to the department's website where the  
4887 full public notice consistent with subsection D of this section is posted. The cost of public  
4888 notice shall be paid by the owner; and
- 4889 3. Any other method reasonably calculated to give actual notice of the action in question  
4890 to the persons potentially affected by it, including press releases or any other forum or  
4891 medium to elicit public participation.
- 4892 D. Contents.
- 4893 1. All public notices issued under this part shall contain the following minimum information:
- 4894 a. Name and address of the office processing the permit action for which notice is  
4895 being given;
- 4896 b. Name and address of the permittee or permit applicant and, if different, of the facility  
4897 or activity regulated by the permit, except in the case of VPDES draft general permits;
- 4898 c. A brief description of the business conducted at the facility or activity described in  
4899 the permit application or the draft permit, for VPDES general permits when there is no  
4900 application;
- 4901 d. Name, address, and telephone number of a person from whom interested persons  
4902 may obtain further information, including copies of the draft permit or draft general  
4903 permit, as the case may be, statement of basis or fact sheet, and the application;
- 4904 e. A brief description of the procedures for submitting comments and the time and  
4905 place of any public hearing that will be held, including a statement of procedures to  
4906 request a public hearing (unless a hearing has already been scheduled) and other  
4907 procedures by which the public may participate in the final permit decision;
- 4908 f. A general description of the location of each existing or proposed discharge point,  
4909 the name of the receiving water, the biosolids use and sewage sludge disposal

4910 practice, the location of each sludge treatment works treating domestic sewage, and  
4911 use or disposal sites known at the time of permit application. For draft general permits,  
4912 this requirement will be satisfied by a map or description of the permit area;

4913 g. Requirements applicable to cooling water intake structures under § 316 of the CWA,  
4914 in accordance with 9VAC25-31-165; and

4915 h. Any additional information considered necessary or proper.

4916 2. In addition to the general public notice described in subdivision 1 of this subsection, the  
4917 public notice of a public hearing under 9VAC25-31-310 shall contain the following  
4918 information:

4919 a. Reference to the date of previous public notices relating to the permit;

4920 b. Date, time, and place of the public hearing;

4921 c. A brief description of the nature and purpose of the public hearing, including the  
4922 applicable rules and procedures; and

4923 d. A concise statement of the issues raised by the persons requesting the public  
4924 hearing.

4925 3. Public notice of a VPDES draft permit for a discharge where a request for alternate  
4926 thermal effluent limitations has been filed shall include:

4927 a. A statement that the thermal component of the discharge is subject to effluent  
4928 limitations incorporated in 9VAC25-31-30 and a brief description, including a  
4929 quantitative statement, of the thermal effluent limitations proposed under §§ 301 or  
4930 306 of the CWA;

4931 b. A statement that an alternate thermal effluent limitation request has been filed and  
4932 that alternative less stringent effluent limitations may be imposed on the thermal  
4933 component of the discharge under the law and § 316(a) of the CWA and a brief  
4934 description, including a quantitative statement, of the alternative effluent limitations, if  
4935 any, included in the request; and

4936 c. If the applicant has filed an early screening request for a CWA § 316(a) variance, a  
4937 statement that the applicant has submitted such a plan.

4938 E. In addition to the general public notice described in subdivision D 1 of this section, all  
4939 persons identified in subdivisions C 1 a, b, c, and d of this section shall be mailed, by electronic  
4940 or postal delivery, a copy of the fact sheet or statement of basis, the permit application (if any)  
4941 and the draft permit (if any).

4942 F. Upon receipt of an application for the issuance of a new or modified permit other than those  
4943 for agricultural production or aquacultural production activities, the department shall:

4944 1. Notify, in writing, the locality wherein the discharge or, as applicable, the associated  
4945 land application of biosolids, or land disposal of treated sewage, stabilized sewage sludge,  
4946 or stabilized septage does or is proposed to take place of, at a minimum:

4947 a. The name of the applicant;

4948 b. The nature of the application and proposed discharge;

4949 c. The availability and timing of any comment period; and

4950 d. Upon request, any other information known to, or in the possession of, ~~the board or~~  
4951 the department regarding the applicant not required to be held confidential by this  
4952 chapter.

4953 2. Except for land application of biosolids or land disposal of treated sewage, stabilized  
4954 sewage sludge or stabilized septage make a good faith effort to provide this same notice  
4955 and information to (i) each locality and riparian property owner to a distance one-quarter

4956 mile downstream and one-quarter mile upstream or to the fall line whichever is closer on  
4957 tidal waters and (ii) each locality and riparian property owner to a distance one-half mile  
4958 downstream on nontidal waters. Distances shall be measured from the point, or proposed  
4959 point, of discharge. If the receiving river at the point or proposed point of discharge is two  
4960 miles wide or greater, the riparian property owners on the opposite shore need not be  
4961 notified. Notice to property owners shall be based on names and addresses taken from  
4962 local tax rolls. Such names and addresses shall be provided by the commissioners of the  
4963 revenue or the tax assessor's office of the affected jurisdictions upon request by the ~~board~~  
4964 department.

4965 G. Whenever the department receives an application for a new permit for land application of  
4966 biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, or  
4967 an application to reissue with the addition of sites increasing acreage by 50% or more of that  
4968 authorized by the initial permit, the department shall establish a date for a public meeting to  
4969 discuss technical issues relating to proposals for land application of biosolids or land disposal of  
4970 treated sewage, stabilized sewage sludge, or stabilized septage. The department shall give notice  
4971 of the date, time, and place of the public meeting and a description of the proposal by publication  
4972 in a newspaper of general circulation in the city or county where the proposal is to take place.  
4973 Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days  
4974 prior to the meeting. The department shall not issue the permit until the public meeting has been  
4975 held and comment has been received from the local governing body or until 30 days have lapsed  
4976 from the date of the public meeting.

4977 H. Following the submission of an application for a new permit for land application of biosolids  
4978 or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, the  
4979 department shall make a good faith effort to notify or cause to be notified persons residing on  
4980 property bordering the sites that contain the proposed land application fields. This notification  
4981 shall be in a manner selected by the department. For the purposes of this subsection, "site" means  
4982 all contiguous land under common ownership, but which may contain more than one tax parcel.

4983 I. Following the submission of an application to add a site that is not contiguous to sites  
4984 included in an existing permit authorizing the land application of biosolids:

4985 1. The department shall notify persons residing on property bordering such site and shall  
4986 receive written comments from those persons for a period of 30 days. Based upon written  
4987 comments, the department shall determine whether additional site-specific requirements  
4988 should be included in the authorization for land application at the site.

4989 2. An application for any permit amendment to increase the acreage authorized by the  
4990 initial permit by 50% or more shall be considered a major modification and shall be treated  
4991 as a new application for purposes of public notice and public hearings. The increase in  
4992 acreage for the purpose of determining the need for the public meeting is the sum of all  
4993 acreage that has been added to the permit since the last public meeting, plus that  
4994 proposed to be added.

4995 J. Before issuing any permit, if the ~~board~~ department finds that there are localities particularly  
4996 affected by the permit, the ~~board~~ department shall:

4997 1. Publish, or require the applicant to publish, a notice in a local paper of general circulation  
4998 in the localities affected at least 30 days prior to the close of any public comment period.  
4999 Such notice shall contain a statement of the estimated local impact of the proposed permit,  
5000 which at a minimum shall include information on the specific pollutants involved and the  
5001 total quantity of each which may be discharged.

5002 2. Mail, by electronic or postal delivery, the notice to the chief elected official and chief  
5003 administrative officer and planning district commission for those localities.

5004 3. Accept written comments for at least 15 days after any public hearing on the permit,  
5005 unless the ~~board votes to shorten~~ department shortens the period.

5006 4. For the purposes of this section, consider the term "locality particularly affected" to mean  
5007 any locality that bears any identified disproportionate material water quality impact that  
5008 would not be experienced by other localities.

5009 **9VAC25-31-300. Public comments and requests for public hearings.**

5010 During the public comment period provided under 9VAC25-31-290, any interested person  
5011 may submit written comments on the draft permit and may request a public hearing, if no public  
5012 hearing has already been scheduled. A request for a public hearing shall be in writing and shall  
5013 meet the requirements of ~~§ 62.1-44.15:02 B of the Code of Virginia~~ 9VAC25-31-315. All  
5014 comments shall be considered in making the final decision and shall be answered as provided in  
5015 9VAC25-31-320.

5016 **9VAC25-31-310. Public hearings.**

5017 A. 1. Procedures for public hearings ~~and for~~ permits before the ~~board~~ department are those  
5018 set forth in ~~§ 62.1-44.15:02 of the Code of Virginia~~ 9VAC25-31-315.

5019 2. Public notice of the public hearing shall be given as specified in 9VAC25-31-290 of this  
5020 chapter.

5021 3. Any public hearing convened pursuant to this section shall be held in the geographical  
5022 area of the proposed discharge, or in another appropriate area. Related groups of permit  
5023 applications may be considered at any such public hearing.

5024 B. Any person may submit oral or written statements and data concerning the draft permit.  
5025 Reasonable limits may be set upon the time allowed for oral statements, and the submission of  
5026 statements in writing may be required. The public comment period for the draft permit shall  
5027 automatically be extended to the close of any public hearing under this section. The hearing officer  
5028 may also extend the comment period by so stating at the public hearing.

5029 C. A tape recording or written transcript of the hearing shall be made available to the public.

5030 D. Proceedings at ~~and the decision from~~, the public hearing will be governed by ~~§ 62.1-~~  
5031 ~~44.15:02 of the Code of Virginia~~ the board's Procedural Rule No. 1 (9VAC25-230-10 et seq.) and  
5032 the decision from the public hearing will be governed by 9VAC25-31-316.

5033 **9VAC25-31-315. Criteria for requesting and granting a public hearing on an individual**  
5034 **permit action.**

5035 A. During the public comment period on a permit action in those instances where a public  
5036 hearing is not mandatory under state or federal law or regulation, interested persons may request  
5037 a public hearing to contest the action or terms and conditions of the permit.

5038 B. Requests for a public hearing shall contain the following information:

5039 1. The name and postal mailing or email address of the requester.

5040 2. The names and addresses of all persons for whom the requester is acting as a  
5041 representative.

5042 3. The reason for the request for a public hearing.

5043 4. A brief, informal statement setting forth the factual nature and extent of the interest of  
5044 the requester or of the persons for whom the requester is acting as representative in the  
5045 application or tentative determination, including an explanation of how and to what extent  
5046 such interest would be directly and adversely affected by the issuance, denial,  
5047 modification, or revocation of the permit in question, and,

5048 5. Where possible, specific references to the terms and the conditions of the permit in  
5049 question, together with suggested revisions and alterations to those terms and conditions

5050 that the requester considers are needed to conform the permit to the intent and provisions  
5051 of the basic laws of the State Water Control Board.

5052 C. Upon completion of the public comment period on a permit action, the director shall review  
5053 all timely requests for public hearing filed during the comment period on the permit action, and  
5054 within 30 calendar days following the expiration of the time period for the submission of requests  
5055 shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director  
5056 finds the following:

5057 1. That there is a significant public interest in the issuance, denial, modification or  
5058 revocation of the permit in question as evidenced by receipt of a minimum of 25 individual  
5059 requests for a public hearing.

5060 2, That the requesters raise substantial, disputed issues relevant to the issuance, denial,  
5061 modification, or revocation of the permit in question, and,

5062 3, That the action requested by the interested party is not on its face inconsistent with, or  
5063 in violation of, the basic laws of the State Water Control Board for a water permit action,  
5064 federal law, or any regulation promulgated thereunder.

5065 D. The director of DEQ shall notify by email or mail at his last known address: (i) each  
5066 requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

5067 E. If the request for a public hearing is granted, the director shall:

5068 1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the  
5069 notice of the decision to grant the public hearing.

5070 2. Cause, or require the applicant to publish, notice of a public hearing to be published  
5071 once, in a newspaper of general circulation in the city or county where the facility or  
5072 operation that is the subject of the permit or permit application is located, at least 30 days  
5073 before the hearing date.

5074 F. The public comment period shall remain open for 15 days after the close of the public  
5075 hearing if required by §62.1-44.15:01 of the Code of Virginia.

5076 G. The director may, at his discretion, convene a public hearing on a permit action.

5077 **9VAC25-31-316. Controversial permits.**

5078 Before rendering a final decision on a controversial permit, the department shall publish a  
5079 summary of public comments received during the applicable public comment period and public  
5080 hearing. After such publication, the department shall publish responses to the public comment  
5081 summary and hold a public hearing to provide an opportunity for individuals who previously  
5082 commented, either at a public hearing or in writing during the applicable public comment period,  
5083 to respond to the department's public comment summary and response. No new information will  
5084 be accepted at that time. In making its decision, the department shall consider: (i) the verbal and  
5085 written comments received during the comment period and the public hearing made part of the  
5086 record, (ii) any commentary of the board, and (iii) the agency files.

5087 **9VAC25-31-317. Controversial permits reporting.**

5088 At each regular meeting of the board, the department shall provide an overview and update  
5089 regarding any controversial permits pending before the department that are relevant. Immediately  
5090 after such presentation by the department, the board shall have an opportunity to  
5091 respond to the department's presentation and provide commentary regarding such pending  
5092 permit.

5093 **9VAC25-31-320. Response to comments.**

5094 A. At the time that a final permit is issued, the board ~~department~~ shall issue a response to  
5095 comments. This response shall:

5096 1. Specify which provisions, if any, of the draft permit have been changed in the final permit  
5097 decision, and the reasons for the change; and

5098 2. Briefly describe and respond to all significant comments on the draft permit raised during  
5099 the public comment period, or during any public hearing.

5100 B. The response to comments shall be available to the public.

5101 **9VAC25-31-330. Conditions requested by the Corps of Engineers and other government**  
5102 **agencies.**

5103 A. If during the comment period for an VPDES draft permit, the district engineer advises the  
5104 department in writing that anchorage and navigation of any of the waters of the United States  
5105 would be substantially impaired by the granting of a permit, the permit shall be denied and the  
5106 applicant so notified. If the District Engineer advised the department that imposing specified  
5107 conditions upon the permit is necessary to avoid any substantial impairment of anchorage or  
5108 navigation, then the ~~board~~ department shall include the specified conditions in the permit. Review  
5109 or appeal of denial of a permit or of conditions specified by the district engineer shall be made  
5110 through the applicable procedures of the Corps of Engineers, and may not be made through the  
5111 procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction  
5112 or by applicable procedures of the Corps of Engineers, those conditions shall be considered  
5113 stayed in the VPDES permit for the duration of that stay.

5114 B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine  
5115 Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public  
5116 health advises the department in writing that the imposition of specified conditions upon the permit  
5117 is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the ~~board~~  
5118 department may include the specified conditions in the permit to the extent they are determined  
5119 necessary to carry out the provisions of this regulation, the law and of the CWA.

5120 C. In appropriate cases the ~~board~~ department may consult with one or more of the agencies  
5121 referred to in this section before issuing a draft permit and may reflect their views in the statement  
5122 of basis, the fact sheet, or the draft permit.

5123 **9VAC25-31-340. Decision on variances.**

5124 A. The ~~board~~ department may grant or deny requests for variances requested pursuant to  
5125 9VAC25-31-100 L 4, subject to EPA objection. Decisions on these variances shall be made  
5126 according to the criteria of 40 CFR Part 125, Subpart H.

5127 B. The ~~board~~ department may deny, or forward to the regional administrator with a written  
5128 concurrence, or submit to EPA without recommendation a completed request for:

5129 1. A variance based on the economic capability of the applicant submitted pursuant to  
5130 9VAC25-31-100 L 2; or

5131 2. A variance based on water quality related effluent limitations submitted pursuant to  
5132 9VAC25-31-100 L 3 or 9VAC25-31-100 M 2.

5133 C. If the EPA Office Director for Wastewater Management approves the variance, the ~~board~~  
5134 department may prepare a draft permit incorporating the variance. Any public notice of a draft  
5135 permit for which a variance or modification has been approved or denied shall identify the  
5136 applicable procedures for appealing that decision.

5137 D. The ~~board~~ department may deny or forward to the administrator with a written concurrence  
5138 a completed request for:

5139 1. A variance based on the presence of fundamentally different factors from those on  
5140 which an effluent limitations guideline was based, made according to the criteria and  
5141 standards of 40 CFR Part 125, Subpart D; or

5142 2. A variance based upon certain water quality factors submitted pursuant to 9VAC25-31-  
5143 100 L 2 or 9VAC25-31-100 M 1.

5144 E. If the administrator approves the variance, the ~~board~~ department may prepare a draft permit  
5145 incorporating the variance. Any public notice of a draft permit for which a variance or modification  
5146 has been approved or denied shall identify the applicable procedures for appealing that decision.

5147 **9VAC25-31-350. Appeals of variances.**

5148 When the ~~board~~ department issues a permit on which EPA has made a variance decision,  
5149 separate appeals of the VPDES permit and of the EPA variance decision are possible.

5150 **9VAC25-31-370. Modification, revocation and reissuance, or termination of permits.**

5151 A. Permits may be modified, revoked and reissued, or terminated either at the request of any  
5152 interested person (including the permittee) or upon the ~~board's~~ department's initiative. When the  
5153 department receives any information (for example, inspects the facility, receives information  
5154 submitted by the permittee as required in the permit, receives a request for modification or  
5155 revocation and reissuance, or conducts a review of the permit file) it may determine whether or  
5156 not one or more of the causes listed in this section for modification or revocation and reissuance,  
5157 or both, exist. However, permits may only be modified, revoked and reissued, or terminated for  
5158 the reasons specified in 9VAC25-31-390 or 9VAC25-31-410. All requests shall be in writing and  
5159 shall contain facts or reasons supporting the request. If cause does not exist under these sections,  
5160 the ~~board~~ department shall not modify, revoke and reissue or terminate the permit. If a permit  
5161 modification satisfies the criteria for minor modifications, the permit may be modified without a  
5162 draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in  
5163 Part IV (9VAC25-31-260 et seq.) followed.

5164 B. If the ~~board~~ department decides the request is not justified, it shall send the requester a  
5165 brief written response giving a reason for the decision. Denials of requests for modification,  
5166 revocation and reissuance, or termination are not subject to public notice, comment, or public  
5167 hearings.

5168 C. 1. If the ~~board~~ department tentatively decides to modify or revoke and reissue a permit, it  
5169 shall prepare a draft permit incorporating the proposed changes. The ~~board~~ department may  
5170 request additional information and, in the case of a modified permit, may require the submission  
5171 of an updated application. In the case of revoked and reissued permits, the ~~board~~ department  
5172 shall require the submission of a new application.

5173 2. In a permit modification under this section, only those conditions to be modified shall be  
5174 reopened when a new draft permit is prepared. All other aspects of the existing permit  
5175 shall remain in effect for the duration of the unmodified permit. When a permit is revoked  
5176 and reissued under this section, the entire permit is reopened just as if the permit had  
5177 expired and was being reissued and the permit is reissued for a new term. During any  
5178 revocation and reissuance proceeding the permittee shall comply with all conditions of the  
5179 existing permit until a new final permit is reissued.

5180 3. Minor modifications as defined in 9VAC25-31-400 are not subject to the requirements  
5181 of this section.

5182 D. If the ~~board~~ department tentatively decides to terminate a permit under 9VAC25-31-410,  
5183 where the permittee objects, it shall issue a notice of intent to terminate. A notice of intent to  
5184 terminate is a type of draft permit which follows the same procedures as any draft permit.

5185 **9VAC25-31-380. Transfer of permits.**

5186 A. Except as provided in subsection B of this section, a permit may be transferred by the  
5187 permittee to a new owner or operator only if the permit has been modified or revoked and  
5188 reissued, or a minor modification made, to identify the new permittee and incorporate such other  
5189 requirements as may be necessary under the law and the CWA.

5190 B. Automatic transfers. As an alternative to transfers under subsection A of this section, any  
5191 VPDES permit may be automatically transferred to a new permittee if:

5192 1. The current permittee notifies the department at least 30 days in advance of the  
5193 proposed transfer date in subdivision 2 of this subsection;

5194 2. The notice includes a written agreement between the existing and new permittees  
5195 containing a specific date for transfer of permit responsibility, coverage, and liability  
5196 between them;

5197 3. The ~~board~~ department does not notify the existing permittee and the proposed new  
5198 permittee of its intent to modify or revoke and reissue the permit. A modification under this  
5199 subdivision may also be a minor modification. If this notice is not received, the transfer is  
5200 effective on the date specified in the agreement mentioned in subdivision 2 of this  
5201 subsection; and

5202 4. The new owner or operator has demonstrated compliance with 9VAC25-650-70, if  
5203 applicable.

5204 **9VAC25-31-390. Modification or revocation and reissuance of permits.**

5205 A. Causes for modification. The following are causes for modification but not revocation and  
5206 reissuance of permits except when the permittee requests or agrees.

5207 1. There are material and substantial alterations or additions to the permitted facility or  
5208 activity (including a change or changes in the permittee's sludge use or disposal practice)  
5209 which occurred after permit issuance which justify the application of permit conditions that  
5210 are different or absent in the existing permit.

5211 2. The department has received new information. Permits may be modified during their  
5212 terms for this cause only if the information was not available at the time of permit issuance  
5213 (other than revised regulations, guidance, or test methods) and would have justified the  
5214 application of different permit conditions at the time of issuance. For VPDES general  
5215 permits this cause includes any information indicating that cumulative effects on the  
5216 environment are unacceptable. For new source or new discharger VPDES permits this  
5217 cause shall include any significant information derived from effluent testing required on  
5218 the permit application after issuance of the permit.

5219 3. The standards or regulations on which the permit was based have been changed by  
5220 promulgation of amended standards or regulations or by judicial decision after the permit  
5221 was issued. Permits may be modified during their terms for this cause only as follows:

5222 a. For promulgation of amended standards or regulations, when:

5223 (1) The permit condition requested to be modified was based on a promulgated effluent  
5224 limitation guideline, EPA approved or promulgated water quality standards, or the  
5225 Secondary Treatment Regulations incorporated by reference in 9VAC25-31-30; and

5226 (2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent  
5227 limitation guideline on which the permit condition was based, or has approved a state  
5228 action with regard to a water quality standard on which the permit condition was based;  
5229 and

5230 (3) A permittee requests modification in accordance with this chapter within 90 days  
5231 after Federal Register notice of the action on which the request is based;

5232 b. For judicial decisions, a court of competent jurisdiction has remanded and stayed  
5233 EPA promulgated regulations or effluent limitation guidelines, if the remand and stay  
5234 concern that portion of the regulations or guidelines on which the permit condition was  
5235 based and a request is filed by the permittee in accordance with this chapter within 90  
5236 days of judicial remand; or



- 5237 c. For changes based upon modified state certifications of VPDES permits.
- 5238 4. The ~~board~~ department determines good cause exists for modification of a compliance
- 5239 schedule, such as an act of God, strike, flood, or materials shortage or other events over
- 5240 which the permittee has little or no control and for which there is no reasonably available
- 5241 remedy. However, in no case may a VPDES compliance schedule be modified to extend
- 5242 beyond an applicable CWA statutory deadline.
- 5243 5. When the permittee has filed a request for a variance pursuant to 9VAC25-31-100 L or
- 5244 M within the time specified in this chapter.
- 5245 6. When required to incorporate an applicable CWA § 307(a) toxic effluent standard or
- 5246 prohibition.
- 5247 7. When required by the reopener conditions in a permit which are established under
- 5248 9VAC25-31-220 B or C or 9VAC25-31-800 E.
- 5249 8. a. Upon request of a permittee who qualifies for effluent limitations on a net basis under
- 5250 9VAC25-31-230 G.
- 5251 b. When a discharger is no longer eligible for net limitations as provided in 9VAC25-
- 5252 31-230 G 1 b.
- 5253 9. As necessary under 9VAC25-31-800 E for a pretreatment program.
- 5254 10. Upon failure to notify another state whose waters may be affected by a discharge.
- 5255 11. When the level of discharge of any pollutant which is not limited in the permit exceeds
- 5256 the level which can be achieved by the technology-based treatment requirements
- 5257 appropriate to the permittee.
- 5258 12. To establish a notification level as provided in 9VAC25-31-220 F.
- 5259 13. To modify a schedule of compliance to reflect the time lost during construction of an
- 5260 innovative or alternative facility, in the case of a POTW which has received a grant under
- 5261 § 202(a)(3) of the CWA for 100% of the costs to modify or replace facilities constructed
- 5262 with a grant for innovative and alternative wastewater technology under § 202(a)(2) of the
- 5263 CWA. In no case shall the compliance schedule be modified to extend beyond an
- 5264 applicable CWA statutory deadline for compliance.
- 5265 14. To correct technical mistakes, such as errors in calculation, or mistaken interpretations
- 5266 of law made in determining permit conditions.
- 5267 15. When the discharger has installed the treatment technology considered by the permit
- 5268 writer in setting effluent limitations imposed under the law and § 402(a)(1) of the CWA and
- 5269 has properly operated and maintained the facilities but nevertheless has been unable to
- 5270 achieve those effluent limitations. In this case, the limitations in the modified permit may
- 5271 reflect the level of pollutant control actually achieved (but shall not be less stringent than
- 5272 required by a subsequently promulgated effluent limitations guideline).
- 5273 B. Causes for modification or revocation and reissuance. The following are causes to modify
- 5274 or, alternatively, revoke and reissue a permit:
- 5275 1. Cause exists for termination under 9VAC25-31-410, and the ~~board~~ department
- 5276 determines that modification or revocation and reissuance is appropriate; or
- 5277 2. The department has received notification of a proposed transfer of the permit. A permit
- 5278 also may be modified to reflect a transfer after the effective date of an automatic transfer
- 5279 but will not be revoked and reissued after the effective date of the transfer except upon
- 5280 the request of the new permittee.

5281 **9VAC25-31-400. Minor modifications of permits.**

5282 Upon the consent of the permittee, the ~~board~~ department may modify a permit to make the  
5283 corrections or allowances for changes in the permitted activity listed in this section, without  
5284 following the procedures of Part IV of this chapter. Any permit modification not processed as a  
5285 minor modification under this section must be made for cause and with draft permit and public  
5286 notice. Minor modifications may only:

5287 A. Correct typographical errors;

5288 B. Require more frequent monitoring or reporting by the permittee;

5289 C. Change an interim compliance date in a schedule of compliance, provided the new date is  
5290 not more than 120 days after the date specified in the existing permit and does not interfere with  
5291 attainment of the final compliance date requirement;

5292 D. Allow for a change in ownership or operational control of a facility where the ~~board~~  
5293 department determines that no other change in the permit is necessary, provided that a written  
5294 agreement containing a specific date for transfer of permit responsibility, coverage, and liability  
5295 between the current and new permittees has been submitted to the department;

5296 E. 1. Change the construction schedule for a discharger which is a new source. No such  
5297 change shall affect a discharger's obligation to have all pollution control equipment installed and  
5298 in operation prior to discharge.

5299 2. Delete a point source outfall when the discharge from that outfall is terminated and does  
5300 not result in discharge of pollutants from other outfalls except in accordance with permit  
5301 limits; or

5302 F. Incorporate conditions of an approved POTW pretreatment program (or a modification  
5303 thereto that has been approved in accordance with the procedures in this chapter) as enforceable  
5304 conditions of the POTW's permits.

5305 G. Incorporate changes to the terms of a CAFO's nutrient management plan that have been  
5306 revised in accordance with the requirements of subdivision C 5 of 9VAC25-31-130.

5307 H. Require electronic reporting requirements (to replace paper reporting requirements)  
5308 including those specified in 40 CFR Part 3 and Part XI (9VAC25-31-950 et seq.) of this chapter.

5309 **9VAC25-31-410. Termination of permits.**

5310 A. The following are causes for terminating a permit during its term, or for denying a permit  
5311 renewal application, after public notice and opportunity for a public hearing:

5312 1. The permittee has violated any regulation of the board or order of the ~~board~~ department,  
5313 any provision of the law, or any order of a court, where such violation results in a release  
5314 of harmful substances into the environment or poses a substantial threat of release of  
5315 harmful substances into the environment or presents a hazard to human health or the  
5316 violation is representative of a pattern of serious or repeated violations which in the opinion  
5317 of the ~~board~~ department, demonstrates the permittee's disregard for or inability to comply  
5318 with applicable laws, regulations or requirements;

5319 2. Noncompliance by the permittee with any condition of the permit;

5320 3. The permittee's failure to disclose fully all relevant material facts, or the permittee's  
5321 misrepresentation of any relevant material facts in applying for a permit, or in any other  
5322 report or document required under the law or this chapter;

5323 4. A determination that the permitted activity endangers human health or the environment  
5324 and can only be regulated to acceptable levels by permit modification or termination;

5325 5. A change in any condition that requires either a temporary or permanent reduction or  
5326 elimination of any discharge or sludge use or disposal practice controlled by the permit;  
5327 or

5328 6. There exists a material change in the basis on which the permit was issued that requires  
5329 either a temporary or a permanent reduction or elimination of any discharge controlled by  
5330 the permit necessary to protect human health or the environment.

5331 B. The ~~board~~ department shall follow the applicable procedures in this chapter in terminating  
5332 any VPDES permit under this section, except that if the entire discharge is permanently  
5333 terminated by elimination of the flow or by connection to a POTW or a PVOTW (but not by land  
5334 application or disposal into a well), the ~~board~~ department may terminate the permit by notice to  
5335 the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the  
5336 permittee objects within that time. If the permittee objects during that period, the ~~board~~ department  
5337 shall follow the applicable procedures for termination under 9VAC25-31-370 D. Expedited permit  
5338 termination procedures are not available to permittees that are subject to pending state or federal  
5339 enforcement actions including citizen suits brought under state or federal law. If requesting  
5340 expedited permit termination procedures, a permittee must certify that it is not subject to any  
5341 pending state or federal enforcement actions including citizen suits brought under state or federal  
5342 law.

5343 C. Permittees that wish to terminate their permit must submit a notice of termination (NOT) to  
5344 the department. If requesting expedited permit termination procedures, a permittee must certify  
5345 in the NOT that it is not subject to any pending state or federal enforcement actions including  
5346 citizen suits brought under state or federal law. As of the start date in Table 1 of 9VAC25-31-  
5347 1020, all NOTs submitted in compliance with this subsection shall be submitted electronically by  
5348 the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including,  
5349 in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of  
5350 this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic  
5351 reporting. Prior to this date, and independent of Part XI of this chapter, the permittee may be  
5352 required to report electronically if specified by a particular permit.

5353 **9VAC25-31-440. Permits and direct enforceability.**

5354 A. The requirements in this part may be implemented through a permit issued to a treatment  
5355 works treating domestic sewage, in accordance with this chapter. Treatment works treating  
5356 domestic sewage shall submit a permit application in accordance with this chapter.

5357 B. No person shall use biosolids or dispose of sewage sludge through any practice for which  
5358 requirements are established in this part except in accordance with such requirements.

5359 C. No person shall land apply Class B biosolids on any land in Virginia unless that land has  
5360 been identified in an application to issue, reissue, or modify a permit and approved by the ~~board~~  
5361 department.

5362 D. No person shall land apply, market, or distribute biosolids in Virginia unless the biosolids  
5363 source has been approved by the ~~board~~ department.

5364 **9VAC25-31-460. Additional or more stringent requirements.**

5365 A. On a case-by-case basis, the ~~board~~ department may impose requirements for the use of  
5366 biosolids or disposal of sewage sludge in addition to or more stringent than the requirements in  
5367 this part when necessary to protect public health and the environment from any adverse effect of  
5368 a pollutant in the biosolids or sewage sludge.

5369 B. Nothing in this part precludes the authority of another state agency, any political subdivision  
5370 of Virginia, or an interstate agency with respect to the use of biosolids or disposal of sewage  
5371 sludge.

5372 C. For biosolids land application where, because of site-specific conditions, including soil type,  
5373 identified during the permit application review process, the department determines that special  
5374 requirements are necessary to protect the environment or the health, safety or welfare of persons  
5375 residing in the vicinity of a proposed land application site, the department may incorporate in the

5376 permit at the time it is issued reasonable special conditions regarding setback distances,  
5377 transportation routes, slope, material source, methods of handling and application, and time of  
5378 day restrictions exceeding those required by this regulation. The permit applicant shall have at  
5379 least 14 days in which to review and respond to the proposed conditions.

5380 **9VAC25-31-485. Requirements for a person who land apply biosolids.**

5381 A. No person shall land apply biosolids pursuant to a permit issued in accordance with this  
5382 regulation unless an individual holding a valid certificate of competence as specified in the Virginia  
5383 Pollution Abatement Permit Regulation, Article 5, Certification of Land Applicators, as set forth in  
5384 9VAC25-32-690 through 9VAC25-32-760, is onsite at all times during such land application.

5385 B. When an application for a permit that authorizes the land application of biosolids is  
5386 submitted to the department:

5387 1. Permit holders shall use a DEQ control number, if previously assigned, identifying each  
5388 land application field. If a DEQ control number has not been assigned, provide the site  
5389 identification code used by the permit applicant to report activities and the site's location.

5390 2. A written agreement shall be established between the landowner and permit applicant  
5391 or permit holder to be submitted with the permit application, whereby the landowner shall  
5392 consent to the application of biosolids on his property. The landowner agreement shall  
5393 include:

5394 a. A statement certifying that the landowner is the sole owner or one of multiple owners  
5395 of the property or properties identified on the landowner agreements;

5396 b. A statement certifying that no concurrent agreements are in effect for the fields to  
5397 be permitted for biosolids application;

5398 c. An acknowledgement that the landowner shall notify the permittee when land is sold  
5399 or ownership transferred;

5400 d. An acknowledgement that the landowner shall notify the permittee if any conditions  
5401 change such that any component of the landowner agreement becomes invalid;

5402 e. Permission to allow department staff on the landowner's property to conduct  
5403 inspections;

5404 f. An acknowledgement by the landowner of any site restrictions identified in the  
5405 regulation;

5406 g. An acknowledgement that the landowner has received a biosolids fact sheet  
5407 approved by the department; and

5408 h. An acknowledgement that the landowner shall not remove notification signs placed  
5409 by the permit holder.

5410 3. New landowner agreements, using the most current form provided by the ~~board~~  
5411 department, shall be submitted to the department for proposed land application sites  
5412 identified in each application for issuance or reissuance of a permit or the modification to  
5413 add land to an existing permit that authorizes the land application of biosolids.

5414 4. For permits modified in order to incorporate changes to this chapter, the permit holder  
5415 shall, within 60 days of the effective date of the permit modification, advise the landowner  
5416 by certified letter of the requirement to provide a new landowner agreement. The letter  
5417 shall include instructions to the landowner for signing and returning the new landowner  
5418 agreement and shall advise the landowner that the permit holder's receipt of such new  
5419 landowner agreement is required prior to application of biosolids to the landowner's  
5420 property.

5421 5. The responsibility for obtaining and maintaining the agreements lies with the permit  
5422 holder.

5423 C. The permit holder shall ensure that the landowner agreement is still valid at the time of land  
5424 application.

5425 D. Notification requirements.

5426 1. At least 100 days prior to commencing the first land application of biosolids at a  
5427 permitted site the permittee shall deliver or cause to be delivered written notification to the  
5428 chief executive officer or his designee for the local government where the site is located.  
5429 The notice shall identify the location of the permitted site and the expected sources of the  
5430 biosolids to be applied to the site. This requirement may be satisfied by the department's  
5431 notice to the local government at the time of receiving the permit application if all  
5432 necessary information is included in the notice or by providing a list of all available  
5433 permitted sites in the locality at least 100 days prior to commencing the application at any  
5434 site on the list. If the site is located in more than one county, the notice shall be provided  
5435 to all jurisdictions where the site is located.

5436 2. At least 14 days prior to commencing land application of biosolids at a permitted site,  
5437 the permit holder shall deliver or cause to be delivered written notification to the  
5438 department and the chief executive officer or designee for the local government where the  
5439 site is located unless they request in writing not to receive the notice. The notice shall  
5440 identify the location of the permitted site and the expected sources of the sewage sludge  
5441 to be applied to the site.

5442 3. Not more than 24 hours prior to commencing land application activities, including  
5443 delivery of biosolids at a permitted site, the permittee shall notify in writing the department  
5444 and the chief executive officer or designee for the local government where the site is  
5445 located unless they request in writing not to receive the notice. This notification shall  
5446 include identification of the biosolids source and shall include only sites where land  
5447 application activities will commence within 24 hours or where the biosolids will be staged  
5448 within 24 hours.

5449 E. Evidence of financial responsibility shall be provided in accordance with requirements  
5450 specified in Article 6 (9VAC25-32-770 et seq.) of Part IX (9VAC25-32-303 et seq.) of the Virginia  
5451 Pollution Abatement (VPA) Permit Regulation.

5452 F. Posting signs.

5453 1. At least five business days prior to delivery of biosolids for land application on any site  
5454 permitted under this regulation, the permit holder shall post signs at the site that comply  
5455 with this section, are visible and legible from the public right-of-way in both directions of  
5456 travel, and conform to the specifications in this subsection. The sign shall remain in place  
5457 for at least five business days after land application has been completed at the site. The  
5458 permit holder shall not remove the signs until at least 30 days after land application has  
5459 been completed at the site.

5460 a. A sign shall be posted at or near the intersection of the public right-of-way and the  
5461 main site access road or driveway to the site used by the biosolids transport vehicles.

5462 b. If the field is located adjacent to a public right-of-way, at least one sign shall be  
5463 posted along each public road frontage beside the field to be land applied.

5464 c. The department may grant a waiver to the requirements in this section, or require  
5465 alternative posting options due to extenuating circumstances or where requirements  
5466 conflict with local government ordinances and other requirements regulating the use  
5467 of signs.

5468 2. Upon the posting of signs at a land application site prior to commencing land application,  
5469 the permittee shall deliver or cause to be delivered written notification to the department  
5470 and the chief executive officer or designee for the local government where the site is

5471 located unless they request in writing not to receive the notice. Notification shall be  
5472 delivered to the department within 24 hours of the posting of the signs. The notice shall  
5473 include the following:

- 5474 a. The name and telephone number of the permit holder, including the name of a  
5475 representative knowledgeable of the permit;
- 5476 b. Identification by tax map number and the DEQ control number for sites on which  
5477 land application is to take place;
- 5478 c. The name or title and telephone number of at least one individual designated by the  
5479 permit holder to respond to questions and complaints related to the land application  
5480 project if not the permit holder identified in subdivision a of this subdivision; and
- 5481 d. The approximate dates on which land application is to begin and end at the site.

5482 3. The sign shall be made of weather-resistant materials and shall be sturdily mounted so  
5483 as to be capable of remaining in place and legible throughout the period that the sign is  
5484 required at the site. Signs required by this section shall be temporary, nonilluminated, and  
5485 four square feet or more in area, and only contain the following information:

- 5486 a. A statement that biosolids are being land applied at the site;
- 5487 b. The name of the permit holder;
- 5488 c. The telephone number of an individual designated by the permit holder to respond  
5489 to complaints and inquiries; and
- 5490 d. Contact information for the department, including a telephone number for  
5491 complaints and inquiries.

5492 4. The permit holder shall make a good faith effort to replace or repair any sign that has  
5493 been removed from a land application site or that has been damaged so as to render any  
5494 of its required information illegible prior to five business days after completion of land  
5495 application.

5496 G. Biosolids management plan.

- 5497 1. The permit holder shall maintain and implement a biosolids management plan, which  
5498 shall consist of three components:
  - 5499 a. The materials, including site booklets, developed and submitted at the time of permit  
5500 application or permit modification adding a site to the permit in accordance with  
5501 9VAC25-31-100 Q;
  - 5502 b. Nutrient management plan for each site, in accordance with 9VAC25-31-505; and
  - 5503 c. Operation and maintenance (O&M) manual, developed and submitted to the  
5504 department within 90 days of the effective date of the permit.
- 5505 2. The biosolids management plan and all of its components shall be incorporated as an  
5506 enforceable part of the permit.
- 5507 3. The O&M manual shall include at a minimum:
  - 5508 a. Equipment maintenance and calibration procedures and schedules;
  - 5509 b. Storage facility maintenance procedures and schedules;
  - 5510 c. Sampling schedules for:
    - 5511 (1) Required monitoring; and
    - 5512 (2) Operational control testing;
  - 5513 d. Sample collection, preservation and analysis procedures, including laboratories and  
5514 methods used; and
  - 5515 e. Instructions for recording and reporting all monitoring activities.

5516 4. Current VPDES permit holders who land apply biosolids may use their existing VPDES  
5517 O&M plan addressing land application to satisfy the requirements of this section if the  
5518 existing plan addresses all of the required minimum components identified in this section.

5519 H. Handling of complaints.

5520 1. Within 24 hours of receiving notification of a complaint, the permit holder shall  
5521 commence investigation of the complaint and shall determine whether the complaint is  
5522 substantive. The permit holder shall confirm receipt of all substantive complaints by phone,  
5523 email, or facsimile to the department, the chief executive officer or designee for the local  
5524 government of the jurisdiction in which the complaint originates, and the owner of the  
5525 treatment facility from which the biosolids originated within 24 hours after receiving the  
5526 complaint.

5527 2. For the purposes of this section, a substantive complaint shall be deemed to be any  
5528 complaint alleging a violation of these regulations, state law, or local ordinance; a release  
5529 of biosolids to state waters or to a public right-of-way or to any location not authorized in  
5530 the permit; or failure to comply with the nutrient management plan for the land application  
5531 site.

5532 **9VAC25-31-500. Definitions.**

5533 In addition to the definitions given in Part I (9VAC25-31-10 et seq.) of this chapter, the  
5534 following definitions apply to Part VI (9VAC25-31-420 et seq.) of this chapter. Where the same  
5535 term is defined in both parts, the definition of Part VI of this chapter applies to the use of the term  
5536 in Part VI of this chapter.

5537 "Active sewage sludge unit" means a sewage sludge unit that has not closed.

5538 "Aerobic digestion" means the biochemical decomposition of organic matter in sewage sludge  
5539 into carbon dioxide and water by microorganisms in the presence of air.

5540 "Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. This  
5541 includes range land and land used as pasture.

5542 "Agronomic rate" means the whole sludge application rate (dry weight basis) designed: (i) to  
5543 provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or  
5544 vegetation grown on the land and (ii) to minimize the amount of nitrogen in the biosolids that  
5545 passes below the root zone of the crop or vegetation grown on the land to the groundwater.

5546 "Anaerobic digestion" means the biochemical decomposition of organic matter in sewage  
5547 sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

5548 "Annual pollutant loading rate " or "APLR" means the maximum amount of a pollutant that can  
5549 be applied to a unit area of land during a 365-day period.

5550 "Annual whole sludge application rate" or "AWSAR" means the maximum amount of biosolids  
5551 (dry weight basis) that can be applied to a unit area of land during a 365-day period.

5552 "Apply biosolids" or "biosolids applied to the land" means land application of biosolids.

5553 "Aquifer" means a geologic formation, group of geologic formations, or a portion of a geologic  
5554 formation capable of yielding groundwater to wells or springs.

5555 "Base flood" means a flood that has a one percent chance of occurring in any given year (i.e.,  
5556 a flood with a magnitude equaled once in 100 years).

5557 "Bulk biosolids" means biosolids that are not sold or given away in a bag or other container  
5558 for application to the land.

5559 "Class I sludge management facility" means any publicly owned treatment works (POTW)  
5560 required to have an approved pretreatment program under this chapter and any treatment works  
5561 treating domestic sewage classified as a Class I sludge management facility by the board

5562 department because of the potential for its biosolids use or sewage sludge disposal practice to  
5563 affect public health and the environment adversely.

5564 "Contaminate an aquifer" means to introduce a substance that causes the maximum  
5565 contaminant level for nitrate in the Virginia Water Quality Standards or in 40 CFR 141.62(b) to be  
5566 exceeded in groundwater or that causes the existing concentration of nitrate in groundwater to  
5567 increase when the existing concentration of nitrate in the groundwater exceeds the maximum  
5568 contaminant level for nitrate in the Virginia Water Quality Standards or 40 CFR 141.62(b).

5569 "Cover" means soil or other material used to cover sewage sludge placed on an active sewage  
5570 sludge unit.

5571 "Cumulative pollutant loading rate" means the maximum amount of an inorganic pollutant that  
5572 can be applied to an area of land.

5573 "Density of microorganisms" means the number of microorganisms per unit mass of total  
5574 solids (dry weight) in the biosolids or sewage sludge.

5575 "Displacement" means the relative movement of any two sides of a fault measured in any  
5576 direction.

5577 "Domestic septage" means either liquid or solid material removed from a septic tank,  
5578 cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives  
5579 only domestic sewage. Domestic septage does not include liquid or solid material removed from  
5580 a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or  
5581 industrial wastewater and does not include grease removed from a grease trap at a restaurant.

5582 "Domestic sewage" means waste and wastewater from humans or household operations that  
5583 is discharged to or otherwise enters a treatment works.

5584 "Dry tons" means dry weight established as representative of land applied biosolids and  
5585 expressed in units of English tons.

5586 "Dry weight" means the measured weight of a sample of sewage sludge or biosolids after all  
5587 moisture has been removed in accordance with the standard methods of testing and often  
5588 represented as percent solids.

5589 "Dry weight basis" means calculated on the basis of having been dried at 105°C until reaching  
5590 a constant mass (i.e., essentially 100% solids content).

5591 "Exceptional quality biosolids" means biosolids that have received an established level of  
5592 treatment for pathogen control and vector attraction reduction and contain known levels of  
5593 pollutants, such that they may be marketed or distributed for public use in accordance with this  
5594 regulation.

5595 "Fault" means a fracture or zone of fractures in any materials along which strata on one side  
5596 are displaced with respect to strata on the other side.

5597 "Feed crops" means crops produced primarily for consumption by animals.

5598 "Fiber crops" means crops such as flax and cotton.

5599 "Field" means an area of land within a site where land application is proposed or permitted.

5600 "Final cover" means the last layer of soil or other material placed on a sewage sludge unit at  
5601 closure.

5602 "Food crops" means crops produced primarily for consumption by humans. These include,  
5603 but are not limited to, fruits, vegetables, and tobacco.

5604 "Forest" means a tract of land thick with trees and underbrush.

5605 "Groundwater" means water below the land surface in the saturated zone.

5606 "Holocene time" means the most recent epoch of the Quaternary period, extending from the  
5607 end of the Pleistocene epoch to the present.



5608 "Industrial wastewater" means wastewater generated in a commercial or industrial process.

5609 "Land application" means in regard to biosolids, the distribution of biosolids by spreading or  
5610 spraying on the surface of the land, injecting below the surface of the land, or incorporating into  
5611 the soil with a uniform application rate for the purpose of fertilizing the crops and vegetation or  
5612 conditioning the soil. Sites approved for land application of biosolids in accordance with this  
5613 chapter are not to be considered to be treatment works. Bulk disposal of stabilized sludge in a  
5614 confined area, such as in landfills, is not land application. For the purpose of this chapter, the use  
5615 of biosolids in agricultural research and the distribution and marketing of exceptional quality  
5616 biosolids are not land application.

5617 "Land application area" means, in regard to biosolids, the area in the permitted field, excluding  
5618 the setback distances, where the biosolids may be applied.

5619 "Land applier" means someone who land applies biosolids pursuant to a valid permit from the  
5620 department as set forth in this chapter and 9VAC25-32-690 through 9VAC25-32-760.

5621 "Land with a high potential for public exposure" means land that the public uses frequently.  
5622 This includes, but is not limited to, a public contact site and a reclamation site located in a  
5623 populated area (e.g., a construction site located in a city).

5624 "Land with a low potential for public exposure" means land that the public uses infrequently.  
5625 This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an  
5626 unpopulated area (e.g., a strip mine located in a rural area).

5627 "Leachate collection system" means a system or device installed immediately above a liner  
5628 that is designed, constructed, maintained, and operated to collect and remove leachate from a  
5629 sewage sludge unit.

5630 "Liner" means soil or synthetic material that has a hydraulic conductivity of  $1 \times 10^{-7}$   
5631 centimeters per second or less.

5632 "Local monitor" means a person or persons employed by a local government to perform the  
5633 duties of monitoring the operations of land appliers pursuant to a local ordinance.

5634 "Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance  
5635 with § 62.1-44.19:3 of the Code of Virginia.

5636 "Lower explosive limit for methane gas" means the lowest percentage of methane gas in air,  
5637 by volume that propagates a flame at 25°C and atmospheric pressure.

5638 "Monthly average" means the arithmetic mean of all measurements taken during the month.

5639 "Municipality" means a city, town, county, district, association, or other public body (including  
5640 an intermunicipal Agency of two or more of the foregoing entities) created by or under state law;  
5641 an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge  
5642 management; or a designated and approved management agency under § 208 of the CWA, as  
5643 amended. The definition includes a special district created under state law, such as a water  
5644 district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an  
5645 integrated waste management facility as defined in § 201(e) of the CWA, as amended, that has  
5646 as one of its principal responsibilities the treatment, transport, use, or disposal of biosolids or  
5647 sewage sludge.

5648 "Odor sensitive receptor" means, in the context of land application of biosolids, any health  
5649 care facility, such as hospitals, convalescent homes, etc. or a building or outdoor facility regularly  
5650 used to host or serve large groups of people such as schools, dormitories, or athletic and other  
5651 recreational facilities.

5652 "Other container" means either an open or closed receptacle. This includes, but is not limited  
5653 to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

5654 "Pasture" means land on which animals feed directly on feed crops such as legumes, grasses,  
5655 grain stubble, or stover.

5656 "Pathogenic organisms" means disease-causing organisms. These include, but are not limited  
5657 to, certain bacteria, protozoa, viruses, and viable helminth ova.

5658 "Person who prepares biosolids" means either the person who generates biosolids during the  
5659 treatment of domestic sewage in a treatment works or the person who derives a material from  
5660 sewage sludge.

5661 "pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25°  
5662 Celsius or measured at another temperature and then converted to an equivalent value at 25°  
5663 Celsius.

5664 "Place sewage sludge or sewage sludge placed" means disposal of sewage sludge on a  
5665 surface disposal site.

5666 "Pollutant" means an organic substance, an inorganic substance, a combination of organic  
5667 and inorganic substances, or a pathogenic organism that, after discharge and upon exposure,  
5668 ingestion, inhalation, or assimilation into an organism either directly from the environment or  
5669 indirectly by ingestion through the food chain, could, on the basis of information available to the  
5670 ~~board~~ department, cause death, disease, behavioral abnormalities, cancer, genetic mutations,  
5671 physiological malfunctions (including malfunction in reproduction), or physical deformations in  
5672 either organisms or offspring of the organisms.

5673 "Pollutant limit" means a numerical value that describes the amount of a pollutant allowed per  
5674 unit amount of biosolids (e.g., milligrams per kilogram of total solids); the amount of a pollutant  
5675 that can be applied to a unit area of land (e.g., kilograms per hectare); or the volume of a material  
5676 that can be applied to a unit area of land (e.g., gallons per acre).

5677 "Public contact site" means land with a high potential for contact by the public. This includes,  
5678 but is not limited to, public parks, ball fields, cemeteries, and golf courses.

5679 "Qualified groundwater scientist" means an individual with a baccalaureate or post-graduate  
5680 degree in the natural sciences or engineering who has sufficient training and experience in  
5681 groundwater hydrology and related fields, as may be demonstrated by state registration,  
5682 professional certification, or completion of accredited university programs, to make sound  
5683 professional judgments regarding groundwater monitoring, pollutant fate and transport, and  
5684 corrective action.

5685 "Range land" means open land with indigenous vegetation.

5686 "Reclamation site" means drastically disturbed land that is reclaimed using biosolids. This  
5687 includes, but is not limited to, strip mines and construction sites.

5688 "Run-off" means rainwater, leachate, or other liquid that drains overland on any part of a land  
5689 surface and runs off of the land surface.

5690 "Seismic impact zone" means an area that has a 10% or greater probability that the horizontal  
5691 ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

5692 "Sewage sludge" means solid, semi-solid, or liquid residue generated during the treatment of  
5693 domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic  
5694 septage; scum or solids removed in primary, secondary, or advanced wastewater treatment  
5695 processes; and a material derived from sewage sludge. Sewage sludge does not include ash  
5696 generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings  
5697 generated during preliminary treatment of domestic sewage in a treatment works.

5698 "Sewage sludge unit" means land on which only sewage sludge is placed for final disposal.  
5699 This does not include land on which sewage sludge is either stored or treated. Land does not  
5700 include surface waters.

5701 "Sewage sludge unit boundary" means the outermost perimeter of an active sewage sludge  
5702 unit.

5703 "Site" means the area of land within a defined boundary where an activity is proposed or  
5704 permitted.

5705 "Specific oxygen uptake rate (SOUR)" means the mass of oxygen consumed per unit time per  
5706 unit mass of total solids (dry weight basis) in the sewage sludge.

5707 "Store or storage of sewage sludge" means the placement of sewage sludge on land on which  
5708 the sewage sludge remains for two years or less. This does not include the placement of sewage  
5709 sludge on land for treatment.

5710 "Surface disposal site" means an area of land that contains one or more active sewage sludge  
5711 units.

5712 "Total solids" means the materials in sewage sludge that remain as residue when the sewage  
5713 sludge is dried at 103°C to 105°C.

5714 "Treat or treatment of sewage sludge" means the preparation of sewage sludge for final use  
5715 or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage  
5716 sludge. This does not include storage of sewage sludge.

5717 "Treatment works" means either a federally owned, publicly owned, or privately owned device  
5718 or system used to treat (including recycle and reclaim) either domestic sewage or a combination  
5719 of domestic sewage and industrial waste of a liquid nature.

5720 "Unstable area" means land subject to natural or human-induced forces that may damage the  
5721 structural components of an active sewage sludge unit. This includes, but is not limited to, land  
5722 on which the soils are subject to mass movement.

5723 "Unstabilized solids" means organic materials in sewage sludge that have not been treated in  
5724 either an aerobic or anaerobic treatment process.

5725 "Use" means to manage or recycle a processed waste product in a manner so as to derive a  
5726 measurable benefit as a result of such management.

5727 "Vector attraction" means the characteristic of biosolids or sewage sludge that attracts  
5728 rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

5729 "Volatile solids" means the amount of the total solids in sewage sludge lost when the sewage  
5730 sludge is combusted at 550°C in the presence of excess air.

5731 **9VAC25-31-505. Universal requirements for land application operations.**

5732 Article 2

5733 Biosolids Applied to the Land

5734 A. A nutrient management plan prepared by a person who is certified as a nutrient  
5735 management planner by the Department of Conservation and Recreation shall be developed for  
5736 all application sites prior to biosolids land application.

5737 1. A nutrient management plan approved by the Department of Conservation and  
5738 Recreation shall be required for application sites prior to ~~board~~ department authorization  
5739 under specific conditions, including but not limited to:

5740 a. Sites operated by an owner or lessee of a confined animal feeding operation, as  
5741 defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry  
5742 feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of  
5743 Virginia;

5744 b. Sites where land application more frequently than once every three years at greater  
5745 than 50% of the annual agronomic rate is proposed;

- 5746 c. Mined or disturbed land sites where land application is proposed at greater than  
5747 agronomic rates; and
- 5748 d. Other sites based on site-specific conditions that increase the risk that land  
5749 application may adversely impact state waters.
- 5750 e. Where conditions at the land application site change so that it meets one or more  
5751 of the specific conditions identified in this section, an approved nutrient management  
5752 plan shall be submitted prior to any future land application at the site.
- 5753 2. The nutrient management plan shall be available for review by the department at the  
5754 land application site during biosolids land application.
- 5755 3. Within 30 days after land application at the site has commenced, the permit holder shall  
5756 provide a copy of the nutrient management plan to the farm operator of the site, the  
5757 Department of Conservation and Recreation, and the chief executive officer or designee  
5758 for the local government unless they request in writing not to receive the nutrient  
5759 management plan.
- 5760 4. The nutrient management plan must be approved by the Department of Conservation  
5761 and Recreation prior to land application for land application sites where the soil test  
5762 phosphorus levels exceed the values in Table 1 of this section. For purposes of approval,  
5763 permittees should submit the nutrient management plan to the Department of  
5764 Conservation and Recreation at least 30 days prior to the anticipated date of land  
5765 application to ensure adequate time for the approval process.

Region	Soil Test P (ppm) VPI & SU Test (Mehlich I)*
Eastern Shore and Lower Coastal Plain	135
Middle and Upper Coastal Plain and Piedmont	136
Ridge and Valley	162

\*If results are from another laboratory, the Department of Conservation and Recreation approved conversion factors must be used.

- 5766 B. Sewage sludge shall be treated to meet standards for land application of biosolids as  
5767 required by Part VI (9VAC25-31-420 et seq.) of this chapter prior to delivery at the land application  
5768 site. No person shall alter the composition of biosolids at a site approved for land application of  
5769 biosolids under a VPDES permit. Any person who engages in the alteration of such biosolids shall  
5770 be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.) of Chapter 3.1 of Title 62.1  
5771 of the Code of Virginia. The addition of lime or deodorants to biosolids that have been treated to  
5772 meet standards for land application as required by Part VI (9VAC25-31-420 et seq.) of this  
5773 chapter, shall not constitute alteration of the composition of biosolids. The ~~board~~ department may  
5774 authorize public institutions of higher education to conduct scientific research on the composition  
5775 of biosolids that may be applied to land.
- 5776 C. Bulk biosolids meeting Class B pathogen reduction standards shall be land applied in  
5777 accordance with the Virginia Pollution Abatement Permit Regulation, Article 3, Biosolids Use  
5778 Standards and Practices, set forth in 9VAC25-32-490 through 9VAC25-32-580.
- 5779 D. Surface incorporation may be required on cropland by the department, or the local monitor  
5780 with approval of the department, to mitigate malodors, when incorporation is practicable and

5781 compatible with a soil conservation plan or contract meeting the standards and specifications of  
5782 the U.S. Department of Agriculture Natural Resources Conservation Service.

5783 E. For applications where surface applied biosolids are not incorporated, the department (or  
5784 the local monitor with approval of the department) may require as a site-specific permit condition,  
5785 extended setback distances when necessary to protect odor sensitive receptors.

5786 F. No person shall apply to the Department of Environmental Quality for a permit, a variance,  
5787 or a permit modification authorizing storage of sewage sludge or biosolids without first complying  
5788 with all requirements adopted pursuant to § 62.1-44.19:3 R of the Code of Virginia.

5789 **9VAC25-31-510. Applicability; bulk biosolids; biosolids sold or given away in a bag or other**  
5790 **container for application to the land.**

5791 A. This article applies to any person who prepares biosolids that is applied to the land, to any  
5792 person who applies biosolids to the land, to biosolids applied to the land, and to the land on which  
5793 biosolids is applied.

5794 B. General requirements for bulk biosolids.

5795 1. The general requirements in 9VAC25-31-530 and the management practices in  
5796 9VAC25-31-550 B through F do not apply when bulk biosolids is applied to the land if the  
5797 bulk biosolids meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant  
5798 concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-  
5799 31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1  
5800 through B 8.

5801 2. The ~~board~~ department may apply any or all of the general requirements in 9VAC25-31-  
5802 530 and the management practices in 9VAC25-31-550 to the bulk biosolids in subdivision  
5803 1 of this subsection on a case-by-case basis after determining that the general  
5804 requirements or management practices are needed to protect public health and the  
5805 environment from any reasonably anticipated adverse effect that may occur from any  
5806 pollutant in the bulk biosolids.

5807 C. General requirements for bulk material derived from biosolids.

5808 1. The general requirements in 9VAC25-31-530 and the management practices in  
5809 9VAC25-31-550 B through F do not apply when a bulk material derived from biosolids is  
5810 applied to the land if the derived bulk material meets the ceiling concentrations in 9VAC25-  
5811 31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen  
5812 requirements in 9VAC25-31-710 A, and one of the vector attraction reduction  
5813 requirements in 9VAC25-31-720 B 1 through B 8.

5814 2. The ~~board~~ department may apply any or all of the general requirements in 9VAC25-31-  
5815 530 or the management practices in 9VAC25-31-550 to the bulk material in subdivision 1  
5816 of this subsection on a case-by-case basis after determining that the general requirements  
5817 or management practices are needed to protect public health and the environment from  
5818 any reasonably anticipated adverse effect that may occur from any pollutant in the bulk  
5819 biosolids.

5820 D. The requirements in this article do not apply when a bulk material derived from biosolids is  
5821 applied to the land if the biosolids from which the bulk material is derived meets the ceiling  
5822 concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the  
5823 Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction  
5824 requirements in 9VAC25-31-720 B 1 through B 8.

5825 E. The general requirements in 9VAC25-31-530 and the management practices in 9VAC25-  
5826 31-550 B through F do not apply when biosolids is sold or given away in a bag or other container  
5827 for application to the land if the biosolids sold or given away in a bag or other container for  
5828 application to the land meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant

5829 concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A,  
5830 and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

5831 F. The general requirements in 9VAC25-31-530 and the management practices in 9VAC25-  
5832 31-550 B through F do not apply when a material derived from biosolids is sold or given away in  
5833 a bag or other container for application to the land if the derived material meets the ceiling  
5834 concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the  
5835 Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction  
5836 requirements in 9VAC25-31-720 B 1 through B 8.

5837 G. The requirements in this article do not apply when a material derived from biosolids is sold  
5838 or given away in a bag or other container for application to the land if the biosolids from which the  
5839 material is derived meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant  
5840 concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A,  
5841 and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

5842 **9VAC25-31-550. Management practices.**

5843 A. All biosolids land application activities shall comply with the operational requirements of  
5844 Part IX (9VAC25-32-303 et seq.) of 9VAC25-32 (Biosolids Program of the VPA Permit  
5845 Regulation).

5846 B. Bulk biosolids shall not be applied to the land if it is likely to adversely affect a threatened  
5847 or endangered species listed in 9VAC25-260-320 or § 4 of the Endangered Species Act (16 USC  
5848 § 1533) or if the land application is likely to adversely affect its designated critical habitat.

5849 C. Bulk biosolids shall not be applied to agricultural land, forest, a public contact site, or a  
5850 reclamation site that is flooded, frozen, or snow-covered so that the bulk biosolids enters a  
5851 wetland or other surface waters except as provided in a VPDES permit or a permit issued pursuant  
5852 to § 404 of the CWA.

5853 D. Bulk biosolids shall not be applied to agricultural land, forest, or a reclamation site that is  
5854 10 meters or less from surface waters, unless otherwise specified by the ~~board~~ department.

5855 E. Bulk biosolids shall be applied to agricultural land, forest, a public contact site, or a  
5856 reclamation site at a whole sludge application rate that is equal to or less than the agronomic rate  
5857 for the bulk biosolids, unless, in the case of a reclamation site, otherwise specified by the ~~board~~  
5858 department.

5859 F. Either a label shall be affixed to the bag or other container in which biosolids that is sold or  
5860 given away for application to the land, or an information sheet shall be provided to the person  
5861 who receives biosolids sold or given away in a bag or other container for application to the land.  
5862 The label or information sheet shall contain the following information:

5863 1. The name and address of the person who prepared the biosolids that is sold or given  
5864 away in a bag or other container for application to the land;

5865 2. A statement that application of the biosolids to the land is prohibited except in  
5866 accordance with the instructions on the label or information sheet; and

5867 3. The annual whole sludge application rate for the biosolids that does not cause any of  
5868 the annual pollutant loading rates in Table 4 of 9VAC25-31-540 to be exceeded.

5869 **9VAC25-31-570. Frequency of monitoring.**

5870 A. Biosolids.

5871 1. The frequency of monitoring for the pollutants listed in Tables 1 through 4 of 9VAC25-  
5872 31-540; the pathogen density requirements in 9VAC25-31-710 A and B 2 through B 4; and  
5873 the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 4, B 7 and  
5874 B 8 shall be the frequency in Table 1 of this section.

TABLE 1  
FREQUENCY OF MONITORING--LAND APPLICATION

Amount of biosolids* (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	once per year
Equal to or greater than 290 but less than 1,500	once per quarter (four times a year)
Equal to or greater than 1,500 but less than 15,000	once per 60 days (six times per year)
Equal to or greater than 15,000	once per month (12 times per year)

\*Either the amount of bulk biosolids applied to the land or the amount of biosolids prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).

5875 2. After the biosolids has been monitored for two years at the frequency in Table 1 of this  
 5876 section, the ~~board~~ department may reduce the frequency of monitoring for pollutant  
 5877 concentrations and for the pathogen density requirements in 9VAC25-31-710 A 5 b and  
 5878 c.

5879 B. Domestic septage. If either the pathogen requirements in 9VAC25-31-710 C 2 or the vector  
 5880 attraction reduction requirements in 9VAC25-31-720 B 12 are met when domestic septage is  
 5881 applied to agricultural land, forest, or a reclamation site, each container of domestic septage  
 5882 applied to the land shall be monitored for compliance with those requirements.

5883 **9VAC25-31-620. General requirements.**

5884 A. No person shall place sewage sludge on an active sewage sludge unit unless the  
 5885 requirements in this article are met.

5886 B. An active sewage sludge unit located within 60 meters of a fault that has displacement in  
 5887 Holocene time; located in an unstable area; or located in a wetland, except as provided in a permit  
 5888 issued pursuant to the law and § 402 or 404 of the CWA, shall close by March 22, 1994, unless,  
 5889 in the case of an active sewage sludge unit located within 60 meters of a fault that has  
 5890 displacement in Holocene time, otherwise specified by the ~~board~~ department.

5891 C. The owner/operator of an active sewage sludge unit shall submit a written closure and post  
 5892 closure plan to the department 180 days prior to the date that the active sewage sludge unit  
 5893 closes. The plan shall describe how the sewage sludge unit will be closed and, at a minimum,  
 5894 shall include:

5895 1. A discussion of how the leachate collection system will be operated and maintained for  
 5896 three years after the sewage sludge unit closes if the sewage sludge unit has a liner and  
 5897 leachate collection system;

5898 2. A description of the system used to monitor for methane gas in the air in any structures  
 5899 within the surface disposal site and in the air at the property line of the surface disposal  
 5900 site, as required in 9VAC25-31-640 J 2; and

5901 3. A discussion of how public access to the surface disposal site will be restricted for three  
 5902 years after the last sewage sludge unit in the surface disposal site closes.

5903 D. The owner of a surface disposal site shall provide written notification to the subsequent  
 5904 owner of the site that sewage sludge was placed on the land.

5905 **9VAC25-31-630. Pollutant limits (other than domestic septage).**

5906 A. Active sewage sludge unit without a liner and leachate collection system.

5907  
5908  
5909  
5910

1. Except as provided in subdivision A 2 and subsection B of this section, the concentration of each pollutant listed in Table 1 of this section in sewage sludge placed on an active sewage sludge unit shall not exceed the concentration for the pollutant in Table 1 of this section.

TABLE 1. POLLUTANT CONCENTRATIONS--ACTIVE SEWAGE SLUDGE UNIT WITHOUT A LINER AND LEACHATE COLLECTION	
Pollutant Concentration	Concentration (milligrams per kilogram*)
Arsenic	73
Chromium	600
Nickel	420

\*Dry weight basis

5911  
5912  
5913  
5914  
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5918  
5919

2. Except as provided in subsection B of this section, the concentration of each pollutant listed in Table 1 of this section in sewage sludge placed on an active sewage sludge unit whose boundary is less than 150 meters from the property line of the surface disposal site shall not exceed the concentration determined using the following procedure.

a. The actual distance from the active sewage sludge unit boundary to the property line of the surface disposal site shall be determined.

b. The concentration of each pollutant listed in Table 2 of this section in the sewage sludge shall not exceed the concentration in Table 2 of this section that corresponds to the actual distance in subdivision 2 a of this subsection.

TABLE 2--POLLUTANT CONCENTRATIONS ACTIVE SEWAGE SLUDGE UNIT WITHOUT A LINER AND LEACHATE COLLECTION SYSTEM THAT HAS A UNIT BOUNDARY TO PROPERTY LINE DISTANCE LESS THAN 150 METERS			
Unit boundary to property line	Pollutant concentration*		
Distance (meters)	Arsenic (mg/kg)	Chromium (mg/kg)	Nickel (mg/kg)
0 to less than 25	30	200	210
25 to less than 50	34	220	240
50 to less than 75	39	260	270
75 to less than 100	46	300	320
100 to less than 125	53	360	390
125 to less than 150	62	450	420

\*Dry weight basis

5920  
5921

B. Active sewage sludge unit without a liner and leachate collection system - site-specific limits.



5922 1. At the time of permit application, the owner/operator of a surface disposal site may  
5923 request site-specific pollutant limits in accordance with subdivision B 2 of this section for  
5924 an active sewage sludge unit without a liner and leachate collection system when the  
5925 existing values for site parameters specified by the ~~board~~ department are different from  
5926 the values for those parameters used to develop the pollutant limits in Table 1 of this  
5927 section and when the ~~board~~ department determines that site-specific pollutant limits are  
5928 appropriate for the active sewage sludge unit.

5929 2. The concentration of each pollutant listed in Table 1 of this section in sewage sludge  
5930 placed on an active sewage sludge unit without a liner and leachate collection system  
5931 shall not exceed either the concentration for the pollutant determined during a site-specific  
5932 assessment, as specified by the ~~board~~ department, or the existing concentration of the  
5933 pollutant in the sewage sludge, whichever is lower.

5934 **9VAC25-31-640. Management practices.**

5935 A. Sewage sludge shall not be placed on an active sewage sludge unit if it is likely to adversely  
5936 affect a threatened or endangered species listed in 9VAC25-260-320 or § 4 of the Endangered  
5937 Species Act (16 USC § 1533 et seq.) or its designated critical habitat.

5938 B. An active sewage sludge unit shall not restrict the flow of a base flood.

5939 C. When a surface disposal site is located in a seismic impact zone, an active sewage sludge  
5940 unit shall be designed to withstand the maximum recorded horizontal ground level acceleration.

5941 D. An active sewage sludge unit shall be located 60 meters or more from a fault that has  
5942 displacement in Holocene time, unless otherwise specified by the ~~board~~ department.

5943 E. An active sewage sludge unit shall not be located in an unstable area.

5944 F. An active sewage sludge unit shall not be located in a wetland, except as provided in a  
5945 permit issued by the ~~board~~ department.

5946 G. 1. Run-off from an active sewage sludge unit shall be collected and shall be disposed in  
5947 accordance with this chapter and any other applicable requirements.

5948 2. The run-off collection system for an active sewage sludge unit shall have the capacity  
5949 to handle run-off from a 24-hour, 25-year storm event.

5950 H. The leachate collection system for an active sewage sludge unit that has a liner and  
5951 leachate collection system shall be operated and maintained during the period the sewage sludge  
5952 unit is active and for three years after the sewage sludge unit closes.

5953 I. Leachate from an active sewage sludge unit that has a liner and leachate collection system  
5954 shall be collected and shall be disposed in accordance with the applicable requirements during  
5955 the period the sewage sludge unit is active and for three years after the sewage sludge unit closes.

5956 J. When a cover is placed on an active sewage sludge unit, the concentration of methane gas  
5957 in air in any structure within the surface disposal site shall not exceed 25% of the lower explosive  
5958 limit for methane gas during the period that the sewage sludge unit is active and the concentration  
5959 of methane gas in air at the property line of the surface disposal site shall not exceed the lower  
5960 explosive limit for methane gas during the period that the sewage sludge unit is active.

5961 When a final cover is placed on a sewage sludge unit at closure, the concentration of methane  
5962 gas in air in any structure within the surface disposal site shall not exceed 25% of the lower  
5963 explosive limit for methane gas for three years after the sewage sludge unit closes and the  
5964 concentration of methane gas in air at the property line of the surface disposal site shall not  
5965 exceed the lower explosive limit for methane gas for three years after the sewage sludge unit  
5966 closes, unless otherwise specified by the ~~board~~ department.

5967 K. A food crop, a feed crop, or a fiber crop shall not be grown on an active sewage sludge unit  
5968 unless the owner/operator of the surface disposal site demonstrates to the ~~board~~ department that

5969 through management practices, public health and the environment are protected from any  
 5970 reasonably anticipated adverse effects of pollutants in sewage sludge when crops are grown.

5971 L. Animals shall not be grazed on an active sewage sludge unit unless the owner/operator of  
 5972 the surface disposal site demonstrates to the ~~board~~ department that through management  
 5973 practices, public health and the environment are protected from any reasonably anticipated  
 5974 adverse effects of pollutants in sewage sludge when animals are grazed.

5975 M. Public access to a surface disposal site shall be restricted for the period that the surface  
 5976 disposal site contains an active sewage sludge unit and for three years after the last active  
 5977 sewage sludge unit in the surface disposal site closes.

5978 N. Sewage sludge placed on an active sewage sludge unit shall not contaminate an aquifer.  
 5979 Results of a groundwater monitoring program developed by a qualified groundwater scientist or  
 5980 a certification by a qualified groundwater scientist shall be used to demonstrate that sewage  
 5981 sludge placed on an active sewage sludge unit does not contaminate an aquifer.

5982 **9VAC25-31-660. Frequency of monitoring.**

5983 A. Sewage sludge (other than domestic septage).

5984 1. The frequency of monitoring for the pollutants in Tables 1 and 2 of 9VAC25-31-630; the  
 5985 pathogen density requirements in 9VAC25-31-710 A and in 9VAC25-31-710 B 2; and the  
 5986 vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 4, B 7 and B 8  
 5987 for sewage sludge placed on an active sewage sludge unit shall be the frequency in Table  
 5988 1 of this section.

TABLE 1  
 FREQUENCY OF MONITORING--SURFACE DISPOSAL

Amount of sewage sludge* (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	once per year
Equal to or greater than 290 but less than 1,500	once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	once per 60 days (six times per year)
Equal to or greater than 15,000	once per month (12 times per year)

\*Amount of sewage sludge placed on an active sewage sludge unit (dry weight basis).

5989 2. After the sewage sludge has been monitored for two years at the frequency in Table 1  
 5990 of this section, the ~~board~~ department may reduce the frequency of monitoring for pollutant  
 5991 concentrations and for the pathogen density requirements in 9VAC25-31-710 A 5 b and  
 5992 c.

5993 B. Domestic septage. If the vector attraction reduction requirements in 9VAC25-31-720 B 12  
 5994 are met when domestic septage is placed on an active sewage sludge unit, each container of  
 5995 domestic septage shall be monitored for compliance with those requirements.

5996 C. Air. Air in structures within a surface disposal site and at the property line of the surface  
 5997 disposal site shall be monitored continuously for methane gas during the period that the surface  
 5998 disposal site contains an active sewage sludge unit on which the sewage sludge is covered and  
 5999 for three years after a sewage sludge unit closes when a final cover is placed on the sewage  
 6000 sludge.

6001 **9VAC25-31-710. Pathogens.**

6002 A. Biosolids - Class A.

6003 1. The requirement in subdivision 2 of this subsection and the requirements in either  
6004 subdivisions 3, 4, 5, 6, 7, or 8 of this subsection shall be met for a biosolids to be classified  
6005 Class A with respect to pathogens.

6006 2. The Class A pathogen requirements in subdivisions 3 through 8 of this subsection shall  
6007 be met either prior to meeting or at the same time the vector attraction reduction  
6008 requirements in 9VAC25-31-720, except the vector attraction reduction requirements in  
6009 9VAC25-31-720 B 6 through B 8, are met.

6010 3. Class A - Alternative 1.

6011 a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most  
6012 Probable Number per gram of total solids (dry weight basis), or the density of  
6013 Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number  
6014 per four grams of total solids (dry weight basis) at the time the biosolids is used or  
6015 disposed; at the time the biosolids is prepared for sale or give away in a bag or other  
6016 container for application to the land; or at the time the biosolids or material derived  
6017 from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

6018 b. The temperature of the sewage sludge that is used or disposed shall be maintained  
6019 at a specific value for a period of time.

6020 (1) When the percent solids of the sewage sludge is 7.0% or higher, the temperature  
6021 of the sewage sludge shall be 50°C or higher; the time period shall be 20 minutes or  
6022 longer; and the temperature and time period shall be determined using equation (1),  
6023 except when small particles of sewage sludge are heated by either warmed gases or  
6024 an immiscible liquid.

**EQUATION (1)**

$$D = 131,700,000/10^{0.1400t}$$

D = time in days

t = temperature in degrees Celsius

6026 (2) When the percent solids of the sewage sludge is 7.0% or higher and small particles  
6027 of sewage sludge are heated by either warmed gases or an immiscible liquid, the  
6028 temperature of the sewage sludge shall be 50°C or higher; the time period shall be 15  
6029 seconds or longer; and the temperature and time period shall be determined using  
6030 equation (1).

6031 (3) When the percent solids of the sewage sludge is less than 7.0% and the time period  
6032 is at least 15 seconds, but less than 30 minutes, the temperature and time period shall  
6033 be determined using equation (1).

6034 (4) When the percent solids of the sewage sludge is less than 7.0%; the temperature  
6035 of the sewage sludge is 50°C or higher; and the time period is 30 minutes or longer,  
6036 the temperature and time period shall be determined using equation (2).

**EQUATION (2)**

$$D = 50,070,000/10^{0.1400t}$$

D = time in days

t = temperature in degrees Celsius

- 6038 4. Class A - Alternative 2.
- 6039 a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most
- 6040 Probable Number per gram of total solids (dry weight basis), or the density of
- 6041 Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number
- 6042 per four grams of total solids (dry weight basis) at the time the biosolids is used or
- 6043 disposed; at the time the biosolids is prepared for sale or give away in a bag or other
- 6044 container for application to the land; or at the time the biosolids or material derived
- 6045 from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.
- 6046 b. (1) The pH of the sewage sludge that is used or disposed shall be raised to above
- 6047 12 and shall remain above 12 for 72 hours.
- 6048 (2) The temperature of the sewage sludge shall be above 52°C for 12 hours or longer
- 6049 during the period that the pH of the sewage sludge is above 12.
- 6050 (3) At the end of the 72-hour period during which the pH of the sewage sludge is above
- 6051 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage
- 6052 sludge greater than 50%.
- 6053 5. Class A - Alternative 3.
- 6054 a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most
- 6055 Probable Number per gram of total solids (dry weight basis), or the density of
- 6056 Salmonella sp. bacteria in biosolids shall be less than three Most Probable Number
- 6057 per four grams of total solids (dry weight basis) at the time the biosolids is used or
- 6058 disposed; at the time the biosolids is prepared for sale or give away in a bag or other
- 6059 container for application to the land; or at the time the biosolids or material derived
- 6060 from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.
- 6061 b. (1) The sewage sludge shall be analyzed prior to pathogen treatment to determine
- 6062 whether the sewage sludge contains enteric viruses.
- 6063 (2) When the density of enteric viruses in the sewage sludge prior to pathogen
- 6064 treatment is less than one Plaque-forming Unit per four grams of total solids (dry
- 6065 weight basis), the sewage sludge is Class A with respect to enteric viruses until the
- 6066 next monitoring episode for the sewage sludge.
- 6067 (3) When the density of enteric viruses in the sewage sludge prior to pathogen
- 6068 treatment is equal to or greater than one Plaque-forming Unit per four grams of total
- 6069 solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses
- 6070 when the density of enteric viruses in the sewage sludge after pathogen treatment is
- 6071 less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and
- 6072 when the values or ranges of values for the operating parameters for the pathogen
- 6073 treatment process that produces the sewage sludge that meets the enteric virus
- 6074 density requirement are documented.
- 6075 (4) After the enteric virus reduction in subdivision 5 b (3) of this subsection is
- 6076 demonstrated for the pathogen treatment process, the sewage sludge continues to be
- 6077 Class A with respect to enteric viruses when the values for the pathogen treatment
- 6078 process operating parameters are consistent with the values or ranges of values
- 6079 documented in subdivision 5 b (3) of this subsection.
- 6080 c. (1) The sewage sludge shall be analyzed prior to pathogen treatment to determine
- 6081 whether the sewage sludge contains viable helminth ova.
- 6082 (2) When the density of viable helminth ova in the sewage sludge prior to pathogen
- 6083 treatment is less than one per four grams of total solids (dry weight basis), the sewage

6084 sludge is Class A with respect to viable helminth ova until the next monitoring episode  
6085 for the sewage sludge.

6086 (3) When the density of viable helminth ova in the sewage sludge prior to pathogen  
6087 treatment is equal to or greater than one per four grams of total solids (dry weight  
6088 basis), the sewage sludge is Class A with respect to viable helminth ova when the  
6089 density of viable helminth ova in the sewage sludge after pathogen treatment is less  
6090 than one per four grams of total solids (dry weight basis) and when the values or  
6091 ranges of values for the operating parameters for the pathogen treatment process that  
6092 produces the sewage sludge that meets the viable helminth ova density requirement  
6093 are documented.

6094 (4) After the viable helminth ova reduction in subdivision 5 c (3) of this subsection is  
6095 demonstrated for the pathogen treatment process, the sewage sludge continues to be  
6096 Class A with respect to viable helminth ova when the values for the pathogen treatment  
6097 process operating parameters are consistent with the values or ranges of values  
6098 documented in subdivision 5 c (3) of this subsection.

6099 6. Class A - Alternative 4.

6100 a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most  
6101 Probable Number per gram of total solids (dry weight basis), or the density of  
6102 Salmonella sp. bacteria in the biosolids shall be less than three Most Probable  
6103 Number per four grams of total solids (dry weight basis) at the time the biosolids is used or  
6104 disposed; at the time the biosolids is prepared for sale or give away in a bag or other  
6105 container for application to the land; or at the time the biosolids or material derived  
6106 from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

6107 b. The density of enteric viruses in the biosolids shall be less than one Plaque-forming  
6108 Unit per four grams of total solids (dry weight basis) at the time the biosolids is used  
6109 or disposed; at the time the biosolids is prepared for sale or give away in a bag or other  
6110 container for application to the land; or at the time the biosolids or material derived  
6111 from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F,  
6112 unless otherwise specified by the ~~board~~ department.

6113 c. The density of viable helminth ova in the biosolids shall be less than one per four  
6114 grams of total solids (dry weight basis) at the time the biosolids is used or disposed;  
6115 at the time the biosolids is prepared for sale or give away in a bag or other container  
6116 for application to the land; or at the time the biosolids or material derived from biosolids  
6117 is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F unless otherwise  
6118 specified by the ~~board~~ department.

6119 7. Class A - Alternative 5.

6120 a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most  
6121 Probable Number per gram of total solids (dry weight basis), or the density of  
6122 Salmonella, sp. bacteria in the biosolids shall be less than three Most Probable  
6123 Number per four grams of total solids (dry weight basis) at the time the biosolids is  
6124 used or disposed; at the time the biosolids is prepared for sale or give away in a bag  
6125 or other container for application to the land; or at the time the biosolids or material  
6126 derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C,  
6127 E, or F.

6128 b. Biosolids that is used or disposed shall be treated in one of the processes to further  
6129 reduce pathogens described in subsection E of this section.

6130 8. Class A - Alternative 6.

- 6131 a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most  
6132 Probable Number per gram of total solids (dry weight basis), or the density of  
6133 Salmonella, sp. bacteria in the biosolids shall be less than three Most Probable  
6134 Number per four grams of total solids (dry weight basis) at the time the biosolids is  
6135 used or disposed; at the time the biosolids is prepared for sale or give away in a bag  
6136 or other container for application to the land; or at the time the biosolids or material  
6137 derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C,  
6138 E, or F.
- 6139 b. Biosolids that is used or disposed shall be treated in a process that is equivalent to  
6140 a process to further reduce pathogens, as determined by the ~~board~~ department.
- 6141 B. Biosolids - Class B.
- 6142 1. The requirements in either subdivision 3, 4, or 5 of this subsection shall be met for a  
6143 biosolids to be classified Class B with respect to pathogens.
- 6144 2. The site restrictions in subdivision 6 of this subsection shall be met when biosolids that  
6145 meets the Class B pathogen requirements in subdivision 3, 4, or 5 of this subsection is  
6146 applied to the land.
- 6147 3. Class B - Alternative 1.
- 6148 a. Seven representative samples of the biosolids that is used or disposed shall be  
6149 collected.
- 6150 b. The geometric mean of the density of fecal coliform in the samples collected in  
6151 subdivision 3 a of this subsection shall be less than either 2,000,000 Most Probable  
6152 Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units  
6153 per gram of total solids (dry weight basis).
- 6154 4. Class B - Alternative 2. Biosolids that is used or disposed shall be treated in one of the  
6155 processes to significantly reduce pathogens described in subsection D of this section.
- 6156 5. Class B - Alternative 3. Biosolids that is used or disposed shall be treated in a process  
6157 that is equivalent to a process to significantly reduce pathogens, as determined by the  
6158 ~~board~~ department.
- 6159 6. Site restrictions.
- 6160 a. Food crops with harvested parts that touch the biosolids/soil mixture and are totally  
6161 above the land surface shall not be harvested for 14 months after application of  
6162 biosolids.
- 6163 b. Food crops with harvested parts below the surface of the land shall not be harvested  
6164 for 20 months after application of biosolids when the biosolids remains on the land  
6165 surface for four months or longer prior to incorporation into the soil.
- 6166 c. Food crops with harvested parts below the surface of the land shall not be harvested  
6167 for 38 months after application of biosolids when the biosolids remains on the land  
6168 surface for less than four months prior to incorporation into the soil.
- 6169 d. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after  
6170 application of biosolids.
- 6171 e. Animals shall not be grazed on the land for 30 days after application of biosolids.
- 6172 f. Turf grown on land where biosolids is applied shall not be harvested for one year  
6173 after application of the biosolids when the harvested turf is placed on either land with  
6174 a high potential for public exposure or a lawn, unless otherwise specified by the ~~board~~  
6175 department.
- 6176 g. Public access to land with a high potential for public exposure shall be restricted for  
6177 one year after application of biosolids.

6178 h. Public access to land with a low potential for public exposure shall be restricted for  
6179 30 days after application of biosolids.

6180 C. Domestic septage: The site restrictions in subdivision B 6 of this section shall be met when  
6181 domestic septage is applied to agricultural land, forest, or a reclamation site.

6182 D. Processes to significantly reduce pathogens (PSRP).

6183 1. Aerobic digestion. Sewage sludge is agitated with air or oxygen to maintain aerobic  
6184 conditions for a specific mean cell residence time at a specific temperature. Values for the  
6185 mean cell residence time and temperature shall be between 40 days at 20°C and 60 days  
6186 at 15°C.

6187 2. Air drying. Sewage sludge is dried on sand beds or on paved or unpaved basins. The  
6188 sewage sludge dries for a minimum of three months. During two of the three months, the  
6189 ambient average daily temperature is above 0°C.

6190 3. Anaerobic digestion. Sewage sludge is treated in the absence of air for a specific mean  
6191 cell residence time at a specific temperature. Values for the mean cell residence time and  
6192 temperature shall be between 15 days at 35°C to 55°C and 60 days at 20°C.

6193 4. Composting. Using either the within-vessel, static aerated pile, or windrow composting  
6194 methods, the temperature of the sewage sludge is raised to 40°C or higher and remains  
6195 at 40°C or higher for five days. For four hours during the five days, the temperature in the  
6196 compost pile exceeds 55°C.

6197 5. Lime stabilization. Sufficient lime is added to the sewage sludge to raise the pH of the  
6198 sewage sludge to 12 after two hours of contact.

6199 E. Processes to further reduce pathogens (PFRP).

6200 1. Composting. Using either the within-vessel composting method or the static aerated  
6201 pile composting method, the temperature of the sewage sludge is maintained at 55°C or  
6202 higher for three days. Using the windrow composting method, the temperature of the  
6203 sewage sludge is maintained at 55°C or higher for 15 days or longer. During the period  
6204 when the compost is maintained at 55°C or higher, there shall be a minimum of five  
6205 turnings of the windrow.

6206 2. Heat drying. Sewage sludge is dried by direct or indirect contact with hot gases to  
6207 reduce the moisture content of the sewage sludge to 10.0% or lower. Either the  
6208 temperature of the sewage sludge particles exceeds 80°C or the wet bulb temperature of  
6209 the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds  
6210 80°C.

6211 3. Heat treatment. Liquid sewage sludge is heated to a temperature of 180°C or higher for  
6212 30 minutes.

6213 4. Thermophilic aerobic digestion. Liquid sewage sludge is agitated with air or oxygen to  
6214 maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10  
6215 days at 55°C to 60°C.

6216 5. Beta ray irradiation. Sewage sludge is irradiated with beta rays from an accelerator at  
6217 dosages of at least 1.0 megarad at room temperature (ca. 20°C).

6218 6. Gamma ray irradiation. Sewage sludge is irradiated with gamma rays from certain  
6219 isotopes, such as Cobalt 60 and Cesium 137, at dosages of at least 1.0 megarad at room  
6220 temperature (ca. 20°C).

6221 7. Pasteurization. The temperature of the sewage sludge is maintained at 70°C or higher  
6222 for 30 minutes or longer.

6223 **9VAC25-31-720. Vector attraction reduction.**

6224 A. Vector attraction reduction requirements:

- 6225 1. One of the vector attraction reduction requirements in subdivisions B 1 through B 10 of  
6226 this section shall be met when bulk biosolids is applied to agricultural land, forest, a public  
6227 contact site, or a reclamation site.
- 6228 2. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of  
6229 this section shall be met when bulk biosolids is applied to a lawn or a home garden.
- 6230 3. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of  
6231 this section shall be met when biosolids is sold or given away in a bag or other container  
6232 for application to the land.
- 6233 4. One of the vector attraction reduction requirements in subdivisions B 1 through B 11 of  
6234 this section shall be met when sewage sludge (other than domestic septage) is placed on  
6235 an active sewage sludge unit.
- 6236 5. One of the vector attraction reduction requirements in subdivision B 9, B 10, or B 12 of  
6237 this section shall be met when domestic septage is applied to agricultural land, forest, or  
6238 a reclamation site and one of the vector attraction reduction requirements in subdivisions  
6239 B 9 through B 12 of this section shall be met when domestic septage is placed on an active  
6240 sewage sludge unit.
- 6241 B. Vector attraction reduction options:
- 6242 1. The mass of volatile solids in the sewage sludge shall be reduced by a minimum of  
6243 38%, calculated according to the method in 9VAC25-31-490 B 8.
- 6244 2. When the 38% volatile solids reduction requirement in subdivision 1 of this subsection  
6245 cannot be met for an anaerobically digested sewage sludge, vector attraction reduction  
6246 can be demonstrated by digesting a portion of the previously digested sewage sludge  
6247 anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature  
6248 between 30°C and 37°C. When at the end of the 40 days, the volatile solids in the sewage  
6249 sludge at the beginning of that period is reduced by less than 17%, vector attraction  
6250 reduction is achieved.
- 6251 3. When the 38% volatile solids reduction requirement in subdivision 1 of this section  
6252 cannot be met for an aerobically digested sewage sludge, vector attraction reduction can  
6253 be demonstrated by digesting a portion of the previously digested sewage sludge that has  
6254 a percent solids of 2.0% or less aerobically in the laboratory in a bench-scale unit for 30  
6255 additional days at 20°C. When at the end of the 30 days, the volatile solids in the sewage  
6256 sludge at the beginning of that period is reduced by less than 15%, vector attraction  
6257 reduction is achieved.
- 6258 4. The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic  
6259 process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total  
6260 solids (dry weight basis) at a temperature of 20°C.
- 6261 5. Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that  
6262 time, the temperature of the sewage sludge shall be higher than 40°C and the average  
6263 temperature of the sewage sludge shall be higher than 45°C.
- 6264 6. The pH of sewage sludge shall be raised to 12 or higher by alkaline addition and, without  
6265 the addition of more alkaline material, shall remain at 12 or higher for two hours and then  
6266 at 11.5 or higher for an additional 22 hours.
- 6267 7. The percent solids of sewage sludge that does not contain unstabilized solids generated  
6268 in a primary wastewater treatment process shall be equal to or greater than 75% based  
6269 on the moisture content and total solids prior to mixing with other materials.
- 6270 8. The percent solids of sewage sludge that contains unstabilized solids generated in a  
6271 primary wastewater treatment process shall be equal to or greater than 90% based on the  
6272 moisture content and total solids prior to mixing with other materials.



- 6273 9. Sewage sludge injection requirements:
- 6274 a. Sewage sludge shall be injected below the surface of the land.
- 6275 b. No significant amount of the sewage sludge shall be present on the land surface
- 6276 within one hour after the sewage sludge is injected.
- 6277 c. When the sewage sludge that is injected below the surface of the land is Class A
- 6278 with respect to pathogens, the sewage sludge shall be injected below the land surface
- 6279 within eight hours after being discharged from the pathogen treatment process.
- 6280 10. Sewage sludge incorporation requirements:
- 6281 a. Sewage sludge applied to the land surface or placed on an active sewage sludge
- 6282 unit shall be incorporated into the soil within six hours after application to or placement
- 6283 on the land, unless otherwise specified by the ~~board~~ department.
- 6284 b. When sewage sludge that is incorporated into the soil is Class A with respect to
- 6285 pathogens, the sewage sludge shall be applied to or placed on the land within eight
- 6286 hours after being discharged from the pathogen treatment process.
- 6287 11. Sewage sludge placed on an active sewage sludge unit shall be covered with soil or
- 6288 other material at the end of each operating day.
- 6289 12. The pH of domestic septage shall be raised to 12 or higher by alkaline addition and,
- 6290 without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes.

6291 **9VAC25-31-910. Enforcement.**

- 6292 A. The ~~board~~ department may enforce the provisions of this chapter by:
- 6293 1. Issuing directives in accordance with the law;
- 6294 2. Issuing special orders in accordance with the law;
- 6295 3. Issuing emergency special orders in accordance with the law;
- 6296 4. Seeking injunction, mandamus or other appropriate remedy as authorized by the law;
- 6297 5. Seeking civil penalties under the law; or
- 6298 6. Seeking remedies under the law, the CWA or under other laws including the common
- 6299 law.
- 6300 B. The ~~board~~ department encourages citizen participation in all its activities, including
- 6301 enforcement. In particular:
- 6302 1. The ~~board~~ department will investigate citizen complaints and provide written response
- 6303 to all signed, written complaints from citizens concerning matters within the ~~board's~~
- 6304 department's purview;
- 6305 2. The ~~board~~ department will not oppose intervention in any civil enforcement action when
- 6306 such intervention is authorized by statute or Supreme Court rule; or in any administrative
- 6307 enforcement action when authorized by the board's procedural rule; and
- 6308 3. At least 30 days prior to the final settlement of any civil enforcement action or the
- 6309 issuance of any consent special order, the ~~board~~ department will publish public notice of
- 6310 such settlement or order in a newspaper of general circulation in the county, city or town
- 6311 in which the discharge is located, and in The Virginia Register of Regulations. This notice
- 6312 will identify the owner, specify the enforcement action to be taken and specify where a
- 6313 copy of the settlement or order can be obtained. Appeals of the enforcement action will be
- 6314 public noticed in accordance with Procedural Rule No. 1 (9VAC25-230-10 et seq.). A
- 6315 consent special order is a special order issued without a public hearing and with the written
- 6316 consent of the affected owner. For the purpose of this chapter, an emergency special
- 6317 order is not a consent special order. The ~~board~~ department shall consider all comments
- 6318 received during the comment period before taking final action.

6319 C. When a permit is amended solely to reflect a new owner, and the previous owner had been  
6320 issued a consent special order that, at the time of permit amendment was still in full force and  
6321 effect, a consent special order issued to the new owner does not have to go to public notice  
6322 provided that:

6323 a. The permit amendment does not have to go to public notice; and

6324 b. The terms of the new consent order are the same as issued to the previous owner.

6325 D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by  
6326 ~~agreement at a board meeting~~ the department without further notice when a public hearing has  
6327 been scheduled to issue a special order to the affected owner, whether or not the public hearing  
6328 is actually held.

6329 **9VAC25-31-920. Delegation of authority. (Repealed.)**

6330 ~~The director may perform any act of the board provided under this chapter, except as limited~~  
6331 ~~by § 62.1-44.14 of the Code of Virginia. Until March 23, 2000, the director shall have no authority~~  
6332 ~~to approve all or portions of permits either in the first instance, as modified or reissued, or on~~  
6333 ~~appeal; until that time, such authority is delegated to the deputy director or his designee.~~



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-110
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day
<b>Action title</b>	Final Exempt CH 110 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-110) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" and removal of delegation of authority language to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-110 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7263 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 110 changes in response to 2022 Board Bill**

4 **9VAC25-110-10. Definitions.**

5 The words and terms used in this chapter shall have the same meanings as given in the State  
6 Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the  
7 VPDES Permit Regulation (9VAC25-31), unless the context clearly indicates otherwise, except  
8 that for the purposes of this chapter:

9 "7Q10" means the lowest flow averaged over a period of seven consecutive days that can be  
10 statistically expected to occur once every 10 years.

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

14 "Combined application" means the Virginia Department of Health Discharging System  
15 Application for Single Family Dwellings Discharging Sewage Less Than or Equal to 1,000 Gallons  
16 per Day and State Water Control Board Virginia Pollutant Discharge Elimination System General  
17 Permit Registration Statement for Domestic Sewage Discharges Less Than or Equal to 1,000  
18 Gallons per Day. This application combines the VDH Alternative Discharging Sewage Treatment  
19 Regulations for Individual Single Family Dwellings (12VAC5-640) requirements with the board's  
20 registration statement requirements.

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

22 "Domestic sewage" means the water-carried human wastes from residences, buildings,  
23 industrial establishments, or other places.

24 "Individual single family dwelling" means a structure, including any accessory structure such  
25 as a garage or pool house, housing one family or household or one that is designed for one family  
26 only. When a treatment works serving an individual single family dwelling has additional unused  
27 connections, it remains a treatment works serving an individual single family dwelling until such  
28 time that an additional single family dwelling is connected to the treatment works.

29 "Receiving water" means a creek, stream, river, lake, estuary, groundwater formation, or other  
30 body of water into which treated waste or untreated waste is discharged.

31 "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a  
32 pollutant that a waterbody can receive and still meet water quality standards, and an allocation of  
33 that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point  
34 source discharges, and load allocations (LAs) for nonpoint sources or natural background or both,  
35 and must include a margin of safety (MOS) and account for seasonal variations.

36 "VDH" means the Virginia Department of Health.

37 **9VAC25-110-20. Purpose; ~~delegation of authority~~; effective date of permit.**

38 A. This general permit regulation governs domestic sewage discharges to surface waters from  
39 treatment works with a design discharge flow of less than or equal to 1,000 gallons per day on a  
40 monthly average.

41 ~~B. The Director of the Department of Environmental Quality, or his designee, may perform~~  
42 ~~any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code~~  
43 ~~of Virginia.~~

44 ~~C. B.~~ This general VPDES permit will become effective on August 2, 2021, and it expires on  
45 July 31, 2026. With respect to a particular dwelling, building, or site served, this general permit

46 shall become effective upon the dwelling, building, or site served owner's compliance with the  
47 provisions of 9VAC25-110-60.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-115
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities
<b>Action title</b>	Final Exempt CH 115 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-115) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" and removal of delegation of authority language to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-115 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.



1 **Project 7264 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 115 changes in response to 2022 Board Bill**

4 **9VAC25-115-10. Definitions.**

5 The words and terms used in this chapter shall have the meanings defined in the State Water  
6 Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the Virginia  
7 Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) unless the  
8 context clearly indicates otherwise. Additionally, for the purposes of this chapter:

9 "Best management practices" or "BMPs" means schedules of activities, practices, prohibitions  
10 of practices, structures, vegetation, maintenance procedures, and other management practices,  
11 including both structural and nonstructural practices, to prevent or reduce the discharge of  
12 pollutants to surface waters.

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

16 "Control measure" means any best management practice or other method, including effluent  
17 limitations, used to prevent or reduce the discharge of pollutants to surface waters.

18 "Corrective action" means any action to (i) repair, modify, or replace any stormwater control  
19 used at the facility; (ii) clean up and properly dispose of spills, releases, or other deposits at the  
20 facility; or (iii) return to compliance with permit requirements.

21 "Department" means the Department of Environmental Quality.

22 "Industrial activity" means the facilities classified under NAICS 311710 and SIC Code 2091 or  
23 2092.

24 "Minimize" means reduce or eliminate to the extent achievable using control measures,  
25 including best management practices, that are technologically available and economically  
26 practicable and achievable in light of best industry practice.

27 "NAICS" means North American Industry Classification System from the U.S. Office of  
28 Management and Budget, 2017 edition.

29 "No exposure" means all industrial materials or activities are protected by a storm-resistant  
30 shelter to prevent exposure to rain, snow, snowmelt, or runoff.

31 "Seafood" includes crabs, oysters, hand-shucked clams, scallops, squid, eels, turtles, fish,  
32 conchs, and crayfish.

33 "Seafood processing facility" means any facility that processes or handles seafood intended  
34 for human consumption or as bait, except a mechanized clam facility, where the primary purpose  
35 is classified under the following NAICS and SIC codes:

36 1. NAICS Code 311710 – Seafood Product Preparation and Packaging and SIC Code  
37 2091 – Canned and Cured Fish and Seafoods, 2092 – Prepared Fresh or Frozen Fish and  
38 Seafoods;

39 2. NAICS Code 424420 – Packaged Frozen Food Merchant Wholesalers and SIC Code  
40 5142 – Packaged Frozen Foods; and

41 3. NAICS Code 424460 – Fish and Seafood Merchant Wholesalers and SIC Code 5146 –  
42 Fish and Seafoods.

43 This definition does not include aquaculture facilities (including hatcheries) classified under  
44 SIC Code 0272 or 0921 and NAICS Code 112512.

45 "SIC" means the Standard Industrial Classification from the U.S. Office of Management and  
46 Budget Standard Industrial Classification Manual, 1987 edition.

47 "Significant materials" includes raw materials; fuels; materials such as solvents, detergents,  
48 and plastic pellets; finished materials such as metallic products; raw materials used in food  
49 processing or production (except oyster, clam or scallop shells); hazardous substances  
50 designated under § 101(14) of the Comprehensive Environmental Response, Compensation and  
51 Liability Act (CERCLA) (42 USC § 9601); any chemical the facility is required to report pursuant  
52 to § 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 USC §  
53 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the  
54 potential to be released with stormwater discharges.

55 "Stormwater discharge associated with industrial activity" means the discharge from any  
56 conveyance that is used for collecting and conveying stormwater and that is directly related to  
57 manufacturing, processing, or raw materials storage areas at an industrial plant. The term does  
58 not include discharges from facilities or activities excluded from the VPDES program under  
59 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term  
60 includes stormwater discharges from industrial plant yards; immediate access roads and rail lines  
61 used or traveled by carriers of raw materials, manufactured products, waste material, or  
62 byproducts (except for oyster, clam or scallop shells) used or created by the facility; material  
63 handling sites; refuse sites; sites used for the application or disposal of process wastewaters;  
64 sites used for the storage and maintenance of material handling equipment; sites used for residual  
65 treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage  
66 area (including tank farms) for raw materials and intermediate and final products; and areas where  
67 industrial activity has taken place in the past and significant materials remain and are exposed to  
68 stormwater. For the purposes of this definition, material handling activities include the storage,  
69 loading and unloading, transportation, or conveyance of any raw material, intermediate product,  
70 final product, byproduct, or waste product (except for oyster, clam or scallop shells). The term  
71 excludes areas located on plant lands separate from the plant's industrial activities, such as office  
72 buildings and accompanying parking lots, as long as the drainage from the excluded areas is not  
73 mixed with stormwater drained from the above described areas. Industrial facilities, including  
74 industrial facilities that are federally, state, or municipally owned or operated that meet the  
75 description of the facilities listed in the "industrial activity" definition, include those facilities  
76 designated under the provisions of 9VAC25-31-120 A 1 c or A 7 a (1) or (2) of the VPDES Permit  
77 Regulation.

78 "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a  
79 pollutant that a waterbody can receive and still meet water quality standards, and an allocation of  
80 that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point  
81 source discharges, and load allocations (LAs) for nonpoint sources or natural background, or  
82 both, and must include a margin of safety (MOS) and account for seasonal variations.

83 "Virginia Environmental Excellence Program" or "VEEP" means a voluntary program  
84 established by the department to provide public recognition and regulatory incentives to  
85 encourage higher levels of environmental performance for program participants that develop and  
86 implement environmental management systems (EMSs). The program is based on the use of  
87 EMSs that improve compliance, prevent pollution, and utilize other measures to improve  
88 environmental performance.

89 **9VAC25-115-20. Purpose; ~~delegation of authority~~; effective date of permit.**

90 A. This general permit regulation governs the discharge of wastewater from seafood  
91 processing facilities and stormwater associated with industrial activity from seafood processing  
92 facilities classified NAICS Code 311710 and as SIC Codes 2091 and 2092.

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

95 ~~C.~~ B. This general permit will become effective on July 24, 2021, and will expire on June 30,  
96 2026. For any covered owner, this general permit is effective upon compliance with all the  
97 provisions of 9VAC25-115-30.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-120
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests
<b>Action title</b>	Final Exempt CH 120 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-120) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" and removal of delegation of authority language to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-120 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7265 - Exempt Final**2 **State Water Control Board**3 **Final exempt CH 120 changes in response to 2022 Board Bill**4 **9VAC25-120-10. Definitions.**

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

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

11 "Central wastewater treatment facilities" means any facility that treats (for disposal, recycling,  
12 or recovery of materials) or recycles hazardous or nonhazardous waste, hazardous or  
13 nonhazardous industrial wastewater, or used material from off-site. This includes both a facility  
14 that treats waste received from off-site exclusively, and a facility that treats waste generated on-  
15 site as well as waste received from off-site.

16 "Chlorinated hydrocarbon solvents" means solvents containing carbon, hydrogen, and  
17 chlorine atoms and the constituents resulting from the degradation of chlorinated hydrocarbon  
18 solvents.

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

20 "Director" means the Director of the Virginia Department of Environmental Quality, or an  
21 authorized representative.

22 "Petroleum products" means petroleum-based substances comprised of a complex blend of  
23 hydrocarbons derived from crude oil such as motor fuels, jet fuels, distillate fuel oils, residual fuel  
24 oils, lubricants, petroleum solvents and used oils. "Petroleum products" does not include  
25 hazardous waste as defined by the Virginia Hazardous Waste Management Regulations  
26 (9VAC20-60).

27 "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a  
28 pollutant that a waterbody can receive and still meet water quality standards and an allocation of  
29 that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point  
30 source discharges, and load allocations (LAs) for nonpoint sources or natural background or both,  
31 and must include a margin of safety (MOS) and account for seasonal variations.

32 **9VAC25-120-40. Delegation of authority. (Repealed.)**

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



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-151
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity
<b>Action title</b>	Final Exempt CH 151 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-151) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" and removal of delegation of authority language to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-151 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.



1 **Project 7266 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 151 changes in response to 2022 Board Bill**

4 **9VAC25-151-10. Definitions.**

5 The words and terms used in this chapter shall have the meanings defined in the State Water  
6 Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the VPDES Permit Regulation  
7 (9VAC25-31) unless the context clearly indicates otherwise, except that for the purposes of this  
8 chapter:

9 "Best management practices" or "BMPs" means schedules of activities, practices, prohibitions  
10 of practices, structures, vegetation, maintenance procedures, and other management practices,  
11 including both structural and nonstructural practices, to prevent or reduce the discharge of  
12 pollutants to surface waters.

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

16 "Closed landfill" means a landfill that, on a permanent basis, will no longer receive waste and  
17 has completed closure in accordance with applicable federal, state, or local requirements.

18 "Coal pile runoff" means the rainfall runoff from or through any coal storage pile.

19 "Colocated industrial activity" means any industrial activity, excluding the facility's primary  
20 industrial activity, located on-site that meets the description of a category included in the  
21 "industrial activity" definition. An activity at a facility is not considered colocated if the activity,  
22 when considered separately, does not meet the description of a category included in the  
23 "industrial activity" definition or identified by the Standard Industrial Classification (SIC) code list  
24 in Table 50-2 in 9VAC25-151-50.

25 "Commercial treatment and disposal facilities" means facilities that receive, on a commercial  
26 basis, any produced hazardous waste (not their own) and treat or dispose of those wastes as a  
27 service to the generators. Such facilities treating or disposing exclusively residential hazardous  
28 wastes are not included in this definition.

29 "Control measure" means any best management practice or other method (including effluent  
30 limitations) used to prevent or reduce the discharge of pollutants to surface waters.

31 "Corrective action" means any action to (i) repair, modify, or replace any stormwater control  
32 used at the facility; (ii) clean up and properly dispose of spills, releases, or other deposits at the  
33 facility; or (iii) return to compliance with permit requirements.

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

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

37 "Existing discharger" means an operator applying for coverage under this permit for  
38 discharges authorized previously under a VPDES general or individual permit.

39 "Impaired water" means, for purposes of this chapter, a water that has been identified by  
40 Virginia pursuant to § 303(d) of the Clean Water Act as not meeting applicable water quality  
41 standards (these waters are called "water quality limited segments" under 40 CFR 30.2(j)).  
42 Impaired waters include both waters with approved or established TMDLs, and those for which a  
43 TMDL has not yet been approved or established.

44 "Impervious surface" means a surface composed of any material that significantly impedes or  
45 prevents natural infiltration of water into the soil.

46 "Industrial activity" - the following categories of facilities are considered to be engaging in  
47 "industrial activity":

- 48 1. Facilities subject to stormwater effluent limitations guidelines, new source performance  
49 standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except  
50 facilities with toxic pollutant effluent standards which are exempted under category 10 of  
51 this definition);
- 52 2. Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26  
53 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, and  
54 373 (Office of Management and Budget (OMB) SIC Manual, 1987);
- 55 3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987)  
56 including active or inactive mining operations (except for areas of coal mining operations  
57 no longer meeting the definition of a reclamation area under 40 CFR 434.11(I) because  
58 the performance bond issued to the facility by the appropriate Surface Mining Control and  
59 Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) authority has been released,  
60 or except for areas of noncoal mining operations which have been released from  
61 applicable state or federal reclamation requirements after December 17, 1990) and oil and  
62 gas exploration, production, processing, or treatment operations, or transmission facilities  
63 that discharge stormwater contaminated by contact with or that has come into contact  
64 with, any overburden, raw material, intermediate products, finished products, byproducts  
65 or waste products located on the site of such operations (inactive mining operations are  
66 mining sites that are not being actively mined, but which have an identifiable owner or  
67 operator; inactive mining sites do not include sites where mining claims are being  
68 maintained prior to disturbances associated with the extraction, beneficiation, or  
69 processing of mined materials, nor sites where minimal activities are undertaken for the  
70 sole purpose of maintaining a mining claim);
- 71 4. Hazardous waste treatment, storage, or disposal facilities, including those that are  
72 operating under interim status or a permit under Subtitle C of the Resource Conservation  
73 and Recovery Act (RCRA) (42 USC § 6901 et seq.);
- 74 5. Landfills, land application sites, and open dumps that receive or have received any  
75 industrial wastes (waste that is received from any of the facilities described under this  
76 definition, and debris or wastes from VPDES regulated construction activities or sites),  
77 including those that are subject to regulation under Subtitle D of RCRA;
- 78 6. Facilities involved in the recycling of materials, including metal scrapyards, battery  
79 reclaimers, salvage yards, and automobile junkyards, including but limited to those  
80 classified as Standard Industrial Classification Codes 5015 and 5093 (OMB SIC Manual,  
81 1987);
- 82 7. Steam electric power generating facilities, including coal handling sites;
- 83 8. Transportation facilities classified as SIC Codes 40, 41, 42 (except 4221-4225), 43, 44,  
84 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops,  
85 equipment cleaning operations, or airport deicing operations. Only those portions of the  
86 facility that are either involved in vehicle maintenance (including vehicle rehabilitation,  
87 mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation,  
88 airport deicing operation, or which are otherwise identified under categories 1 through 7  
89 or 9 and 10 of this definition are associated with industrial activity;
- 90 9. Treatment works treating domestic sewage or any other sewage sludge or wastewater  
91 treatment device or system used in the storage treatment, recycling, and reclamation of  
92 municipal or domestic sewage, including land dedicated to the disposal of sewage sludge  
93 that is located within the confines of the facility, with a design flow of 1.0 MGD or more, or  
94 required to have an approved publicly owned treatment works (POTW) pretreatment

95 program under 9VAC25-31. Not included are farm lands, domestic gardens or lands used  
 96 for sludge management where sludge is beneficially reused and which are not physically  
 97 located in the confines of the facility, or areas that are in compliance with 9VAC25-31-420  
 98 through 9VAC25-31- 720; and

99 10. Facilities under SIC Codes 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31  
 100 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB  
 101 SIC Manual, 1987).

102 "Industrial stormwater" means stormwater runoff from industrial activity.

103 "Land application unit" means an area where wastes are applied onto or incorporated into the  
 104 soil surface (excluding manure spreading operations) for treatment or disposal.

105 "Landfill" means an area of land or an excavation in which wastes are placed for permanent  
 106 disposal, and that is not a land application unit, surface impoundment, injection well, or waste  
 107 pile.

108 "Measurable storm event" means a storm event that results in a discharge from an outfall.

109 "Minimize" means reduce or eliminate to the extent achievable using control measures  
 110 (including best management practices) that are technologically available and economically  
 111 practicable and achievable in light of best industry practice.

112 "Municipal separate storm sewer system" or "MS4" means a conveyance or system of  
 113 conveyances (including roads with drainage systems, municipal streets, catch basins, curbs,  
 114 gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city,  
 115 town, borough, county, parish, district, association, or other public body (created by or pursuant  
 116 to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other  
 117 wastes, including special districts under state law such as a sewer district, flood control district or  
 118 drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or  
 119 a designated and approved management agency under § 208 of the Clean Water Act that  
 120 discharges to surface waters of the state; (ii) designed or used for collecting or conveying  
 121 stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a POTW.

122 "No exposure" means all industrial materials or activities are protected by a storm-resistant  
 123 shelter to prevent exposure to rain, snow, snowmelt, or runoff.

124 "Primary industrial activity" includes any activities performed on-site which are:

- 125 1. Identified by the facility's primary SIC code; or
- 126 2. Included in the narrative descriptions of the definition of "industrial activity."

127 Narrative descriptions in the "industrial activity" definition include: category 1 activities  
 128 subject to stormwater effluent limitations guidelines, new source performance standards,  
 129 or toxic pollutant effluent standards; category 4 hazardous waste treatment storage or  
 130 disposal facilities, including those that are operating under interim status or a permit under  
 131 subtitle C of the Resource Conservation and Recovery Act (RCRA); category 5 landfills,  
 132 land application sites, and open dumps that receive or have received industrial wastes;  
 133 category 7 steam electric power generating facilities; and category 9 sewage treatment  
 134 works with a design flow of 1.0 mgd or more.

135 For colocated activities covered by multiple SIC codes, the primary industrial determination  
 136 should be based on the value of receipts or revenues, or, if such information is not available for a  
 137 particular facility, the number of employees or production rate for each process may be compared.  
 138 The operation that generates the most revenue or employs the most personnel is the operation  
 139 in which the facility is primarily engaged. In situations where the vast majority of on-site activity  
 140 falls within one SIC code, that activity may be the primary industrial activity.

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

143 "Significant materials" includes raw materials; fuels; materials such as solvents, detergents,  
144 and plastic pellets; finished materials such as metallic products; raw materials used in food  
145 processing or production; hazardous substances designated under § 101(14) of the  
146 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC §  
147 9601 et seq.); any chemical the facility is required to report pursuant to the Emergency Planning  
148 and Community Right-to-Know Act (EPCRA) § 313; fertilizers; pesticides; and waste products  
149 such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

150 "Significant spills" includes releases of oil or hazardous substances in excess of reportable  
151 quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102  
152 of CERCLA (see 40 CFR 302.4).

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

155 "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

156 "Stormwater discharge associated with industrial activity" means the discharge from any  
157 conveyance which is used for collecting and conveying stormwater and that is directly related to  
158 manufacturing, processing or raw materials storage areas at an industrial plant. The term does  
159 not include discharges from facilities or activities excluded from the VPDES program under  
160 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term  
161 includes stormwater discharges from industrial plant yards; immediate access roads and rail lines  
162 used or traveled by carriers of raw materials, manufactured products, waste material, or by-  
163 products used or created by the facility; material handling sites; refuse sites; sites used for the  
164 application or disposal of process wastewaters; sites used for the storage and maintenance of  
165 material handling equipment; sites used for residual treatment, storage, or disposal; shipping and  
166 receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials,  
167 and intermediate and final products; and areas where industrial activity has taken place in the  
168 past and significant materials remain and are exposed to stormwater. For the purposes of this  
169 definition, material handling activities include the storage, loading and unloading, transportation,  
170 or conveyance of any raw material, intermediate product, final product, by-product or waste  
171 product. The term excludes areas located on plant lands separate from the plant's industrial  
172 activities, such as office buildings and accompanying parking lots, as long as the drainage from  
173 the excluded areas is not mixed with stormwater drained from the above described areas.  
174 Industrial facilities include those that are federally, state, or municipally owned or operated that  
175 meet the description of the facilities listed in the "industrial activity" definition. The term also  
176 includes those facilities designated under the provisions of 9VAC25-31-120 A 1 c, or under  
177 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation.

178 "SWPPP" means stormwater pollution prevention plan.

179 "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a  
180 pollutant that a waterbody can receive and still meet water quality standards, and an allocation of  
181 that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point  
182 source discharges, load allocations (LAs) for nonpoint sources or natural background, and must  
183 include a margin of safety (MOS) and account for seasonal variations.

184 "Virginia Environmental Excellence Program" or "VEEP" means a voluntary program  
185 established by the department to provide public recognition and regulatory incentives to  
186 encourage higher levels of environmental performance for program participants that develop and  
187 implement environmental management systems (EMSs). The program is based on the use of  
188 EMSs that improve compliance, prevent pollution, and utilize other measures to improve  
189 environmental performance.

190 "Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used  
191 for treatment or storage.

192 **9VAC25-151-30. Delegation of authority. (Repealed.)**

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



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-190
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining
<b>Action title</b>	Final Exempt CH 190 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-190) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" and removal of delegation of authority language to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-190 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7267 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 190 changes in response to 2022 Board Bill**

4 **9VAC25-190-10. Definitions.**

5 The words and terms used in this chapter shall have the meanings defined in the State Water  
6 Control Law Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the Virginia  
7 Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) unless the  
8 context clearly indicates otherwise. Additionally, for the purposes of this chapter:

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

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

17 "Colocated facility" means an industrial activity other than mineral mining operating on a site  
18 where the primary industrial activity is mineral mining. Such an activity must have wastewater  
19 characteristics similar to those of the mineral mine and be located within the permitted mining  
20 area. The term refers to activities that are commonly found at mining sites such as manufacturing  
21 of ready-mix concrete (SIC Code 3273, NAICS Code 327320), concrete products (SIC Codes  
22 3271 and 3272, NAICS Codes 327331, 327332, and 327390), and asphalt paving materials (SIC  
23 Code 2951, NAICS Code 324121) except asphalt emulsion manufacturing. It does not mean  
24 industrial activity that is specifically excluded from this permit.

25 "Control measure" means any best management practice or other method (including effluent  
26 limitations) used to prevent or reduce the discharge of pollutants to surface waters.

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

28 "Inactive mining operations" means mining sites that are not being actively mined, but which  
29 have an identifiable owner or operator; inactive mining sites do not include sites where mining  
30 claims are being maintained prior to disturbances associated with the extraction, beneficiation, or  
31 processing of mined materials, nor sites where minimal activities are undertaken for the sole  
32 purpose of maintaining a mining claim.

33 "Industrial activity" means activity associated with mineral mining facilities generally identified  
34 by SIC Major Group 14 including active or inactive mining operations that discharge stormwater  
35 that has come into contact with any overburden, raw material, intermediate products, finished  
36 products, by-products or waste products located on the site of such operations. This includes  
37 activity at facilities or those portions of a facility where the primary purpose is classified as:

- 38 1. North American Industry Classification System (NAICS) Code 212311 - Dimension  
39 Stone Mining and Quarrying, and Standard Industrial Classification (SIC) Code 1411 -  
40 Dimension Stone;
- 41 2. NAICS Code 212312 - Crushed and Broken Limestone Mining and Quarrying, and SIC  
42 Code 1422 Crushed and Broken Limestone;
- 43 3. NAICS Code 212313 - Crushed and Broken Granite Mining and Quarrying, and SIC  
44 Code 1423 -Crushed and Broken Granite;



- 45 4. NAICS Code 212319 - Crushed and Broken Stone not elsewhere classified (NEC), and  
46 SIC Code 1429 Crushed and Broken Stone NEC;
- 47 5. NAICS Code 212321 - Construction Sand and Gravel, and SIC Code 1442 -  
48 Construction Sand and Gravel;
- 49 6. NAICS Code 212324 - Kaolin and Ball Clay Mining, and SIC Code 1455 - Kaolin and  
50 Ball Clay;
- 51 7. NAICS Code 212325 - Clay and Ceramic and Refractory Minerals Mining, and SIC  
52 Code 1459 -Clay and Related Minerals, NEC (excluding for purposes of both NAICS and  
53 SIC bentonite and magnesite mines);
- 54 8. NAICS Code 212392 - Phosphate Rock Mining, and SIC Code 1475 - Phosphate Rock;  
55 and
- 56 9. NAICS Codes 212399 - All Other Nonmetallic Mineral Mining, and SIC Code 1499 -  
57 Miscellaneous Nonmetallic Minerals, except fuels (excluding for purposes of both NAICS  
58 and SIC gypsum, graphite, asbestos, diatomite, jade, novaculite, wollastonite, Tripoli, or  
59 asphaltic mineral mines).

60 Industrial activity also includes facilities classified under other SIC codes that may be  
61 collocated within the mineral mine permit area, unless they are expressly excluded by this general  
62 permit.

63 "Minimize" means reduce or eliminate to the extent achievable using control measures,  
64 including best management practices, that are technologically available and economically  
65 practicable and achievable in light of best industry practice.

66 "Municipal separate storm sewer system" or "MS4" means a conveyance or system of  
67 conveyances, including roads with drainage systems, municipal streets, catch basins, curbs,  
68 gutters, ditches, man-made channels, or storm drains (i) owned or operated by a state, city, town,  
69 county, district, association, or other public body (created by or pursuant to state law) having  
70 jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including  
71 special districts under state law such as a sewer district, flood control district or drainage district,  
72 or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and  
73 approved management agency under § 208 of the Clean Water Act that discharges to surface  
74 waters of the state; (ii) designed or used for collecting or conveying stormwater; (iii) that is not a  
75 combined sewer; and (iv) that is not part of a publicly owned treatment works (POTW).

76 "NAICS" means North American Industry Classification System, U.S. Office of Management  
77 and Budget, 2017.

78 "Permittee" means the owner of a nonmetallic mineral mine covered under this general permit.

79 "Process wastewater" means any wastewater used in the slurry transport of mined material,  
80 air emissions control, or processing exclusive of mining, and any other water that becomes  
81 commingled with such wastewater in a pit, pond, lagoon, mine, or other facility used for treatment  
82 of such wastewater. It includes mine pit dewatering, water used in the process of washing stone,  
83 noncontact cooling water, wastewater from vehicle or equipment degreasing activities, vehicle  
84 washing and return water from operations where mined material is dredged and miscellaneous  
85 plant cleanup wastewaters.

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

88 "SIC" means the Standard Industrial Classification Code or Industrial Grouping from the U.S.  
89 Office of Management and Budget Standard Industrial Classification Manual, 1987 Edition.

90 "Significant materials" includes raw materials; fuels; materials such as solvents, detergents,  
91 and plastic pellets; finished materials; hazardous substances designated under § 101(14) of the

92 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC §  
93 9601 et seq.); any chemical the owner is required to report pursuant to § 313 of the Emergency  
94 Planning and Community Right-to-Know Act (EPCRA) (42 USC § 11001 et seq.); fertilizers;  
95 pesticides; and waste products such as ashes, slag and sludge (including pond sediments) that  
96 have the potential to be released with stormwater discharges.

97 "Significant spills" includes releases of oil or hazardous substances in excess of reportable  
98 quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102  
99 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42  
100 USC § 9601 et seq.) (see 40 CFR 302.4).

101 "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

102 "Stormwater discharge associated with industrial activity" means the discharge from any  
103 conveyance that is used for collecting and conveying stormwater and that is directly related to  
104 manufacturing, processing or raw materials storage areas at an industrial plant. The term does  
105 not include discharges from facilities or activities excluded from the VPDES program under  
106 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term  
107 includes stormwater discharges from industrial plant yards; immediate access roads and rail lines  
108 used or traveled by carriers of raw materials, manufactured products, waste material, or by-  
109 products used or created by the mineral mine; material handling sites; refuse sites; sites used for  
110 the application or disposal of process wastewaters; sites used for the storage and maintenance  
111 of material handling equipment; sites used for residual treatment, storage, or disposal; shipping  
112 and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw  
113 materials, and intermediate and finished products; and areas where industrial activity has taken  
114 place in the past and significant materials remain and are exposed to stormwater. For the  
115 purposes of this paragraph, material handling activities include the storage, loading and  
116 unloading, transportation, or conveyance of any raw material, intermediate product, finished  
117 product, by-product or waste product. The term excludes areas located on plant lands separate  
118 from the plant's industrial activities, such as office buildings and accompanying parking lots as  
119 long as the drainage from the excluded areas is not mixed with stormwater drained from the above  
120 described areas.

121 "Temporarily inactive mineral mining facility" means a site or portion of a site where  
122 nonmetallic mineral mining or milling occurred in the past but currently is not being actively  
123 undertaken, and the facility is covered by an active mining permit issued by the applicable state  
124 or federal agency.

125 "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a  
126 pollutant that a waterbody can receive and still meet water quality standards and an allocation of  
127 that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point  
128 source discharges, and load allocations (LAs) for nonpoint sources or natural background or both,  
129 and must include a margin of safety (MOS) and account for seasonal variations.

130 "Twenty-five-year, 24-hour storm event" means the maximum 24-hour precipitation event with  
131 a probable recurrence interval of once in 25 years as established by the National Weather Service  
132 or appropriate regional or state rainfall probability information.

133 "Virginia Environmental Excellence Program" or "VEEP" means a voluntary program  
134 established by the department to provide public recognition and regulatory incentives to  
135 encourage higher levels of environmental performance for program participants that develop and  
136 implement environmental management systems (EMSs). The program is based on the use of  
137 EMSs that improve compliance, prevent pollution, and utilize other measures to improve  
138 environmental performance.

139 **9VAC25-190-20. Purpose; ~~delegation of authority~~; effective date of permit.**

140 A. The purpose of this chapter is to establish General Permit Number VAG84 to regulate  
141 wastewater and stormwater discharges to surface waters from nonmetallic mineral mines as  
142 follows:

143 1. For active and inactive nonmetallic mineral mining facilities in SIC Major Group 14, this  
144 general permit covers discharges composed entirely of stormwater associated with  
145 industrial activity.

146 2. This general permit authorizes the discharge of process wastewater as well as  
147 stormwater associated with industrial activity from active and inactive mineral mines  
148 classified under:

149 a. SIC Code 1411 - NAICS Code 212311,

150 b. SIC Code 1422 - NAICS Code 212312,

151 c. SIC Code 1423 - NAICS Code 212313,

152 d. SIC Code 1429 - NAICS Code 212319,

153 e. SIC Code 1442 - NAICS Code 212321,

154 f. SIC Code 1455 - NAICS Code 212324,

155 g. SIC Code 1459 - NAICS Code 212325, excluding bentonite and magnesite mines,

156 h. SIC Code 1475 - NACIS Code 212392, and

157 i. SIC Code 1499 - NAICS Code 212399, excluding gypsum, graphite, asbestos,  
158 diatomite, jade, novaculite, wollastonite, tripoli or asphaltic mineral mines.

159 3. Coal mining, metal mining, and oil and gas extraction are not covered by this general  
160 permit.

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

163 C. B. This general permit will become effective on July 1, 2019, and will expire June 30, 2024.  
164 For any covered owner, this general permit is effective upon compliance with all the provisions of  
165 9VAC25-190-50 and the receipt of this general permit.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-192
<b>VAC Chapter title(s)</b>	Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management
<b>Action title</b>	Final Exempt CH 192 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-192) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" and removal of delegation of authority language to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-192 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7268 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 192 changes in response to 2022 Board Bill**

4 **9VAC25-192-10. Definitions.**

5 The words and terms used in this chapter shall have the meanings defined in the State Water  
6 Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (9VAC25-32)  
7 unless the context clearly indicates otherwise, except that for the purposes of this chapter:

8 "Agricultural stormwater discharge" means a precipitation-related discharge of manure, litter,  
9 or process wastewater that has been applied on land areas under the control of an animal feeding  
10 operation or under the control of an animal waste end-user in accordance with a nutrient  
11 management plan approved by the Virginia Department of Conservation and Recreation and in  
12 accordance with site specific nutrient management practices that ensure appropriate agricultural  
13 utilization of the nutrients in the manure, litter or process wastewater.

14 "Animal feeding operation" means a lot or facility where the following conditions are met:

15 1. Animals have been, are, or will be stabled or confined and fed or maintained for a total  
16 of 45 days or more in any 12-month period; and

17 2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the  
18 normal growing season over any portion of the operation of the lot or facility.

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

22 "Animal waste" means liquid, semi-solid, and solid animal manure and process wastewater,  
23 compost, or sludges associated with animal feeding operations including the final treated wastes  
24 generated by a digester or other manure treatment technologies.

25 "Animal waste end-user" or "end-user" means any recipient of transferred animal waste who  
26 stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use  
27 for an operation under his control.

28 "Animal waste fact sheet" means the document that details the requirements regarding  
29 utilization, storage, and management of animal waste by end-users. The fact sheet is approved  
30 by the department.

31 "Beneficial use" means a use that is of benefit as a substitute for natural or commercial  
32 products and does not contribute to adverse effects on health or environment.

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

36 "Confined animal feeding operation," for the purposes of this regulation, has the same  
37 meaning as an "animal feeding operation."

38 "Department" means the Virginia Department of Environmental Quality.

39 "Director" means the Director of the Virginia Department of Environmental Quality or his  
40 designee.

41 "Nutrient management plan" or "NMP" means a plan developed or approved by the  
42 Department of Conservation and Recreation that requires proper storage, treatment, and  
43 management of animal waste and limits accumulation of excess nutrients in soils and leaching or

44 discharge of nutrients into state waters; except that for an animal waste end-user who is not  
45 covered under the general permit, the requirements of 9VAC25-192-90 constitute the NMP.

46 "Organic source" means any nutrient source including, but not limited to, manures, biosolids,  
47 compost, and waste or sludges from animals, humans, or industrial processes, but for the  
48 purposes of this regulation it excludes waste from wildlife.

49 "Waste nutrient analysis rate" means a land application rate for animal waste approved by the  
50 board as specified in this regulation.

51 "Waste storage facility" means (i) a waste holding pond or tank used to store manure prior to  
52 land application, (ii) a lagoon or treatment facility used to digest or reduce the solids or nutrients,  
53 or (iii) a structure used to store manure or waste.

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

58 "300 animal units" means 300,000 pounds of live animal weight, or the following numbers and  
59 types of animals:

- 60 a. 300 slaughter and feeder cattle;
- 61 b. 200 mature dairy cattle (whether milked or dry cows);
- 62 c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- 63 d. 150 horses;
- 64 e. 3,000 sheep or lambs;
- 65 f. 16,500 turkeys;
- 66 g. 30,000 laying hens or broilers.

67 **9VAC25-192-20. Purpose; ~~delegation of authority~~; effective date of permit.**

68 A. This general permit regulation governs the pollutant management activities at animal  
69 feeding operations having 300 or more animal units utilizing a liquid manure collection and storage  
70 system not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit and  
71 animal waste utilized or stored by animal waste end-users. These animal feeding operations may  
72 operate and maintain treatment works for waste storage, treatment, or recycling and may perform  
73 land application of manure, wastewater, compost, or sludges.

74 ~~B. The Director of the Department of Environmental Quality, or his designee, may perform~~  
75 ~~any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code~~  
76 ~~of Virginia.~~

77 C.B. This general permit will become effective on November 16, 2014. This general permit  
78 will expire 10 years from the effective date.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-193
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concrete Products Facilities
<b>Action title</b>	Final Exempt CH 193 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-193) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" and removal of delegation of authority language to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.



## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-193 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7269 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 193 changes in response to 2022 Board Bill**

4 **9VAC25-193-10. Definitions.**

5 The words and terms used in this chapter shall have the meanings defined in § 62.1-44.2 et  
6 seq. of the Code of Virginia (State Water Control Law) and 9VAC25-31 (VPDES Permit  
7 Regulation), unless the context clearly indicates otherwise, except that for the purposes of this  
8 chapter:

9 "Best management practices" or "BMPs" means schedules of activities, practices and  
10 prohibitions of practices, structures, vegetation, maintenance procedures, and other management  
11 practices to prevent or reduce the discharge of pollutants to surface waters. BMPs also include  
12 treatment requirements, operating procedures, and practices to control plant site runoff, spillage  
13 or leaks, sludge or waste disposal, or drainage from raw material storage.

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

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

18 "Industrial activity" means facilities or those portions of a facility where the primary purpose is  
19 classified as:

- 20 1. North American Industry Classification System (NAICS) Code 327331 - Concrete Block  
21 and Brick Manufacturing, (Executive Office of the President, Office of Management and  
22 Budget, United States, 2017) and Standard Industrial Classification (SIC) Code 3271 -  
23 Concrete Block and Brick (Office of Management and Budget (OMB) SIC Manual, 1987);
- 24 2. NAICS Code 327332 Concrete Pipe Manufacturing, NAICS Code 327390 Other  
25 Concrete Product Manufacturing, NAICS Code 327999 All Other Miscellaneous  
26 Nonmetallic Mineral Product Manufacturing (dry mix concrete manufacturing only) and  
27 SIC Code 3272 - Concrete Products, Except Block and Brick; or
- 28 3. NAICS Code 327320 Ready-Mix Concrete Manufacturing and SIC Code 3273 - Ready-  
29 Mixed Concrete, including both permanent and portable plants.

30 These facilities are collectively defined as "Concrete Products Facilities."

31 "Minimize" means reduce or eliminate to the extent achievable using control measures,  
32 including best management practices, that are technologically available and economically  
33 practicable and achievable in light of best industry practice.

34 "No discharge system" means process, commingled, or stormwater systems designed to  
35 operate so that there is no discharge of wastewater or pollutants, except in storm events greater  
36 than a 25-year, 24-hour storm event.

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

39 "Significant spills" includes releases of oil or hazardous substances in excess of reportable  
40 quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102  
41 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42  
42 USC § 9601 et seq.) (see 40 CFR 302.4).

43 "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a  
44 pollutant that a waterbody can receive and still meet water quality standards and an allocation of  
45 that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point

46 source discharges and load allocations (LAs) for nonpoint sources or natural background, or both,  
47 and must include a margin of safety (MOS) and account for seasonal variations.

48 "25-year, 24-hour storm event" means the maximum 24-hour precipitation event with a  
49 probable recurrence interval of once in 25 years as established by the National Weather Service  
50 or appropriate regional or state rainfall probability information.

51 "Vehicle or equipment degreasing" means the washing or steam cleaning of engines or other  
52 drive components of a vehicle or piece of equipment in which the purpose is to degrease and  
53 clean petroleum products from the equipment for maintenance purposes. Removing sediment  
54 and concrete residue is not considered vehicle or equipment degreasing.

55 "Virginia Environmental Excellence Program" or "VEEP" means a voluntary program  
56 established by the department to provide public recognition and regulatory incentives to  
57 encourage higher levels of environmental performance for program participants that develop and  
58 implement environmental management systems (EMSs). The program is based on the use of  
59 EMSs that improve compliance, prevent pollution, and utilize other measures to improve  
60 environmental performance.

61 **9VAC25-193-30. Delegation of authority. (Repealed.)**

62 ~~The director of the Department of Environmental Quality, or his designee, may perform any~~  
63 ~~act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of~~  
64 ~~Virginia.~~



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-194
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities
<b>Action title</b>	Final Exempt CH 194 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-194) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" and removal of delegation of authority language to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-194 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7270 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 194 changes in response to 2022 Board Bill**

4 **9VAC25-194-10. Definitions.**

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

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

11 "Construction equipment" means trenchers, backhoes, boring equipment, bulldozers, loaders,  
12 dump trucks, and any other piece of earth moving equipment.

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

14 "Laundry" means any self-service facility where the washing of clothes is conducted as  
15 designated by SIC 7215. It does not include facilities that engage in dry cleaning.

16 "Maintenance equipment" means street sweepers and catch basin cleaner trucks.

17 "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a  
18 pollutant that a waterbody can receive and still meet water quality standards and an allocation of  
19 that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point  
20 source discharges, and load allocations (LAs) for nonpoint sources or natural background or both,  
21 and must include a margin of safety (MOS) and account for seasonal variations.

22 "Vehicle maintenance" means vehicle and equipment rehabilitation, mechanical repairs,  
23 painting, fueling, and lubrication.

24 "Vehicle wash" means any fixed or mobile facility where the manual, automatic, or self-service  
25 exterior washing of vehicles is conducted and includes the following:

- 26 1. Vehicles that convey passengers or goods on streets or highways as designated by  
27 Standard Industrial Classification (SIC) Code 7542 such as automobiles, trucks, motor  
28 homes, buses, motorcycles, ambulances, fire trucks, and tractor trailers;
- 29 2. Incidental floor cleaning wash waters associated with facilities that wash vehicles where  
30 the floor wash water also passes through the vehicle wash treatment system;
- 31 3. Golf course equipment and lawn maintenance equipment;
- 32 4. Maintenance and construction equipment; and
- 33 5. Recreational boats less than 8.6' beam and 25' in length towed by a vehicle.

34 "Vehicle wash" does not mean engine cleaning or degreasing; the cleaning of floors in vehicle  
35 maintenance areas, cleaning of the interior of tanks or trailers carrying bulk or raw material,  
36 cleaning of equipment used in the paving industry, cleaning of chemical spreading equipment, or  
37 cleaning of tanker trucks, garbage trucks, livestock trailers, trains, boats larger than 8.6' beam  
38 and 25' in length, or aircraft; or the use of acid caustic metal brighteners or steam heated water.

39 **9VAC25-194-30. Delegation of authority. (Repealed.)**

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



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-196
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less
<b>Action title</b>	Final Exempt CH 196 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-196) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" and removal of delegation of authority language to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-196 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.



1 **Project 7271 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 196 changes in response to 2022 Board Bill**

4 **9VAC25-196-10. Definitions.**

5 The words and terms used in this chapter shall have the meanings defined in § 62.1-44.2 et  
6 seq. of the Code of Virginia (State Water Control Law) and 9VAC25-31 (VPDES Permit  
7 Regulation) unless the context clearly indicates otherwise, except that for the purposes of this  
8 chapter:

9 "Blowdown" means a discharge of recirculating water from any cooling equipment or cooling  
10 process in order to maintain a desired quality of the recirculating water. Boiler blowdown is  
11 excluded from this definition.

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

15 "Cooling water" means water used for cooling which does not come into direct contact with  
16 any raw product, intermediate product (other than heat) or finished product. For the purposes of  
17 this general permit, cooling water can be generated from any cooling equipment blowdown or  
18 produced as a result of any noncontact cooling process.

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

20 "Director" means the Director of the Virginia Department of Environmental Quality, or an  
21 authorized representative.

22 "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a  
23 pollutant that a waterbody can receive and still meet water quality standards and an allocation of  
24 that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point  
25 source discharges, and load allocations (LAs) for nonpoint sources or natural background or both,  
26 and must include a margin of safety (MOS) and account for seasonal variations.

27 **9VAC25-196-30. Delegation of authority. (Repealed.)**

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



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-800
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters
<b>Action title</b>	Final Exempt CH 800 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-800) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" and removal of delegation of authority language to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-800 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7277 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 800 changes in response to 2022 Board Bill**

4 **9VAC25-800-10. Definitions.**

5 The words and terms used in this chapter shall have the same meanings as given in the State  
6 Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the VPDES Permit Regulation  
7 (9VAC25-31), unless the context clearly indicates otherwise, except that for the purposes of this  
8 chapter:

9 "Action threshold" means the point at which pest populations or environmental conditions  
10 necessitate that pest control action be taken based on economic, human health, aesthetic, or  
11 other effects. An action threshold may be based on current or past environmental factors that are  
12 or have been demonstrated to be conducive to pest emergence or growth, as well as past or  
13 current pest presence. Action thresholds are those conditions that indicate both the need for  
14 control actions and the proper timing of such actions.

15 "Active ingredient" means any substance (or group of structurally similar substances if  
16 specified by the federal Environmental Protection Agency (EPA) that will prevent, destroy, repel,  
17 or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the  
18 meaning of § 2(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (40 CFR  
19 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and  
20 used in a living plant, or in the produce thereof, and the genetic material necessary for the  
21 production of such a pesticidal substance (40 CFR 174.3).

22 "Adverse incident" means an unusual or unexpected incident that the operator observes upon  
23 inspection or of which otherwise becomes aware, in which there is evidence that:

- 24 1. A person or nontarget organism has likely been exposed to a pesticide residue; and  
25 2. The person or nontarget organism suffered a toxic or adverse effect.

26 The phrase "toxic or adverse effects" includes effects that occur within surface waters on  
27 nontarget plants, fish, or wildlife that are unusual or unexpected (e.g., effects are to organisms  
28 not described on the pesticide product labels or not expected to be present) as a result of  
29 exposure to a pesticide residue and may include:

- 30 1. Distressed or dead juvenile and small fishes;  
31 2. Washed up or floating fish;  
32 3. Fish swimming abnormally or erratically;  
33 4. Fish lying lethargically at water surface or in shallow water;  
34 5. Fish that are listless or nonresponsive to disturbance;  
35 6. Stunting, wilting, or desiccation of nontarget submerged or emergent aquatic plants;  
36 and  
37 7. Other dead or visibly distressed nontarget aquatic or semi-aquatic organisms  
38 (amphibians, turtles, invertebrates, etc.).

39 The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin  
40 rashes) or domesticated animals (e.g., vomiting, lethargy) that occur either from direct contact  
41 with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or  
42 animals containing pesticides) to surface waters that are temporally and spatially related to  
43 exposure to a pesticide residue.

44 "Biological control" means organisms that can be introduced to sites, such as herbivores,  
45 predators, parasites, and hyperparasites.

46 "Biological pesticides" or "biopesticides" includes microbial pesticides, biochemical pesticides,  
47 and plant-incorporated protectants (PIP).

48 1. "Microbial pesticide" means a microbial agent intended for preventing, destroying,  
49 repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or  
50 desiccant, that:

51 a. Is a eukaryotic microorganism, including protozoa, algae, and fungi;

52 b. Is a prokaryotic microorganism, including Eubacteria and Archaeobacteria; or

53 c. Is a parasitically replicating microscopic element, including viruses.

54 2. "Biochemical pesticide" means a pesticide that:

55 a. Is a naturally occurring substance or structurally similar and functionally identical to  
56 a naturally occurring substance;

57 b. Has a history of exposure to humans and the environment demonstrating minimal  
58 toxicity, or in the case of a synthetically derived biochemical pesticide, is equivalent to  
59 a naturally occurring substance that has such a history; and

60 c. Has a nontoxic mode of action to the target pests.

61 3. "Plant-incorporated protectant" means a pesticidal substance that is intended to be  
62 produced and used in a living plant, or in the produce thereof, and the genetic material  
63 necessary for production of such a pesticidal substance. It also includes any inert  
64 ingredient contained in the plant or produce thereof.

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

68 "Chemical pesticides" means all pesticides not otherwise classified as biological pesticides.

69 "Cultural methods" means manipulation of the habitat to increase pest mortality by making the  
70 habitat less suitable to the pest.

71 "Declared pest emergency situation" means an event defined by a public declaration by a  
72 federal agency, state, or local government of a pest problem determined to require control through  
73 application of a pesticide beginning less than 10 days after identification of the need for pest  
74 control. This public declaration may be based on:

75 1. Significant risk to human health;

76 2. Significant economic loss; or

77 3. Significant risk to:

78 a. Endangered species;

79 b. Threatened species;

80 c. Beneficial organisms; or

81 d. The environment.

82 "DEQ" or "department" means the Virginia Department of Environmental Quality.

83 "Discharge of a pollutant" means the addition of any "pollutant" or combination of pollutants  
84 to surface waters from any point source, or the addition of any pollutant or combination of  
85 pollutants to the water of the contiguous zone or the ocean from any point source.

86 "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act (7 USC § 136 et seq.)  
87 as amended.

88 "Impaired water" or "water quality impaired water" or "water quality limited segment" means  
89 any stream segment where the water quality does not or will not meet applicable water quality  
90 standards, even after the application of technology-based effluent limitations required by §§  
91 301(b) and 306 of the Clean Water Act (CWA) (33 USC § 1251 et seq. as of 1987). Impaired  
92 waters include both impaired waters with approved or established TMDLs, and impaired waters  
93 for which a TMDL has not yet been approved or established.

94 "Inert ingredient" means any substance (or group of structurally similar substances if  
95 designated by EPA), other than an active ingredient, that is intentionally included in a pesticide  
96 product. Inert ingredient also means any substance, such as a selectable marker, other than the  
97 active ingredient, where the substance is used to confirm or ensure the presence of the active  
98 ingredient, and includes the genetic material necessary for the production of the substance,  
99 provided that genetic material is intentionally introduced into a living plant in addition to the active  
100 ingredient.

101 "Integrated pest management" or "IPM" means an effective and environmentally sensitive  
102 approach to pest management that relies on a combination of common-sense practices. IPM uses  
103 current, comprehensive information on the life cycles of pests and their interaction with the  
104 environment. This information, in combination with available pest control methods, is used to  
105 manage pest damage by the most economical means, and with the least possible hazard to  
106 people, property, and the environment.

107 "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device,  
108 or the immediate container thereof, and the outside container or wrapper of the retail package, if  
109 any, of the pesticide or device.

110 "Labeling" means all labels and other written, printed, or graphic matter:

- 111 1. Upon the pesticide or device or any of its containers or wrappers;
- 112 2. Accompanying the pesticide or device at any time; or
- 113 3. To which reference is made on the label or in literature accompanying the pesticide or  
114 device, except when accurate, nonmisleading reference is made to current official  
115 publications of the agricultural experiment station, the Virginia Polytechnic Institute and  
116 State University, the Virginia Department of Agriculture and Consumer Services, the State  
117 Board of Health, or similar federal institutions or other official agencies of the  
118 Commonwealth or other states when such states are authorized by law to conduct  
119 research in the field of pesticides.

120 "Mechanical or physical methods" means mechanical tools or physical alterations of the  
121 environment for pest prevention or removal.

122 "Minimize" means to reduce or eliminate pesticide discharges to surface waters through the  
123 use of pest management measures to the extent technologically available and economically  
124 practicable and achievable.

125 "Nontarget organisms" means the plant and animal hosts of the target species, the natural  
126 enemies of the target species living in the community, and other plants and animals, including  
127 vertebrates, living in or near the community that are not the target of the pesticide.

128 "Operator" means any person involved in the application of a pesticide that results in a  
129 discharge to surface waters that meets either or both of the following two criteria:

- 130 1. The person who has control over the financing for or the decision to perform pesticide  
131 applications that result in discharges, including the ability to modify those decisions; or
- 132 2. The person who performs the application of a pesticide or who has day-to-day control  
133 of the application (e.g., they are authorized to direct workers to carry out those activities  
134 that result in discharges to surface waters).

135 "Person" means an individual; a corporation; a partnership; an association; a local, state, or  
136 federal governmental body; a municipal corporation; or any other legal entity.

137 "Pest" means any deleterious organism that is:

- 138 1. Any vertebrate animal other than man;
- 139 2. Any invertebrate animal excluding any internal parasite of living man or other living  
140 animals;
- 141 3. Any plant growing where not wanted, and any plant part such as a root; or
- 142 4. Any bacterium, virus, or other microorganisms, except for those on or in living man or  
143 other living animals and those on or in processed food or processed animal feed,  
144 beverages, drugs (as defined by the federal Food, Drug, and Cosmetic Act at 21 USC §  
145 321(g)(1)), and cosmetics (as defined by the federal Food, Drug, and Cosmetic Act at 21  
146 USC § 321(i)).

147 Any organism classified by state or federal law or regulation as endangered or threatened  
148 shall not be deemed a pest for the purposes of this chapter.

149 "Pest management area" means the area of land, including any water, for which pest  
150 management activities covered by this permit are conducted.

151 "Pest management measure" means any practice used to meet the effluent limitations that  
152 comply with manufacturer specifications, industry standards, and recommended industry  
153 practices related to the application of pesticides, relevant legal requirements, and other provisions  
154 that a prudent operator would implement to reduce or eliminate pesticide discharges to surface  
155 waters.

156 "Pesticide" means:

- 157 1. Any substance or mixture of substances intended for preventing, destroying, repelling,  
158 or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal  
159 life or viruses, except viruses on or in living man or other animals, which the Commissioner  
160 of Agriculture and Consumer Services shall declare to be a pest;
- 161 2. Any substance or mixture of substances intended for use as a plant regulator, defoliant,  
162 or desiccant; and
- 163 3. Any substance which is intended to become an active ingredient thereof.

164 Pesticides that are used or applied shall only be those that are approved and registered for  
165 use by the Virginia Department of Agriculture and Consumer Services.

166 "Pesticide product" means a pesticide in the particular form (including active and inert  
167 ingredients, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or  
168 sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed  
169 or sold with the pesticide.

170 "Pesticide research and development" means activities undertaken on a systematic basis to  
171 gain new knowledge (research) or apply research findings or other scientific knowledge for the  
172 creation of new or significantly improved products or processes (experimental development).

173 "Pesticide residue" means that portion of a pesticide application that has been discharged  
174 from a point source to surface waters and no longer provides pesticidal benefits. It also includes  
175 any degradates of the pesticide.

176 "Point source" means any discernible, confined, and discrete conveyance including any pipe,  
177 ditch, channel, tunnel, conduit, or container from which pollutants are or may be discharged. This  
178 includes biological pesticides or chemical pesticides that leave a residue coming from a container  
179 or nozzle of a pesticide application device. This term does not include return flows from irrigated  
180 agriculture or agricultural stormwater run-off.

181 "Pollutant" means biological pesticides and any pesticide residue resulting from use of a  
182 chemical pesticide.

183 "Surface waters" means:

- 184 1. All waters that are currently used, were used in the past, or may be susceptible to use  
185 in interstate or foreign commerce, including all waters that are subject to the ebb and flow  
186 of the tide;
- 187 2. All interstate waters, including interstate wetlands;
- 188 3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams),  
189 mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or  
190 natural ponds the use, degradation, or destruction of which would affect or could affect  
191 interstate or foreign commerce including any such waters:
  - 192 a. That are or could be used by interstate or foreign travelers for recreational or other  
193 purposes;
  - 194 b. From which fish or shellfish are or could be taken and sold in interstate or foreign  
195 commerce; or
  - 196 c. That are used or could be used for industrial purposes by industries in interstate  
197 commerce;
- 198 4. All impoundments of waters otherwise defined as surface waters under this definition;
- 199 5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
- 200 6. The territorial sea; and
- 201 7. Wetlands adjacent to waters, other than waters that are themselves wetlands, identified  
202 in subdivisions 1 through 6 of this definition.

203 Surface waters do not include wastewater treatment systems, including treatment ponds or  
204 lagoons designed to meet the requirements of the Clean Water Act (CWA) and the law. Surface  
205 waters do not include prior converted cropland. Notwithstanding the determination of an area's  
206 status as prior converted cropland by any other agency, for the purposes of the CWA, the final  
207 authority regarding the CWA jurisdiction remains with the EPA.

208 "Target pest" means the organism toward which pest management measures are being  
209 directed.

210 "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a  
211 pollutant that a waterbody can receive and still meet water quality standards, and an allocation of  
212 that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point  
213 source discharges, and load allocations (LAs) for nonpoint sources or natural background or both,  
214 and must include a margin of safety (MOS) and account for seasonal variations.

215 "Treatment area" means the area of land including any waters, or the linear distance along  
216 water or water's edge, to which pesticides are being applied. Multiple treatment areas may be  
217 located within a single pest management area.

218 Treatment area includes the entire area, whether over land or water, where the pesticide  
219 application is intended to provide pesticidal benefits. In some instances, the treatment area will  
220 be larger than the area where pesticides are actually applied. For example, the treatment area for  
221 a stationary drip treatment into a canal should be calculated by multiplying the width of the canal  
222 by the length over which the pesticide is intended to control weeds. The treatment area for a lake  
223 or marine area is the water surface area where the application is intended to provide pesticidal  
224 benefits.

225 Treatment area calculations for pesticide applications that occur at water's edge, where the  
226 discharge of pesticides directly to waters is unavoidable, are determined by the linear distance  
227 over which pesticides are applied.



228 "VDACS" means the Virginia Department of Agriculture and Consumer Services. VDACS  
229 administers the provisions of Virginia's pesticide statute, Chapter 39 (§ 3.2-3900 et seq.) of Title  
230 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control  
231 Board. VDACS also has delegated authority to enforce the provisions of FIFRA. As such, VDACS  
232 is the primary agency for the regulatory oversight of pesticides in the Commonwealth.

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

237 **9VAC25-800-20. Purpose; ~~delegation of authority~~; effective date of permit.**

238 A. This general permit regulation governs discharges resulting from the application of  
239 pesticides to surface waters.

240 ~~B. The Director of the Department of Environmental Quality, or his designee, may perform~~  
241 ~~any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code~~  
242 ~~of Virginia.~~

243 C.B. This VPDES general permit will become effective on March 1, 2019, and expire on  
244 February 29, 2024.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-820
<b>VAC Chapter title(s)</b>	General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia
<b>Action title</b>	Final Exempt CH 820 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-820) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" and removal of delegation of authority language to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

### Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

### Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-820 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7279 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 820 changes in response to 2022 Board Bill (CH356 of the 2022 Acts of**  
4 **Assembly)**

5 **9VAC25-820-10. Definitions.**

6 Except as defined below, the words and terms used in this chapter shall have the meanings  
7 defined in the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation  
8 (9VAC25-31).

9 "Annual mass load of total nitrogen" (expressed in pounds per year) means the sum of the  
10 total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit  
11 in 9VAC25-820-70 for calculating total monthly load.

12 "Annual mass load of total phosphorus" (expressed in pounds per year) means the sum of the  
13 total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit  
14 in 9VAC25-820-70 for calculating total monthly load.

15 "Association" means the Virginia Nutrient Credit Exchange Association authorized by § 62.1-  
16 44.19:17 of the Code of Virginia.

17 "Attenuation" means the rate at which nutrients are reduced through natural processes during  
18 transport in water.

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

22 "Delivered total nitrogen load" means the discharged mass load of total nitrogen from a point  
23 source that is adjusted by the delivery factor for that point source.

24 "Delivered total phosphorus load" means the discharged mass load of total phosphorus from  
25 a point source that is adjusted by the delivery factor for that point source.

26 "Delivery factor" means an estimate of the number of pounds of total nitrogen or total  
27 phosphorus delivered to tidal waters for every pound discharged from a facility, as determined by  
28 the specific geographic location of the facility, to account for attenuation that occurs during riverine  
29 transport between the facility and tidal waters. Delivery factors shall be calculated using the  
30 Chesapeake Bay Program watershed model. For the purpose of this regulation, delivery factors  
31 with a value greater than 1.00 in the Chesapeake Bay Program watershed model shall be  
32 considered to be equal to 1.00.

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

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

35 "Eastern Shore trading ratio" means the ratio of pounds of point source credits from another  
36 tributary that can be acquired and applied by the owner of a facility in the Eastern Shore Basin for  
37 every pound of point source total nitrogen or total phosphorus discharged from the Eastern Shore  
38 Basin facility. Trading ratios are expressed in the form "credits supplied: credits received."

39 "Equivalent load" means:

40 2,300 pounds per year of total nitrogen or 300 pounds per year of total phosphorus  
41 discharged by an industrial facility are considered equivalent to the load discharged from  
42 sewage treatment works with a design capacity of 0.04 million gallons per day,

43 5,700 pounds per year of total nitrogen or 760 pounds per year of total phosphorus  
44 discharged by an industrial facility are considered equivalent to the load discharged from  
45 sewage treatment works with a design capacity of 0.1 million gallons per day, and  
46 28,500 pounds per year of total nitrogen or 3,800 pounds per year of total phosphorus  
47 discharged by an industrial facility are considered equivalent to the load discharged from  
48 sewage treatment works with a design capacity of 0.5 million gallons per day.

49 "Existing facility" means a facility (i) subject to a current individual VPDES permit from which  
50 a discharge has commenced or for which its owner has received a Certificate to Construct (for  
51 sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) for  
52 the treatment works used to derive its wasteload allocation on or before July 1, 2005, or (ii) for  
53 which the owner has a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C,  
54 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality  
55 Management Planning Regulation. Existing facility shall also mean and include any facility, not  
56 subject to an individual VPDES permit, for which its owner holds a separate wasteload allocation  
57 in 9VAC25-720-120 C of the Water Quality Management Planning Regulation.

58 "Expansion" or "expands" means (i) initiating construction at an existing treatment works after  
59 July 1, 2005, to increase design flow capacity, except that the term does not apply in those cases  
60 where a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for  
61 discharges from industrial facilities) was issued on or before July 1, 2005, or (ii) industrial  
62 production process changes or the use of new treatment products at industrial facilities that  
63 increase the annual mass load of total nitrogen or total phosphorus above the wasteload  
64 allocation.

65 "Facility" means a point source from which a discharge or proposed discharge of total nitrogen  
66 or total phosphorus to the Chesapeake Bay or its tributaries exists. This term does not include  
67 confined animal feeding operations, discharges of storm water, return flows from irrigated  
68 agriculture, or vessels.

69 "General permit" means this general permit authorized by § 62.1-44.19:14 of the Code of  
70 Virginia.

71 "Industrial facility" means any facility (as defined above) other than sewage treatment works.

72 "Local water quality-based limitations" means limitations intended to protect local water quality  
73 including applicable total maximum daily load (TMDL) allocations, applicable Virginia Pollution  
74 Discharge Elimination System (VPDES) permit limits, applicable limitations set forth in water  
75 quality standards established under § 62.1-44.15 (3a) of the Code of Virginia, or other limitations  
76 as established by the State Water Control Board.

77 "New discharge" means any discharge from a facility that did not commence prior to July 1,  
78 2005, except that the term does not apply in those cases where a Certificate to Construct (for  
79 sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) was  
80 issued to the facility on or before July 1, 2005.

81 "Nonsignificant discharger" means (i) a sewage treatment works discharging to the  
82 Chesapeake Bay watershed downstream of the fall line with a design capacity of less than 0.1  
83 million gallons per day, or less than an equivalent load discharged from industrial facilities, or (ii)  
84 a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall  
85 line with a design capacity of less than 0.5 million gallons per day, or less than an equivalent load  
86 discharged from industrial facilities.

87 "Offset" means to acquire an annual wasteload allocation of total nitrogen or total phosphorus  
88 for a new or expanding facility to ensure that there is no net increase of nutrients into the affected  
89 tributary of the Chesapeake Bay.

90 "Permitted design capacity" or "permitted capacity" means the allowable load (pounds per  
91 year) assigned to an existing facility that is a nonsignificant discharger and that does not have a  
92 wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-  
93 720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. The  
94 permitted design capacity is calculated based on the design flow and installed nutrient removal  
95 technology (for sewage treatment works, or equivalent discharge from industrial facilities) at a  
96 facility that has either commenced discharge, or for which an owner has received a Certificate to  
97 Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial  
98 facilities) prior to July 1, 2005. This mass load is used for (i) determining whether the owner of the  
99 expanding facility must offset additional mass loading of nitrogen and phosphorus and (ii)  
100 determining whether the owner of the facility must acquire credits at the end of a calendar year.  
101 For the purpose of this chapter, owners of facilities that have installed secondary wastewater  
102 treatment (intended to achieve BOD and TSS monthly average concentrations equal to or less  
103 than 30 milligrams per liter) are assumed to achieve an annual average total nitrogen effluent  
104 concentration of 18.7 milligrams per liter and an annual average total phosphorus effluent  
105 concentration of 2.5 milligrams per liter. Permitted design capacities for facilities that, before July  
106 1, 2005, were required to comply with more stringent nutrient limits shall be calculated using the  
107 more stringent values.

108 "Permitted facility" means a facility whose owner is authorized by this general permit to  
109 discharge total nitrogen or total phosphorus. For the sole purpose of generating point source  
110 nitrogen credits or point source phosphorus credits, "permitted facility" shall also mean the Blue  
111 Plains wastewater treatment facility operated by the District of Columbia Water and Sewer  
112 Authority.

113 "Permittee" means a person authorized by this general permit to discharge total nitrogen or  
114 total phosphorus.

115 "Point source nitrogen credit" means the difference between (i) the wasteload allocation for a  
116 permitted facility specified as an annual mass load of total nitrogen and (ii) the monitored annual  
117 mass load of total nitrogen discharged from that facility, where clause (ii) is less than clause (i),  
118 and where the difference is adjusted by the applicable delivery factor and expressed as pounds  
119 per year of delivered total nitrogen load.

120 "Point source phosphorus credit" means the difference between (i) the wasteload allocation  
121 for a permitted facility specified as an annual mass load of total phosphorus and (ii) the monitored  
122 annual mass load of total phosphorus discharged from that facility, where clause (ii) is less than  
123 clause (i), and where the difference is adjusted by the applicable delivery factor and expressed  
124 as pounds per year of delivered total phosphorus load.

125 "Quantification level" or "QL" means the minimum levels, concentrations, or quantities of a  
126 target variable (e.g., target analyte) that can be reported with a specified degree of confidence in  
127 accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or  
128 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

129 "Registration list" means a list maintained by the department indicating all facilities that are  
130 registered for coverage under this general permit, by tributary, including their wasteload  
131 allocations, permitted design capacities, and delivery factors as appropriate.

132 "Significant discharger" means the owner of (i) a sewage treatment works discharging to the  
133 Chesapeake Bay watershed upstream of the fall line with a design capacity of 0.5 million gallons  
134 per day or greater, or an equivalent load discharged from industrial facilities; (ii) a sewage  
135 treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with  
136 a design capacity of 0.1 million gallons per day or greater, or an equivalent load discharged from  
137 industrial facilities; (iii) a planned or newly expanding sewage treatment works discharging to the  
138 Chesapeake Bay watershed upstream of the fall line that was expected to be in operation by

139 December 31, 2010, with a permitted design of 0.5 million gallons per day or greater, or an  
140 equivalent load to be discharged from industrial facilities; or (iv) a planned or newly expanding  
141 sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall  
142 line that was expected to be in operation by December 31, 2010, with a design capacity of 0.1  
143 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities.

144 "State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual  
145 average total nitrogen effluent concentration of three milligrams per liter and an annual average  
146 total phosphorus effluent concentration of 0.3 milligrams per liter or (ii) equivalent load reductions  
147 in total nitrogen and total phosphorus through recycle or reuse of wastewater as determined by  
148 the department.

149 "Tributaries" means those river basins listed in the Chesapeake Bay TMDL and includes the  
150 Potomac, Rappahannock, York, and James River Basins and the Eastern Shore Basin, which  
151 encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13  
152 and drain into the Chesapeake Bay.

153 "VPDES" means Virginia Pollutant Discharge Elimination System.

154 "Wasteload allocation" means the most limiting of (i) the water quality-based annual mass  
155 load of total nitrogen or annual mass load of total phosphorus allocated to individual facilities  
156 pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and  
157 9VAC25-720-120 C of the Water Quality Management Planning Regulation or its successor, or  
158 permitted capacity in the case of nonsignificant dischargers; (ii) the water quality-based annual  
159 mass load of total nitrogen or annual mass load of total phosphorus acquired pursuant to § 62.1-  
160 44.19:15 of the Code of Virginia for new or expanded facilities; or (iii) applicable total nitrogen or  
161 total phosphorus wasteload allocations under the Chesapeake Bay total maximum daily loads  
162 (TMDLs) to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its  
163 tidal tributaries.

164 **9VAC25-820-20. Purpose, applicability, ~~delegation of authority.~~**

165 A. This regulation fulfills the statutory requirement for the General VPDES Watershed Permit  
166 for Total Nitrogen and Total Phosphorus discharges and nutrient trading in the Chesapeake Bay  
167 watershed issued by the board pursuant to the Clean Water Act (33 USC § 1251 et seq.) and §  
168 62.1-44.19:14 of the Code of Virginia.

169 B. This general permit regulation governs owners of facilities holding individual VPDES  
170 permits or otherwise meeting the definition of "existing facility" that discharge or propose to  
171 discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries.

172 ~~C. The director may perform any act of the board provided under this regulation, except as~~  
173 ~~limited by § 62.1-44.14 of the Code of Virginia.~~



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-860
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System General Permit for Potable Water Treatment Plants
<b>Action title</b>	Final Exempt CH 860 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-860) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" and removal of delegation of authority language to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.



## Mandate and Impetus

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

---

SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-860 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7278 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 860 changes in response to 2022 Board Bill**

4 **9VAC25-860-10. Definitions.**

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

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

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

12 "Membrane treatment" means a pressure driven process using synthetic materials to separate  
13 constituents from water. Membranes are used for dissolved solids or suspended solids removal.  
14 Membrane treatment for dissolved solids removal includes reverse osmosis and nanofiltration.  
15 Membrane treatment for suspended solids removal includes ultrafiltration and microfiltration.

16 "Microfiltration" means a method of membrane treatment designed to remove particles down  
17 to 0.1 µm in size. The treatment removes cysts, bacteria, and most (but not all) particulates.

18 "Nanofiltration" or "low-pressure reverse osmosis" or "membrane softening" means a method  
19 of membrane treatment designed to remove multivalent ions (softening) and removes  
20 contaminants down to 1 nm (nanometer = 0.001 µm) in size.

21 "Potable water treatment plant" means an establishment engaged in producing water for  
22 domestic, commercial, or industrial use as designated by North American Industry Classification  
23 System (NAICS) Code 221310 - Water Supply and Irrigation Systems, (Executive Office of the  
24 President, Office of Management and Budget, United States, 2017), Standard Industrial Classified  
25 (SIC) Code 4941 - Water Supply (Office of Management and Budget (OMB) SIC Manual, 1987),  
26 or others as approved by the board.

27 "Reverse osmosis" means a method of membrane treatment designed to remove salts and  
28 low-molecular weight solutes and remove all contaminants down to 0.0001 µm (microns) in size.  
29 Reverse osmosis methods apply pressure in excess of osmotic pressure to force water through  
30 a semi-permeable membrane from a region of high salt concentration to a region of lower salt  
31 concentration.

32 "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a  
33 pollutant that a waterbody can receive and still meet water quality standards and an allocation of  
34 that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point  
35 source discharges, and load allocations (LAs) for nonpoint sources or natural background or both,  
36 and must include a margin of safety (MOS) and account for seasonal variations.

37 "Ultrafiltration" means a method of membrane treatment designed to remove particles down  
38 to 0.01 µm in size. The treatment removes cysts, bacteria, and viruses as well as suspended  
39 solids.

40 **~~9VAC25-860-30. Delegation of authority. (Repealed.)~~**

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



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-880
<b>VAC Chapter title(s)</b>	General VPDES Permit for Discharges of Stormwater from Construction Activities
<b>Action title</b>	Final Exempt CH 880 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-880) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" and the repeal of the delegation of authority provisions to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-880 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7280 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 880 changes in response to 2022 Board Bill**

4 **9VAC25-880-1. Definitions.**

5 The words and terms used in this chapter shall have the meanings defined in the Virginia  
6 Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of  
7 the Code of Virginia), this chapter, and 9VAC25-870 unless the context clearly indicates  
8 otherwise, except as otherwise specified in this section. Terms not defined in the Act, this chapter,  
9 or 9VAC25-870 shall have the meaning attributed to them in the federal Clean Water Act (33 USC  
10 § 1251 et seq.) (CWA). For the purposes of this chapter:

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

14 "Business day" means Monday through Friday excluding state holidays.

15 "Commencement of land disturbance" means the initial disturbance of soils associated with  
16 clearing, grading, or excavating activities or other construction activities (e.g., stockpiling of fill  
17 material).

18 "Construction site" means the land where any land-disturbing activity is physically located or  
19 conducted, including any adjacent land used or preserved in connection with the land-disturbing  
20 activity.

21 "Department" means the Department of Environmental Quality.

22 "Final stabilization" means that one of the following situations has occurred:

23 1. All soil disturbing activities at the site have been completed and a permanent vegetative  
24 cover has been established on denuded areas not otherwise permanently stabilized.  
25 Permanent vegetation shall not be considered established until a ground cover is achieved  
26 that is uniform (e.g., evenly distributed), mature enough to survive, and will inhibit erosion.

27 2. For individual lots in residential construction, final stabilization can occur by either:

28 a. The homebuilder completing final stabilization as specified in subdivision 1 of this  
29 definition; or

30 b. The homebuilder establishing temporary soil stabilization, including perimeter  
31 controls for an individual lot prior to occupation of the home by the homeowner, and  
32 providing written notification to the homeowner of the need for, and benefits of, final  
33 stabilization. The homebuilder shall maintain a copy of the written notification and a  
34 signed statement certifying that the information was provided to the homeowner in  
35 accordance with the stormwater pollution prevention plan recordkeeping requirements  
36 as specified in Part II G 6.

37 3. For construction projects on land used for agricultural purposes, final stabilization may  
38 be accomplished by returning the disturbed land to its preconstruction agricultural use.  
39 Areas disturbed that were not previously used for agricultural activities, such as buffer  
40 strips immediately adjacent to surface waters, and areas that are not being returned to  
41 their preconstruction agricultural use shall meet the final stabilization criteria specified in  
42 subdivision 1 or 2 of this definition.

43 "Immediately" means as soon as practicable, but no later than the end of the next business  
44 day, following the day when the land-disturbing activities have temporarily or permanently ceased.

45 In the context of this general permit, "immediately" is used to define the deadline for initiating  
46 stabilization measures.

47 "Impaired waters" means surface waters identified as impaired on the 2016 § 305(b)/303(d)  
48 Water Quality Assessment Integrated Report.

49 "Infeasible" means not technologically possible or not economically practicable and  
50 achievable in light of best industry practices.

51 "Initiation of stabilization activities" means:

- 52 1. Prepping the soil for vegetative or nonvegetative stabilization;
- 53 2. Applying mulch or other nonvegetative product to the exposed area;
- 54 3. Seeding or planting the exposed area;
- 55 4. Starting any of the above activities on a portion of the area to be stabilized, but not on  
56 the entire area; or
- 57 5. Finalizing arrangements to have the stabilization product fully installed in compliance  
58 with the applicable deadline for completing stabilization.

59 This list is not exhaustive.

60 "Measurable storm event" means a rainfall event producing 0.25 inches of rain or greater over  
61 24 hours.

62 "Stabilized" means land that has been treated to withstand normal exposure to natural forces  
63 without incurring erosion damage.

64 **9VAC25-880-100. Delegation of authority. (Repealed.)**

65 ~~The director, or his designee, may perform any act of the board provided under this chapter,~~  
66 ~~except as limited by § 62.1-44.14 of the Code of Virginia.~~



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-890
<b>VAC Chapter title(s)</b>	General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems
<b>Action title</b>	Final Exempt CH 890 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-890) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate; adding definitions of “Board” and “Department”; and the repeal of the delegation of authority provisions.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

### **Mandate and Impetus**

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

### **Statement of Final Agency Action**

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-890 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.



1 **Project 7281 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 890 changes in response to 2022 Board Bill**

4 **9VAC25-890-1. Definitions.**

5 The words and terms used in this chapter shall have the meanings defined in the Virginia  
6 Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of  
7 the Code of Virginia) and 9VAC25-870 unless the context clearly indicates otherwise, except that  
8 for the purposes of this chapter:

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

12 "Date brought online" means the date when the permittee determines that a new stormwater  
13 management facility is properly functioning.

14 "Department" means the Department of Environmental Quality.

15 "High-priority facilities" means facilities owned or operated by the permittee that actively  
16 engage in one or more of the following activities: (i) composting, (ii) equipment storage and  
17 maintenance, (iii) materials storage, (iv) pesticide storage, (v) storage for public works, (vi)  
18 recycling, (vii) salt storage, (viii) solid waste handling and transfer, and (ix) vehicle storage and  
19 maintenance.

20 "MS4 regulated service area" or "service area" means for Phase II permittees, the drainage  
21 area served by the permittee's MS4 that is located within an urbanized area as determined by the  
22 2010 decennial census performed by the Bureau of the Census. MS4 regulated service area may  
23 also be referred to as "served by the MS4" as it pertains to the tables in Part II A of this permit.

24 "Physically interconnected" means that one MS4 is connected to a second MS4 in such a  
25 manner that it allows for direct discharges to the second system.

26 "Pollutants of concern" or "POC" means pollutants specifically identified in a U.S.  
27 Environmental Protection Agency approved total maximum daily load (TMDL) report as causing  
28 a water quality impairment.

29 **9VAC25-890-10. Purpose; ~~delegation of authority~~; effective date of the state permit.**

30 A. This general permit regulation governs point source stormwater discharges from regulated  
31 small municipal separate storm sewer systems (small MS4s) to surface waters of the  
32 Commonwealth of Virginia. Nonmunicipal stormwater or wastewater discharges are not  
33 authorized by this permit except in accordance with 9VAC25-890-20 D.

34 B. This general permit will become effective on November 1, 2018 and will expire October 31,  
35 2023.

36 ~~C. The Director of the Department of Environmental Quality, or his designee, may perform~~  
37 ~~any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code~~  
38 ~~of Virginia.~~



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-32
<b>VAC Chapter title(s)</b>	Virginia Pollution Abatement (VPA) Permit Regulation
<b>Action title</b>	Final Exempt CH 32 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-32) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits and provide procedures for public comment on pending controversial permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”, the addition of language establishing “permit rationale”; the addition of language establishing “criteria for requesting and granting a public hearing in a permit action”; the addition of language related to “controversial permits” and “controversial permits reporting”; the repeal of the delegation of authority provisions, and the correction of Code references where necessary to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

### Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

### Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-32 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**1 Project 7261 - Exempt Final**

**2 State Water Control Board**

**3 Final exempt CH 32 changes in response to 2022 Board Bill**

**4 9VAC25-32-10. Definitions.**

5 A. The following words and terms, when used in this chapter and in VPA permits issued under  
6 this chapter, shall have the meanings defined in the State Water Control Law, unless the context  
7 clearly indicates otherwise and as follows:

8 "Active sewage sludge unit" means a sewage sludge unit that has not closed.

9 "Aerobic digestion" means the biochemical decomposition of organic matter in sewage sludge  
10 into carbon dioxide and water by microorganisms in the presence of air.

11 "Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. This  
12 includes range land and land used as pasture.

13 "Agricultural storm water discharge" means a precipitation-related discharge of manure, litter,  
14 or process wastewater that has been applied on land areas under the control of an animal feeding  
15 operation or under the control of an animal waste end-user in accordance with a nutrient  
16 management plan approved by the Virginia Department of Conservation and Recreation and in  
17 accordance with site specific nutrient management practices that ensure appropriate agricultural  
18 utilization of the nutrients in the manure, litter, or process wastewater.

19 "Agronomic rate" means, in regard to biosolids, the whole sludge application rate (dry weight  
20 basis) designed: (i) to provide the amount of nitrogen needed by the food crop, feed crop, fiber  
21 crop, cover crop, or vegetation grown on the land and (ii) to minimize the amount of nitrogen in  
22 the biosolids that passes below the root zone of the crop or vegetation grown on the land to the  
23 groundwater.

24 "Anaerobic digestion" means the biochemical decomposition of organic matter in sewage  
25 sludge or biosolids into methane gas and carbon dioxide by microorganisms in the absence of  
26 air.

27 "Animal feeding operation" means a lot or facility where the following conditions are met:

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

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

35 "Animal waste" means liquid, semisolid, and solid animal manure and process wastewater,  
36 compost, or sludges associated with animal feeding operations including the final treated wastes  
37 generated by a digester or other manure treatment technologies.

38 "Animal waste end-user" means any recipient of transferred animal waste who stores or who  
39 utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an  
40 operation under his control.

41 "Animal waste fact sheet" means the document that details the requirements regarding  
42 utilization, storage, and management of animal waste by end-users. The fact sheet is approved  
43 by the department.

44 "Annual pollutant loading rate" or "APLR" means the maximum amount of a pollutant that can  
45 be applied to a unit area of land during a 365-day period.

46 "Annual whole sludge application rate" or "AWSAR" means the maximum amount of biosolids  
47 (dry weight basis) that can be applied to a unit area of land during a 365-day period.

48 "Apply biosolids" or "biosolids applied to the land" means land application of biosolids.

49 "Beneficial use" means a use that is of benefit as a substitute for natural or commercial  
50 products and does not contribute to adverse effects on health or the environment.

51 "Best Management Practices (BMP)" means a schedule of activities, prohibition of practices,  
52 maintenance procedures and other management practices to prevent or reduce the pollution of  
53 state waters. BMPs include treatment requirements, operating and maintenance procedures,  
54 schedule of activities, prohibition of activities, and other management practices to control plant  
55 site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

56 "Biosolids" means a sewage sludge that has received an established treatment and is  
57 managed in a manner to meet the required pathogen control and vector attraction reduction, and  
58 contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part  
59 503 and 9VAC25-32-356, such that it meets the standards established for use of biosolids for  
60 land application, marketing, or distribution in accordance with this regulation. Liquid biosolids  
61 contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry  
62 residue by weight.

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

66 "Bulk biosolids" means biosolids that are not sold or given away in a bag or other container  
67 for application to the land.

68 "Bypass" means intentional diversion of waste streams from any portion of a treatment works.

69 "Confined animal feeding operation," for the purposes of this regulation, has the same  
70 meaning as an "animal feeding operation."

71 "Confined poultry feeding operation" means any confined animal feeding operation with 200  
72 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys regardless of  
73 animal age or sex.

74 "Controversial permit" means a water permitting action for which a public hearing has been  
75 granted pursuant to 9VAC25-32-170 and 9VAC25-32-175.

76 "Critical areas" and "critical waters" mean areas and waters in proximity to shellfish waters, a  
77 public water supply, or recreation or other waters where health or water quality concerns are  
78 identified by the Department of Health.

79 "Cumulative pollutant loading rate" means the maximum amount of an inorganic pollutant that  
80 can be applied to an area of land.

81 "Density of microorganisms" means the number of microorganisms per unit mass of total  
82 solids (dry weight) in the sewage sludge.

83 "Department" means the Department of Environmental Quality.

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

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

87 "Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to  
88 state waters or waters of the contiguous zone or ocean other than discharge from a vessel or  
89 other floating craft when being used as a means of transportation.

90 "Domestic septage" means either liquid or solid material removed from a septic tank,  
91 cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives  
92 only domestic sewage. Domestic septage does not include liquid or solid material removed from  
93 a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or  
94 industrial wastewater and does not include grease removed from a grease trap at a restaurant.

95 "Domestic sewage" means waste and wastewater from humans or household operations that  
96 is discharged to or otherwise enters a treatment works.

97 "Draft VPA permit" means a document indicating the ~~board's~~ department's tentative decision  
98 to issue, deny, modify, revoke and reissue, terminate or reissue a VPA permit. A notice of intent  
99 to terminate a VPA permit and a notice of intent to deny a VPA permit are types of draft VPA  
100 permits. A denial of a request for modification, revocation and reissuance or termination is not a  
101 draft VPA permit.

102 "Dry tons" means dry weight established as representative of land applied biosolids or  
103 industrial residuals and expressed in units of English tons.

104 "Dry weight" means the measured weight of a sample of sewage sludge, biosolids, or  
105 industrial residuals after all moisture has been removed in accordance with the standard methods  
106 of testing and often represented as percent solids.

107 "Dry weight basis" means calculated on the basis of having been dried at 105°C until reaching  
108 a constant mass (i.e., essentially 100% solids content).

109 "Exceptional quality biosolids" means biosolids that have received an established level of  
110 treatment for pathogen control and vector attraction reduction and contain known levels of  
111 pollutants, such that they may be marketed or distributed for public use in accordance with this  
112 regulation.

113 "Facilities" means, in regard to biosolids, processes, equipment, storage devices and  
114 dedicated sites, located or operated separately from a treatment works, utilized for sewage sludge  
115 management including, but not limited to, handling, treatment, transport, and storage of biosolids.

116 "Fact sheet" means the document that details the requirements regarding utilization, storage,  
117 and management of poultry waste by poultry waste end-users and poultry waste brokers. The fact  
118 sheet is approved by the department in consultation with the Department of Conservation and  
119 Recreation.

120 "Feed crops" means crops produced primarily for consumption by animals.

121 "Fiber crops" means crops produced primarily for the manufacture of textiles, such as flax and  
122 cotton.

123 "Field" means an area of land within a site where land application is proposed or permitted.

124 "Food crops" means crops produced primarily for consumption by humans. These include,  
125 but are not limited to, fruits, vegetables, and tobacco.

126 "Forest" means a tract of land thick with trees and underbrush.

127 "General VPA permit" means a VPA permit issued ~~by the~~ as a regulation adopted by the board  
128 authorizing a category of pollutant management activities.

129 "Generator" means the owner of a sewage treatment works that produces sewage sludge and  
130 biosolids.

131 "Groundwater" means water below the land surface in the saturated zone.

132 "Industrial residuals" means solid or semisolid industrial waste including solids, residues, and  
133 precipitates separated or created by the unit processes of a device or system used to treat  
134 industrial wastes.

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

137 "Land application" means, in regard to sewage, biosolids, and industrial residuals, the  
138 distribution of treated wastewater, referred to as "effluent," stabilized sewage sludge, referred to  
139 as "biosolids," or industrial residuals by spreading or spraying on the surface of the land, injecting  
140 below the surface of the land, or incorporating into the soil with a uniform application rate for the  
141 purpose of fertilizing crops or vegetation or conditioning the soil. Sites approved for land  
142 application of biosolids in accordance with this regulation are not to be considered to be treatment  
143 works. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in  
144 landfills, is not land application. For the purpose of this regulation, the use of biosolids in  
145 agricultural research and the distribution and marketing of exceptional quality biosolids are not  
146 land application.

147 "Land application area" means, in regard to biosolids, the area in the permitted field, excluding  
148 the setback areas, where biosolids may be applied.

149 "Land applier" means someone who land applies biosolids or industrial residuals pursuant to  
150 a valid permit from the department as set forth in this regulation.

151 "Land with a high potential for public exposure" means land that the public uses frequently.  
152 This includes, but is not limited to, a public contact site and a reclamation site located in a  
153 populated area (e.g., a construction site located in a city).

154 "Land with a low potential for public exposure" means land that the public uses infrequently.  
155 This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an  
156 unpopulated area (e.g., a strip mine located in a rural area).

157 "Limitation" means any restriction imposed on quantities, rates or concentration of pollutants  
158 which are managed by pollutant management activities.

159 "Liner" means soil or synthetic material that has a hydraulic conductivity of  $1 \times 10^{-7}$   
160 centimeters per second or less.

161 "Local monitor" means a person or persons employed by a local government to perform the  
162 duties of monitoring the operations of land appliers pursuant to a local ordinance.

163 "Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance  
164 with § 62.1-44.16 or 62.1-44.19:3 of the Code of Virginia.

165 "Malodor" means an unusually strong or offensive odor associated with biosolids or sewage  
166 sludge as distinguished from odors commonly associated with biosolids or sewage sludge.

167 "Monitoring report" means forms supplied by the department for use in reporting of self-  
168 monitoring results of the permittee.

169 "Monthly average" means the arithmetic mean of all measurements taken during the month.

170 "Municipality" means a city, county, town, district association, or other public body (including  
171 an intermunicipal agency of two or more of the foregoing entities) created by or under state law;  
172 an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge  
173 or biosolids management; or a designated and approved management agency under § 208 of the  
174 federal Clean Water Act, as amended. The definition includes a special district created under  
175 state law, such as a water district, sewer district, sanitary district, utility district, drainage district,  
176 or similar entity; or an integrated waste management facility as defined in § 201(e) of the federal  
177 Clean Water Act, as amended, that has as one of its principal responsibilities the treatment,  
178 transport, use, or disposal of sewage sludge or biosolids.

179 "Nonpoint source" means a source of pollution, such as a farm or forest land runoff, urban  
180 storm water runoff or mine runoff that is not collected or discharged as a point source.

181 "Odor sensitive receptor" means, in the context of land application of biosolids, any health  
182 care facility, such as hospitals, convalescent homes, etc. or a building or outdoor facility regularly  
183 used to host or serve large groups of people such as schools, dormitories, or athletic and other  
184 recreational facilities.

185 "Operate" means the act of any person who may have an impact on either the finished water  
186 quality at a waterworks or the final effluent at a sewage treatment works, such as to (i) place into  
187 or take out of service a unit process or unit processes, (ii) make or cause adjustments in the  
188 operation of a unit process or unit processes at a treatment works, or (iii) manage sewage sludge  
189 or biosolids.

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

196 "Other container" means either an open or closed receptacle. This includes, but is not limited  
197 to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

198 "Overflow" means the unintentional discharge of wastes from any portion of a treatment works.

199 "Owner" means the Commonwealth or any of its political subdivisions including sanitary  
200 districts, sanitation district commissions and authorities; federal agencies; any individual; any  
201 group of individuals acting individually or as a group; or any public or private institution,  
202 corporation, company, partnership, firm, or association that owns or proposes to own a sewerage  
203 system or treatment works as defined in § 62.1-44.3 of the Code of Virginia.

204 "Pasture" means land on which animals feed directly on feed crops such as legumes, grasses,  
205 grain stubble, or stover.

206 "Pathogenic organisms" means disease-causing organisms. These include, but are not limited  
207 to, certain bacteria, protozoa, viruses, and viable helminth ova.

208 "Permittee" means an owner or operator who has a currently effective VPA permit issued by  
209 ~~the board or the department~~ or a general permit issued as a regulation adopted by the board.

210 "Person who prepares biosolids" means either the person that generates biosolids during the  
211 treatment of domestic sewage in a treatment works or the person that derives the material from  
212 sewage sludge.

213 "pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at  
214 25°C or measured at another temperature and then converted to an equivalent value at 25°C.

215 "Place sewage sludge" or "sewage sludge placed" means disposal of sewage sludge on a  
216 surface disposal site.

217 "Point source" means any discernible, defined and discrete conveyance, including but not  
218 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,  
219 vessel or other floating craft, from which pollutants are or may be discharged. This term does not  
220 include return flows from irrigated agricultural land.

221 "Pollutant" means, in regard to wastewater, any substance, radioactive material, or heat which  
222 causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage  
223 from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production  
224 of oil or gas, or water derived in association with oil or gas production and disposed of in a well,  
225 if the well is used either to facilitate production or for disposal purposes if approved by the  
226 Department of Energy unless the ~~board~~ department determines that such injection or disposal will  
227 result in the degradation of ground or surface water resources.



228 "Pollutant" means, in regard to sewage sludge or biosolids, an organic substance, an  
229 inorganic substance, a combination of organic and inorganic substances, or a pathogenic  
230 organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an  
231 organism either directly from the environment or indirectly by ingestion through the food chain,  
232 could, on the basis of information available to the ~~board~~ department, cause death, disease,  
233 behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including  
234 malfunction in reproduction), or physical deformations in either organisms or offspring of the  
235 organisms.

236 "Pollutant limit" means a numerical value that describes the amount of a pollutant allowed per  
237 unit amount of biosolids (e.g., milligrams per kilogram of total solids), the amount of a pollutant  
238 that can be applied to a unit area of land (e.g., kilograms per hectare), or the volume of a material  
239 that can be applied to a unit area of land (e.g., gallons per acre).

240 "Pollutant management activity" means a treatment works with a potential or actual discharge  
241 to state waters, but which does not have a point source discharge to surface waters.

242 "Pollution" means such alteration of the physical, chemical, or biological properties of any  
243 state waters or soil as will, or is likely to, create a nuisance or render such waters or soil: (i)  
244 harmful or detrimental or injurious to the public health, safety, or welfare or to the health of  
245 animals, fish, or aquatic life; (ii) unsuitable despite reasonable treatment for use as present or  
246 possible future sources of public water supply; or (iii) unsuitable for recreational, commercial,  
247 industrial, agricultural, or other reasonable uses. Such alteration is also deemed to be pollution,  
248 if there occurs: (a) an alteration of the physical, chemical, or biological property of state waters or  
249 soil, or a discharge or a deposit of sewage, industrial wastes, or other wastes to state waters or  
250 soil by any owner which by itself is not sufficient to cause pollution, but which, in combination with  
251 such alteration of, or discharge, or deposit, to state waters or soil by other owners, is sufficient to  
252 cause pollution; (b) the discharge of untreated sewage by any owner into state waters or soil; or  
253 (c) the contravention of standards of air or water quality duly established by the board.

254 "Poultry grower" or "grower" means any person who owns or operates a confined poultry  
255 feeding operation.

256 "Poultry waste" means dry poultry litter and composted dead poultry.

257 "Poultry waste broker" or "broker" means a person who possesses or controls poultry waste  
258 that is not generated on an animal feeding operation under his operational control and transfers  
259 or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined  
260 as a hauler for the purposes of this regulation.

261 "Poultry waste end-user" means any recipient of transferred poultry waste who stores or  
262 utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an  
263 operation under his control.

264 "Poultry waste hauler" or "hauler" means a person who provides transportation of transferred  
265 poultry waste from one entity to another and is not otherwise involved in the transfer or transaction  
266 of the waste nor responsible for determining the recipient of the waste. The responsibility of the  
267 recordkeeping and reporting remains with the entities to which the service was provided: grower,  
268 broker, and end-user.

269 "Primary sludge" means sewage sludge removed from primary settling tanks that is readily  
270 thickened by gravity thickeners.

271 "Privately owned treatment works (PVOTW)" means any sewage treatment works not publicly  
272 owned.

273 "Process" means a system, or an arrangement of equipment or other devices that remove  
274 from waste materials pollutants including, but not limited to, a treatment works or portions thereof.

275 "Public contact site" means land with a high potential for contact by the public. This includes,  
276 but is not limited to, public parks, ball fields, cemeteries, and golf courses.

277 "Publicly owned treatment works (POTW)" means any sewage treatment works that is owned  
278 by a state or municipality. Sewers, pipes, or other conveyances are included in this definition only  
279 if they convey wastewater to a POTW providing treatment.

280 "Public hearing" means a fact-finding proceeding held to afford interested persons an  
281 opportunity to submit factual data, views, and arguments to the ~~board~~ department.

282 "Reclamation site" means drastically disturbed land that is reclaimed using biosolids. This  
283 includes, but is not limited to, strip mines and construction sites.

284 "Run-off" means rainwater, leachate, or other liquid that drains overland on any part of a land  
285 surface and runs off of the land surface.

286 "Schedule of compliance" means a schedule of remedial measures including an enforceable  
287 sequence of actions or operations leading to compliance with the federal Clean Water Act (33  
288 USC 1251 et seq.), the law, and board regulations, standards and policies.

289 "Setback area" means the area of land between the boundary of the land application area and  
290 adjacent features where biosolids or other managed pollutants may not be land applied.

291 "Sewage" means the water-carried and non-water-carried human excrement, kitchen,  
292 laundry, shower, bath, or lavatory wastes, separately or together with such underground, surface,  
293 storm, and other water and liquid industrial wastes as may be present from residences, buildings,  
294 vehicles, industrial establishments, or other places.

295 "Sewage sludge" means any solid, semisolid, or liquid residue generated during the treatment  
296 of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic  
297 septage; scum or solids removed in primary, secondary, or advanced wastewater treatment  
298 processes; and a material derived from sewage sludge. Sewage sludge does not include ash  
299 generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings  
300 generated during preliminary treatment of domestic sewage in a treatment works.

301 "Sewage sludge unit" means land on which only sewage sludge is placed for final disposal.  
302 This does not include land on which sewage sludge is either stored or treated. Land does not  
303 include surface waters.

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

306 "Site" means the area of land within a defined boundary where an activity is proposed or  
307 permitted.

308 "Sludge" means solids, residues, and precipitates separated from or created by the unit  
309 processes of a treatment works.

310 "Sludge management" means the treatment, handling, transportation, storage, use,  
311 distribution, or disposal of sewage sludge.

312 "Specific oxygen uptake rate" or "SOUR" means the mass of oxygen consumed per unit time  
313 per mass of total solids (dry weight basis) in the sewage sludge.

314 "State waters" means all water on the surface or under the ground wholly or partially within or  
315 bordering the state or within its jurisdiction.

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

318 "Store sewage sludge" or "storage of sewage sludge" means the placement of sewage sludge  
319 on land on which the sewage sludge remains for two years or less. This does not include the  
320 placement of sewage sludge on land for treatment.

321 "Substantial compliance" means designs and practices that do not exactly conform to the  
322 standards set forth in this chapter as contained in documents submitted pursuant to 9VAC25-32-  
323 60, but whose construction or implementation will not substantially affect health considerations or  
324 performance.

325 "Supernatant" means a liquid obtained from separation of suspended matter during sludge  
326 treatment or storage.

327 "Surface disposal site" means an area of land that contains one or more active sewage sludge  
328 units.

329 "Surface water" means:

330 1. All waters which are currently used, were used in the past, or may be susceptible to use  
331 in interstate or foreign commerce, including all waters which are subject to the ebb and  
332 flow of the tide;

333 2. All interstate waters, including interstate "wetlands";

334 3. All other waters such as inter/intrastate lakes, rivers, streams (including intermittent  
335 streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa  
336 lakes, or natural ponds the use, degradation, or destruction of which would affect or could  
337 affect interstate or foreign commerce including any such waters:

338 a. Which are or could be used by interstate or foreign travelers for recreational or other  
339 purposes;

340 b. From which fish or shellfish are or could be taken and sold in interstate or foreign  
341 commerce; or

342 c. Which are used or could be used for industrial purposes by industries in interstate  
343 commerce;

344 4. All impoundments of waters otherwise defined as surface waters of the United States  
345 under this definition;

346 5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

347 6. The territorial sea; and

348 7. "Wetlands" adjacent to waters, other than waters that are themselves wetlands,  
349 identified in subdivisions 1 through 6 of this definition.

350 "Total solids" means the materials in sewage sludge that remain as residue when the sewage  
351 sludge is dried to 103°C to 105°C.

352 "Toxic pollutant" means any pollutant listed as toxic under § 307 (a)(1) of the CWA or, in the  
353 case of "sludge use or disposal practices," any pollutant identified in regulations implementing §  
354 405 (d) of the CWA.

355 "Toxicity" means the inherent potential or capacity of a material to cause adverse effects in a  
356 living organism, including acute or chronic effects to aquatic life, detrimental effects on human  
357 health, or other adverse environmental effects.

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

360 "Treat sewage sludge" or "treatment of sewage sludge" means the preparation of sewage  
361 sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and  
362 dewatering of sewage sludge. This does not include storage of sewage sludge.

363 "Treatment works" means either a federally owned, publicly owned, or privately owned device  
364 or system used to treat (including recycle and reclaim) either domestic sewage or a combination  
365 of domestic sewage and industrial waste of a liquid nature. Treatment works may include but are  
366 not limited to pumping, power, and other equipment and their appurtenances; septic tanks; and

367 any works, including land, that are or will be (i) an integral part of the treatment process or (ii)  
368 used for ultimate disposal of residues or effluents resulting from such treatment. "Treatment  
369 works" does not include biosolids use on privately owned agricultural land.

370 "Twenty-five-year, 24-hour storm event" means the maximum 24-hour precipitation event with  
371 a probable recurrence interval of once in 25 years as established by the National Weather Service  
372 or appropriate regional or state rainfall probability information.

373 "Unstabilized solids" means organic materials in sewage sludge that have not been treated in  
374 either an aerobic or anaerobic treatment process.

375 "Upset" means an exceptional incident in which there is unintentional and temporary  
376 noncompliance with technology-based permit limitations because of factors beyond the  
377 permittee's reasonable control. An upset does not include noncompliance caused by operational  
378 error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive  
379 maintenance, or careless or improper operation.

380 "Use" means to manage or recycle a processed waste product in a manner so as to derive a  
381 measurable benefit as a result of such management.

382 "Variance" means a conditional approval based on a waiver of specific regulations to a specific  
383 owner relative to a specific situation under documented conditions for a specified period of time.

384 "Vector attraction" means the characteristic of biosolids or sewage sludge that attracts  
385 rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

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

390 "Virginia Pollution Abatement (VPA) permit" means a document issued by the ~~board~~  
391 department, pursuant to this chapter, authorizing pollutant management activities under  
392 prescribed conditions or a general permit issued as a regulation adopted by the board in  
393 accordance with 9VAC25-32-260.

394 "Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued  
395 by the ~~board~~ department pursuant to 9VAC25-31, authorizing, under prescribed conditions, the  
396 potential or actual discharge of pollutants from a point source to surface waters or a general permit  
397 issued as a regulation adopted by the board in accordance with 9VAC25-31-171.

398 "Volatile solids" means the amount of the total solids in sewage sludge lost when the sewage  
399 sludge is combusted at 550°C in the presence of excess air.

400 "VPA application" means the standard form or forms approved by the ~~board~~ department for  
401 applying for a VPA permit.

402 "Waste storage facility" means a (i) waste holding pond or tank used to store manure prior to  
403 land application, (ii) lagoon or treatment facility used to digest or reduce the solids or nutrients, or  
404 (iii) structure used to store manure or waste.

405 "300 animal units" means 300,000 pounds of live animal weight or the following numbers and  
406 types of animals:

- 407 a. 300 slaughter and feeder cattle;
- 408 b. 200 mature dairy cattle (whether milked or dry cows);
- 409 c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- 410 d. 150 horses;
- 411 e. 3,000 sheep or lambs;
- 412 f. 16,500 turkeys;

413 g. 30,000 laying hens or broilers.

414 "Water quality standards" means the narrative statements for general requirements and  
415 numeric limits for specific requirements that describe the water quality necessary to meet and  
416 maintain reasonable and beneficial uses. Such standards are established by the board under §  
417 62.1-44.15 (3a) of the Code of Virginia.

418 B. Generally used technical terms not defined in subsection A of this section or the  
419 department's latest definitions of technical terms as used to implement § 62.1-44.15 of the Code  
420 of Virginia shall be defined in accordance with "Glossary-Water and Wastewater Control  
421 Engineering" published by the American Public Health Association (APHA), American Society of  
422 Civil Engineers (ASCE), American Water Works Association (AWWA), and the Water  
423 Environment Federation (WEF).

424 **9VAC25-32-15. Permit Rationale.**

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

432 **9VAC25-32-20. Purpose.**

433 This regulation delineates the procedures and requirements to be followed in connection with  
434 VPA permits issued by the ~~board~~ department or a general permit issued as a regulation adopted  
435 by the board pursuant to the State Water Control Law.

436 **9VAC25-32-30. Requirements and prohibitions.**

437 A. All pollutant management activities covered under a VPA permit shall maintain no point  
438 source discharge of pollutants to surface waters except in the case of a storm event greater than  
439 the 25-year, 24-hour storm.

440 B. Except in compliance with a VPA permit, or another permit issued by the ~~board~~ department  
441 or a general permit issued as a regulation adopted by the board, it shall be unlawful for any person  
442 to:

443 1. Discharge into, or adjacent to, state waters sewage, industrial wastes, other wastes, or  
444 any noxious or deleterious substances; or

445 2. Otherwise alter the physical, chemical or biological properties of such state waters and  
446 make them detrimental to the public health, or to animal or aquatic life, or to the use of  
447 such waters for domestic or industrial consumption, or for recreation, or for other uses.

448 C. Any person required to obtain a permit pursuant to this chapter who discharges or causes  
449 or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious  
450 substance into or upon state waters in violation of subsection B of this section; or who discharges  
451 or causes or allows a discharge that may reasonably be expected to enter state waters in violation  
452 of subsection B of this section shall notify the department of the discharge immediately upon  
453 discovery of the discharge and, in any event, no later than 24 hours after the discovery. A written  
454 report of the unauthorized discharge shall be submitted by the owner, to the department, within  
455 five days of discovery of the discharge.

456 1. The written report shall contain:

457 a. A description of the nature of the discharge;

458 b. The cause of the discharge;

459 c. The date on which the discharge occurred;

- 460 d. The length of time that the discharge continued;
- 461 e. The volume of the discharge;
- 462 f. If the discharge is continuing, how long it is expected to continue;
- 463 g. If the discharge is continuing, what the expected total volume of the discharge will
- 464 be; and
- 465 h. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the
- 466 present discharge or any future discharges not authorized by the permit.

467 2. Discharges reportable to the department under the immediate reporting requirements

468 of other regulations are exempted from this requirement.

469 D. VPA permits may be utilized to authorize pollutant management activities including, but not

470 limited to, animal feeding operations, storage or land application of sewage, sludge, biosolids,

471 industrial waste or other waste; or the complete reuse or recycle of wastewater. Point source

472 discharges of pollutants to surface waters may be authorized by a VPDES permit (See 9VAC25-

473 31, VPDES Permit Regulation).

474 E. No VPA permit shall be issued in the following circumstances:

- 475 1. Where the terms or conditions of the VPA permit do not comply with the applicable
- 476 regulations or requirements of the law;
- 477 2. For the discharge of any radiological, chemical or biological warfare agent or high level
- 478 radioactive material into state waters; or
- 479 3. For any pollutant management activity that is in conflict with any area-wide or basin-
- 480 wide water quality control and waste management plan or policy established by the board
- 481 pursuant to the law.

#### 482 **9VAC25-32-40. Exclusions.**

483 The following do not require a VPA permit:

- 484 1. The introduction of sewage, industrial waste or other pollutants into publicly owned
- 485 treatment works by indirect dischargers. Plans or agreements to switch to this method of
- 486 disposal in the future do not relieve dischargers of the obligation to have and comply with
- 487 VPA permits until all discharges of pollutants to state waters are eliminated;
- 488 2. Any introduction of pollutants from nonpoint source agricultural or silvicultural activities,
- 489 including runoff from orchards, cultivated crops, pastures, range lands, and forest lands,
- 490 except that this exclusion shall not apply to concentrated confined animal feeding
- 491 operations;
- 492 3. Return flows from irrigated agricultural land;
- 493 4. Land disposal activity, including biosolids use or sewage sludge disposal or onsite
- 494 waste treatment, when this activity is otherwise authorized by the department;
- 495 5. Land disposal activity, including onsite waste treatment, when this activity is authorized
- 496 by a Virginia Department of Health permit; and
- 497 6. Discharges authorized by EPA under the Safe Drinking Water Act Underground
- 498 Injection Control Program (UIC), 40 CFR Part 144, and approved, in writing, by the ~~board~~
- 499 department.

#### 500 **9VAC25-32-60. Application for a VPA permit.**

501 A. Duty to apply. Any owner of a pollutant management activity who does not have an effective

502 VPA permit, except persons covered by general VPA permits or excluded under 9VAC25-32-40,

503 shall submit a complete application to the department in accordance with this section.

504 B. Time to apply.

505 1. Any owner proposing a new pollutant management activity shall submit an application  
506 for a VPA permit 180 days prior to the date planned for commencing erection, construction  
507 or expansion or employment of new processes at any site. There shall be no operation of  
508 said facilities prior to the issuance of a VPA permit.

509 2. Any owner with an existing pollutant management activity that has not been permitted  
510 shall submit an application within 60 days upon being requested to by the ~~board~~  
511 department. The ~~board~~ department, after determining there is pollution occurring, may  
512 allow the construction of treatment works prior to permit issuance. There shall be no  
513 operation of said treatment works prior to permit issuance.

514 3. Owners currently managing pollutants who have effective VPA permits shall submit a  
515 new application 180 days prior to proposed facility expansions, production increases, or  
516 process modification which will:

517 a. Result in significantly new or substantially increased amounts of pollutants being  
518 managed or a significant change in the nature of the pollutant management activity  
519 that was not anticipated and accounted for on the application for the effective VPA  
520 permit; or

521 b. Violate or lead to violation of the terms and conditions of the effective VPA permit.

522 C. Duty to reapply. Any permittee with an effective VPA permit shall submit a new application  
523 at least 180 days before the expiration date of the effective VPA permit unless permission for a  
524 later date has been granted by the ~~board~~ department. Permission shall not be granted to submit  
525 an application later than the expiration date of the existing VPA permit.

526 D. Completeness.

527 1. A complete VPA permit application shall be submitted by the owner of the pollutant  
528 management activity before a VPA permit can be issued. The permit application may be  
529 submitted as a hard copy or electronically with a hard copy signature page. This item does  
530 not apply where general VPA permits are applicable.

531 2. The ~~board~~ department may require the submission of additional information after an  
532 application has been filed, and may suspend processing of any application until such time  
533 as the owner has supplied missing or deficient information and the ~~board~~ department  
534 considers the application complete. Further, when the owner becomes aware that he  
535 omitted one or more relevant facts from a VPA permit application, or submitted incorrect  
536 information in a VPA permit application or in any report to the department, he shall  
537 promptly submit such facts or the correct information.

538 3. In accordance with § 62.1-44.19:3 A of the Code of Virginia, no application for a permit  
539 or variance to authorize the storage of biosolids shall be complete unless it contains  
540 certification from the governing body of the locality in which the biosolids is to be stored  
541 that the storage site is consistent with all applicable ordinances. The governing body shall  
542 confirm or deny consistency within 30 days of receiving a request for certification. If the  
543 governing body does not so respond, the site shall be deemed consistent.

544 4. No application for a permit to land apply biosolids in accordance with Part IX (9VAC25-  
545 32-303 et seq.) of this chapter shall be complete unless it includes the written consent of  
546 the landowner to apply biosolids on his property.

547 5. Pursuant to § 62.1-44.15:3 of the Code of Virginia, no application for a VPA permit from  
548 a privately owned treatment works serving, or designed to serve, 50 or more residences  
549 shall be considered complete unless the applicant has provided the department with  
550 notification from the State Corporation Commission that the applicant is incorporated in  
551 the Commonwealth and is in compliance with all regulations and relevant orders of the  
552 State Corporation Commission.

553 E. Information requirements. All applicants for VPA permits shall provide information to the  
554 department using the most current application forms provided by the ~~board~~ department.

555 F. Application for the authorization to land apply biosolids. All persons applying to land apply  
556 biosolids must provide the information in this subsection to the department using an application  
557 form approved by the department. New applicants must submit all information available at the  
558 time of permit application. The information may be provided by referencing information previously  
559 submitted to the department. The ~~board~~ department may waive any requirement of this subsection  
560 if it has access to substantially identical information. The ~~board~~ department may also waive any  
561 requirement of this subsection that is not of material concern for a specific permit.

562 1. General information.

563 a. Legal name and address.

564 b. Owner contact information including:

565 (1) Name;

566 (2) Mailing address;

567 (3) Telephone number; and

568 (4) Email address.

569 c. A general description of the proposed activity including:

570 (1) Name and location of generators involved and their owners;

571 (2) Biosolids quality and the generator's biosolids treatment and handling processes;

572 (3) Generator's odor control plan, that contains at minimum:

573 (a) Methods used to minimize odor in producing biosolids;

574 (b) Methods used to identify malodorous biosolids before land application (at the  
575 generating facility);

576 (c) Methods used to identify and abate malodorous biosolids if delivered to the field,  
577 prior to land application; and

578 (d) Methods used to abate malodor from biosolids if land applied;

579 (4) Means of biosolids transport or conveyance;

580 (5) Location and volume of storage proposed;

581 (6) A description of field staging methods;

582 (7) General location of sites proposed for application, and

583 (8) Methods of biosolids application proposed.

584 d. Written permission of landowners on the most current form approved by the ~~board~~  
585 department and pertinent lease agreements as may be necessary for operation of the  
586 treatment works.

587 e. Methods for notification of local government and obtaining compliance with local  
588 government zoning and applicable ordinances.

589 f. A copy of a letter of approval of the nutrient management plan for the operation from  
590 the Department of Conservation and Recreation if required in subdivision 3 b of this  
591 subsection.

592 2. Design information.

593 a. Biosolids characterization. For each source of biosolids that the applicant proposes  
594 to land apply, the applicant must submit biosolids monitoring data for the pollutants for  
595 which limits in biosolids have been established in Part IX (9VAC25-32-303 et seq.) of  
596 this chapter, for the applicant's use or disposal practices on the date of permit  
597 application with the following conditions:



598 (1) When applying for authorization to land apply a biosolids source not previously  
599 included in a VPDES or VPA permit, the biosolids shall be sampled and analyzed for  
600 PCBs. The sample results shall be submitted with the permit application or request to  
601 add the source;

602 (2) The ~~board~~ department may require sampling for additional pollutants, as  
603 appropriate, on a case-by-case basis;

604 (3) Applicants must provide:

605 (a) Biosolids analytical data from a minimum of three samples taken within four and  
606 one-half years prior to the date of the permit application. Samples must be  
607 representative of the biosolids and should be taken at least one month apart. Existing  
608 data may be used in lieu of sampling done solely for the purpose of this application.  
609 The department may reduce the number of samples collected based on site specific  
610 conditions;

611 (b) The total dry tons per 365-day period of biosolids subject to this subsection that is  
612 applied to the land; and

613 (c) A statement that the biosolids is nonhazardous; a documentation statement for  
614 treatment and quality; and a description of how treated biosolids meets other  
615 standards in accordance with this regulation;

616 (4) Samples shall be collected and analyzed in accordance with analytical methods  
617 specified in 40 CFR Part 503 and 40 CFR Part 136; and

618 (5) The monitoring data provided must include at least the following information for  
619 each parameter:

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

622 (b) Analytical method used; and

623 (c) Method detection level.

624 b. Storage facilities. Plans and specifications for storage facilities of all biosolids to be  
625 handled, including routine and on-site storage, shall be submitted for the issuance of  
626 a certificate to construct and a certificate to operate in accordance with the Sewage  
627 Collection and Treatment Regulations (9VAC25-790) and shall depict the following  
628 information:

629 (1) Site layout on a recent 7.5 minute topographic quadrangle or other appropriate  
630 scaled map;

631 (2) Location of any required soil, geologic, and hydrologic test holes or borings;

632 (3) Location of the following field features within 0.25 miles of the site boundary  
633 (indicate on map) with the approximate distance from the site boundary:

634 (a) Water wells (operating or abandoned);

635 (b) Surface waters;

636 (c) Springs;

637 (d) Public water supplies;

638 (e) Sinkholes;

639 (f) Underground and surface mines;

640 (g) Mine pool (or other) surface water discharge points;

641 (h) Mining spoil piles and mine dumps;

642 (i) Quarries;

- 643 (j) Sand and gravel pits;  
644 (k) Gas and oil wells;  
645 (l) Diversion ditches;  
646 (m) Occupied dwellings, including industrial and commercial establishments;  
647 (n) Landfills and dumps;  
648 (o) Other unlined impoundments;  
649 (p) Septic tanks and drainfields; and  
650 (q) Injection wells;
- 651 (4) Topographic map (10-foot contour preferred) of sufficient detail to clearly show the  
652 following information:
- 653 (a) Maximum and minimum percent slopes;  
654 (b) Depressions on the site that may collect water;  
655 (c) Drainage ways that may attribute to rainfall run-on to or runoff from the site; and  
656 (d) Portions of the site (if any) that are located within the 100-year floodplain;
- 657 (5) Data and specifications for the liner proposed for seepage control;  
658 (6) Scaled plan view and cross-sectional view of the facilities showing inside and  
659 outside slopes of all embankments and details of all appurtenances;  
660 (7) Calculations justifying impoundment capacity; and  
661 (8) Groundwater monitoring plans for facilities if required by the department. The  
662 groundwater monitoring plan shall include pertinent geohydrological data to justify  
663 upgradient and downgradient well location and depth.
- 664 c. Staging. Generic plans for staging of biosolids.  
665 d. Land application sites:
- 666 (1) DEQ control number, if previously assigned, identifying each land application field.  
667 If a DEQ control number has not been assigned, provide the site identification code  
668 used by the permit applicant to report activities and the site's location;
- 669 (2) The site's latitude and longitude in decimal degrees to three decimal places and  
670 the method of determination;
- 671 (3) A legible topographic map and aerial photograph, including legend, of proposed  
672 application areas to scale as needed to depict the following features:
- 673 (a) Property boundaries;  
674 (b) Surface water courses;  
675 (c) Water supply wells and springs;  
676 (d) Roadways;  
677 (e) Rock outcrops;  
678 (f) Slopes;  
679 (g) Frequently flooded areas (National Resources Conservation Service (NRCS)  
680 designation);  
681 (h) Occupied dwellings within 400 feet of the property boundaries and all existing  
682 dwelling and property line setback distances;  
683 (i) Publicly accessible properties and occupied buildings within 400 feet of the property  
684 boundaries and the associated extended setback distances; and  
685 (j) The gross acreage of the fields where biosolids will be applied;

- 686 (4) County map or other map of sufficient detail to show general location of the site  
687 and proposed transport vehicle haul routes to be utilized from the treatment plant;
- 688 (5) County tax maps labeled with Tax Parcel ID or IDs for each farm to be included in  
689 the permit, which may include multiple fields to depict properties within 400 feet of the  
690 field boundaries;
- 691 (6) A USDA soil survey map, if available, of proposed sites for land application of  
692 biosolids;
- 693 (7) The name, mailing address, and telephone number of each site owner, if different  
694 from the applicant;
- 695 (8) The name, mailing address, and telephone number of the person who applies  
696 biosolids to the site, if different from the applicant;
- 697 (9) Whether the site is agricultural land, forest, a public contact site, or a reclamation  
698 site, as such site types are defined in 9VAC25-32-10;
- 699 (10) Description of agricultural practices including a list of proposed crops to be grown;
- 700 (11) The following information for each land application site that has been identified at  
701 the time of permit application, if the applicant intends to apply bulk biosolids subject to  
702 the cumulative pollutant loading rates in 9VAC25-32-356 Table 3 to the site:
- 703 (a) Whether the applicant has contacted the permitting authority in the state where the  
704 bulk biosolids subject to 9VAC25-32-356 Table 3 will be applied, to ascertain whether  
705 bulk biosolids subject to 9VAC25-32-356 Table 3 has been applied to the site on or  
706 since July 20, 1993, and if so, the name of the permitting authority and the name and  
707 phone number of a contact person at the permitting authority; and
- 708 (b) Identification of facilities other than the applicant's facility that have sent, or are  
709 sending, biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356  
710 Table 3 to the site since July 20, 1993, if, based on the inquiry in subdivision 2 d (11)  
711 (a) of this subsection, bulk biosolids subject to cumulative pollutant loading rates in  
712 9VAC25-32-356 Table 3 has been applied to the site since July 20, 1993.
- 713 3. A biosolids management plan shall be provided that includes the following minimum  
714 site specific information at the time of permit application.
- 715 a. Description of operation: A comprehensive, general description of the operation as  
716 required by this section.
- 717 b. A nutrient management plan approved by the Department of Conservation and  
718 Recreation as required for application sites prior to ~~board~~ department authorization  
719 under the following conditions:
- 720 (1) Sites operated by an owner or lessee of a confined animal feeding operation, as  
721 defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry  
722 feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of  
723 Virginia;
- 724 (2) Sites where land application more frequently than once every three years at greater  
725 than 50% of the annual agronomic rate is proposed;
- 726 (3) Mined or disturbed land sites where land application is proposed at greater than  
727 agronomic rates; or
- 728 (4) Other sites based on site-specific conditions that increase the risk that land  
729 application may adversely impact state waters.
- 730 4. Biosolids transport.
- 731 a. General description of transport vehicles to be used.

732 b. Procedures for biosolids offloading at the biosolids facilities and the land application  
733 site together with spill prevention, cleanup (including vehicle cleaning); field  
734 reclamation and emergency spill notification and cleanup measures.

735 c. Voucher system used for documentation and recordkeeping.

736 5. Field operations.

737 a. Storage.

738 (1) Routine storage - supernatant handling and disposal, biosolids handling and  
739 loading of transport vehicles, equipment cleaning, freeboard maintenance, and  
740 inspections for structural integrity.

741 (2) On-site storage - procedures for department ~~or board~~ approval and  
742 implementation.

743 (3) Staging - procedures to be followed including either designated site locations  
744 provided in the "Design Information" or the specific site criteria for such locations  
745 including the liner or cover requirements and the time limit assigned for such use.

746 (4) Reestablishment of offloading and staging areas.

747 b. Application methodology.

748 (1) Description and specifications on spreader vehicles.

749 (2) Procedures for calibrating equipment for various biosolids contents to ensure  
750 uniform distribution and appropriate loading rates on a day-to-day basis.

751 (3) Procedures used to ensure that operations address the following constraints:  
752 application of biosolids to frozen ground, pasture or hay fields, crops for direct human  
753 consumption and saturated or ice-covered or snow-covered ground; establishment of  
754 setback distances; slopes; prohibited access for beef and dairy animals, and soil pH  
755 requirements; and proper site specific biosolids loading rates on a field-by-field basis.

756 c. Odor control plan for land applier. Include at a minimum:

757 (1) Methods used to identify and abate malodorous biosolids in the field prior to land  
758 application, and

759 (2) Methods used to abate malodorous biosolids if land applied.

760 6. An applicant for a permit authorizing the land application of biosolids shall provide to  
761 the department, and to each locality in which the applicant proposes to land apply  
762 biosolids, written evidence of financial responsibility. Evidence of financial responsibility  
763 shall be provided in accordance with the requirements specified under Article 6 (9VAC25-  
764 32-770 et seq.) of Part IX of this chapter.

765 **9VAC25-32-70. Signatory requirements.**

766 Any application, report, including monitoring reports, or certifications shall be signed as  
767 follows:

768 1. Application.

769 a. For a corporation: by a responsible corporate official. For purposes of this section,  
770 a responsible corporate official means (i) a president, secretary, treasurer, or vice-  
771 president of the corporation in charge of a principal business function, or any other  
772 person who performs similar policy or decision-making functions for the corporation,  
773 or (ii) the manager of one or more manufacturing, production, or operating facilities  
774 employing more than 250 persons or having gross annual sales or expenditures  
775 exceeding \$25,000,000 (in second quarter 1980 dollars), if authority to sign documents  
776 has been assigned or delegated to the manager in accordance with corporate  
777 procedures.

778 b. For a municipality, state, federal or other public agency by either a principal  
779 executive officer or ranking elected official. (A principal executive officer of a federal,  
780 municipal, or state agency includes the chief executive officer of the agency or head  
781 executive officer having responsibility for the overall operation of a principal  
782 geographic unit of the agency.)

783 c. For a partnership or sole proprietorship, by a general partner or proprietor,  
784 respectively.

785 2. Reports. All reports required by VPA permits and other information requested by the  
786 ~~board~~ department shall be signed by:

787 a. One of the persons described in subdivision 1 of this section; or

788 b. A duly authorized representative of that person. A person is a duly authorized  
789 representative only if:

790 (1) The authorization is made in writing by a person described in subdivision 1 of this  
791 section; and

792 (2) The authorization specifies either an individual or a position having responsibility  
793 for the overall operation of the regulated facility or activity, such as the position of plant  
794 manager, operator of a well or a well field, superintendent, or position of equivalent  
795 responsibility. (A duly authorized representative may thus be either a named individual  
796 or any individual occupying a named position.)

797 (3) If an authorization is no longer accurate because a different individual or position  
798 has responsibility for the overall operation of the facility, a new authorization must be  
799 submitted to the department prior to or together with any separate information, or  
800 applications to be signed by an authorized representative.

801 3. Certification. Any person signing a document under subdivision 1 or 2 of this section  
802 shall make the following certification: "I certify under penalty of law that this document and  
803 all attachments were prepared under my direction or supervision in accordance with a  
804 system designed to assure that qualified personnel properly gather and evaluate the  
805 information submitted. Based on my inquiry of the person or persons who manage the  
806 system or those persons directly responsible for gathering the information, the information  
807 submitted is to the best of my knowledge and belief true, accurate, and complete. I am  
808 aware that there are significant penalties for submitting false information including the  
809 possibility of fine and imprisonment for knowing violations."

810 **9VAC25-32-80. Conditions applicable to all VPA permits.**

811 A. Duty to comply. The permittee shall comply with all conditions of the VPA permit. Any permit  
812 noncompliance is a violation of the law, and is grounds for enforcement action, permit termination,  
813 revocation, modification, or denial of a permit renewal application.

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

817 C. Duty to mitigate. The permittee shall take all reasonable steps to minimize, correct, or  
818 prevent any pollutant management activity in violation of the VPA permit which has a reasonable  
819 likelihood of adversely affecting human health or the environment.

820 D. Proper operation and maintenance. The permittee shall be responsible for the proper  
821 operation and maintenance of all treatment works, systems, and controls which are installed or  
822 used to achieve compliance with permit conditions. Proper operation and maintenance includes  
823 effective plant performance, adequate funding, adequate licensed operator staffing, and adequate  
824 laboratory and process controls, including appropriate quality assurance procedures.

- 825 E. Permit action.
- 826 1. A VPA permit may be modified, revoked and reissued, or terminated as set forth in this  
827 chapter.
- 828 2. If a permittee files a request for a permit modification, revocation, or termination, or files  
829 a notification of planned changes, or anticipated noncompliance, the permit terms and  
830 conditions shall remain effective until the request is acted upon by the ~~board~~ department.  
831 This provision shall not be used to extend the expiration date of the effective VPA permit.
- 832 3. VPA permits may be modified, revoked and reissued or terminated upon the request of  
833 the permittee or interested persons, or upon the ~~board's~~ department's initiative, to reflect  
834 the requirements of any changes in the statutes or regulations.
- 835 4. VPA permits continued under 9VAC25-32-130 remain effective and enforceable.
- 836 F. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the  
837 ~~board~~ department may, at reasonable times and under reasonable circumstances:
- 838 1. Enter upon any permittee's property, public or private, and have access to records  
839 required by the VPA permit;
- 840 2. Have access to, inspect, and copy any records that must be kept as part of VPA permit  
841 conditions;
- 842 3. Inspect any facility's equipment (including monitoring and control equipment) practices  
843 or operations regulated or required under the VPA permit; and
- 844 4. Sample or monitor any substances or parameters at any locations for the purpose of  
845 assuring VPA permit compliance or as otherwise authorized by law.
- 846 G. Duty to provide information.
- 847 1. The permittee shall furnish to the department, within a reasonable time, any information  
848 which the ~~board~~ department may request to determine whether cause exists for modifying,  
849 revoking and reissuing, terminating the VPA permit, or to determine compliance with the  
850 VPA permit. The permittee shall also furnish to the department, upon request, copies of  
851 records required to be kept by the permittee.
- 852 2. Plans, specifications, maps, conceptual reports and other relevant information shall be  
853 submitted as requested by the ~~board~~ department prior to commencing construction.
- 854 H. Monitoring and records.
- 855 1. Samples and measurements taken for the purpose of monitoring shall be representative  
856 of the monitored activity.
- 857 2. The permittee shall retain records of all monitoring information, including all calibration  
858 and maintenance records and all original strip chart recordings for continuous monitoring  
859 instrumentation, copies of all reports required by the VPA permit, and records of all data  
860 used to complete the application for the VPA permit, for a period of at least three years or  
861 in the case of activities regulated under Part IX (9VAC25-32-303 et seq.) of this chapter,  
862 at least five years from the date of the sample, measurement, report, or application. This  
863 period may be extended by request of the ~~board~~ department at any time.
- 864 3. Records of monitoring information shall include:
- 865 a. The date, exact place and time of sampling or measurements;
- 866 b. The name of the individuals who performed the sampling or measurements;
- 867 c. The date or dates analyses were performed;
- 868 d. The name of the individuals who performed the analyses;
- 869 e. The analytical techniques or methods supporting the information such as  
870 observations, readings, calculations and bench data used; and

- 871 f. The results of such analyses.
- 872 4. Monitoring shall be conducted according to analytical methods promulgated pursuant  
873 to § 304(h) of the Clean Water Act (33 USC § 1251 et seq.) and listed in the Code of  
874 Federal Regulations at 40 CFR Part 136. Any other acceptable test procedure not listed  
875 in 40 CFR Part 136 shall be specified in the VPA permit.
- 876 5. Records related to biosolids data and information specified in agreements between  
877 generator, owner, agents, landowners, and farmers shall be described and maintained for  
878 a minimum period of five years or the duration of the permit or subsequent revisions if  
879 longer than five years.
- 880 I. Reporting requirements.
- 881 1. The permittee shall give prompt notice to the department of any planned changes to  
882 the design or operation of the pollutant management activity.
- 883 2. If any unusual or extraordinary discharge including a bypass or upset should occur from  
884 a treatment works and the discharge enters or could be expected to enter state waters,  
885 the owner shall promptly notify, in no case later than 24 hours, the department by  
886 telephone after the discovery of the discharge. This notification shall provide all available  
887 details of the incident, including any adverse effects on aquatic life and the known number  
888 of fish killed. The permittee shall reduce the report to writing and shall submit it to the  
889 department within five days of discovery of the discharge in accordance with subdivision  
890 6 of this subsection. Unusual and extraordinary discharges include any discharge resulting  
891 from:
- 892 a. Unusual spillage of materials resulting directly or indirectly from processing  
893 operations;
- 894 b. Breakdown of processing or accessory equipment;
- 895 c. Failure or taking out of service of some or all of the treatment works; and  
896 d. Flooding or other acts of nature.
- 897 3. The permittee shall give at least 10 days advance notice to the department of any  
898 planned changes to the facility or activity which may result in noncompliance.
- 899 4. Monitoring results shall be reported at the intervals specified in the applicable VPA  
900 permit.
- 901 a. Monitoring results shall be reported in a format acceptable to the ~~board~~ department.
- 902 b. If a permittee monitors the pollutant management activity, at a sampling location  
903 specified in the VPA permit, for any pollutant more frequently than required by the VPA  
904 permit using approved analytical methods, the permittee shall report the results of this  
905 monitoring on the monitoring report.
- 906 c. If the permittee monitors the pollutant management activity, at a sampling location  
907 specified in the VPA permit, for any pollutant that is not required to be monitored by  
908 the VPA permit, and uses approved analytical methods the permittee shall report the  
909 results with the monitoring report.
- 910 d. Calculations for all limitations which require averaging of measurements shall utilize  
911 an arithmetic mean unless otherwise specified in the VPA permit.
- 912 5. Reports of compliance or noncompliance with or any progress report on interim and  
913 final requirements contained in any compliance schedule in the VPA permit shall be  
914 submitted no later than 14 days following each scheduled date.
- 915 6. 24-hour reporting.

916 a. The permittee shall report any noncompliance that may adversely affect state waters  
917 or may endanger public health. An oral report must be provided to the department as  
918 soon as possible, but in no case later than 24 hours from the time the permittee  
919 becomes aware of the circumstances. A written report shall be submitted within five  
920 days and shall contain a description of the noncompliance and its cause; the period of  
921 noncompliance including exact dates and times, and, if the noncompliance has not  
922 been corrected, how long it is expected to continue, steps planned or taken to reduce,  
923 eliminate, and prevent a recurrence of the noncompliance. The ~~board~~ department may  
924 waive the written report requirements on a case-by-case basis if the oral report has  
925 been received within 24 hours and no adverse impact on state waters has been  
926 reported. All other noncompliance reports which may not adversely affect state waters  
927 shall be submitted with the monitoring report. Reports shall include overflows.

928 b. The following shall be included as information which must be reported within 24  
929 hours under this subdivision:

- 930 (1) Any unanticipated bypass; and  
931 (2) Any upset which causes a discharge to surface waters.

932 J. Bypass.

- 933 1. A bypass of the treatment works is prohibited except as provided herein.  
934 2. If the permittee knows in advance of the need for a bypass, he shall notify the  
935 department promptly at least 10 days prior to the bypass. After considering its adverse  
936 effects, the ~~board~~ department may approve an anticipated bypass if:

937 a. The bypass will be unavoidable to prevent loss of human life, personal injury, or  
938 severe property damage ("severe property damage" means substantial physical  
939 damage to property, damage to the treatment facilities which causes them to become  
940 inoperable, or substantial and permanent loss of natural resources which can  
941 reasonably be expected to occur in the absence of a bypass. Severe property damage  
942 does not mean economic loss caused by delays in production); and

943 b. There are no feasible alternatives to bypass such as the use of auxiliary treatment  
944 facilities, retention of untreated waste, or maintenance during normal periods of  
945 equipment downtime. However, if bypass occurs during normal periods of equipment  
946 downtime or preventive maintenance and in the exercise of reasonable engineering  
947 judgment the permittee could have installed adequate backup equipment to prevent  
948 such bypass, this exclusion shall not apply as a defense.

949 3. If an unplanned bypass occurs, the permittee shall notify the department as soon as  
950 possible, but in no case later than 24 hours, and shall take steps to halt the bypass as  
951 early as possible. This notification will be a condition for defense to an enforcement action  
952 that an unplanned bypass met the conditions in subdivision 2 of this subsection and in  
953 light of the information reasonably available to the owner at the time of the bypass.

954 K. Upset. A permittee may claim an upset as an affirmative defense to an action brought for  
955 noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to  
956 establish the occurrence of any upset. In order to establish an affirmative defense of upset, the  
957 permittee shall present properly signed, contemporaneous operating logs or other relevant  
958 evidence that shows:

- 959 1. That an upset occurred and that the cause can be identified;  
960 2. That the permitted facility was at the time being operated efficiently and in compliance  
961 with proper operation and maintenance procedures;  
962 3. That the 24-hour reporting requirements to the department were met; and



963 4. That the permittee took all reasonable steps to minimize or correct any adverse impact  
964 on state waters resulting from noncompliance with the VPA permit.

965 L. Signature requirements. All applications, reports, or information submitted to the  
966 department shall be signed and certified as required in 9VAC25-32-70.

967 M. Transfers. A VPA permit is not transferable to any person except after notice to the  
968 department according to 9VAC25-32-230. The ~~board~~ department may require modification or  
969 revocation and reissuance of the VPA permit to change the name of the permittee and incorporate  
970 such other requirements as may be necessary.

971 **9VAC25-32-90. Conditions applicable to publicly or privately owned sewage treatment**  
972 **works.**

973 A. Publicly or privately owned sewage treatment works shall provide adequate notice to the  
974 department of any substantial change in quantity or quality of pollutants being introduced into the  
975 privately or publicly owned sewage treatment works and any anticipated impact the change may  
976 have on such treatment works.

977 B. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design  
978 capacity authorized by the VPA permit for each month of any consecutive three-month period,  
979 the owner shall within 30 days notify the department in writing and within 90 days submit a plan  
980 of action for ensuring continued compliance with the terms of the VPA permit.

981 1. The plan shall include the necessary steps and a prompt schedule of implementation  
982 for controlling any current problem, or any problem which could reasonably be anticipated,  
983 resulting from high influent flows.

984 2. Upon receipt of the owner's plan of action, the ~~board~~ department shall notify the owner  
985 whether the plan is approved or disapproved. If the plan is disapproved, such notification  
986 shall state the reasons and specify the actions necessary to obtain approval of the plan.

987 3. Failure to submit an adequate plan in a timely manner shall be deemed a violation of  
988 the VPA permit.

989 C. Nothing herein shall in any way impair the authority of the ~~board~~ department to take  
990 enforcement action under § 62.1-44.15, § 62.1-44.23, or § 62.1-44.32 of the Code of Virginia.

991 **9VAC25-32-100. Establishing limitations and other VPA permit conditions.**

992 A. In addition to the conditions established in 9VAC25-32-80 and 9VAC25-32-90, each VPA  
993 permit shall include conditions meeting the following requirements where applicable.

994 1. Determination of limitations. VPA permit limitations and conditions shall be established  
995 based on the nature of the pollutant management activity in order to ensure compliance  
996 with technology-based limitations, water quality standards, the law and all regulations  
997 promulgated thereunder. These limitations and conditions may include, but are not limited  
998 to, duration of VPA permits, monitoring requirements, limitations to control toxic pollutants,  
999 best management practices and schedules of compliance.

1000 2. Duration of VPA permits. VPA permits issued under this regulation shall have an  
1001 effective date and an expiration date which will determine the life of the VPA permit. VPA  
1002 permits shall be effective for a fixed term not to exceed 10 years as specified in the VPA  
1003 permit. The term of the VPA permits shall not be extended by modification beyond the  
1004 maximum duration. The VPA permit shall expire at the end of the term unless an  
1005 application for a new VPA permit has been timely filed as required by this chapter and the  
1006 ~~board~~ department is unable, through no fault of the permittee, to issue a new VPA permit  
1007 before the expiration date of the previous VPA permit.

1008 B. Monitoring requirements.

1009 1. All VPA permits may specify:

- 1010 a. Requirements concerning the proper use, maintenance and installation, when  
1011 appropriate, of monitoring equipment or methods;
- 1012 b. Required monitoring including type, intervals, and frequency sufficient to yield data  
1013 which are representative of the monitored activity and including, when appropriate,  
1014 continuous monitoring; and
- 1015 c. Applicable reporting requirements based upon the impact of the regulated activity  
1016 on water quality.
- 1017 2. VPA permits may include requirements to report monitoring results with a frequency  
1018 dependent on the nature and effect of the pollutant management activity.
- 1019 3. In addition, the following monitoring requirements may be included in the VPA permits:
- 1020 a. Mass or other measurements specified in the VPA permit for each pollutant of  
1021 concern;
- 1022 b. The volume of waste, wastewater, biosolids, or sludge managed by the activity; and  
1023 c. Other measurements as appropriate.
- 1024 C. Best Management Practices (BMPs). The VPA permit shall require the use of BMPs to  
1025 control or abate pollutants where numeric limits are infeasible, and the VPA permit may include  
1026 BMPs in addition to numeric limits where BMPs are necessary to achieve limitations and  
1027 standards or to carry out the purpose and intent of the law.
- 1028 D. Sludge disposal. The VPA permit shall include, where appropriate, specific requirements  
1029 for disposal of all sludge.
- 1030 E. Biosolids land application. Where, because of site-specific conditions, including soil type,  
1031 identified during the permit application review process, the department determines that special  
1032 requirements are necessary to protect the environment or the health, safety or welfare of persons  
1033 residing in the vicinity of a proposed land application site, the department may incorporate in the  
1034 permit at the time it is issued reasonable special conditions regarding setback distances,  
1035 transportation routes, slope, material source, methods of handling and application, and time of  
1036 day restrictions exceeding those required by this regulation. The permit applicant shall have at  
1037 least 14 days in which to review and respond to the proposed conditions.
- 1038 F. Schedules of compliance. The VPA permit may specify a schedule, when appropriate,  
1039 leading to compliance with the VPA permit as soon as possible. When schedules of compliance  
1040 are applicable the following shall be incorporated:
- 1041 1. Schedule or schedules of compliance shall require the permittee to take specific steps  
1042 where necessary to achieve expeditious compliance with the VPA permit;
- 1043 2. The schedule of compliance shall set forth interim time periods not more than one year  
1044 apart for the submission of reports of progress toward completion of each requirement;  
1045 and
- 1046 3. Schedule or schedules of compliance may be modified by modification of the VPA  
1047 permit for good cause beyond the control of the permittee (e.g., act of God, strike, flood,  
1048 material shortage).
- 1049 **9VAC25-32-110. Draft VPA permit formulation.**
- 1050 A. Upon receipt of a complete application, the ~~board~~ department shall make a decision to  
1051 tentatively issue the VPA permit or deny the application. If a tentative decision is to issue the VPA  
1052 permit then a draft VPA permit shall be prepared in advance of public notice. The following  
1053 tentative determinations shall be incorporated into a draft VPA permit:
- 1054 1. Conditions, limitations, standards and other requirements applicable to the VPA permit;  
1055 2. Compliance schedules where applicable; and

1056 3. Monitoring requirements.

1057 B. If the tentative decision is to deny the application, the ~~board~~ department shall advise the  
1058 owner of that decision and of the requirements necessary to obtain approval. The owner may  
1059 withdraw the application prior to ~~board~~ department action. If the application is not withdrawn or  
1060 modified to contain conditions necessary for tentative approval to issue, the ~~board~~ department  
1061 shall provide public notice and opportunity for a public hearing prior to ~~board~~ department action  
1062 on a recommendation to deny the application.

1063 C. This section does not apply to requests for coverage under a general VPA permit.

1064 **9VAC25-32-130. Continuation of expiring VPA permits.**

1065 A. Expiring VPA permits are automatically continued pending issuance of a new VPA permit  
1066 if:

1067 1. The permittee has submitted a timely and complete application as required by this  
1068 chapter, unless the ~~board~~ department has given permission for a later submittal, which  
1069 shall not extend beyond the expiration date of the original VPA permit; and

1070 2. The ~~board~~ department is unable, through no fault of the permittee, to issue a new VPA  
1071 permit before the expiration date of the previous VPA permit.

1072 B. Continued VPA permits remain effective and enforceable against the permittee.

1073 **9VAC25-32-140. Public notice of VPA permit action and public comment period.**

1074 A. Draft VPA permits.

1075 1. Every draft VPA permit shall be given public notice, paid for by the owner, by publication  
1076 once a week for two successive weeks in a newspaper of general circulation in the area  
1077 affected by the pollutant management activity except for animal feeding operations as  
1078 defined in 9VAC25-32-10, when the modifications are to the nutrient management plan.

1079 2. Interested persons shall have a period of at least 30 days following the date of the initial  
1080 newspaper public notice to submit written comments on the tentative decision and to  
1081 request a public hearing.

1082 3. The contents of the public notice of an application for a VPA permit shall include:

1083 a. The name and address of the applicant. If the location of the pollutant management  
1084 activity differs from the address of the applicant the notice shall also state the location  
1085 of the pollutant management activity including storage and land application sites;

1086 b. A brief description of the business or activity conducted at the facility;

1087 c. A statement of the tentative determination to issue or deny a VPA permit;

1088 d. A brief description of the final determination procedure;

1089 e. The address and phone number of a specific person at the state office from whom  
1090 further information may be obtained; and

1091 f. A brief description of how to submit comments and request a hearing.

1092 B. VPA permit application.

1093 1. Upon receipt of an application for the issuance of a new or modified permit, the  
1094 department shall notify in writing the locality wherein the pollutant management activity  
1095 does or is proposed to take place. This notification shall, at a minimum, include:

1096 a. The name of the applicant;

1097 b. The nature of the application and proposed pollutant management activity;

1098 c. The availability and timing of any comment period; and

1099 d. Upon request, any other information known to, or in the possession of, ~~the board or~~  
1100 the department regarding the application except as restricted by 9VAC25-32-150.

1101 2. Whenever the department receives an application for a new permit for land application  
1102 of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized  
1103 septage, or an application to reissue with the addition of sites increasing acreage by 50%  
1104 or more of that authorized in the initial permit, the department shall establish a date for a  
1105 public meeting to discuss technical issues relating to proposals for land application of  
1106 biosolids or land disposal of treated sewage, stabilized sewage sludge or stabilized  
1107 septage. The department shall give notice of the date, time, and place of the public  
1108 meeting and a description of the proposal by publication in a newspaper of general  
1109 circulation in the city or county where the proposal is to take place. Public notice of the  
1110 scheduled meeting shall occur no fewer than seven nor more than 14 days prior to the  
1111 meeting. The department shall not issue the permit until the public meeting has been held  
1112 and comment has been received from the local governing body or until 30 days have  
1113 lapsed from the date of the public meeting.

1114 3. Following the submission of an application for a new permit for land application of  
1115 biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized  
1116 septage, the department shall make a good faith effort to notify or cause to be notified  
1117 persons residing on property bordering the sites that contain the proposed land application  
1118 fields. This notification shall be in a manner selected by the department. For the purposes  
1119 of this subsection, "site" means all contiguous land under common ownership, but which  
1120 may contain more than one tax parcel.

1121 4. Public notice shall not be required for submission or approval of plans and specifications  
1122 or conceptual engineering reports not required to be submitted as part of the application.

1123 C. Following the submission of an application to add a site that is not contiguous to sites  
1124 included in an existing permit authorizing the land application of biosolids:

1125 1. The department shall notify persons residing on property bordering such site and shall  
1126 receive written comments from those persons for a period of 30 days. Based upon written  
1127 comments, the department shall determine whether additional site-specific requirements  
1128 should be included in the authorization for land application at the site.

1129 2. An application for any permit amendment to increase the acreage authorized by the  
1130 initial permit by 50% or more shall be considered a major modification and shall be treated  
1131 as a new application for purposes of public notice and public hearings. The increase in  
1132 acreage for the purpose of determining the need for the public meeting is the sum of all  
1133 acreage that has been added to the permit since the last public meeting, plus that  
1134 proposed to be added.

1135 D. Before issuing any permit, if the ~~board~~ department finds that there are localities particularly  
1136 affected by the permit, the ~~board~~ department shall:

1137 1. Publish, or require the applicant to publish, a notice in a local paper of general circulation  
1138 in the localities affected at least 30 days prior to the close of any public comment period.  
1139 Such notice shall contain a statement of the estimated local impact of the proposed permit,  
1140 which at a minimum shall include information on the specific pollutants involved and the  
1141 total quantity of each which may be discharged; and

1142 2. Mail, by electronic or postal delivery, the notice to the chief elected official and chief  
1143 administrative officer and planning district commission for those localities.

1144 Written comments shall be accepted by the ~~board~~ department for at least 15 days after  
1145 any public hearing on the permit, unless the ~~board votes to shorten~~ department shortens  
1146 the period. For the purposes of this section, the term "locality particularly affected" means  
1147 any locality which bears any identified disproportionate material water quality impact which  
1148 would not be experienced by other localities.

1149 **9VAC25-32-160. Conditions requested by other government agencies.**

1150 If during the comment period any other state agency with jurisdiction over fish, wildlife, or  
1151 public health advises the department in writing that the imposition of specified conditions upon  
1152 the VPA permit is necessary to avoid substantial impairment of human health or of fish, shellfish,  
1153 or wildlife resources, the ~~board~~ department shall consider the inclusion of the specified conditions  
1154 in the VPA permit. If any conditions requested are not included in the VPA permit, the agency  
1155 making the request shall be notified of the reasons for not including the conditions.

1156 **9VAC25-32-170. Public comments and hearings.**

1157 A. A comment period of at least 30 days following the initial date of the newspaper public  
1158 notice of the formulation of a draft VPA permit shall be provided. During this period any interested  
1159 persons may submit written comments on the draft VPA permit and may request a public hearing.  
1160 A request for a public hearing shall be in writing and shall state the nature of the issues to be  
1161 raised pursuant to ~~the board's Procedural Rule No. 1 (9VAC25-230-10 et seq.), or its successor~~  
1162 9VAC25-32-175. All comments shall be considered by the ~~board~~ department in preparing the final  
1163 VPA permit and shall be responded to in writing.

1164 B. The ~~board~~ department may hold a public hearing on any permit action. The ~~board~~  
1165 department shall hold a public hearing where there is a significant degree of public interest  
1166 relevant to a draft VPA permit pursuant to 9VAC25-32-175. Public notice of that hearing shall be  
1167 given as specified in 9VAC25-32-180. Nothing in this subsection shall relieve the ~~board~~  
1168 department of the requirement to hold a hearing where a hearing is required by applicable law or  
1169 regulation.

1170 C. Any hearing convened pursuant to this section will be held in the geographical area of the  
1171 proposed pollutant management activity, or in another appropriate area. Related groups of VPA  
1172 permit applications may be considered at any such hearing.

1173 D. If changes are made to the VPA permit based on public comments, the permittee and all  
1174 persons who commented will be notified of the changes and the reasons for the changes. No  
1175 further public notice is required.

1176 E. Any owner aggrieved by any action of the ~~board~~ department taken without a formal hearing,  
1177 or by inaction of the ~~board~~ department, may demand in writing a formal hearing pursuant to §  
1178 62.1-44.25 of the Code of Virginia.

1179 F. Proceedings ~~at, and the decision from,~~ the public hearing will be governed by the board's  
1180 Procedural Rule No. 1 (9VAC25-230-10 et seq) or its successor and the decision from the public  
1181 hearing will be governed by 9VAC25-32-176.

1182 **9VAC25-32-175. Criteria for requesting and granting a public hearing on an individual**  
1183 **permit action.**

1184 A. During the public comment period on a permit action in those instances where a public  
1185 hearing is not mandatory under state or federal law or regulation, interested persons may request  
1186 a public hearing to contest the action or terms and conditions of the permit.

1187 B. Requests for a public hearing shall contain the following information:

1188 1. The name and postal mailing or email address of the requester.

1189 2. The names and addresses of all persons for whom the requester is acting as a  
1190 representative.

1191 3. The reason for the request for a public hearing.

1192 4. A brief, informal statement setting forth the factual nature and extent of the interest of  
1193 the requester or of the persons for whom the requester is acting as representative in the  
1194 application or tentative determination, including an explanation of how and to what extent

1195 such interest would be directly and adversely affected by the issuance, denial,  
1196 modification, or revocation of the permit in question, and,

1197 5. Where possible, specific references to the terms and the conditions of the permit in  
1198 question, together with suggested revisions and alterations to those terms and conditions  
1199 that the requester considers are needed to conform the permit to the intent and provisions  
1200 of the basic laws of the State Water Control Board.

1201 C. Upon completion of the public comment period on a permit action, the director shall review  
1202 all timely requests for public hearing filed during the comment period on the permit action, and  
1203 within 30 calendar days following the expiration of the time period for the submission of requests  
1204 shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director  
1205 finds the following:

1206 1. That there is a significant public interest in the issuance, denial, modification or  
1207 revocation of the permit in question as evidenced by receipt of a minimum of 25 individual  
1208 requests for a public hearing.

1209 2. That the requesters raise substantial, disputed issues relevant to the issuance, denial,  
1210 modification, or revocation of the permit in question, and,

1211 3. That the action requested by the interested party is not on its face inconsistent with, or  
1212 in violation of, the basic laws of the State Water Control Board for a water permit action,  
1213 federal law, or any regulation promulgated thereunder.

1214 D. The director of DEQ shall notify by email or mail at his last known address: (i) each  
1215 requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

1216 E. If the request for a public hearing is granted, the director shall:

1217 1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the  
1218 notice of the decision to grant the public hearing.

1219 2. Cause, or require the applicant to publish, notice of a public hearing to be published  
1220 once, in a newspaper of general circulation in the city or county where the facility or  
1221 operation that is the subject of the permit or permit application is located, at least 30 days  
1222 before the hearing date.

1223 F. The public comment period shall remain open for 15 days after the close of the public  
1224 hearing if required by §62.1-44.15:01 of the Code of Virginia.

1225 G. The director may, at his discretion, convene a public hearing on a permit action.

1226 **9VAC25-32-176. Controversial permits.**

1227 Before rendering a final decision on a controversial permit, the department shall publish a  
1228 summary of public comments received during the applicable public comment period and public  
1229 hearing. After such publication, the department shall publish responses to the public comment  
1230 summary and hold a public hearing to provide an opportunity for individuals who previously  
1231 commented, either at a public hearing or in writing during the applicable public comment period,  
1232 to respond to the department's public comment summary and response. No new information will  
1233 be accepted at that time. In making its decision, the department shall consider: (i) the verbal and  
1234 written comments received during the comment period and the public hearing made part of the  
1235 record, (ii) any commentary of the board, and (iii) the agency files.

1236 **9VAC25-32-177. Controversial permits reporting.**

1237 At each regular meeting of the board, the department shall provide an overview and update  
1238 regarding any controversial permits pending before the department that are relevant. Immediately  
1239 after such presentation by the department, the board shall have an opportunity to respond to the  
1240 department's presentation and provide commentary regarding such pending permits.

1241 **9VAC25-32-190. Operator requirements.**

1242 A. The permittee shall employ or contract at least one operator who holds a current  
1243 wastewater license appropriate for the permitted facility, if required by the VPA permit. The license  
1244 shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the  
1245 Board for Waterworks and Wastewater Works Operators (18VAC160-20-10 et seq.).  
1246 Notwithstanding the foregoing requirement, unless the pollutant management activity is  
1247 determined by the board department on a case-by-case basis to be a potential contributor of  
1248 pollution, no licensed operator is required for wastewater treatment works:

- 1249 1. That have a design hydraulic capacity equal to or less than 0.04 million gallons per day;  
1250 2. That discharge industrial waste or other waste from coal mining operations; or  
1251 3. That do not utilize biological or physical/chemical treatment.

1252 B. In making this case-by-case determination, the following shall be considered:

- 1253 1. The location of the pollutant management activity with respect to state waters;  
1254 2. The size of the pollutant management activity;  
1255 3. The quantity and nature of pollutants reaching state waters; and  
1256 4. The treatment methods used at the treatment works.

1257 C. The permittee shall notify the department in writing whenever he is not complying, or has  
1258 grounds for anticipating he will not comply, with the requirements of subsection A of this section.  
1259 The notification shall include a statement of reasons and a prompt schedule for achieving  
1260 compliance.

1261 **9VAC25-32-200. Modification, revocation and reissuance, and termination.**

1262 A. VPA permits shall be modified, revoked and reissued, or terminated only as authorized by  
1263 this section.

1264 B. A VPA permit may be modified in whole or in part, revoked and reissued, or terminated.

1265 C. VPA permit modifications shall not be used to extend the term of a VPA permit.

1266 D. Modification, revocation and reissuance, or termination of VPA permit may be initiated by  
1267 the board department, interested persons, or permittee under applicable provisions of this  
1268 chapter.

1269 E. An updated VPA permit application may be required in order to modify or revoke and  
1270 reissue a VPA permit.

1271 **9VAC25-32-210. Causes for termination.**

1272 A. The following are causes for terminating a VPA permit during its term, or for denying a VPA  
1273 permit renewal application, after public notice and opportunity for a public hearing:

1274 1. The permittee has violated any regulation of the board or order of the board department,  
1275 any condition of a VPA permit, any provision of the law, or any order of a court, where  
1276 such violation results in a release of harmful substances into the environment or poses a  
1277 substantial threat of release of harmful substances into the environment or presents a  
1278 hazard to human health or the violation is representative of a pattern of serious or repeated  
1279 violations which, in the opinion of the board department, demonstrates the permittee's  
1280 disregard for or inability to comply with applicable laws, regulations or requirements;

1281 2. The permittee's failure to disclose fully all relevant material facts, or the permittee's  
1282 misrepresentation of any relevant material facts in applying for a VPA permit, or in any  
1283 other report or document required under the law or this chapter;

1284 3. A determination that the permitted activity endangers human health or the environment  
1285 and can only be regulated to acceptable levels by VPA permit modification or termination;  
1286 or

1287 4. There exists a material change in the basis on which the VPA permit was issued that  
1288 requires either a temporary or a permanent reduction or elimination of any pollutant  
1289 management activity controlled by the VPA permit necessary to protect human health or  
1290 the environment.

1291 B. In addition to causes for terminating a VPA permit specified in subsection A of this section,  
1292 causes for terminating a VPA permit issued for land application, marketing and distribution of  
1293 biosolids shall include:

- 1294 1. Failure to comply with the conditions of the permit.
- 1295 2. Violation of Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia or of
- 1296 any provisions of this regulation.
- 1297 3. Change in ownership.
- 1298 4. Abandonment of the facilities.

1299 C. A VPA permit may be terminated without public notice and opportunity for a hearing when  
1300 the termination is mutually agreed to by the permittee and the ~~board~~ department.

1301 **9VAC25-32-230. Transfer of VPA permits.**

1302 A. Transfer by modification. Except as provided for under automatic transfer in subsection B  
1303 of this section, a VPA permit shall be transferred only if the VPA permit has been modified to  
1304 reflect the transfer or has been revoked and reissued to the new owner.

1305 B. Automatic transfer. Any VPA permit shall be automatically transferred to a new owner if:

- 1306 1. The current owner notifies the department 30 days in advance of the proposed transfer
- 1307 of the title to the facility or property;
- 1308 2. The notice to the department includes a written agreement between the existing and
- 1309 proposed new owner containing a specific date of transfer of VPA permit responsibility,
- 1310 coverage and liability between them; and
- 1311 3. The ~~board~~ department does not within the 30-day time period notify the existing owner
- 1312 and the proposed owner of its intent to modify or revoke and reissue the VPA permit.

1313 **9VAC25-32-240. Minor modification.**

1314 A. Upon request of the permittee, or upon ~~board~~ department initiative with the consent of the  
1315 permittee, minor modifications may be made in the VPA permit without following the public  
1316 involvement procedures.

1317 B. Minor modification may only:

- 1318 1. Correct typographical errors;
- 1319 2. Require reporting by the permittee at a frequency other than that required in the VPA
- 1320 permit;
- 1321 3. Change an interim compliance date in a schedule of compliance to no more than 120
- 1322 days from the original compliance date and provided it will not interfere with the final
- 1323 compliance date;
- 1324 4. Allow for a change in name, ownership or operational control when the ~~board~~
- 1325 department determines that no other change in the VPA permit is necessary, provided
- 1326 that a written agreement containing a specific date for transfer of VPA permit
- 1327 responsibility, coverage and liability from the current to the new permittee has been
- 1328 submitted to the department;
- 1329 5. Delete the listing of a land application site when the pollutant management activity is
- 1330 terminated and does not result in an increase of pollutants which would exceed VPA permit
- 1331 limitations;



- 1332 6. Reduce VPA permit limitations to reflect a reduction in the permitted activity when such  
1333 reduction results from a shutdown of processes or pollutant generating activities or from  
1334 connection of the permitted activity to a POTW;
- 1335 7. Change plans and specifications where no other changes in the VPA permit are  
1336 required;
- 1337 8. Authorize treatment facility expansions, production increases or process modifications  
1338 which will not cause a significant change in the quantity of pollutants being managed or a  
1339 significant change in the nature of the pollutant management activity; or
- 1340 9. Delete VPA permit limitation or monitoring requirements for specific pollutants when the  
1341 activities generating these pollutants are terminated.

1342 C. An application for any permit amendments to increase the acreage authorized by the initial  
1343 permit shall not be considered a minor modification and shall require the public involvement  
1344 procedures outlined in 9VAC25-32-140 C.

1345 **9VAC25-32-250. Animal feeding operations.**

1346 A. All animal feeding operations shall maintain no point source discharge of pollutants to  
1347 surface waters except in the case of a storm event greater than the 25-year, 24-hour storm.  
1348 Animal feeding operations having 300 or more animal units utilizing a liquid manure collection and  
1349 storage system or having 200 or more animal units of poultry are pollutant management activities  
1350 subject to the VPA permit program. Two or more animal feeding operations under common  
1351 ownership are a single animal feeding operation for the purpose of determining the number of  
1352 animals at an operation if they adjoin each other or if they use a common area or system for the  
1353 disposal of wastes.

1354 B. Case-by-case determination.

1355 1. The ~~board~~ department may determine that any animal feeding operation that does not  
1356 otherwise qualify for coverage under the VPA general permit and has not been required  
1357 to obtain a VPDES permit be required to obtain an individual VPA permit upon determining  
1358 that it is a potential or actual contributor of pollution to state waters. In making this  
1359 determination the following factors shall be considered:

- 1360 a. The size of the operation;
- 1361 b. The location of the operation relative to state waters;
- 1362 c. The means of conveyance of animal wastes and process waters into state waters;
- 1363 d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency  
1364 of discharge of animal wastes and process waste waters into state waters;
- 1365 e. The compliance history and the ability to make corrections in order to comply with  
1366 the VPA general permit conditions;
- 1367 f. The means of storage, treatment, or disposal of animal wastes; and
- 1368 g. Other relevant factors.

1369 2. A VPA permit application shall not be required for an animal feeding operation subject  
1370 to subdivision 1 of this subsection until the ~~board~~ department has conducted an on-site  
1371 inspection of the operation and determined that the operation shall be regulated under the  
1372 VPA permit program.

1373 **9VAC25-32-260. General VPA permits.**

1374 The board may issue a general VPA permit in accordance with the following:

- 1375 1. Sources. A general VPA permit may be written to regulate a category of pollutant  
1376 management activities that:
- 1377 a. Involve the same or similar types of operations;

- 1378 b. Manage the same or similar types of wastes;  
1379 c. Require the same VPA permit limitations or operating conditions;  
1380 d. Require the same or similar monitoring; and  
1381 e. In the opinion of the board, are more appropriately controlled under a general VPA  
1382 permit than under individual VPA permits.

1383 2. Administration.

1384 a. General VPA permits will be issued, modified, revoked and reissued, or terminated  
1385 pursuant to the law and the Administrative Process Act (§ 2.2-4000 et seq. of the Code  
1386 of Virginia).

1387 b. The ~~board~~ department may require any person operating under a general VPA  
1388 permit to apply for and obtain an individual VPA permit. Interested persons may  
1389 petition the ~~board~~ department to take action under this subdivision. Cases where an  
1390 individual VPA permit may be required include the following:

1391 (1) Where the pollutant management activity is a significant contributor of pollution;

1392 (2) Where the owner is not in compliance with the conditions of the general VPA  
1393 permit;

1394 (3) When a water quality management plan containing requirements applicable to the  
1395 pollutant management activity is approved; or

1396 (4) When a permitted activity no longer meets the general VPA permit conditions.

1397 c. Any owner operating under a general VPA permit may request to be excluded from  
1398 the coverage of the general VPA permit by applying for an individual VPA permit.

1399 d. When an individual VPA permit is issued to an owner the applicability of the general  
1400 VPA permit to the individual permittee is automatically terminated on the effective date  
1401 of the individual VPA permit.

1402 e. When a general VPA permit is issued which applies to an owner already covered  
1403 by an individual VPA permit, such owner may request exclusion from the provisions of  
1404 the general VPA permit and subsequent coverage under an individual VPA permit.

1405 f. A general VPA permit may be revoked as to an individual owner for any of the  
1406 reasons set forth in 9VAC25-32-210 or subdivision 2 b of this section subject to  
1407 appropriate opportunity for a hearing.

1408 **9VAC25-32-270. Control of disposal of pollutants into wells.**

1409 A. No right to dispose of pollutants into wells shall exist under this regulation, except as  
1410 authorized pursuant to a VPA permit issued by the ~~board~~ department or VPA general permit  
1411 issued as a regulation adopted by the board.

1412 B. Whenever an applicant for a VPA permit proposes to dispose of pollutants into a well or  
1413 wells, the proposed disposal shall be prohibited, or specific terms and conditions shall be included  
1414 in the VPA permit which shall control the proposed disposal in order to prevent the pollution of  
1415 and protect all beneficial uses of state waters, protect the public health and welfare, and require  
1416 compliance with all applicable water quality standards.

1417 **9VAC25-32-280. Enforcement.**

1418 A. The ~~board~~ department may enforce the provisions of this regulation by:

1419 1. Issuing directives in accordance with the law;

1420 2. Issuing special orders in accordance with the law;

1421 3. Issuing emergency special orders in accordance with the law;

1422 4. Seeking injunction, mandamus or other appropriate remedy as authorized by the law;

- 1423 5. Seeking civil penalties under the law;
- 1424 6. Seeking remedies under the law or under other laws including the common law.
- 1425 B. The ~~board~~ department encourages citizen participation in all its activities, including
- 1426 enforcement. In particular:
- 1427 1. The ~~board~~ department will investigate citizen complaints and provide written response
- 1428 to all signed, written complaints from citizens concerning matters within the ~~board's~~
- 1429 department's purview;
- 1430 2. The ~~board~~ department will not oppose intervention in any civil enforcement action when
- 1431 such intervention is authorized by statute or Supreme Court rule, or in any administrative
- 1432 enforcement action when authorized by the board's Procedural Rule; and
- 1433 3. At least 30 days prior to the final settlement of any civil enforcement action or the
- 1434 issuance of any consent special order, the ~~board~~ department will publish public notice of
- 1435 such settlement or order in a newspaper of general circulation in the county, city or town
- 1436 in which the pollutant management activity is located, and in the Virginia Register of
- 1437 Regulations. This notice will identify the owner, specify the enforcement action to be taken
- 1438 and specify where a copy of the settlement or order can be obtained. Appeals will be public
- 1439 noticed in accordance with Procedural Rule No. 1 (9VAC25-230-10 et seq.). A consent
- 1440 special order is a special order issued without a public hearing and with the written consent
- 1441 of the affected owner. For the purpose of this chapter, an emergency special order is not
- 1442 a consent special order. The ~~board~~ department shall consider all comments received
- 1443 during the comment period before taking final action.
- 1444 C. When a VPA permit is amended solely to reflect a new owner, and the previous owner had
- 1445 been issued a consent special order that at the time of VPA permit amendment was still in full
- 1446 force and effect, a consent special order issued to the new owner does not have to go to public
- 1447 notice provided that:
- 1448 1. The VPA permit amendment does not have to go to public notice, and
- 1449 2. The terms of the new consent order are the same as issued to the previous owner.
- 1450 D. Notwithstanding subdivision 3 of this subsection, a special order may be issued by
- 1451 ~~agreement at a board meeting~~ the department without further notice when a public hearing has
- 1452 been scheduled to issue a special order, to the affected owner, whether or not the public hearing
- 1453 is actually held.

1454 Part VIII

1455 Delegation of Authority; Transition

1456 **9VAC25-32-290. Delegation of authority. (Repealed.)**

1457 ~~The director may perform any act of the board provided under this regulation, except as limited~~

1458 ~~by § 62.1-44.14 of the Code of Virginia.~~

1459 **9VAC25-32-305. Permits.**

1460 A. No owner shall cause or allow any land application, marketing, or distribution of biosolids

1461 except in compliance with a permit issued by the ~~board~~ department that authorizes these

1462 activities.

1463 B. A separate biosolids use permit shall be issued for each political jurisdiction (county or city)

1464 where land application is proposed.

1465 C. No person shall land apply Class B biosolids on any land in Virginia unless that land has

1466 been identified in an application to issue, reissue or modify a permit and approved by the ~~board~~

1467 department.

1468 D. No person shall land apply, market, or distribute biosolids in Virginia unless the biosolids  
1469 source has been approved by the ~~board~~ department.

1470 **9VAC25-32-315. Additional and more stringent requirements.**

1471 A. On a case-by-case basis, the ~~board~~ department may impose requirements for the use of  
1472 biosolids or the disposal of sewage sludge in addition to or more stringent than the requirements  
1473 in this part when necessary to protect human health and the environment from any adverse effect  
1474 of a pollutant in the biosolids or sewage sludge.

1475 B. Nothing in this part precludes the authority of another state agency, political subdivision of  
1476 Virginia, or an interstate agency with respect to the use of biosolids or disposal of sewage sludge.

1477 C. For biosolids land application where, because of site specific conditions, including soil type,  
1478 identified during the permit application review process, the department determines that special  
1479 requirements are necessary to protect the environment or the health, safety, or welfare of persons  
1480 residing in the vicinity of a proposed land application site, the department may incorporate in the  
1481 permit at the time it is issued reasonable special conditions regarding setback distances,  
1482 transportation routes, slope, material source, methods of handling and application, and time of  
1483 day restrictions exceeding those required by this regulation. The permit applicant shall have at  
1484 least 14 days in which to review and respond to the proposed conditions.

1485 **9VAC25-32-330. Variances.**

1486 A. The ~~board~~ department may grant a variance to a procedural, design, or operational  
1487 regulation by following the appropriate procedures set forth in this section.

1488 B. Requirements for a variance. The ~~board~~ department may grant a variance if it finds that the  
1489 hardship imposed outweighs the benefits that may be received by the public and that the granting  
1490 of such variance does not subject the public to unreasonable health risks or environmental  
1491 pollution.

1492 C. Application for a variance. Any owner may apply in writing for a variance. The application  
1493 shall be submitted to the appropriate regional office for evaluation. The application shall include:

- 1494 1. A citation of the regulation from which a variance is requested.
- 1495 2. The nature and duration of variance requested.
- 1496 3. A statement of the hardship to the owner and the anticipated impacts to the public health  
1497 and welfare if a variance were granted.
- 1498 4. Suggested conditions that might be imposed on the granting of a variance that would  
1499 limit its detrimental impact on public health and welfare.
- 1500 5. Other information, if any, believed to be pertinent by the applicant.
- 1501 6. Such other information as may be required to make the determination in accordance  
1502 with subsection B of this section.

1503 D. Consideration of a variance.

1504 1. The ~~board~~ department shall act on any variance request submitted pursuant to this  
1505 subsection within 90 days of receipt of request.

1506 2. In the ~~board's~~ department's consideration of whether a biosolids use variance should  
1507 be granted, the ~~board~~ department shall consider such factors as the following:

- 1508 a. The effect that such a variance would have on the adequate operation of the  
1509 biosolids use facility, including public nuisance concerns;
- 1510 b. The cost and other economic considerations imposed by this requirement; and
- 1511 c. The effect that such a variance would have on the protection of the public health or  
1512 the environment.

1513 E. Disposition of a variance request.

1514 1. The ~~board~~ department may grant the variance request and if the ~~board~~ department  
 1515 proposes to deny the variance it shall provide the owner an opportunity to an informal  
 1516 proceeding as provided in § 2.2-4019 of the Code of Virginia. Following this opportunity  
 1517 for an informal proceeding the ~~board~~ department may reject any application for a variance  
 1518 by sending a rejection notice to the applicant. The rejection notice shall be in writing and  
 1519 shall state the reasons for the rejection. A rejection notice constitutes a case decision.

1520 2. If the ~~board~~ department proposes to grant a variance request submitted pursuant to this  
 1521 regulation, the applicant shall be notified in writing of this decision. Such notice shall  
 1522 identify the variance, the biosolids use facility involved, and shall specify the period of time  
 1523 for which the variance will be effective. Such notice shall provide that the variance will be  
 1524 terminated when the biosolids use facility comes into compliance with the applicable  
 1525 regulation and may be terminated upon a finding by the ~~board~~ department that the  
 1526 biosolids use facility has failed to comply with any requirements or schedules issued in  
 1527 conjunction with the variance. The effective date of the variance shall be 15 days following  
 1528 its issuance.

1529 F. Posting of variances. All variances granted for the design or operation of biosolids use  
 1530 facility are nontransferable. Any requirements of the variance shall become part of the permit for  
 1531 biosolids use subsequently granted by the ~~board~~ department.

1532 **9VAC25-32-350. Procedures for obtaining a certificate to construct and certificate to**  
 1533 **operate.**

1534 No owner shall cause or allow the construction, expansion, modification, or operation of  
 1535 facilities necessary for biosolids treatment or storage except in compliance with a certificate to  
 1536 construct (CTC) and a certificate to operate (CTO) issued by the ~~board~~ department in accordance  
 1537 with the Sewage Collection and Treatment Regulations (9VAC25-790).

1538 **9VAC25-32-358. Frequency of monitoring.**

1539 A. Biosolids.

1540 1. The frequency of monitoring for the pollutants listed in Tables 1 through 5 of 9VAC25-  
 1541 32-356; the pathogen density requirements in 9VAC25-32-675 A and B 2 through B 4; and  
 1542 the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 4, B 7, and  
 1543 B 8 shall be the frequency in Table 1 of this section.

TABLE 1 FREQUENCY OF MONITORING – LAND APPLICATION	
Amount of biosolids <sup>(1)</sup> (metric tons per 365-day period)	Frequency <sup>(2)</sup>
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year)
Equal to or greater than 15,000	Once per month (12 times per year)
Note <sup>(1)</sup> : Either the amount of bulk biosolids applied to the land or the amount of biosolids received by a person who prepares biosolids that is sold or given away in a bag or other container for application to the land (dry weight basis).	

Note<sup>(2)</sup>: Sampling shall be conducted at approximately equal intervals at the listed frequencies. Biosolids programs that store biosolids and land apply only during discrete events throughout the year shall schedule sampling events to coincide with application periods. The department may require increased monitoring frequencies, if necessary, to adequately define any significant variability in biosolids quality.

1544 2. After the biosolids has been monitored for two years at the frequency in Table 1 of this  
1545 section, the ~~board~~ department may reduce the frequency of monitoring for pollutant  
1546 concentrations and for the pathogen density requirements in 9VAC25-32-675 A 5 b and  
1547 c.

1548 B. Domestic septage. If the vector attraction reduction requirements in 9VAC25-32-685 B 12  
1549 are met when domestic septage is applied to agricultural land, forest, or a reclamation site, each  
1550 container of domestic septage applied to the land shall be monitored for compliance with those  
1551 requirements.

1552 **9VAC25-32-400. Additional monitoring.**

1553 A. The department may require that additional site specific monitoring be performed by the  
1554 holder of the permit for any biosolids land application practice regardless of frequency of  
1555 application or size of the application area. Such requirements may occur in situations in which  
1556 groundwater contamination, surface runoff, soil toxicity, health hazards or nuisance conditions  
1557 are identified as an existing problem or potential problem as a result of biosolids use operations.  
1558 Additional monitoring may include, but is not limited to, groundwater, surface water, crop, and soil  
1559 monitoring.

1560 B. The ~~board~~ department may require the owner or operator of any facility or operation to  
1561 install, use, and maintain monitoring equipment for internal testing of biosolids quality, to identify  
1562 and determine the causes of operational problems, and to determine the necessary corrective  
1563 actions to correct such problems. If this testing is required, test results shall be recorded,  
1564 compiled, and reported to the department.

1565 C. Additional operational control information may be required on an individual basis by the  
1566 department.

1567 D. The department may require biosolids to be tested for certain toxic organic compounds  
1568 prior to agricultural use. If performed and validated, these test results shall be utilized to evaluate  
1569 the maximum allowable annual loading rate for the tested biosolids. If analytical test results verify  
1570 that biosolids contains levels of organic chemicals exceeding concentration limits incorporated in  
1571 federal regulations or standards, appropriate restrictions shall be imposed for agricultural use of  
1572 those biosolids.

1573 E. Additional parameters may be required for screening purposes such as aluminum (mg/kg),  
1574 water soluble boron (mg/kg), calcium (mg/kg), manganese (mg/kg), sulfates (mg/kg), and those  
1575 pollutants for which removal credits are granted.

1576 F. Microbiological testing may be necessary to document the sludge treatment classification  
1577 (9VAC25-32-675). Microbiological standards shall be verified by the log mean of the analytical  
1578 results from testing of seven or more samples of the sludge source. Sampling events shall be  
1579 separated by an appropriate period of time so as to be representative of the random and cyclic  
1580 variations in sewage characteristics.

1581 **9VAC25-32-410. Biosolids management plan.**

1582 A. The permit holder shall maintain and implement a Biosolids Management Plan that shall  
1583 consist of three components:

- 1584 1. The materials, including site booklets, developed and submitted at the time of permit  
 1585 application or permit modification adding a farm to the permit in accordance with 9VAC25-  
 1586 32-60 F;
- 1587 2. Nutrient management plan developed for each site, prior to biosolids application; and  
 1588 3. Operations and maintenance (O&M) manual, developed and submitted to the  
 1589 department within 90 days of the effective date of the permit.
- 1590 B. The biosolids management plan and all of its components shall be incorporated as an  
 1591 enforceable part of the permit.
- 1592 C. Nutrient management plan:
- 1593 1. A nutrient management plan approved by the Department of Conservation and  
 1594 Recreation shall be required for application sites prior to ~~board~~ department authorization  
 1595 under specific conditions, including but not limited to:
- 1596 a. Sites operated by an owner or lessee of a confined animal feeding operation as  
 1597 defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry  
 1598 feeding operation as defined in subsection A of § 62.1-44.17:1.1 of the Code of  
 1599 Virginia;
- 1600 b. Sites where land application more frequently than once every three years at greater  
 1601 than 50% of the annual agronomic rate is proposed;
- 1602 c. Mined or disturbed land sites where land application is proposed at greater than  
 1603 agronomic rates; and
- 1604 d. Other sites based on site-specific conditions that increase the risk that land  
 1605 application may adversely impact state waters.
- 1606 2. Where conditions at the land application site change so that it meets one or more of the  
 1607 specific conditions identified in subdivisions 1 a through d of this subsection, an approved  
 1608 nutrient management plan shall be submitted prior to any future land application at the  
 1609 site.
- 1610 3. The nutrient management plan shall be available for review by the department at the  
 1611 land application site during biosolids land application.
- 1612 4. Within 30 days after land application at the site has commenced, the permit holder shall  
 1613 provide a copy of the nutrient management plan to the farm operator of the site, the  
 1614 Department of Conservation and Recreation and the chief executive officer or designee  
 1615 for the local government unless they request in writing not to receive the nutrient  
 1616 management plan.
- 1617 5. The nutrient management plan must be approved by the Department of Conservation  
 1618 and Recreation prior to land application for application sites where the soil test phosphorus  
 1619 levels exceed the values in Table 1 of this section. For purposes of approval, permittees  
 1620 should submit the nutrient management plan to the Department of Conservation and  
 1621 Recreation at least 30 days prior to the anticipated date of land application to ensure  
 1622 adequate time for the approval process.

TABLE 1 SOIL PHOSPHORUS LEVELS REQUIRING NMP APPROVAL	
Region	Soil Test P (ppm) VPI & SU Test (Mehlich I)*
Eastern Shore and Lower Coastal Plain	135

Middle and Upper Coastal Plain and Piedmont	136
Ridge and Valley	162
*If results are from another laboratory, the Department of Conservation and Recreation approved conversion factors must be used.	

- 1623 D. The O&M manual shall include at a minimum:
- 1624 1. Equipment maintenance and calibration procedures and schedules;
- 1625 2. Storage facility maintenance procedures and schedules;
- 1626 3. Sampling schedules for:
- 1627 a. Required monitoring; and
- 1628 b. Operational control testing;
- 1629 4. Sample collection, preservation, and analysis procedures, including laboratories and
- 1630 methods used; and
- 1631 5. Instructions for recording and reporting of all monitoring activities.

1632 **9VAC25-32-470. Crop monitoring and reporting.**

1633 Vegetation monitoring may be required by the ~~board~~ department upon recommendation of the

1634 department once every three years on sites with frequent applications of biosolids applied at or

1635 greater than agronomic rates and when 400 pounds per acre or more of available phosphorus

1636 has been applied to the soil. Analyses of plant tissue should be conducted at the proper growth

1637 stage as recommended by either the Virginia Department of Agriculture and Consumer Services,

1638 the Virginia Department of Conservation and Recreation or Virginia Cooperative Extension

1639 Service. Routine analyses include nitrate-nitrogen, phosphorus, potassium, calcium, manganese,

1640 magnesium, iron, copper and zinc. Analysis for additional parameters may be necessary as

1641 determined on a case-by-case basis. Results shall be reported annually to the department.

1642 **9VAC25-32-480. Groundwater monitoring and reporting.**

1643 A. Monitoring wells may be required by the ~~board~~ department for land treatment sites, sludge

1644 lagoons, biosolids land application sites, or biosolids storage facilities to monitor groundwater

1645 quality.

1646 B. If groundwater monitoring is required, a groundwater monitoring plan shall be submitted to

1647 the department for approval that includes at a minimum:

- 1648 1. Geologic and hydrologic conditions at the site;
- 1649 2. Monitoring well design, placement, and construction;
- 1650 3. Sampling frequency;
- 1651 4. Sampling procedures, including quality assurance and quality control; and
- 1652 5. Collection of background samples.

1653 **9VAC25-32-490. Compliance with biosolids use practices of this chapter.**

1654 Article 3

1655 Biosolids Use Standards and Practices

1656 Guidelines set forth in 9VAC25-32-515 through 9VAC25-32-580 of this regulation specify

1657 minimum standards for biosolids use for land application, marketing and distribution, including

1658 biosolids quality and site specific management practices. Compliance with this chapter will not be

1659 required for facilities not including land application, distribution, or marketing, which have received

1660 the approval of the Commissioner of the State Department of Health and the State Water Control

1661 Board and for which operation has commenced as of January 1, 2008. Such operation of facilities

1662 is deemed to be commenced upon issuance of a certificate to operate in accordance with the



1663 Sewage Collection and Treatment Regulations (9VAC25-790). However, the ~~board~~ department  
1664 may impose standards and requirements that are more stringent than those contained in this  
1665 regulation according to the provisions of 9VAC25-32-100 E, 9VAC25-32-315, and 9VAC25-32-  
1666 560 B 3. Conformance to local land use zoning and planning should be resolved between the  
1667 local government and the facility owner or permit holder. Applications submitted for facilities must  
1668 demonstrate that the facility and biosolids use management practices will adequately safeguard  
1669 public health and will comply with the certificate and permit requirements, as appropriate.  
1670 Submissions that are in substantial compliance with this regulation and comply with any additional  
1671 requirements as noted above will be approved. Justification for biosolids use proposals may be  
1672 required for those portions of the submitted proposal that differ from these criteria. The owner or  
1673 owner's agent shall identify and justify noncompliance with specific standards or "shall" criteria  
1674 that the department identifies, or the applicant, in his judgment, believes to be substantial in  
1675 nature. The department may request changes in designs that are not in substantial compliance  
1676 with this regulation and that are not adequately justified by the applicant. The fact that significant  
1677 work was accomplished on a specific permit application prior to adoption of this regulation shall  
1678 be a consideration when evaluating applications.

1679 **9VAC25-32-530. Land acquisition.**

1680 A. When an application to permit land application of biosolids is submitted to the department,  
1681 the permit applicant shall ensure the continued availability of the land and protection from  
1682 improper concurrent use during the utilization period.

1683 B. Land acquisition requirements.

1684 1. Permit holders shall use a unique control number assigned by the department as an  
1685 identifier for fields permitted for land application.

1686 2. A written agreement shall be established between the landowner and permit applicant  
1687 or permit holder to be submitted with the permit application, whereby the landowner shall  
1688 consent to apply biosolids on his property. The landowner agreement shall include:

1689 a. A statement certifying that the landowner is the sole owner or one of multiple owners  
1690 of the property or properties identified on the landowner agreement;

1691 b. A statement certifying that no concurrent agreements are in effect for the fields to  
1692 be permitted for biosolids application;

1693 c. An acknowledgement that the landowner shall notify the permittee when land is sold  
1694 or ownership transferred;

1695 d. An acknowledgement that the landowner shall notify the permittee if any conditions  
1696 change such that any component of the landowner agreement becomes invalid;

1697 e. Permission to allow department staff on the landowner's property to conduct  
1698 inspections;

1699 f. An acknowledgement by the landowner of any site restrictions identified in the  
1700 regulation;

1701 g. An acknowledgement that the landowner has received a biosolids fact sheet  
1702 approved by the department; and

1703 h. An acknowledgement that the landowner shall not remove notification signs placed  
1704 by the permit holder.

1705 3. New landowner agreements using the most current form provided by the ~~board~~  
1706 department shall be submitted to the department for proposed land application sites  
1707 identified in each application for issuance or reissuance of a permit or the modification to  
1708 add land to an existing permit that authorizes the land application of biosolids.

- 1709 4. For permits modified in order to incorporate changes to this regulation, the permit holder  
1710 shall, within 60 days of the effective date of the permit modification, advise the landowner  
1711 by certified letter of the requirement to provide a new landowner agreement. The letter  
1712 shall include instructions to the landowner for signing and returning the new landowner  
1713 agreement, and shall advise the landowner that the permit holder's receipt of such new  
1714 landowner agreement is required prior to application of biosolids to the landowner's  
1715 property.
- 1716 5. The responsibility for obtaining and maintaining the agreements lies with the permit  
1717 holder. The written agreement shall be submitted to the department with the permit  
1718 application.

1719 **9VAC25-32-540. Transport.**

1720 A. Transport routes should follow primary highways, shall avoid residential areas when  
1721 possible, and shall comply with all Virginia Department of Transportation requirements and  
1722 standards. Transport vehicles shall be sufficiently sealed to prevent leakage and spillage of  
1723 biosolids. For biosolids with a solids content of less than 15%, totally closed watertight transport  
1724 vehicles with rigid tops shall be provided to prevent spillage unless adequate justification is  
1725 provided to demonstrate that such controls are unnecessary. The ~~board~~ department may also  
1726 require certain dewatered biosolids exceeding 15% solids content to be handled as liquid  
1727 biosolids. The minimum information for biosolids transport that shall be supplied in the biosolids  
1728 management plan is listed in 9VAC25-32-60 F.

1729 B. The permit holder shall be responsible for the prompt cleanup and removal of biosolids  
1730 spilled during transport. The operations manual shall include a plan for the prevention of spills  
1731 during transport and for the cleanup and removal of spills. The permit holder shall ensure that its  
1732 personnel, subcontractors or the drivers of vehicles transporting biosolids for land application shall  
1733 be properly trained in procedures for spill removal and cleanup.

1734 C. The permit holder shall take appropriate steps to prevent drag-out and track-out of dirt and  
1735 debris or biosolids from land application sites onto public roads. Where material is transported  
1736 onto a paved or public road surface, the road surface shall be cleaned thoroughly as soon as  
1737 practicable, but no later than the end of each day.

1738 D. The permit holder shall promptly report offsite spills to the department, the chief executive  
1739 officer or designee for the local government and the owner of the facility generating the biosolids.  
1740 The report shall be made verbally as soon as possible, but no later than 24 hours after the  
1741 discovery of the spill. After business hours notification may be provided by voicemail, facsimile or  
1742 email.

1743 E. A written report, which shall include a description of measures taken in response to the  
1744 spill, shall be submitted by the permit holder to the department, the chief executive officer or  
1745 designee for the local government, and the owner of the facility generating the biosolids within  
1746 five working days of the spill. The report may be sent by first class mail, facsimile or email, or it  
1747 may be hand delivered.

1748 **9VAC25-32-550. Storage facilities.**

1749 A. No person shall apply to the department for a permit, a variance, or a permit modification  
1750 authorizing storage of biosolids without first complying with all requirements adopted pursuant to  
1751 § 62.1-44.19:3 R of the Code of Virginia.

1752 B. Two types of storage may be integrated into a complete biosolids management plan:

1753 1. On-site storage, or

1754 2. Routine storage. Only routine storage facilities shall be considered a facility under this  
1755 regulation.

1756 C. All on-site storage and routine storage facilities shall comply with the requirements of this  
1757 section by 12 months from the effective date of this regulation.

1758 D. On-site storage. On-site storage is the short-term storage of biosolids on a constructed  
1759 surface within a site approved for land application at a location preapproved by the department.  
1760 These stored biosolids shall be applied only to sites under the operational control of the same  
1761 owner or operator of the site where the on-site storage is located. Requirements for on-site  
1762 storage include the following:

1763 1. The certified land applier shall notify the department within the same working day  
1764 whenever it is necessary to implement on-site storage. Notification shall include the source  
1765 or sources, location, and amounts;

1766 2. A surface shall be constructed with sufficient strength to support operational equipment  
1767 and with a maximum permeability of  $10^{-7}$  cm/sec;

1768 3. Storage shall be limited to the amount of biosolids specified in the nutrient management  
1769 plan to be applied at sites under the operational control of the same owner or operator of  
1770 the site where the on-site storage is located;

1771 4. If malodors related to the stored biosolids are verified by the department at any occupied  
1772 dwelling on surrounding property, the problem must be corrected within 48 hours. If the  
1773 problem is not corrected within 48 hours, the biosolids must be removed from the storage  
1774 site;

1775 5. All biosolids stored on the on-site storage pad shall be land applied by the 45<sup>th</sup> day from  
1776 the first day of on-site storage;

1777 6. Biosolids storage shall be located to provide minimum visibility from adjacent properties;

1778 7. Best management practices shall be utilized as appropriate to prevent contact with  
1779 storm water run on or runoff;

1780 8. Stored biosolids are to be inspected by the certified land applier at least every seven  
1781 days and after precipitation events of 0.1 inches or greater to ensure that runoff controls  
1782 are in good working order. Observed excessive slumping, erosion, or movement of  
1783 biosolids is to be corrected within 24 hours. Any ponding or malodor at the storage site is  
1784 to be corrected. The certified land applier shall maintain documentation of inspections of  
1785 stored biosolids;

1786 9. The department may prohibit or require additional restrictions for on-site storage in  
1787 areas of Karst topography and environmentally sensitive sites; and

1788 10. Storage of biosolids shall be managed so as to prevent adverse impacts to water  
1789 quality or public health.

1790 E. Routine storage. Routine storage is the long-term storage of biosolids at a facility not  
1791 located at the site of the wastewater treatment plant, preapproved by the department and  
1792 constructed specifically for the storage of biosolids to be applied at any permitted site. Routine  
1793 storage facilities shall be provided for all land application projects if no alternative means of  
1794 management is available during nonapplication periods. No person shall apply to the department  
1795 for a permit, a variance, or a permit modification authorizing storage of biosolids without first  
1796 complying with all requirements adopted pursuant to § 62.1-44.19:3 A 5 of the Code of Virginia.  
1797 Plans and specifications for any surface storage facilities (pits, ponds, lagoons) or aboveground  
1798 facilities (tanks, pads) shall be submitted as part of the minimum information requirements. The  
1799 minimum information requirements include:

1800 1. Location.

- 1801 a. The facility shall be located at an elevation that is not subject to, or is otherwise  
1802 protected against, inundation produced by the 100-year flood/wave action as defined  
1803 by U.S. Geological Survey or equivalent information.
- 1804 b. Storage facilities should be located to provide minimum visibility.
- 1805 c. All storage facilities located offsite of property owned by the generator shall be  
1806 provided with a minimum 750-foot setback area. The length of the setback area  
1807 considered will be the distance measured from the perimeter of the storage facility.  
1808 Residential uses, high-density human activities and activities involving food  
1809 preparation are prohibited within the setback area. The ~~board~~ department may reduce  
1810 the setback requirements based on site-specific factors, such as facility size,  
1811 topography, prevailing wind direction, and the inclusion of an effective windbreak in  
1812 the overall design.
- 1813 2. Design capacity.
- 1814 a. The design capacity for storage of liquid biosolids shall be sufficient to store a  
1815 minimum volume equivalent to 60 days or more average production of biosolids and  
1816 the incidental wastewater generated by operation of the treatment works plus sufficient  
1817 capacity necessary for: (i) the 25 year-24 hour design storm (incident rainfall and any  
1818 runoff as may be present); (ii) net precipitation excess during the storage period; and  
1819 (iii) an additional one foot freeboard from the maximum water level (attributed to the  
1820 sum of the above factors) to the top berm elevation. Storage capacity of less than that  
1821 specified above will be considered on a case-by-case basis only if sufficient  
1822 justification warrants such a reduction.
- 1823 b. If alternative methods of management cannot be adequately verified, contractors  
1824 shall provide for a minimum of 30 days of in-state routine storage capacity for the  
1825 average quantity of biosolids transported into Virginia from out-of-state treatment  
1826 works generating at least a Class B biosolids.
- 1827 3. Facility design.
- 1828 a. All drawings and specifications shall be submitted in accordance with 9VAC25-790-  
1829 160.
- 1830 b. The biosolids shall be stored on an engineered surface with a maximum  
1831 permeability of  $10^{-7}$  cm/sec and of sufficient strength to support operational equipment.
- 1832 c. Storage facilities designed to hold dewatered biosolids shall be constructed with a  
1833 cover to prevent contact with precipitation.
- 1834 d. Existing facilities permitted as routine storage facilities and designed to contain  
1835 liquid biosolids may be used to store dewatered biosolids. The supernatant shall be  
1836 managed as liquid biosolids in accordance with 9VAC25-32-550 E 5 d. Freeboard shall  
1837 be maintained in accordance with 9VAC25-32-550 E 5 c. The department may require  
1838 additional monitoring prior to land application.
- 1839 e. Storage facilities shall be of uniform shape (round, square, rectangular) with no  
1840 narrow or elongated portions.
- 1841 f. The facilities shall also be designed to permit access of equipment necessary for  
1842 loading and unloading biosolids, and shall be designed with receiving facilities to allow  
1843 for even distribution of biosolids into the facility.
- 1844 g. The design shall also provide for truck cleaning facilities.
- 1845 4. Monitoring. All biosolids storage facilities shall be monitored in accordance with the  
1846 requirements of this regulation. Plans and specifications shall be provided for such a

1847 monitoring program in accordance with the minimum information specified in 9VAC25-32-  
1848 60 F and 9VAC25-32-410.

1849 5. Operation.

1850 a. Only biosolids suitable for land application (Class A or B biosolids) shall be placed  
1851 into permitted routine storage facilities.

1852 b. Storage of biosolids located offsite or remote from the wastewater treatment works  
1853 during the summer months shall be avoided whenever possible so that the routine  
1854 storage facility remains as empty as possible during the summer months.

1855 c. Storage facilities shall be operated in a manner such that sufficient freeboard is  
1856 provided to ensure that the maximum anticipated high water elevation due to any and  
1857 all design storm inputs is not less than one foot below the top berm elevation.

1858 d. Complete plans for supernatant disposal shall be provided in accordance with  
1859 9VAC25-32-60 F. Plans for supernatant disposal may include transport to the sewage  
1860 treatment works, mixing with the biosolids for land application or land application  
1861 separately. However, separate land application of supernatant will be regulated as  
1862 liquid biosolids; additional testing, monitoring and treatment (disinfection) may be  
1863 required.

1864 e. The facility site shall be fenced to a minimum height of five feet; gates and locks  
1865 shall be provided to control access. The fence shall be posted with signs identifying  
1866 the facility. The fence shall not be constructed closer than 10 feet to the outside edge  
1867 of the facility or appurtenances, to allow adequate accessibility.

1868 f. If malodors related to the stored biosolids are verified by the department at any  
1869 occupied dwelling on surrounding property, the malodor must be corrected within 48  
1870 hours.

1871 6. Closure. An appropriate plan of closure or abandonment shall be developed by the  
1872 permittee when the facility ceases to be utilized and approved by the ~~board~~ department.  
1873 Such plans may also be reviewed by the Department of Health.

1874 7. Recordkeeping. A manifest system shall be developed, implemented and maintained  
1875 and be available for inspection during operations as part of the overall daily recordkeeping  
1876 for the project (9VAC25-32-60 F).

1877 **9VAC25-32-560. Biosolids utilization methods.**

1878 A. Requirements applicable to land application of biosolids.

1879 1. All biosolids application rates, application times and other site management operations  
1880 shall be restricted as specified in the biosolids management plan. The biosolids  
1881 management plan shall include a nutrient management plan as required by 9VAC25-32-  
1882 410 and prepared by a certified nutrient management planner as stipulated in regulations  
1883 promulgated pursuant to § 10.1-104.2 of the Code of Virginia.

1884 2. Biosolids shall be treated to meet standards for land application as required by Part IX  
1885 (9VAC25-32-303 et seq.) of this chapter prior to delivery at the land application site. No  
1886 person shall alter the composition of biosolids at a site approved for land application of  
1887 biosolids under a Virginia Pollution Abatement Permit. Any person who engages in the  
1888 alteration of such biosolids shall be subject to the penalties provided in Article 6 (§ 62.1-  
1889 44.31 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. The addition of lime or  
1890 deodorants to biosolids that have been treated to meet standards for land application as  
1891 required by Part IX (9VAC25-32-303 et seq.) of this chapter shall not constitute alteration  
1892 of the composition of biosolids. The ~~board~~ department may authorize public institutions of  
1893 higher education to conduct scientific research on the composition of biosolids that may  
1894 be applied to land.

1895 B. Agricultural use. Agricultural use of biosolids is the land application of biosolids to cropland  
1896 or pasture land to obtain agronomic benefits as a plant nutrient source and soil conditioner.

1897 1. Biosolids treatment. As a minimum, biosolids that are applied to the land or incorporated  
1898 into the soil shall be treated by a Class II pathogen treatment process and shall be treated  
1899 or managed to provide an acceptable level of vector attraction reduction.

1900 2. Site soils.

1901 a. Depth to bedrock or restrictive layers shall be a minimum of 18 inches.

1902 b. Biosolids application shall not be made during times when the seasonal high water  
1903 table of the soil is within 18 inches of the ground surface. If Natural Resources  
1904 Conservation Service soil survey information regarding depth of seasonal water table  
1905 is not available, the water table depth shall be determined by soil characteristics or  
1906 water table observations. If the soil survey or such evidence indicates that the  
1907 seasonal water table can be less than 18 inches below the average ground surface,  
1908 soil borings shall be conducted within seven days prior to land application operations  
1909 during periods of high water table for the soil series present to verify the actual water  
1910 table depth. The use of soil borings and water table depth verification may be required  
1911 for such sites from November to May (during seasonal high water table elevations) of  
1912 each year depending on soil type. Constructed channels (agricultural drainage  
1913 ditches) may be utilized to remove surface water and lower the water table as  
1914 necessary for crop production and site management.

1915 c. The pH of the biosolids and soil mixture shall be 6.0 or greater at the time of each  
1916 biosolids application if the biosolids cadmium concentration is greater than or equal to  
1917 21 mg/kg. The soil pH must be properly tested and recorded prior to land application  
1918 operations during which a pH change of one-half unit or more may occur within the  
1919 zone of incorporation (i.e., use of biosolids containing lime or other alkaline additives  
1920 at 10% or more of dry solid weight).

1921 d. When soil test pH is less than 5.5 S.U., the land shall be supplemented with lime at  
1922 the recommended agronomic rate prior to or during biosolids application if the biosolids  
1923 to be land applied have not been alkaline stabilized.

1924 e. When soil test potassium levels are less than 38 parts per million (Mehlich I  
1925 analytical procedure or equivalent), the land shall be supplemented with potash at the  
1926 recommended agronomic rate prior to or during biosolids application.

1927 3. Management practices.

1928 a. Site specific application rates shall not exceed the rates established in the nutrient  
1929 management plan nor result in exceedance of the cumulative trace element loading  
1930 rates specified in 9VAC25-32-356 Table 3.

1931 b. Agricultural use of stabilized septage shall be in accordance with the same  
1932 requirements as biosolids.

1933 c. Infrequent application. If biosolids are applied to a field only once in a three-year  
1934 period, biosolids may be applied such that the total crop needs for nitrogen is not  
1935 exceeded during a one-year crop rotation period including the production and  
1936 harvesting of two crops in succession within a consecutive 12-month growing season.  
1937 The infrequent application rate may be restricted (i) down to 10% of the maximum  
1938 cumulative loading rate (9VAC25-32-356 Table 3) for cadmium and lead or (ii) to  
1939 account for all sources of nutrients applied to the site, including existing residuals.

1940 d. Operations.

1941 (1) Field management. The application rate of all application equipment shall be  
1942 routinely measured as described in a biosolids management plan. Liquid biosolids

1943 shall not be applied at rates exceeding 14,000 gallons per acre, per application.  
 1944 Sufficient drying times shall be allowed between subsequent applications. Application  
 1945 vehicles shall be suitable for use on agricultural land. Pasture and hay fields shall be  
 1946 grazed or clipped to a height of approximately six inches prior to biosolids application.  
 1947 Biosolids shall be applied such that uniform application is achieved. If application  
 1948 methods do not result in a uniform distribution of biosolids, additional operational  
 1949 methods shall be employed following application such as dragging with a pasture  
 1950 harrow, followed by clipping if required, to achieve a uniform distribution of the applied  
 1951 biosolids.

1952 (2) Surface incorporation may be required on cropland by the department, or the local  
 1953 monitor with approval of the department, to mitigate malodors when incorporation is  
 1954 practicable and compatible with a soil conservation plan or contract meeting the  
 1955 standards and specifications of the U.S. Department of Agriculture Natural Resources  
 1956 Conservation Service.

1957 (3) Slopes above 15%. Biosolids shall not be applied to site slopes exceeding 15%.  
 1958 This restriction may be waived by the department for the establishment and  
 1959 maintenance of perennial vegetation or based on site specific criteria and BMPs in  
 1960 place in the field.

1961 (4) Biosolids application timing and slope restrictions shall conform to criteria  
 1962 contained in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia.

1963 (5) Snow. Biosolids may only be applied to snow-covered ground if the snow cover  
 1964 does not exceed one inch and the snow and biosolids are incorporated within 24 hours  
 1965 of application. If snow melts during biosolids application, incorporation is not  
 1966 necessary.

1967 e. Setback distances.

1968 (1) Setback distances. The land application of biosolids shall not occur within the  
 1969 following minimum setback distance requirements (Table 1 of this section):

TABLE 1 MINIMUM SETBACK DISTANCE REQUIREMENTS	
Adjacent Feature	Minimum Setback Distance (Feet) to Land Application Area
Occupied dwelling	200 <sup>1,2,3</sup>
Odor sensitive receptors (without injection or same day incorporation)	400 <sup>3</sup>
Odor sensitive receptors (with injection or same day incorporation)	200
Property lines	100 <sup>2,4</sup>
Property lines of publicly accessible sites <sup>5</sup>	200
Water supply wells or springs	100
Public water supply reservoirs	400
All segments of streams and tributaries designated as a Public Water Supply under the Water Quality Standards	100

Surface waters without a vegetated buffer	100
Surface waters with a 35-foot vegetated buffer	35
Agricultural drainage ditches	10
All improved roadways	10
Rock outcrops	25
Open sinkholes	100
Limestone rock outcrops and closed sinkholes <sup>6</sup>	50

<sup>1</sup>The setback distance to occupied dwellings may be reduced or waived upon written consent of the occupant and landowner of the dwelling.

<sup>2</sup>The department shall grant to any landowner or resident in the vicinity of a biosolids land application site an extended setback of up to 200 feet from their property line and up to 400 feet from their occupied dwelling upon request from their physician based on medical reasons. In order for an extended setback request to be granted, the request must be submitted to the department in writing on a form provided by the department. A request must be received by the department no later than 48 hours before land application commences on the field affected by the extended setback, and communicated to the permittee no later than 24 hours before land application commences on the field affected by the extended setback. The department may extend a setback distance within 48 hours of land application if requested by the Virginia Department of Health in connection with the landowner or resident's physician.

<sup>3</sup>Setback distances may be extended beyond 400 feet where an evaluation by the Virginia Department of Health determines that a setback in excess of 400 feet is necessary to prevent specific and immediate injury to the health of an individual.

<sup>4</sup>The setback distance to property lines may be reduced or waived upon written consent of the landowner.

<sup>5</sup>Publicly accessible sites are open to the general public and routinely accommodate pedestrians and include, but are not limited to, schools, churches, hospitals, parks, nature trails, businesses open to the public, and sidewalks. Temporary structures, public roads or similar thoroughfares are not considered publicly accessible.

<sup>6</sup>A closed sinkhole does not have an open conduit to groundwater. The setback from a closed sinkhole may be reduced or waived by the department upon evaluation by a professional soil scientist.

**1970** (2) In cases where more than one setback distance is involved, the most restrictive  
**1971** distance governs.

**1972** (3) Waivers. Waivers from adjacent property residents and landowners may only be  
**1973** used to reduce setback distances from occupied dwellings and property lines.

**1974** (4) Extended setback distances. The department may increase setback requirements  
**1975** based on site specific features, such as agricultural drainage features and site slopes.

**1976** f. Voluntary extensions of setback distances. If a permit holder negotiates a voluntary  
**1977** agreement with a landowner or resident to extend setback distances or add other more  
**1978** restrictive criteria than required by this regulation, the permit holder shall document  
**1979** the agreement in writing and provide the agreement to the department. Voluntary  
**1980** setback increases or other management criteria will not become an enforceable part



1981 of the land application permit unless the permit holder modifies the biosolids  
1982 management plan to include the additional restriction.

1983 g. Extension of setback distances with phosphorus index. If the application rate  
1984 included in a nutrient management plan for a biosolids land application site is  
1985 dependent upon an extended setback distance calculated using the phosphorus index,  
1986 the phosphorus index calculations shall be included in the nutrient management plan.  
1987 The extended setback distance shall be an enforceable part of the permit.

1988 C. Forestland (Silviculture). Silvicultural use includes application of biosolids to timber and  
1989 fiber production land, as well as federal and state forests. The forestland may be recently cleared  
1990 and planted, young plantations (two-year-old to five-year-old trees), or established forest stands.

1991 1. Biosolids standards. Refer to the standards of this article.

1992 2. Site suitability.

1993 a. Site suitability requirements shall conform to the requirements contained in  
1994 subdivision B 2 of this section.

1995 b. Notwithstanding the requirements of subdivision B 2 of this section the soil pH shall  
1996 be managed at the natural soil pH for the types of trees proposed for growth.

1997 c. Notwithstanding the requirements of subdivision B 2 of this section the soil test  
1998 potassium level is not required to be at a minimum level at the time of biosolids  
1999 application.

2000 3. Management practices.

2001 a. Application rates. Biosolids application rates shall be in accordance with the  
2002 biosolids management plan. The biosolids management plan shall include information  
2003 provided by the Virginia Department of Forestry.

2004 b. Operations.

2005 (1) Field management.

2006 (a) High pressure spray shall not be utilized if public activity is occurring within 1,500  
2007 feet downwind of the application site. Public access to the site shall be controlled  
2008 following application in accordance with Article 3 (9VAC25-32-490 et seq.) of this part.

2009 (b) Biosolids application vehicles shall have adequate ground clearance to be suitable  
2010 for silvicultural field use.

2011 (c) Application scheduling included in the biosolids management plan shall take into  
2012 account rainfall and periods of freezing conditions.

2013 (d) Monitoring requirements shall be site specific and may include groundwater,  
2014 surface water or soils, for frequent application sites.

2015 (2) Setbacks. Setbacks shall conform to those for agricultural utilization. Refer to Table  
2016 1 of this section.

2017 D. Reclamation of disturbed land.

2018 1. Biosolids standards. Refer to the standards of this article.

2019 2. Site suitability. Site suitability requirements shall conform to the requirements contained  
2020 in subdivision B 2 of this section. Exceptions may be considered on a case-by-case basis.

2021 3. Management practices.

2022 a. Application rates. The biosolids application rates shall be established in the biosolids  
2023 management plan in consultation with the Virginia Department of Energy, the Virginia  
2024 Department of Conservation and Recreation, and the Department of Crop and Soil  
2025 Environmental Sciences of the Virginia Polytechnic Institute and State University. The  
2026 nutrient management plan shall be approved by the Department of Conservation and

2027 Recreation prior to permit issuance where land application is proposed at greater than  
2028 agronomic rates.

2029 b. Vegetation selection. The land shall be seeded with grass and legumes even when  
2030 reforested. The biosolids management plan shall include information on the seeding  
2031 mixture and a detailed seeding schedule.

2032 c. Operations.

2033 (1) The soil pH shall be maintained at 6.0 or above if the cadmium level in the biosolids  
2034 applied is at or above 21 mg/kg. during the first year after the initial application. Soil  
2035 samples should be analyzed by a qualified laboratory. The application rate shall be  
2036 limited by the most restrictive cumulative trace element loading (9VAC25-32-356  
2037 Table 3).

2038 (2) Surface material shall be turned or worked prior to the surface application of liquid  
2039 biosolids.

2040 (3) Unless the applied biosolids are determined to be Class A or have been  
2041 documented as subjected to Class I treatment, crops intended for direct human  
2042 consumption shall not be grown for a period of three years following the date of the  
2043 last biosolids application. No animals whose products are intended for human  
2044 consumption may graze the site or obtain feed from the site for a period of six months  
2045 following the date of the last biosolids application.

2046 **9VAC25-32-570. Distribution and marketing.**

2047 A. Exceptional quality. Distribution or marketing provides for the sale or distribution of  
2048 exceptional quality biosolids or mixtures of exceptional quality biosolids with other materials such  
2049 that the mixture achieves the Class A pathogen control, vector attraction reduction and pollutant  
2050 control standards. Distribution or marketing of Class A biosolids that have been mixed with inert  
2051 materials may be approved on a case-by-case basis. Use of such mixtures for agricultural  
2052 purposes shall be evaluated through proper testing or research programs designed to assess the  
2053 suitability of the material for such use. Exceptional quality biosolids marketed as fertilizers or soil  
2054 conditioners must meet the following conditions:

2055 1. The biosolids product must be registered with the Virginia Department of Agriculture  
2056 and Consumer Services in accordance with the provisions of § 3.2-3607 of the Code of  
2057 Virginia.

2058 2. The biosolids product must be processed to meet Class A pathogen requirements as  
2059 specified in 9VAC25-32-675 A.

2060 3. The biosolids product must meet one of the vector attraction reduction requirements as  
2061 specified in 9VAC25-32-685 B 1 through B 8.

2062 4. The biosolids product must meet the ceiling concentrations specified in 9VAC25-32-  
2063 356 - Table 2.

2064 5. The biosolids product must meet the pollutant concentrations specified in 9VAC25-32-  
2065 356 - Table 4.

2066 6. Additional parameters may be required for screening purposes such as organic  
2067 chemicals, aluminum (mg/kg), water soluble boron (mg/kg), calcium (mg/kg), chlorides  
2068 (mg/l), manganese (mg/kg), sulfur (mg/kg), and those pollutants for which removal credits  
2069 are granted.

2070 B. Bulk distribution. Exceptional quality biosolids may be distributed and marketed in either  
2071 bulk amounts (unpacked) or as a bagged product. The following requirements shall apply to  
2072 distribution and marketing of biosolids products:

- 2073 1. Any permit holder who distributes or markets exceptional quality biosolids shall comply  
2074 with the reporting requirements of §§ 3.2-3609 and 3.2-3610 of the Code of Virginia. The  
2075 records shall be maintained for five years and made available to the department upon  
2076 request.
- 2077 2. Bulk quantities of exceptional quality biosolids shall be land applied in accordance with  
2078 a nutrient management plan prepared by a certified nutrient management planner as  
2079 stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia,  
2080 except under the following conditions:
- 2081 a. The percent solids of the biosolids is equal to or greater than 90% based on moisture  
2082 content and total solids, or
- 2083 b. A blended product derived from biosolids is utilized for a purpose other than land  
2084 application at agricultural operations.
- 2085 3. Within 30 days after land application at the site has commenced, the permit holder shall  
2086 provide a copy of the plan to the farm operator of the site and the Department of  
2087 Conservation and Recreation.
- 2088 C. Approval of biosolids sources. Only exceptional quality biosolids produced from a sludge  
2089 processing facility approved by the ~~board~~ department can be distributed and marketed.
- 2090 D. Information furnished to all users. Labeling requirements shall be addressed in a biosolids  
2091 management plan. Either a label shall be affixed to the bag or other container in which exceptional  
2092 quality biosolids is sold or given away for application to the land, or an information sheet shall be  
2093 provided to the person who receives exceptional quality biosolids. The label or information sheet  
2094 shall contain the following information:
- 2095 1. The name and address of the person who prepared the exceptional quality biosolids;  
2096 2. A statement that application of the exceptional quality biosolids to the land is prohibited  
2097 except in accordance with the instructions on the label or information sheet;  
2098 3. The annual whole sludge application rate for the biosolids that does not cause any of  
2099 the annual pollutant loading rates in Table 5 of 9VAC25-32-356 to be exceeded; and  
2100 4. Information required in accordance with regulations promulgated under § 3.2-3601 of  
2101 the Code of Virginia and with the labeling provisions of § 3.2-3611 of the Code of Virginia.
- 2102 E. Recordkeeping.
- 2103 1. The person who prepares exceptional quality biosolids shall develop the following  
2104 information and shall retain the information for five years:
- 2105 a. The concentration of each pollutant listed in Table 4 of 9VAC25-32-356 in the  
2106 biosolids;
- 2107 b. The following certification statement:
- 2108 "I certify, under penalty of law, that the information that will be used to determine  
2109 compliance with the Class A pathogen requirements in 9VAC25-32-675 A and the  
2110 vector attraction reduction requirement in (insert one of the vector attraction reduction  
2111 requirements in 9VAC25-32-685 B 1 through B 8) was prepared under my direction  
2112 and supervision in accordance with the system designed to ensure that qualified  
2113 personnel properly gather and evaluate this information. I am aware that there are  
2114 significant penalties for false certification including the possibility of fine and  
2115 imprisonment.";
- 2116 c. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are  
2117 met; and
- 2118 d. A description of how one of the vector attraction reduction requirements in 9VAC25-  
2119 32-685 B 1 through B 8 is met.

- 2120 2. The person who derives the material that meets the criteria of exceptional quality  
 2121 biosolids shall develop the following information and shall retain the information for five  
 2122 years:
- 2123 a. The concentration of each pollutant listed in Table 4 of 9VAC25-32-356 in the  
 2124 material;
  - 2125 b. The following certification statement:  
 2126 "I certify, under penalty of law, that the information that will be used to determine  
 2127 compliance with the Class A pathogen requirements in 9VAC25-32-675 A and the  
 2128 vector attraction reduction requirement in (insert one of the vector attraction reduction  
 2129 requirements in 9VAC25-32-685 B 1 through B 8) was prepared under my direction  
 2130 and supervision in accordance with the system designed to ensure that qualified  
 2131 personnel properly gather and evaluate this information. I am aware that there are  
 2132 significant penalties for false certification including the possibility of fine and  
 2133 imprisonment.";
  - 2134 c. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are  
 2135 met; and
  - 2136 d. A description of how one of the vector attraction reduction requirements in 9VAC25-  
 2137 32-685 B 1 through B 8 is met.
- 2138 3. If the requirements in 9VAC25-32-356 B 4 b are met when biosolids is sold or given  
 2139 away in a bag or other container for application to the land, the person who prepares the  
 2140 biosolids that is sold or given away in a bag or other container shall develop the following  
 2141 information and shall retain the information for five years:
- 2142 a. The annual whole sludge application rate for the biosolids that does not cause the  
 2143 annual pollutant loading rates in Table 5 of 9VAC25-32-356 to be exceeded;
  - 2144 b. The concentration of each pollutant listed in Table 5 of 9VAC25-32-356 in the  
 2145 biosolids;
  - 2146 c. The following certification statement:  
 2147 "I certify, under penalty of law, that the information that will be used to determine  
 2148 compliance with the management practices in 9VAC25-32-570 E and F, the Class A  
 2149 pathogen requirement in 9VAC25-32-675 A, and the vector attraction reduction  
 2150 requirement in (insert one of the vector attraction reduction requirements in 9VAC25-  
 2151 32-685 B 1 through B 8) was prepared under my direction and supervision in  
 2152 accordance with the system designed to ensure that qualified personnel properly  
 2153 gather and evaluate this information. I am aware that there are significant penalties for  
 2154 false certification including the possibility of fine and imprisonment.";
  - 2155 d. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are  
 2156 met; and
  - 2157 e. A description of how one of the vector attraction reduction requirements in 9VAC25-  
 2158 32-685 B 1 through B 8 is met.
- 2159 F. An annual report shall be submitted to the department that includes the following  
 2160 information:
- 2161 1. Total amount in dry tons of exceptional quality biosolids distributed in a bag or other  
 2162 container per year;
  - 2163 2. Total amount in dry tons of exceptional quality biosolids distributed in bulk; and
  - 2164 3. Total amount in dry tons of exceptional quality biosolids distributed from each approved  
 2165 source.

2166 **9VAC25-32-675. Pathogens.**

2167 A. Biosolids - Class A.

2168 1. The requirement in subdivision 2 of this subsection and the requirements in either  
2169 subdivision 3, 4, 5, 6, 7, or 8 of this subsection shall be met for biosolids to be classified  
2170 as Class A biosolids with respect to pathogens.

2171 2. The Class A pathogen requirements in subdivisions 3 through 8 of this subsection shall  
2172 be met either prior to meeting or at the same time the vector attraction reduction  
2173 requirements in 9VAC25-32-685, except the vector attraction reduction requirements in  
2174 9VAC25-32-685 B 6 through B 8, are met.

2175 3. Class A - Alternative 1.

2176 a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most  
2177 Probable Number per gram of total solids (dry weight basis), or the density of  
2178 Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number  
2179 per four grams of total solids (dry weight basis) at the time the biosolids is used or  
2180 disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other  
2181 container for application to the land; or at the time the biosolids or material derived  
2182 from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table  
2183 2, the pollutant concentrations in 9VAC25-32-356 Table 4, the Class A pathogen  
2184 requirements in subsection A of this section, and one of the vector attraction reduction  
2185 requirements in 9VAC25-32-685 B 1 through B 8.

2186 b. The temperature of the sewage sludge that is used as biosolids or disposed shall  
2187 be maintained at a specific value for a period of time.

2188 (1) When the percent solids of the sewage sludge is 7.0% or higher, the temperature  
2189 of the sewage sludge shall be 50°C or higher, the time period shall be 20 minutes or  
2190 longer; and the temperature and time period shall be determined using equation (1),  
2191 except when small particles of sewage sludge are heated by either warmed gases or  
2192 an immiscible liquid.

EQUATION (1)

$$D = 131,700,000/10^{0.1400t}$$

D = time in days

t = temperature in degrees Celsius

2193 (2) When the percent solids of the sewage sludge is 7.0% or higher and small particles  
2194 of sewage sludge are heated by either warmed gases or an immiscible liquid, the  
2195 temperature of the sewage sludge shall be 50°C or higher; the time period shall be 15  
2196 seconds or longer; and the temperature and time period shall be determined using  
2197 equation (1).

2198 (3) When the percent solids of the sewage sludge is less than 7.0% and the time period  
2199 is at least 15 seconds, but less than 30 minutes, the temperature and time period shall  
2200 be determined using equation (1).

2201 (4) When the percent solids of the sewage sludge is less than 7.0%, the temperature  
2202 of the sewage sludge is 50°C or higher; and the time period is 30 minutes or longer;  
2203 the temperature and time period shall be determined using equation (2).

EQUATION (2)

$$D = 50,070,000/10^{0.1400t}$$

D = time in days

t = temperature in degrees Celsius

- 2204 4. Class A - Alternative 2.
- 2205 a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most
- 2206 Probable Number per gram of total solids (dry weight basis) or the density of
- 2207 Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number
- 2208 per four grams of total solids (dry weight basis) at the time the biosolids is used or
- 2209 disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other
- 2210 container for application to the land; or at the time the biosolids or material derived
- 2211 from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table
- 2212 2; the pollutant concentrations in 9VAC25-32-356 Table 4; the Class A pathogen
- 2213 requirements in subsection A of this section, and one of the vector attraction reduction
- 2214 requirements in 9VAC25-32-685 B 1 through B 8.
- 2215 b. The pH and temperature of the sewage sludge that is used as biosolids or disposed
- 2216 shall be maintained at specific values for a period of time.
- 2217 (1) The pH of the sewage sludge that is used as biosolids or disposed shall be raised
- 2218 to above 12 and shall remain above 12 for 72 hours;
- 2219 (2) The temperature of the sewage sludge shall be above 52°C for 12 hours or longer
- 2220 during the period that the pH of the sewage sludge is above 12; and
- 2221 (3) At the end of the 72-hour period during which the pH of the sewage sludge is above
- 2222 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage
- 2223 sludge greater than 50%.
- 2224 5. Class A - Alternative 3.
- 2225 a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most
- 2226 Probable Number per gram of total solids (dry weight basis), or the density of
- 2227 Salmonella sp. bacteria in biosolids shall be less than three Most Probable Number
- 2228 per four grams of total solids (dry weight basis) at the time the biosolids is used or
- 2229 disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other
- 2230 container for application to the land; or at the time the biosolids or material derived
- 2231 from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table
- 2232 2; the pollutant concentrations in 9VAC25-32-356 Table 4; the Class A pathogen
- 2233 requirements in subsection A of this section; and one of the vector attraction reduction
- 2234 requirements in 9VAC25-32-685 B 1 through B 8.
- 2235 b. The sewage sludge shall be analyzed prior to pathogen treatment to determine
- 2236 whether the sewage sludge contains enteric viruses.
- 2237 (1) When the density of enteric viruses in the sewage sludge prior to pathogen
- 2238 treatment is less than one Plaque-forming Unit per four grams of total solids (dry
- 2239 weight basis), the sewage sludge is Class A with respect to enteric viruses until the
- 2240 next monitoring episode for the sewage sludge;
- 2241 (2) When the density of enteric viruses in the sewage sludge prior to pathogen
- 2242 treatment is equal to or greater than one Plaque-forming Unit per four grams of total
- 2243 solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses
- 2244 when the density of enteric viruses in the sewage sludge after pathogen treatment is
- 2245 less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and
- 2246 when the values or ranges of values for the operating parameters for the pathogen
- 2247 treatment process that produces the biosolids that meets the enteric virus density
- 2248 requirement are documented; and

2249 (3) After the enteric virus reduction in subdivision 5 b (2) of this subsection is  
2250 demonstrated for the pathogen treatment process, the biosolids continues to be Class  
2251 A with respect to enteric viruses when the values for the pathogen treatment process  
2252 operating parameters are consistent with the values or ranges of values documented  
2253 in subdivision 5 b (2) of this subsection.

2254 c. The sewage sludge shall be analyzed prior to pathogen treatment to determine  
2255 whether the sewage sludge contains viable helminth ova.

2256 (1) When the density of viable helminth ova in the sewage sludge prior to pathogen  
2257 treatment is less than one per four grams of total solids (dry weight basis), the sewage  
2258 sludge is Class A with respect to viable helminth ova until the next monitoring episode  
2259 for the sewage sludge.

2260 (2) When the density of viable helminth ova in the sewage sludge prior to pathogen  
2261 treatment is equal to or greater than one per four grams of total solids (dry weight  
2262 basis), the sewage sludge is Class A with respect to viable helminth ova when the  
2263 density of viable helminth ova in the sewage sludge after pathogen treatment is less  
2264 than one per four grams of total solids (dry weight basis) and when the values or  
2265 ranges of values for the operating parameters for the pathogen treatment process that  
2266 produces the sewage sludge that meets the viable helminth ova density requirement  
2267 are documented.

2268 (3) After the viable helminth ova reduction in subdivision 5 c (2) of this subsection is  
2269 demonstrated for the pathogen treatment process, the sewage sludge continues to be  
2270 Class A with respect to viable helminth ova when the values for the pathogen treatment  
2271 process operating parameters are consistent with the values or ranges of values  
2272 documented in subdivision 5 c (2) of this subsection.

2273 6. Class A - Alternative 4.

2274 a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most  
2275 Probable Number per gram of total solids (dry weight basis), or the density of  
2276 Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number  
2277 per four grams of total solids (dry weight basis) at the time the biosolids is used or  
2278 disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other  
2279 container for application to the land; or at the time the biosolids or material derived  
2280 from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table  
2281 2; the pollutant concentrations in 9VAC25-32-356 Table 4; the Class A pathogen  
2282 requirements in subsection A of this section; and one of the vector attraction reduction  
2283 requirements in 9VAC25-32-685 B 1 through B 8.

2284 b. The density of enteric viruses in the biosolids shall be less than one Plaque-forming  
2285 Unit per four grams of total solids (dry weight basis) at the time the biosolids is used  
2286 or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other  
2287 container for application to the land; or at the time the biosolids or material derived  
2288 from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table  
2289 2; the pollutant concentrations in 9VAC25-32-356 Table 4; the Class A pathogen  
2290 requirements in subsection A of this section; and one of the vector attraction reduction  
2291 requirements in 9VAC25-32-685 B 1 through B 8, unless otherwise specified by the  
2292 board department.

2293 c. The density of viable helminth ova in the sewage sludge shall be less than one per  
2294 four grams of total solids (dry weight basis) at the time the biosolids is used or  
2295 disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other  
2296 container for application to the land; or at the time the biosolids or material derived  
2297 from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table

2298 2; the pollutant concentrations in 9VAC25-32-356 Table 4; the Class A pathogen  
2299 requirements in subsection A of this section, and one of the vector attraction reduction  
2300 requirements in 9VAC25-32-685 B 1 through B 8, unless otherwise specified by the  
2301 ~~board~~ department.

2302 7. Class A - Alternative 5.

2303 a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most  
2304 Probable Number per gram of total solids (dry weight basis), or the density of  
2305 Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number  
2306 per four grams of total solids (dry weight basis) at the time the biosolids is used or  
2307 disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other  
2308 container for application to the land; or at the time the biosolids or material derived  
2309 from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table  
2310 2; the pollutant concentrations in 9VAC25-32-356 Table 4; the Class A pathogen  
2311 requirements in subsection A of this section; and one of the vector attraction reduction  
2312 requirements in 9VAC25-32-685 B 1 through B 8.

2313 b. Biosolids that is used or disposed shall be treated in one of the processes to further  
2314 reduce pathogens described in subsection E of this section.

2315 8. Class A - Alternative 6.

2316 a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most  
2317 Probable Number per gram of total solids (dry weight basis), or the density of  
2318 Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number  
2319 per four grams of total solids (dry weight basis) at the time the biosolids is used or  
2320 disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other  
2321 container for application to the land; or at the time the biosolids or material derived  
2322 from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table  
2323 2; the pollutant concentrations in 9VAC25-32-356 Table 4; the Class A pathogen  
2324 requirements in subsection A of this section; and one of the vector attraction reduction  
2325 requirements in 9VAC25-32-685 B 1 through B 8.

2326 b. Biosolids that is used or disposed shall be treated in a process that is equivalent to  
2327 a process to further reduce pathogens, as determined by the ~~board~~ department.

2328 B. Biosolids - Class B.

2329 1. Minimum requirements for Class B biosolids.

2330 a. The requirements in either subdivisions 2, 3, or 4 of this subsection shall be met for  
2331 a sewage sludge to be classified as Class B biosolids with respect to pathogens.

2332 b. The site restrictions in subdivision B 5 of this section shall be met when biosolids  
2333 that meets the Class B pathogen requirements in subdivision 2, 3, or 4 of this  
2334 subsection is applied to the land.

2335 2. Class B - Alternative 1.

2336 a. Seven representative samples of the biosolids that is used or disposed shall be  
2337 collected.

2338 b. The geometric mean of the density of fecal coliform in the samples collected in  
2339 subdivision 2 a of this subsection shall be less than either 2,000,000 Most Probable  
2340 Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units  
2341 per gram of total solids (dry weight basis).

2342 3. Class B - Alternative 2. Biosolids that is used or disposed shall be treated in one of the  
2343 processes to significantly reduce pathogens described in subsection D of this section.



- 2344 4. Class B - Alternative 3. Biosolids that is used or disposed shall be treated in a process  
 2345 that is equivalent to a process to significantly reduce pathogens, as determined by the  
 2346 board department.
- 2347 5. Site restrictions.
- 2348 a. Food crops with harvested parts that touch the biosolids/soil mixture and are totally  
 2349 above the land surface shall not be harvested for 14 months after application of  
 2350 biosolids.
- 2351 b. Food crops with harvested parts below the surface of the land shall not be harvested  
 2352 for 20 months after application of biosolids when the biosolids remains on the land  
 2353 surface for four months or longer prior to incorporation into the soil.
- 2354 c. Food crops with harvested parts below the surface of the land shall not be harvested  
 2355 for 38 months after application of biosolids when the biosolids remains on the land  
 2356 surface for less than four months prior to incorporation into the soil.
- 2357 d. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after  
 2358 application of biosolids.
- 2359 e. Animals shall not be grazed on the land for 30 days after application of biosolids (60  
 2360 days for lactating dairy livestock).
- 2361 f. Turf grown on land where biosolids is applied shall not be harvested for one year  
 2362 after application of the biosolids when the harvested turf is placed on either land with  
 2363 a high potential for public exposure or a lawn, unless otherwise specified by the board  
 2364 department.
- 2365 g. Public access to land with a high potential for public exposure shall be restricted for  
 2366 one year after application of biosolids.
- 2367 h. Public access to land with a low potential for public exposure shall be restricted for  
 2368 30 days after application of biosolids.

TABLE 1 TIME RESTRICTIONS FOLLOWING COMPLETION OF BIOSOLIDS APPLICATION ASSOCIATED WITH CLASS B PATHOGEN REDUCTION		
Type of Application	Surface <sup>(1)</sup>	Incorporated <sup>(2)</sup>
Control of access for high potential for public contact <sup>(3)</sup>	12 months	12 months
Time lapse required before above ground food crops with harvested parts that touch the biosolids/soil mixture can be harvested	14 months	14 months
Time lapse before food crops with harvested parts below the land surface can be harvested	20 months	38 months
Harvesting food crops, feed crops and fiber crops	1 month	1 month
Grazing and feeding harvested crops to animals whose products are consumed by humans <sup>(4)</sup>	1 month	1 month
Grazing of farm animals whose products are not consumed by humans	1 month	1 month
Harvesting turf for placement on land with a high potential for public exposure or a lawn <sup>(5)</sup>	12 months	12 month

Notes:

- (1)Remains on land surface for four months or longer prior to incorporation.
- (2)Remains on land surface for less than four months prior to incorporation.
- (3)Public access to agricultural sites and other sites with a low potential for direct contact with the ground surface shall be controlled for 30 days.
- (4)The restriction for lactating dairy cows is 60 days.
- (5)This time restriction must be met unless otherwise specified by the department.

2369 C. Domestic septage. The site restrictions in subdivision B 5 of this section shall be met when  
2370 domestic septage is applied to agricultural land, forest, or a reclamation site.

2371 D. Processes to significantly reduce pathogens (PSRP).

2372 1. Aerobic digestion. Sewage sludge is agitated with air or oxygen to maintain aerobic  
2373 conditions for a specific mean cell residence time at a specific temperature. Values for the  
2374 mean cell residence time and temperature shall be between 40 days at 20°C and 60 days  
2375 at 15°C.

2376 2. Air drying. Sewage sludge is dried on sand beds or on paved or unpaved basins. The  
2377 sewage sludge dries for a minimum of three months. During two of the three months, the  
2378 ambient average daily temperature is above 0°C.

2379 3. Anaerobic digestion. Sewage sludge is treated in the absence of air for a specific mean  
2380 cell residence time at a specific temperature. Values for the mean cell residence time and  
2381 temperature shall be between 15 days at 35°C to 55°C and 60 days at 20°C.

2382 4. Composting. Using either the within-vessel, static aerated pile, or windrow composting  
2383 methods, the temperature of the sewage sludge is raised to 40°C or higher and remains  
2384 at 40°C or higher for five days. For four hours during the five days, the temperature in the  
2385 compost pile exceeds 55°C.

2386 5. Lime stabilization. Sufficient lime is added to the sewage sludge to raise the pH of the  
2387 sewage sludge to 12 after two hours of contact.

2388 E. Processes to further reduce pathogens (PFRP).

2389 1. Composting. Using either the within-vessel composting method or the static aerated  
2390 pile composting method, the temperature of the sewage sludge is maintained at 55°C or  
2391 higher for three days. Using the windrow composting method, the temperature of the  
2392 sewage sludge is maintained at 55°C or higher for 15 days or longer. During the period  
2393 when the compost is maintained at 55°C or higher, there shall be a minimum of five  
2394 turnings of the windrow.

2395 2. Heat drying. Sewage sludge is dried by direct or indirect contact with hot gases to  
2396 reduce the moisture content of the sewage sludge to 10.0% or lower. Either the  
2397 temperature of the sewage sludge particles exceeds 80°C or the wet bulb temperature of  
2398 the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds  
2399 80°C.

2400 3. Heat treatment. Liquid sewage sludge is heated to a temperature of 180°C or higher for  
2401 30 minutes.

2402 4. Thermophilic aerobic digestion. Liquid sewage sludge is agitated with air or oxygen to  
2403 maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10  
2404 days at 55°C to 60°C.

2405 5. Beta ray irradiation. Sewage sludge is irradiated with beta rays from an accelerator at  
2406 dosages of at least 1.0 megarad at room temperature (ca. 20°C).

- 2407 6. Gamma ray irradiation. Sewage sludge is irradiated with gamma rays from certain  
2408 isotopes, such as Cobalt 60 and Cesium 137, at dosages of at least 1.0 megarad at room  
2409 temperature (ca. 20°C).
- 2410 7. Pasteurization. The temperature of the sewage sludge is maintained at 70°C or higher  
2411 for 30 minutes or longer.

2412 **9VAC25-32-685. Vector attraction reduction.**

2413 A. Conditions under which vector attraction reductions are required:

- 2414 1. One of the vector attraction reduction requirements in subdivisions B 1 through B 10 of  
2415 this section shall be met when bulk biosolids is applied to agricultural land, forest, a public  
2416 contact site, or a reclamation site;
- 2417 2. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of  
2418 this section shall be met when bulk biosolids is applied to a lawn or a home garden;
- 2419 3. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of  
2420 this section shall be met when biosolids is sold or given away in a bag or other container  
2421 for application to the land;
- 2422 4. One of the vector attraction reduction requirements in subdivisions B 1 through B 11 of  
2423 this section shall be met when sewage sludge (other than domestic septage) is placed on  
2424 an active sewage sludge unit;
- 2425 5. One of the vector attraction reduction requirements in subdivision B 9, B 10, or B 12 of  
2426 this section shall be met when domestic septage is applied to agricultural land, forest, or  
2427 a reclamation site; and
- 2428 6. One of the vector attraction reduction requirements in subdivisions B 9 through B 12  
2429 shall be met when domestic septage is placed on an active sewage sludge unit.

2430 B. Vector attraction reduction options:

- 2431 1. The mass of volatile solids in the sewage sludge shall be reduced by a minimum of  
2432 38%, calculated according to the method in 9VAC25-32-450 F 8.
- 2433 2. When the 38% volatile solids reduction requirement in subdivision 1 of this subsection  
2434 cannot be met for an anaerobically digested sewage sludge, vector attraction reduction  
2435 can be demonstrated by digesting a portion of the previously digested sewage sludge  
2436 anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature  
2437 between 30°C and 37°C. When at the end of the 40 days, the volatile solids in the sewage  
2438 sludge at the beginning of that period is reduced by less than 17%, vector attraction  
2439 reduction is achieved.
- 2440 3. When the 38% volatile solids reduction requirement in subdivision 1 of this section  
2441 cannot be met for an aerobically digested sewage sludge, vector attraction reduction can  
2442 be demonstrated by digesting a portion of the previously digested sewage sludge that has  
2443 a percent solids of 2.0% or less aerobically in the laboratory in a bench-scale unit for 30  
2444 additional days at 20°C. When at the end of the 30 days, the volatile solids in the sewage  
2445 sludge at the beginning of that period is reduced by less than 15%, vector attraction  
2446 reduction is achieved.
- 2447 4. The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic  
2448 process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total  
2449 solids (dry weight basis) at a temperature of 20°C.
- 2450 5. Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that  
2451 time, the temperature of the sewage sludge shall be higher than 40°C and the average  
2452 temperature of the sewage sludge shall be higher than 45°C.

- 2453 6. The pH of sewage sludge shall be raised to 12 or higher by alkaline addition and, without  
2454 the addition of more alkaline material, shall remain at 12 or higher for two hours and then  
2455 at 11.5 or higher for an additional 22 hours.
- 2456 7. The percent solids of sewage sludge that does not contain unstabilized solids generated  
2457 in a primary wastewater treatment process shall be equal to or greater than 75% based  
2458 on the moisture content and total solids prior to mixing with other materials.
- 2459 8. The percent solids of sewage sludge that contains unstabilized solids generated in a  
2460 primary wastewater treatment process shall be equal to or greater than 90% based on the  
2461 moisture content and total solids prior to mixing with other materials.
- 2462 9. Sewage sludge injection requirements:
- 2463 a. Sewage sludge shall be injected below the surface of the land.
- 2464 b. No significant amount of the sewage sludge shall be present on the land surface  
2465 within one hour after the sewage sludge is injected.
- 2466 c. When the sewage sludge that is injected below the surface of the land is Class A  
2467 with respect to pathogens, the sewage sludge shall be injected below the land surface  
2468 within eight hours after being discharged from the pathogen treatment process.
- 2469 10. Sewage sludge incorporation requirements:
- 2470 a. Sewage sludge applied to the land surface or placed on an active sewage sludge  
2471 unit shall be incorporated into the soil within six hours after application to or placement  
2472 on the land unless otherwise specified by the ~~board~~ department.
- 2473 b. When the sewage sludge that is incorporated into the soil is Class A with respect to  
2474 pathogens, the sewage sludge shall be applied to or placed on the land within eight  
2475 hours after being discharged from the pathogen treatment process.
- 2476 11. Sewage sludge placed on an active sewage sludge unit shall be covered with soil or  
2477 other material at the end of each operating day.
- 2478 12. The pH of domestic septage shall be raised to 12 or higher by alkaline addition and,  
2479 without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-630
<b>VAC Chapter title(s)</b>	Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management
<b>Action title</b>	Final Exempt CH 630 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-630) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-630 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7275 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 630 changes in response to 2022 Board Bill**

4 **9VAC25-630-10. Definitions.**

5 The words and terms used in this chapter shall have the meanings defined in the State Water  
6 Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (9VAC25-32)  
7 unless the context clearly indicates otherwise, except that for the purposes of this chapter:

8 "Agricultural storm water discharge" means a precipitation-related discharge of manure, litter,  
9 or process wastewater that has been applied on land areas under the control of an animal feeding  
10 operation or under the control of a poultry waste end-user or poultry waste broker in accordance  
11 with a nutrient management plan approved by the Virginia Department of Conservation and  
12 Recreation and in accordance with site-specific nutrient management practices that ensure  
13 appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

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

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

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

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

26 "Commercial poultry processor" or "processor" means any animal food manufacturer, as  
27 defined in § 3.2-5400 of the Code of Virginia, that contracts with poultry growers for the raising of  
28 poultry.

29 "Confined animal feeding operation," for the purposes of this regulation, has the same  
30 meaning as an "animal feeding operation."

31 "Confined poultry feeding operation" means any confined animal feeding operation with 200  
32 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys, regardless of  
33 animal age or sex.

34 "Department" means the Virginia Department of Environmental Quality.

35 "Director" means the Director of the Virginia Department of Environmental Quality or the  
36 director's designee.

37 "Fact sheet" means the document prepared by the department that summarizes the  
38 requirements set forth in this chapter regarding utilization, storage, and management of poultry  
39 waste by poultry waste end-users and poultry waste brokers.

40 "General permit" means 9VAC25-630-50.

41 "Nutrient management plan" or "NMP" means a plan developed or approved by the  
42 Department of Conservation and Recreation that requires proper storage, treatment, and  
43 management of poultry waste, including dry litter, and limits accumulation of excess nutrients in  
44 soils and leaching or discharge of nutrients into state waters; except that for a poultry waste end-

45 user or poultry waste broker who is not subject to the general permit, the requirements of 9VAC25-  
46 630-80 constitute the NMP.

47 "Organic source" means any nutrient source including, but not limited to, manures, biosolids,  
48 compost, and waste or sludges from animals, humans, or industrial processes, but for the  
49 purposes of this regulation it excludes waste from wildlife.

50 "Permittee" means the poultry grower, poultry waste end-user, or poultry waste broker whose  
51 poultry waste management activities are covered under the general permit.

52 "Poultry grower" or "grower" means any person who owns or operates a confined poultry  
53 feeding operation.

54 "Poultry waste" means dry poultry litter and composted dead poultry.

55 "Poultry waste broker" or "broker" means a person who possesses or controls poultry waste  
56 that is not generated on an animal feeding operation under his operational control and who  
57 transfers or hauls poultry waste to other persons. If the entity is defined as a broker they cannot  
58 be defined as a hauler for the purposes of this regulation.

59 "Poultry waste end-user" or "end-user" means any recipient of transferred poultry waste who  
60 stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end  
61 use for an operation under his control.

62 "Poultry waste hauler" or "hauler" means a person who provides transportation of transferred  
63 poultry waste from one entity to another, and is not otherwise involved in the transfer or  
64 transaction of the waste, nor responsible for determining the recipient of the waste. The  
65 responsibility of the recordkeeping and reporting remains with the entities to which the service  
66 was provided: grower, broker, and end-user.

67 "Seasonal high water table" means that portion of the soil profile where a color change has  
68 occurred in the soil as a result of saturated soil conditions or where soil concretions have formed.  
69 Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these  
70 conditions first occur is termed the seasonal high water table.

71 "Standard rate" means a land application rate for poultry waste approved by the board as  
72 specified in this regulation.

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

77 **9VAC25-630-20. Purpose; ~~delegation of authority~~; effective date of permit.**

78 A. This regulation governs the management of poultry waste at confined poultry feeding  
79 operations not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit and  
80 poultry waste utilized or stored by poultry waste end-users or poultry waste brokers. It establishes  
81 requirements for proper nutrient management, waste storage, and waste tracking and accounting  
82 of poultry waste.

83 ~~B. The Director of the Department of Environmental Quality, or the director's designee, may~~  
84 ~~perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the~~  
85 ~~Code of Virginia.~~

86 C. B. This general permit will become effective on February 17, 2021. This general permit will  
87 expire 10 years from the effective date.





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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-91
<b>VAC Chapter title(s)</b>	Facility and Aboveground Storage Tank (AST) Regulation
<b>Action title</b>	Final Exempt CH 91 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 15, 2022

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### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-91) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”; and the repeal of the delegation of authority provisions.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-91 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7161 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt- CH91 Changes in response to 2022 Board bill**

4 Chapter 91

5 Facility and Aboveground Storage Tank (AST) Regulation

6 Part I

7 Program Administration

8 **9VAC25-91-10. Definitions.**

9 The following words and terms when used in this chapter shall have the following meanings,  
10 unless the context clearly indicates otherwise:

11 "Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes,  
12 used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including  
13 the volume of the pipes, is more than 90% above the surface of the ground. This term does not  
14 include line pipe and breakout tanks of an interstate pipeline regulated under the federal  
15 Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 et seq.).

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

19 "Containment and cleanup" means abatement, containment, removal and disposal of oil and,  
20 to the extent possible, the restoration of the environment to its existing state prior to an oil  
21 discharge.

22 "Corrosion professional" means a person who by reason of thorough knowledge of the  
23 physical sciences and the principles of engineering and mathematics acquired by a professional  
24 education and related practical experience is qualified to engage in the practice of corrosion  
25 control on buried or submerged metal piping systems and metal tanks. Such a person shall be  
26 accredited or certified as being qualified by the National Association of Corrosion Engineers or be  
27 a registered professional engineer who has certification or licensing that includes education and  
28 experience in corrosion control of buried or submerged metal piping systems and metal tanks.

29 "Department" means the Department of Environmental Quality (DEQ).

30 "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

31 "Elevated tank" means an AST that is not in contact with the ground and that is raised above  
32 the surface of the ground.

33 "Facility" means any development or installation within the Commonwealth that deals in,  
34 stores or handles oil and includes a pipeline.

35 "Flow-through process tank" means (as defined in 40 CFR Part 280) a tank that forms an  
36 integral part of a production process through which there is a steady, variable, recurring, or  
37 intermittent flow of materials during the operation of the process. Flow-through process tanks do  
38 not include tanks used for the storage of materials prior to their introduction into the production  
39 process or for the storage of finished products or byproducts from the production process.

40 "Local building official" means the person authorized by the Commonwealth to enforce the  
41 provisions of the Uniform Statewide Building Code (USBC).

42 "Local director or coordinator of emergency services" means any person appointed pursuant  
43 to § 44-146.19 of the Code of Virginia.

44 "Major repair" means alterations that refer to operations that require cutting, additions,  
45 removal or replacement of the annular plate ring, the shell-to-bottom weld or a sizable portion of  
46 the AST shell.

47 "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and  
48 petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes,  
49 crude oils, and all other liquid hydrocarbons regardless of specific gravity.

50 "Operator" means any person who owns, operates, charters by demise, rents, or otherwise  
51 exercises control over or responsibility for a facility or a vehicle or a vessel.

52 "Person" means an individual; trust; firm; joint stock company; corporation, including a  
53 government corporation; partnership; association; any state or agency thereof; municipality;  
54 county; town; commission; political subdivision of a state; any interstate body; consortium; joint  
55 venture; commercial entity; the government of the United States or any unit or agency thereof.

56 "Pipes" or "piping" means a pressure-tight cylinder used to convey a fluid or to transmit a fluid  
57 pressure and is ordinarily designated "pipe" in applicable material specifications. Materials  
58 designated "tube" or "tubing" in the specifications are treated as pipe when intended for pressure  
59 service. This term includes piping and associated piping which is utilized in the operation of an  
60 AST, or emanating from or feeding ASTs or transfers oil from or to an AST (e.g., dispensing  
61 systems, including airport hydrant fueling systems, supply systems, gauging systems, auxiliary  
62 systems, etc.). This term does not include line pipe and breakout tanks of an interstate pipeline  
63 regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC §  
64 60101 et seq.).

65 "Pipeline" means all new and existing pipe, rights of way, and any equipment, facility, or  
66 building used in the transportation of oil, including, but not limited to, line pipe, valves, and other  
67 appurtenances connected to line pipe; pumping units; fabricated assemblies associated with  
68 pumping units; metering and delivery stations and fabricated assemblies therein; and breakout  
69 tanks.

70 "Release prevention barrier (RPB)" means a nonearthen barrier that is impermeable; is  
71 composed of material compatible with oil stored in the AST; meets proper engineering strength  
72 and elasticity standards; and functions to prevent the discharge of stored oil to state lands, waters  
73 and storm drains. It must contain and channel any leaked oil in a manner that provides for early  
74 release detection through the required daily and weekly inspections.

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

77 "Storage capacity" means the total capacity of an AST or a container, whether filled in whole  
78 or in part with oil, a mixture of oil, or mixtures of oil with nonhazardous substances, or empty. An  
79 AST that has been permanently closed in accordance with this chapter has no storage capacity.

80 "Tank" means a device designed to contain an accumulation of oil and constructed of  
81 nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This  
82 term does not include flow-through process tanks as defined in 40 CFR Part 280.

83 "Tank vessel" means any vessel used in the transportation of oil as bulk cargo.

84 "Upgrade" means an alteration of the performance, design, equipment or appurtenances of  
85 an AST or facility to meet a higher, new, or current standard.

86 "Vaulted tank" means any tank situated upon or above the surface of the floor in an  
87 underground area (such as an underground room, basement, cellar, mine-working, drift, shaft,  
88 tunnel or vault) providing enough space for physical inspection of the exterior of the tank.

89 "Vehicle" means any motor vehicle, rolling stock, or other artificial contrivance for transport  
90 whether self-propelled or otherwise, except vessels.

91 "Vessel" includes every description of watercraft or other contrivance used as a means of  
92 transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

93 **9VAC25-91-40. Compliance dates.**

94 A. Every operator shall comply with this chapter on its effective date unless a later date is  
95 otherwise specified.

96 B. Operators of facilities existing on June 24, 1998, and exempted under § 62.1-44.34:17 D  
97 of the Code of Virginia (i.e., facilities not engaged in the resale of oil) having an aboveground  
98 storage capacity of 25,000 gallons or greater of oil must have complied with Part III (9VAC25-91-  
99 130 et seq., Pollution Prevention Requirements) of this chapter on or before October 22, 1998,  
100 unless otherwise specified in this chapter. If compliance with Part III of this chapter necessitates  
101 extensive upgrades to the existing facility design, these exempted operators shall have submitted  
102 a proposed extended compliance schedule and supporting explanation to the ~~board~~ department  
103 no later than September 22, 1998, or such date approved by the ~~board~~ department.

104 C. Operators of ASTs and facilities existing prior to June 24, 1998, and previously registered  
105 in accordance with the requirements of § 62.1-44.34:19.1 of the Code of Virginia shall not have  
106 to resubmit the registration form until five years from the date of the initial registration unless title  
107 to that AST or facility is transferred (i.e., change of ownership) or the AST is converted or brought  
108 back into use after permanent closure, whichever occurs first.

109 D. Operators of facilities subject to Part IV (9VAC25-91-170, Oil Discharge Contingency Plan  
110 (ODCP) Requirements) of this chapter that were brought into use on or after June 24, 1998, shall  
111 submit a complete application meeting all applicable requirements of this chapter no later than 90  
112 days prior to commencement of operations.

113 1. The operator must receive approval of the ODCP by the ~~board~~ department prior to  
114 commencement of facility operations.

115 2. The operators of facilities that have previously met the provisions of § 62.1-44.34:15 of  
116 the Code of Virginia for ODCP submittal shall not be required to resubmit the ODCP until  
117 90 days prior to the date that plan's approval expires. Ninety days prior to the expiration  
118 of approval of the ODCP, the facility operator shall submit an updated plan or certification  
119 of renewal of an existing plan according to 9VAC25-91-170 F.

120 E. An operator having obtained approval of the ODCP shall operate, maintain, monitor, and  
121 keep records pertaining to 9VAC25-91-170 A 18 of Part IV (9VAC25-91-170, Oil Discharge  
122 Contingency Plan (ODCP) Requirements) of this chapter and under the provisions of Part III  
123 (9VAC25-91-130 et seq., Pollution Prevention Requirements) of this chapter.

124 **9VAC25-91-50. Statement of purpose.**

125 The purpose of this chapter is to: (i) establish requirements for registration of facilities and  
126 individual ASTs located within the Commonwealth; (ii) provide the ~~board~~ department with the  
127 information necessary to identify and inventory facilities with an aggregate storage capacity of  
128 greater than 1,320 gallons of oil or an individual AST with a storage capacity of greater than 660  
129 gallons of oil; (iii) develop standards and procedures for operators of facilities with an aggregate  
130 aboveground storage capacity of 25,000 gallons or greater of oil relating to the prevention of  
131 pollution from new and existing aboveground storage tanks; (iv) provide requirements for the  
132 development of facility oil discharge contingency plans for facilities with an aggregate  
133 aboveground storage capacity of 25,000 gallons or greater of oil that will ensure that the applicant  
134 can take such steps as are necessary to protect environmentally sensitive areas, to respond to  
135 the threat of an oil discharge, and to contain, clean up and mitigate an oil discharge within the  
136 shortest feasible time, where plans must address concerns for the effect of oil discharges on the

137 environment as well as considerations of public health and safety; and (v) provide requirements  
138 for facilities and individual ASTs with an aggregate aboveground storage capacity of one million  
139 gallons or greater of oil to conduct a groundwater characterization study (GCS) within the  
140 geographic boundaries of a facility; to submit the GCS as part of the oil discharge contingency  
141 plan; to conduct a monthly gauging and inspection of GCS monitoring wells, monitoring of well  
142 headspace and sampling and laboratory analysis of GCS monitoring wells; and to gather all  
143 observations and data maintained at the facility and compile and submit them as an annual report  
144 to the department.

145 **9VAC25-91-80. Delegation of authority. (Repealed.)**

146 ~~The executive director, or his designee, may perform any act of the board under this chapter,~~  
147 ~~except as limited by § 62.1-44.14 of the Code of Virginia.~~

148 Part II

149 Registration, Notification and Closure Requirements

150 **9VAC25-91-100. Registration requirements.**

151 A. Section 62.1-44.34:19.1 of the Code of Virginia requires an operator of a facility located  
152 within the Commonwealth with an aggregate aboveground storage capacity of more than 1,320  
153 gallons of oil or an operator of an individual AST located within the Commonwealth with a storage  
154 capacity of more than 660 gallons of oil to register such facility or AST with the ~~board~~ department  
155 and with the local director or coordinator of emergency services unless otherwise specified within  
156 this chapter.

157 B. Although the term "operator" includes a variety of persons who may share joint  
158 responsibility for compliance with this chapter, in fixing responsibility for compliance with the  
159 registration requirements, the ~~board~~ department shall look first to the owner or a duly authorized  
160 representative of the facility or AST.

161 C. A duly authorized representative may submit the registration on the owner's behalf.

162 1. A person is a duly authorized representative only if:

163 a. The authorization is made in writing by the owner and indicates that the  
164 representative has signatory authority for the registration;

165 b. The authorization specifies either an individual or a position having responsibility for  
166 the overall operation of the regulated facility or activity (e.g., the plant manager, the  
167 operator of a facility or an AST, the superintendent, or a position of equivalent  
168 responsibility), or specifies an individual or a position having overall responsibility for  
169 environmental matters for the facility or company. A duly authorized representative  
170 thus may be either a named individual or any individual occupying a named position;  
171 and

172 c. The written authorization is submitted to the department along with the registration  
173 form.

174 2. Changes to authorization. If an authorization previously submitted is no longer accurate  
175 because a different individual or position has assumed responsibility for the overall  
176 operation of the facility or for environmental matters, a new authorization satisfying the  
177 requirements shall be submitted to the department prior to or together with any reports or  
178 information signed by that duly authorized representative.

179 3. Certification. Any person signing a registration document shall make the following  
180 certification:

181 "I certify under penalty of law that this document and all attachments were prepared  
182 under my direction or supervision in accordance with a system designed to ensure that

183 qualified personnel properly gathered and evaluated the information submitted. Based  
184 on my inquiry of the person or persons who manage the system, or those persons  
185 directly responsible for gathering the information, the information submitted is, to the  
186 best of my knowledge and belief, true, accurate, and complete. I am aware that there  
187 are significant penalties for submitting false information, including the possibility of  
188 fines and imprisonment for knowing violations."

189 D. The owner or a duly authorized representative of a new facility or AST, a converted facility  
190 or AST, a facility or AST brought back into use after permanent closure, or a facility or AST whose  
191 title is transferred (change of ownership) shall register such facility or AST with the ~~board~~  
192 department and local director or coordinator of emergency services within 30 days after being  
193 brought into use or when title is transferred.

194 E. Registration shall include the following information and other information that may be  
195 required if approved by the ~~board~~ department:

- 196 1. Facility and AST owner and operator information (e.g., name, address, and phone  
197 numbers);
- 198 2. Facility information (e.g., name, type, address, contact person and phone numbers, and  
199 aggregate storage capacity);
- 200 3. Tank and piping information (e.g., storage capacity, product stored, type of design and  
201 construction standards);
- 202 4. Other information that may be reasonably requested by the ~~board~~ department; and
- 203 5. Owner certification of information.

204 F. The owner or a duly authorized representative of the facility or AST shall renew the  
205 registration required by this section every five years or whenever title to the facility or AST is  
206 transferred (change of ownership), whichever occurs first.

207 G. A facility or AST installed after June 24, 1998, including an AST or facility operated by the  
208 federal government, shall not be registered without either (i) a review performed by the  
209 department of the permits, inspections, and certification of use required in accordance with the  
210 provisions of the Uniform Statewide Building Code and obtained by the owner or a duly authorized  
211 representative from the local code officials or their designee or (ii) an inspection by the  
212 department. In the case of a regulated AST operated by the Commonwealth, the Department of  
213 General Services shall function as the local code official in accordance with § 36-98.1 of the Code  
214 of Virginia.

215 **9VAC25-91-110. Notifications.**

216 A. An owner or a duly authorized representative of the facility or AST shall notify the ~~board~~  
217 department within 30 days after any AST:

- 218 1. Upgrade;
- 219 2. Major repair;
- 220 3. Replacement (i.e., relocating or repositioning of an existing AST); or
- 221 4. Change in service (i.e., change in operation, conditions of the stored product, specific  
222 gravity, corrosivity, temperature or pressure that has occurred from the original that may  
223 affect the tank's suitability for service).

224 B. Notifications do not require a fee.

225 **9VAC25-91-120. Aboveground storage tank closure.**

226 A. After June 24, 1998, a facility or AST, including a facility or AST operated by the federal  
227 government, shall not be permanently closed without being registered and either (i) having a  
228 review performed by the department of the permits and inspections required in accordance with

229 the provisions of the Uniform Statewide Building Code and obtained by the owner or a duly  
230 authorized representative from the local code official or his designee or (ii) being inspected by the  
231 department.

232 1. For inspections by the department (e.g., where a permit is not issued by the local code  
233 official or his designee), at least 14 days notice to the department is required prior to the  
234 commencement of closure operations. Notice shall be made by the owner or a duly  
235 authorized representative.

236 2. In the case of a regulated AST operated by the Commonwealth, the Department of  
237 General Services shall function as the local code official in accordance with § 36-98.1 of  
238 the Code of Virginia.

239 3. If the closure is in response to containment and cleanup actions that necessitate AST  
240 removal, the owner or a duly authorized representative of the facility or AST shall  
241 immediately notify the local code official and the department.

242 B. Closure operations shall be reported to the department by the owner or a duly authorized  
243 representative within 30 days after the permanent closure operation is completed.

244 C. Closure operations shall include the following:

245 1. Removal of all liquids, sludges, and vapors from the AST and associated piping. All  
246 wastes removed shall be disposed of in accordance with all applicable state and federal  
247 requirements.

248 2. For tanks being closed in place, the tank shall be rendered vapor free. Provisions must  
249 be made for adequate ventilation to ensure that the tank remains vapor free. Vent lines  
250 shall remain open and maintained in accordance with the applicable codes. All access  
251 openings shall be secured (normally with spacers to assist ventilation). The AST shall be  
252 secured against tampering and flooding. The name of the product last stored, the date of  
253 permanent closure and PERMANENTLY CLOSED shall be stenciled in a readily visible  
254 location on the AST. Piping shall be disconnected. All pipes being closed in place shall be  
255 vapor free and capped or blind flanged.

256 3. An assessment of the AST site shall be conducted prior to completion of permanent  
257 closure operations.

258 a. In conducting the assessment, the owner or a duly authorized representative shall  
259 sample and test for the presence of petroleum hydrocarbons at the AST site in any  
260 area where contamination is likely to have occurred. These locations shall be subject  
261 to the review of the ~~board~~ department. Sampling and testing shall be conducted in  
262 accordance with established EPA-approved analytical methods or other methods  
263 approved by the ~~board~~ department .

264 (1) The owner or a duly authorized representative shall submit copies of the laboratory  
265 results, a description of the area sampled, a photograph of the site indicating sampled  
266 areas, and a site map indicating the location of the closed AST and associated piping  
267 as attachments to the closure form.

268 (2) If contaminated soils, contaminated groundwater, free product as a liquid or vapor,  
269 or other evidence of a release is discovered, the owner or a duly authorized  
270 representative shall immediately notify the ~~board~~ department and conduct the cleanup  
271 in accordance with ~~board~~ department requirements.

272 b. The ~~board~~ department may consider an alternative to the soil sampling requirements  
273 of this subsection if the owner or a duly authorized representative of the AST  
274 demonstrates to the ~~board's~~ department's satisfaction that:

275 (1) There is no evidence of present or past contamination by providing records of  
276 monthly leak detection monitoring for the previous 12 months; and



277 (2) The facility or AST has operated an approved or approvable leak detection system.  
278 4. A closure inspection conducted by either the department or the local building official, as  
279 discussed in subsection A of this section.

280 D. When deemed necessary by the ~~board~~ department, the owner or a duly authorized  
281 representative of a facility or an AST that was permanently closed prior to June 24, 1998, shall  
282 assess the site and close the AST in accordance with the requirements of this section.

283 E. The owner or a duly authorized representative shall maintain all records relating to  
284 compliance with this section for a period of not less than five years from the date the ~~board~~  
285 department receives notice of the completed closure. These records shall be made available to  
286 the ~~board~~ department upon request.

### 287 Part III

#### 288 Pollution Prevention Requirements

#### 289 **9VAC25-91-130. Pollution prevention standards and procedures.**

290 A. Pollution prevention standards and procedures for facilities are listed in this section.  
291 Aboveground storage tanks with an aggregate capacity of one million gallons or more shall  
292 comply with the requirements of subsections B and C of this section.

293 B. Requirements for aboveground storage tanks at facilities for 25,000 gallons or more.  
294 Section 62.1-44.34:15.1 of the Code of Virginia provides the following requirements for existing  
295 aboveground storage tanks at a facility with an aggregate aboveground storage capacity equal to  
296 or greater than 25,000 gallons of oil or for an existing individual aboveground storage tank with a  
297 storage capacity equal to or greater than 25,000 gallons of oil, unless otherwise exempted.

##### 298 1. Inventory control and testing for significant variations.

299 a. The following aboveground storage tanks shall not be subject to inventory control  
300 and testing for significant variations:

301 (1) Aboveground storage tanks totally off ground with all associated piping off ground;

302 (2) Aboveground storage tanks with a capacity of 5,000 gallons or less located within  
303 a building or structure designed to fully contain a discharge of oil; and

304 (3) Aboveground storage tanks containing No. 5 or No. 6 oil for consumption on the  
305 premises where stored.

306 b. Each operator shall institute inventory control procedures capable of detecting a  
307 significant variation of inventory. A significant variation shall be considered a variation  
308 in excess of 1.0% of the storage capacity of each individual AST. Reconciliations of  
309 inventory measurements shall be conducted monthly. If a significant variation persists  
310 for two consecutive reconciliation periods, the operator shall conduct an investigation  
311 to determine the cause of the variation and reconcile physical measurements to 60°F  
312 at 14.7 pounds per square inch absolute. This investigation shall be completed within  
313 five working days of the end of the second reconciliation period. If this investigation  
314 does not reveal the cause of the inventory variation, the operator shall notify the ~~board~~  
315 department and the local director or coordinator of emergency services and shall  
316 conduct additional testing to determine the cause of the inventory variation. The testing  
317 method, schedule, and results of this additional testing shall be submitted to the ~~board~~  
318 department for review. For a refinery, a significant variation of inventory shall be  
319 considered a loss in excess of 1.0% by weight of the difference between the refinery's  
320 input and output of oil.

321 c. Inventory records shall be kept of incoming and outgoing volumes of oil from each  
322 tank. All tanks shall be gauged no less frequently than once every 14 days and on

323 each day of normal operation. For a refinery, the operator shall calculate the input and  
324 output of oil at the refinery on a daily basis. The operator shall reconcile daily inventory  
325 records with the inventory measurements conducted monthly.

326 2. Secondary containment.

327 a. The operator shall have and maintain secondary containment or another method  
328 approved by the ~~board~~ department for each AST. The containment structure must be  
329 capable of containing oil and shall be constructed in accordance with 40 CFR Part 112  
330 so that any discharge from the AST will not escape the containment before cleanup  
331 occurs. The operator shall have each secondary containment or approved method  
332 evaluated and certified to be in compliance with the applicable requirements of 40 CFR  
333 Part 112, the Uniform Statewide Building Code and its referenced model codes and  
334 standards, and 29 CFR 1910.106. The operator of a facility existing on June 24, 1998,  
335 shall have had this evaluation or certification performed by a professional engineer or  
336 person approved by the ~~board~~ department on or before June 30, 1998, and every 10  
337 years thereafter, unless otherwise exempted.

338 b. If the secondary containment cannot be certified to be in compliance with the  
339 applicable requirements of 40 CFR Part 112, the Uniform Statewide Building Code  
340 and its referenced model codes and standards, and 29 CFR 1910.106, the operator  
341 must upgrade, repair, or replace the secondary containment to meet the applicable  
342 requirements listed in subdivision 2 a of this subsection unless the ~~board~~ department  
343 accepts the certification with qualifications.

344 c. The operator of a facility shall have the evaluation and certification performed every  
345 10 years by a professional engineer (PE) licensed in the Commonwealth of Virginia or  
346 other state having reciprocity with Virginia or by a person approved by the ~~board~~  
347 department unless otherwise exempted.

348 d. The professional engineer shall not certify the secondary containment until all of the  
349 applicable requirements of 40 CFR Part 112, the Uniform Statewide Building Code  
350 and its referenced model codes and standards, and 29 CFR 1910.106 have been met.  
351 In the event the professional engineer certifies the secondary containment with  
352 qualifications, such qualifications will be subject to review and approval by the ~~board~~  
353 department. If the certification contains qualifications that may impact the ability of the  
354 secondary containment to contain a discharge of oil as required by subdivision 2 a of  
355 this subsection, the deficiencies must be corrected and the secondary containment  
356 must be reevaluated and recertified by a professional engineer.

357 e. At a minimum, the certification statement for the secondary containment must  
358 contain the following statement: "Based on my evaluation, I hereby certify that each  
359 secondary containment structure for (insert the facility name and tank identification  
360 information) is in compliance with the applicable requirements of 40 CFR Part 112, the  
361 Uniform Statewide Building Code and its referenced model codes and standards, and  
362 29 CFR 1910.106."

363 f. The certification must be signed and sealed by a professional engineer licensed in  
364 the Commonwealth of Virginia or other state having reciprocity or by a person  
365 approved by the ~~board~~ department.

366 g. Operators of facilities existing on June 24, 1998, and exempted under § 62.1-  
367 44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale  
368 of oil) shall have had this evaluation completed on or before June 24, 2003, and every  
369 10 years thereafter.

370 h. Operators of a newly installed AST shall have this evaluation completed prior to  
371 being placed into service and every 10 years thereafter.

372 i. Operators of an existing AST with a current engineering certification statement on  
373 November 1, 2015, may maintain their existing engineering certification statement until  
374 their next required certification, or 10 years, whichever is sooner. At such time, the  
375 certification statements must contain the statement required in 9VAC25-91-130 B 2 e.

376 3. Safe fill and shutdown procedures.

377 a. Each operator shall institute safe fill, shutdown, and transfer procedures, or  
378 equivalent measures approved by the ~~board~~ department, that will ensure that spills  
379 resulting from tank overfills or other product transfer operations do not occur. Written  
380 safe fill, shutdown, and transfer procedures shall be maintained by the operator for  
381 use by facility personnel.

382 All receipts of oil shall be authorized by the operator or facility personnel trained by the  
383 operator who shall ensure the volume available in the tank is greater than the volume  
384 of oil to be transferred to the tank before the transfer operation commences. The  
385 operator shall ensure the transfer operation is monitored continually, either by manual  
386 or automatic means, until complete. The operator shall ensure that all tank fill valves  
387 not in use are secured and that only the tank designated is receiving oil.

388 b. All oil transfer areas where filling connections are made with vehicles shall be  
389 equipped with a spill containment system capable of containing and collecting those  
390 spills and overfills. The containment system shall be designed to hold at least the  
391 capacity as required by 40 CFR Part 112.

392 c. If installed, an automatic shutdown system utilized during transfer of oil shall include  
393 the capability to direct the flow of oil to another tank capable of receiving the  
394 transferred oil or the capability to shut down the pumping or transfer system. This  
395 automatic shutdown system shall be tested prior to each receipt of oil and records of  
396 testing shall be maintained at the facility.

397 d. All ASTs shall be equipped with a gauge that is readily visible and indicates the level  
398 of oil or quantity of oil in the tank. In addition, the storage capacity, product stored and  
399 tank identification number shall be clearly marked on the tank at the location of the  
400 gauge. These gauges shall be calibrated annually.

401 4. Pressure testing of piping. All piping shall be pressure tested as specified in this  
402 subsection or using an equivalent method or measure approved by the ~~board~~ department  
403 at intervals not to exceed five years. The operator of a facility or AST existing on June 24,  
404 1998, shall have completed the initial test on or before June 30, 1998, except operators  
405 of existing facilities or ASTs for which compliance was exempted under § 62.1-44.34:17  
406 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil). These  
407 excepted operators shall have completed the initial test on or before June 24, 2003. All  
408 newly installed or repaired piping shall be tested before being placed into service.

409 a. A pressure test may be a hydrostatic test at 150% maximum allowable working  
410 pressure (MAWP) or an inert gas test at 110% MAWP.

411 b. A test conducted and certified by an American Petroleum Institute (API) authorized  
412 piping inspector to be in conformity with the API 570 Piping Inspection Code is deemed  
413 an equivalent method of testing approved by the ~~board~~ department.

414 c. The ~~board~~ department may consider on a case-by-case basis requests for approval  
415 of other equivalent methods or measures which conform to industry recommended  
416 practices, standards and codes. The operator shall submit a request for approval of a  
417 proposed equivalent method or measure to the ~~board~~ department as specified in  
418 9VAC25-91-160.

419 5. Visual daily inspection and weekly inspections.

420 a. The operator or a duly authorized representative shall conduct a daily visual  
421 inspection for each day in which normal operation occurs, but no less frequently than  
422 once every 14 days in the areas of the facility where this chapter applies. The facility  
423 person conducting the inspection shall document completion of this inspection by  
424 making and signing an appropriate notation in the facility records. This visual  
425 inspection shall include the following:

426 (1) A complete walk-through of the facility property in the areas where this chapter  
427 applies to ensure that no hazardous conditions exist;

428 (2) An inspection of ground surface for signs of leakage, spillage, or stained or  
429 discolored soils;

430 (3) A check of the berm or dike area for excessive accumulation of water and to ensure  
431 the dike or berm manual drain valves are secured;

432 (4) A visual inspection of the exterior tank shell to look for signs of leakage or damage;  
433 and

434 (5) An evaluation of the condition of the aboveground storage tank and appurtenances.

435 b. The operator or a duly authorized representative shall conduct a weekly inspection  
436 each week in which normal operation occurs, but no less frequently than once every  
437 14 days, of the facility in the areas where this chapter applies, using a checklist that  
438 contains at least the items found in subdivision 5 c of this subsection. The checklist is  
439 not inclusive of all safety or maintenance procedures but is intended to provide  
440 guidance to the requirements within this chapter. The weekly checklist shall be  
441 maintained at the facility and provided to the ~~board~~ department upon request. This  
442 checklist shall be signed and dated by the facility person or persons conducting the  
443 inspection and shall become part of the facility record.

444 (1) The operator of a new AST/facility shall develop the checklist within 90 days after  
445 the date of installation.

446 (2) The operator of each facility existing on June 24, 1998, and exempted under §  
447 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the  
448 resale of oil) shall have developed the checklist by September 28, 1998.

449 (3) Operators of facilities existing on June 24, 1998, and not exempted under § 62.1-  
450 44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale  
451 of oil) and who have developed a checklist by September 28, 1993, shall be deemed  
452 to be in compliance with this checklist requirement as of June 24, 1998.

453 c. Sample—weekly inspection checklist for aboveground storage tank systems:

454 \_\_\_\_ (1) Containment dike or berm in satisfactory condition.

455 \_\_\_\_ (2) Containment area free of excess standing water or oil.

456 \_\_\_\_ (3) Gate valves used for emptying containment areas secured.

457 \_\_\_\_ (4) Containment area/base of tank free of high grass, weeds, and debris.

458 \_\_\_\_ (5) Tank shell surface, including any peeling areas, welds, rivets/bolts, seams,  
459 and foundation, visually inspected for areas of rust and other deterioration.

460 \_\_\_\_ (6) Ground surface around tanks and containment structures and transfer areas  
461 checked for signs of leakage.

462 \_\_\_\_ (7) Leak detection equipment in satisfactory condition.

463 \_\_\_\_ (8) Separator or drainage tank in satisfactory condition.

464 \_\_\_\_ (9) Tank water bottom drawoffs not in use are secured.

465 \_\_\_\_ (10) Tank fill valves not in use are secured.

- 466 \_\_\_\_\_ (11) Valves inspected for signs of leakage or deterioration.
- 467 \_\_\_\_\_ (12) Inlet and outlet piping and flanges inspected for leakage.
- 468 \_\_\_\_\_ (13) All tank gauges have been inspected and are operational.

Signature of Inspector	Date	Time
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469 d. The operator shall promptly remedy unsatisfactory facility and equipment conditions  
 470 observed in the daily and weekly inspections. The operator shall make repairs,  
 471 alterations, and retrofits in accordance with American Petroleum Institute (API)  
 472 Standard 653, Fourth Edition (April 2009), with Addendum 1 (August 2010) and  
 473 Addendum 2 (January 2012), Steel Tank Institute (STI) standard STI-SP001, Fifth  
 474 Edition (September 2011), industry standards, or methods approved by the ~~board~~  
 475 department.

476 6. Training of individuals. To ensure proper training of individuals conducting inspections  
 477 required by subdivision 5 of this subsection, the operator of a facility shall train personnel  
 478 based on the following requirements:

479 a. Each facility operator shall establish a training program for those facility personnel  
 480 conducting the daily visual and weekly inspections of the facility. Facility records shall  
 481 contain the basic information and procedures required by subdivision 6 c of this  
 482 subsection. The required training may be conducted by the operator or by a third party.  
 483 The training program established shall be maintained to reflect current conditions of  
 484 the facility.

485 (1) The operator of a new facility shall establish the training program within six months  
 486 after being brought into use.

487 (2) The operator of each facility exempted under § 62.1-44.34:17 D of the Code of  
 488 Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have established  
 489 the training program by December 24, 1998.

490 (3) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia  
 491 (i.e., exempted facilities not engaged in the resale of oil) and who developed a training  
 492 program by December 31, 1993, shall be deemed to be in compliance with this training  
 493 program requirement as of June 24, 1998, so long as that program reflects current  
 494 conditions of the facility.

495 b. The required training shall be conducted for facility personnel as applicable.  
 496 Personnel not receiving this initial training and who will be conducting these  
 497 inspections shall receive the training prior to conducting any inspection.

498 (1) The operator of a new facility shall conduct the personnel training within 12 months  
 499 after being brought into use and prior to personnel conducting any inspection.

500 (2) The operator of each facility exempted under § 62.1-44.34:17 D of the Code of  
 501 Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have conducted  
 502 the personnel training by June 24, 1999.

503 (3) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia  
 504 (i.e., exempted facilities not engaged in the resale of oil) and who have conducted the  
 505 personnel training by June 30, 1994, shall be deemed to be in compliance with this  
 506 personnel training requirement as of June 24, 1998, so long as the training provided  
 507 reflects current conditions of the facility and all inspections are current.

508 c. Training for personnel performing daily and weekly inspections shall address at a  
 509 minimum:

510 (1) Basic information regarding occupational safety, hazard recognition, personnel  
 511 protection, and facility operations;

512 (2) The procedures to be followed in conducting the daily visual and weekly facility  
513 inspections;

514 (3) The procedures to be followed upon recognition of a hazard or the potential for a  
515 hazard; and

516 (4) The procedure for evaluating the condition of the aboveground storage tank and  
517 appurtenances.

518 d. The operator of a facility shall train facility personnel upon any changes to the  
519 contents of the initial training program or every three years and shall document this  
520 training in the facility records.

521 7. Leak detection. The operator shall operate, maintain, monitor and keep records of the  
522 system established for early detection of a discharge to groundwater (i.e., a method of  
523 leak detection) as required by 9VAC25-91-170 A 18 and contained in the facility's  
524 approved ODCP. These activities shall be inspected and approved by the ~~board~~  
525 department.

526 C. Requirements for aboveground storage tanks at facilities for one million gallons or more.  
527 In addition to the requirements of subsection B of this section, the following requirements apply  
528 to existing aboveground storage tanks at facilities with an aggregate aboveground storage  
529 capacity of one million gallons or more of oil or for an existing individual aboveground storage  
530 tank with a storage capacity of one million or more gallons of oil, unless otherwise exempted.

531 1. Formal inspections.

532 a. Each AST shall undergo formal external and internal tank inspections. The initial  
533 formal internal and external inspections for an AST existing on June 24, 1998, shall  
534 have been completed on or before June 30, 1998, unless otherwise specified within  
535 this chapter.

536 (1) All newly installed ASTs shall have initial formal inspections within five years after  
537 the date of installation.

538 (2) Operators of facilities existing on June 24, 1998, and exempted under § 62.1-  
539 44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale  
540 of oil) shall have completed the initial formal inspections on or before June 24, 2003.

541 (3) An AST with a storage capacity of less than 12,000 gallons shall not be subject to  
542 the formal internal inspection unless the integrity of the AST is in question and an  
543 inspection is deemed necessary by the ~~board~~ department.

544 b. Inspections shall be conducted in accordance with the provisions of American  
545 Petroleum Institute (API) Standard 653, Fourth Edition (April 2009), with Addendum 1  
546 (August 2010) and Addendum 2 (January 2012); Steel Tank Institute (STI) standard  
547 STI-SP001, Fifth Edition (September 2011); or procedure approved by the ~~board~~  
548 department. If construction practices allow external access to the tank bottom, a formal  
549 external inspection utilizing accepted methods of nondestructive testing or procedure  
550 approved by the ~~board~~ department may be allowed in lieu of the internal inspection.

551 c. An API Standard 653 inspection conducted between January 1, 1991, and June 24,  
552 1998, may be accepted by the ~~board~~ department if the operator provides supporting  
553 documentation to the ~~board~~ department for review and approval.

554 d. All formal inspections and testing required by subdivisions 1 and 2 of this subsection  
555 shall be conducted by a person certified to conduct the inspection or test. This  
556 certification shall be accomplished in accordance with the provisions of API Standard  
557 653, STI-SP001, or a procedure approved by the ~~board~~ department. Proof of this  
558 certification shall be maintained in the facility records. The results of all tests and  
559 inspections required by subdivisions 1 and 2 of this subsection shall be maintained at

560 the facility or at a location approved by the ~~board~~ department for the life of the tank,  
561 but for no less than five years.

562 2. Formal reinspections.

563 a. Each AST shall undergo an external reinspection every five years. Inspections shall  
564 be conducted in accordance with the provisions of API Standard 653, STI-SP001, or  
565 other procedure accepted by the ~~board~~ department after the initial formal external  
566 inspection has been conducted.

567 b. Each AST with a storage capacity of 12,000 gallons of oil or greater shall undergo  
568 an internal reinspection in accordance with the provisions of API Standard 653 or STI-  
569 SP001 every 10 years after the initial formal internal inspection has been conducted.

570 (1) The ~~board~~ department may require the internal reinspection sooner than 10 years  
571 if there is an indication that the corrosion rate established by the initial internal  
572 inspection or a subsequent reinspection has increased.

573 (2) The internal reinspection period may be extended beyond 10 years if the operator  
574 can demonstrate to the ~~board~~ department that an extension of the reinspection period  
575 is warranted. The operator shall provide supporting documentation to the ~~board~~  
576 department for review and approval at least six months prior to the date the  
577 reinspection is due.

578 c. An AST with a storage capacity of less than 12,000 gallons shall not be subject to  
579 the formal internal reinspection unless the integrity of the AST is in question and an  
580 inspection is deemed necessary by the ~~board~~ department.

581 3. Safe fill and shutdown procedures - high level alarm. If unattended during transfer  
582 operations, the AST shall be equipped with a high level alarm or other appropriate  
583 mechanism approved by the ~~board~~ department that will immediately alert the operator to  
584 prevent an overfill event. Activation of the high level alarm or other appropriate mechanism  
585 shall initiate an immediate and controlled emergency shutdown of the transfer, either by  
586 manual or automatic means. Each operator shall include this emergency shutdown  
587 procedure in the facility records and shall ensure that all facility personnel involved in the  
588 transfer operation are trained in this procedure. The alarm shall consist of a visual and  
589 audible device capable of alerting the operator, both by sight and hearing, to prevent an  
590 overfill situation. If the operator is in a control station, this alarm shall activate a warning  
591 light and audible signal in that station. In addition, this system shall alarm on failure,  
592 malfunction, or power loss. This high level alarm shall be tested prior to each receipt of  
593 oil. Records of testing shall be maintained at the facility.

594 4. Cathodic protection of piping. The requirement for cathodic protection of piping shall  
595 apply to buried piping only. Cathodic protection shall be installed and maintained in  
596 accordance with the following applicable publications: American Petroleum Institute  
597 Standard (API) 1632, Third Edition (2002), the Uniform Statewide Building Code and its  
598 referenced model codes and standards, or National Association of Corrosion Engineers  
599 (NACE) SP0285-2011. All piping above ground shall be protected from corrosion using  
600 methods and procedures referenced in the Uniform Statewide Building Code and its  
601 referenced model codes and standards, or a procedure approved by the ~~board~~  
602 department. Piping that passes through the wall of the containment berm or dike or under  
603 road crossings shall be protected from corrosion and damage using practices  
604 recommended in the publications listed in this subdivision.

605 **9VAC25-91-140. Performance standards for aboveground storage tanks newly installed,**  
606 **retrofitted, or brought into use.**

607 A. All ASTs shall be built in accordance with the applicable design standards adopted by  
608 Underwriters Laboratories, the American Petroleum Institute, the Steel Tank Institute or other  
609 standard approved by the ~~board~~ department.

610 B. All ASTs shall be strength tested before being placed in use in accordance with the  
611 applicable code or standard under which they were built.

612 C. ASTs that have the tank bottom in direct contact with the soil shall have a determination  
613 made by a corrosion professional as to the type and degree of corrosion protection needed to  
614 ensure the integrity of the tank system during the use of the tank. If a survey indicates the need  
615 for corrosion protection for the new installation, corrosion protection shall be provided.

616 D. ASTs installed after June 30, 1993, shall have a release prevention barrier (RPB) installed  
617 either under or in the bottom of the tank. The RPB shall be capable of: (i) preventing the release  
618 of the oil and (ii) containing or channeling the oil for leak detection.

619 E. Existing ASTs that are retrofitted (reconstruction or bottom replacement) or brought back  
620 into use shall be brought into compliance with subsections A, B, C, and D of this section. The  
621 operator shall submit a schedule to the department of the work to be performed in order to bring  
622 the existing AST into compliance with new-built construction standards. This compliance schedule  
623 shall be submitted to the department no less than six months prior to the anticipated completion  
624 date.

625 F. Operators of ASTs installed, retrofitted (reconstruction or bottom replacement) or brought  
626 back into use shall also comply with 9VAC25-91-130 B and 9VAC25-91-130 C, as applicable.

627 G. All newly installed ASTs shall be constructed and installed in a manner consistent with the  
628 applicable standards and requirements found in the Uniform Statewide Building Code and its  
629 referenced model codes and standards or other standards approved by the ~~board~~ department.  
630 Approval and any applicable permits shall be obtained from the local building official before  
631 construction starts.

632 H. Compliance dates for subsections A through G of this section.

633 1. Operators of a newly installed, retrofitted or brought-back-into-use facility or AST shall  
634 comply with the requirements of this section within 30 days prior to being placed into  
635 service.

636 2. Operators of facilities existing on June 24, 1998, and exempted under § 62.1-44.34:17  
637 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall  
638 have complied with these requirements by October 22, 1998.

639 3. Operators of facilities existing on June 24, 1998, and not exempted under § 62.1-  
640 44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of  
641 oil) and who have met these requirements on or before June 30, 1993, shall be deemed  
642 to be in compliance with these requirements as of the effective date of this chapter.

643 **9VAC25-91-145. Performance standards for certain aboveground storage tanks located in**  
644 **the City of Fairfax.**

645 A. The requirements of this section apply to aboveground storage tanks at facilities with an  
646 aggregate capacity of one million gallons or greater existing prior to January 29, 1992, and located  
647 in the City of Fairfax.

648 B. All ASTs altered as required by this section shall be strength tested before being returned  
649 to use in accordance with the applicable code or standard under which they were built.

650 C. All ASTs shall contain a release prevention barrier (RPB) either under or in the bottom of  
651 the tank. The RPB shall be capable of (i) preventing the release of the oil and (ii) containing or



652 channeling the oil for leak detection. Existing elevated ASTs that are installed in containment  
653 areas meeting the requirements of an RPB or that are located within earthen containment dikes  
654 and are included in the daily and weekly inspections required by 9VAC25-91-130 B 5 shall be  
655 considered to be in compliance with the requirements of this section.

656 D. All ASTs altered as required by this section shall meet the applicable standards and  
657 requirements found in the Uniform Statewide Building Code or other standards approved by the  
658 ~~board~~ department. Approval and all applicable permits shall be obtained from the local building  
659 official before altering ASTs.

660 E. Operators of facilities subject to this section shall meet the performance standards of this  
661 section no later than July 1, 2021.

662 **9VAC25-91-150. Recordkeeping and access to facilities.**

663 A. Each operator of a facility subject to this chapter shall maintain the following records:

- 664 1. All records relating to all required measurements and inventory and reconciliation of oil  
665 at the facility;
- 666 2. All records relating to required tank/pipe testing;
- 667 3. All records relating to spill events and other discharges of oil from the facility;
- 668 4. All supporting documentation for developed contingency plans;
- 669 5. All records for implementation and monitoring of leak detection and applicable  
670 provisions of 9VAC25-91-170 A 18 of Part IV (9VAC25-91-170, Oil Discharge Contingency  
671 Plan (ODCP) Requirements) of this chapter;
- 672 6. All records relating to training of individuals;
- 673 7. All records relating to facility and tank inspections; and
- 674 8. Any records required to be kept by statute or regulation of the board.

675 B. These records shall be kept by the operator of a facility at the facility or at an alternate  
676 location approved by the ~~board~~ department for a period of no less than five years unless otherwise  
677 indicated.

678 C. Upon request, each operator shall make these records available to the department and to  
679 the director or coordinator of emergency services for the locality in which the facility is located or  
680 to any political subdivision within one mile of the facility.

681 D. Operators shall maintain all records relating to compliance with this chapter for a period of  
682 no less than five years from the date the department receives notice of the closure unless  
683 otherwise indicated. These records shall be made available to the department at any time upon  
684 request.

685 **9VAC25-91-160. Variances to the requirements of Part III (9VAC25-91-130 et seq.) of this**  
686 **chapter.**

687 A. General criteria for granting a variance on a case-by-case basis.

- 688 1. The ~~board~~ department is required by § 62.1-44.34:15.1 of the Code of Virginia to  
689 establish the criteria to grant variances of the AST pollution prevention requirements on a  
690 case-by-case basis and by regulation for categories of ASTs. Any person affected by this  
691 chapter may petition the ~~board~~ department to grant a variance of any requirement of Part  
692 III (9VAC25-91-130 et seq.) of this chapter.
- 693 2. The ~~board~~ department will not grant any petition for a variance related to:
  - 694 a. Definitions;
  - 695 b. Registration;
  - 696 c. Classification of aboveground storage tanks; or

- 697 d. Oil discharge contingency plans.
- 698 3. The ~~board~~ department may grant a variance if:
- 699 a. The applicant demonstrates to the satisfaction of the ~~board~~ department that the
- 700 alternate design or operation will result in a facility that is equally capable of preventing
- 701 pollution of state water, land, and storm drains from the discharge of oil from new and
- 702 existing ASTs. If the variance would extend a deadline, the petitioner shall
- 703 demonstrate that a good faith effort to comply with the deadline was made;
- 704 b. Granting the variance will not result in an unreasonable risk to human health or the
- 705 environment; and
- 706 c. Granting the variance will not result in a conflict with applicable local codes or
- 707 ordinances.
- 708 4. In rendering a decision, the ~~board~~ department may:
- 709 a. Deny the petition;
- 710 b. Grant the variance as requested;
- 711 c. Grant a modified variance which:
- 712 (1) Specifies additional or modified requirements;
- 713 (2) Includes a schedule for:
- 714 (a) Periodic review of the modified requirements;
- 715 (b) Implementation by the facility of such control measures as the ~~board~~ department
- 716 finds necessary in order that the variance may be granted; or
- 717 (c) Compliance, including increments of progress, by the facility with each requirement
- 718 of the variance; or
- 719 (3) Specifies the termination date of the variance.
- 720 d. Grant a partial variance that:
- 721 (1) Specifies a particular part of the requirement;
- 722 (2) Specifies a particular part of the request;
- 723 (3) Includes a schedule for:
- 724 (a) Periodic review of the partial requirements;
- 725 (b) Implementation by the facility of such control measures as the ~~board~~ department
- 726 finds necessary in order that the variance may be granted; or
- 727 (4) Specifies the termination date of the variance.
- 728 5. An operator must comply with the requirements of this chapter even when a variance
- 729 request is under consideration by the ~~board~~ department. A variance request submitted but
- 730 disapproved, or submitted but not yet decided, shall not constitute a defense or delay to
- 731 any enforcement action undertaken by the department.
- 732 B. Administrative procedures.
- 733 1. General requirements for the submission of a petition by the owner or a duly authorized
- 734 representative. All petitions submitted to the ~~board~~ department shall include:
- 735 a. The owner's or duly authorized representative's name and address;
- 736 b. A citation of the regulatory requirement to which a variance is requested;
- 737 c. An explanation of the need or desire for the proposed action, including the reason
- 738 the existing requirement is not achievable or is impractical compared to the alternative
- 739 being proposed;
- 740 d. An explanation of the impact to applicable local codes and ordinances;

- 741 e. A description of the proposed action;
- 742 f. The duration of the variance, if applicable;
- 743 g. The potential impact of the variance on human health or the environment and a  
744 justification of the proposed action's ability to provide equivalent protection of human  
745 health and the environment as would compliance with the regulatory requirements;
- 746 h. Enforcement action against or pending against the petitioner;
- 747 i. Other information believed by the applicant to be pertinent; and
- 748 j. The following statements signed by the owner or a duly authorized representative:
- 749 "I certify that I have personally examined and am familiar with the information  
750 submitted in this petition and all attached documents, and that, based on my inquiry of  
751 those individuals immediately responsible for obtaining the information, I believe that  
752 the submitted information is true, accurate, and complete. The petition, if granted, will  
753 not be in violation of any local codes or ordinances or pose an unreasonable risk to  
754 human health or the environment. I am aware that there are significant penalties for  
755 submitting false information, including the possibility of fine and imprisonment."
- 756 2. In addition to the general information required of all petitioners under subdivision 1 of  
757 this subsection, the petitioner shall submit other information as may be required by the  
758 board department.
- 759 3. All variance petitions and correspondence shall be submitted to the following address:
- 760 Mailing Address:
- 761 Department of Environmental Quality  
762 Office of Spill Response and Remediation  
763 P.O. Box 1105  
764 Richmond, VA 23218
- 765 Street Address:
- 766 Department of Environmental Quality  
767 Office of Spill Response and Remediation  
768 1111 East Main Street, Suite 1400  
769 Richmond, VA 23219
- 770 C. Petition processing.
- 771 1. After receiving a petition that includes the information required in subdivision B 1 of this  
772 section, the board department will determine whether the information received is sufficient  
773 to render the decision. If the information is deemed to be insufficient, the board department  
774 will specify additional information needed and request that it be furnished.
- 775 2. The petitioner may submit the additional information requested, may attempt to show  
776 that no reasonable basis exists for the request for additional information, or may withdraw  
777 the petition. If the board department agrees that no reasonable basis exists for the request  
778 for additional information, the board department will act in accordance with subdivision 3  
779 b of this subsection. If the board department continues to believe that a reasonable basis  
780 exists to require the submission of such information, the board department will deny the  
781 petition.
- 782 3. After the petition is deemed complete:
- 783 a. The board department will review the petition;
- 784 b. After evaluating the petition, the board department will notify the applicant of the  
785 following final decision:

- 786 (1) Petition is denied;
- 787 (2) Requested variance is granted; or
- 788 (3) Modified or partial variance is granted;
- 789 c. The ~~board~~ department shall send written notification of the variance to the chief
- 790 administrative officer of the locality in which the facility is located; and
- 791 d. If the ~~board~~ department grants a variance request, the notice to the petitioner shall
- 792 provide that the variance may be terminated upon a finding by the ~~board~~ department
- 793 that the petitioner has failed to comply with any variance requirements.
- 794 D. Variance by regulation for categories of ASTs.
- 795 1. ASTs totally off ground shall not be subject to inventory control or testing for significant
- 796 variation if:
- 797 a. All associated piping is off ground;
- 798 b. All associated buried piping is double walled; or
- 799 c. All associated piping meets the requirements using a combination of subdivisions 1
- 800 a and 1 b of this subsection.
- 801 2. ASTs with a capacity of 5,000 gallons or less located within a building or structure
- 802 designed to fully contain a discharge of oil shall not be subject to inventory control or
- 803 testing for significant variation.
- 804 3. ASTs containing No. 5 or No. 6 fuel oil for consumption on the premises where stored
- 805 shall not be subject to inventory control or testing for significant variation.
- 806 4. ASTs with release prevention barriers (RPBs) and with an established corrosion rate
- 807 and cathodic protection that protects the entire area of the tank bottom shall not be subject
- 808 to inventory control or testing for significant variation if:
- 809 a. All associated piping is off ground;
- 810 b. All associated buried piping is double walled; or
- 811 c. All associated piping meets the requirements using a combination of subdivisions 4
- 812 a and 4 b of this subsection.
- 813 5. ASTs with release prevention barriers (RPBs) and with secondary containment that is
- 814 72 hours impermeable shall not be subject to inventory control or testing for significant
- 815 variation if:
- 816 a. All associated piping is off ground;
- 817 b. All associated buried piping is double walled; or
- 818 c. All associated piping meets the requirements using a combination of subdivisions 5
- 819 a and 5 b of this subsection.
- 820 6. ASTs that meet the construction and installation standards of STI-F911, F921, or F941,
- 821 or equivalent standards approved by the ~~board~~ department shall not be subject to
- 822 inventory control or testing for significant variation.
- 823 7. For refineries with a continuous leak detection monitoring system and cathodic
- 824 protection of the AST and piping, a significant variation of inventory shall be considered a
- 825 loss in excess of 3.0% by weight of the difference between the refinery's input and output.
- 826 8. Vaulted tanks meeting UL 2245 or an equivalent standard approved by the ~~board~~
- 827 department shall not be subject to inventory control or testing for significant variation. The
- 828 inspections for these tanks required in 9VAC25-91-130 B 5 need to be conducted no more
- 829 frequently than once every 31 days. The criteria for the visual daily inspection and weekly
- 830 inspection checklist shall be incorporated into a monthly checklist.

831 9. An AST used in the production/manufacturing process with full containment that is 72  
832 hours impervious shall not be subject to inventory control or testing for significant variation.

833 10. An AST of 12,000 gallons or less with full containment that is 72 hours impervious,  
834 inside a building and used for the storage of heating oil consumed on the premises shall  
835 not be subject to inventory control or testing for significant variation.

836 11. A double-walled AST shall not be subject to inventory control or testing for significant  
837 variation. The inspections required in 9VAC25-91-130 B 5 need be conducted no more  
838 frequently than once every 31 days. The criteria for the visual daily inspection and weekly  
839 inspection checklist shall be incorporated into a monthly checklist.

840 Part IV

841 Oil Discharge Contingency Plan (ODCP) Requirements

842 **9VAC25-91-170. Contingency plan requirements and approval.**

843 A. Section 62.1-44.34:15 of the Code of Virginia requires that all facility oil discharge  
844 contingency plans must conform to the requirements and standards determined by the ~~board~~  
845 department to be necessary to ensure that the applicant can take such steps as are necessary to  
846 protect environmentally sensitive areas; to respond to the threat of an oil discharge; and to  
847 contain, cleanup, and mitigate an oil discharge within the shortest feasible time. Each such plan  
848 shall provide for the use of the best available technology (economically feasible, proven effective  
849 and reliable and compatible with the safe operation of the facility) at the time the plan is submitted  
850 for approval and, in order to be approvable, shall contain, at a minimum, the following  
851 requirements:

852 1. The name of the facility, geographic location and access routes from land and water if  
853 applicable;

854 2. The names of the operators of the facility including address and phone number;

855 3. A physical description of the facility consisting of a plan of the facility which identifies  
856 the applicable oil storage areas, transfer locations, control stations, above and below  
857 ground oil transfer piping within the facility boundary (and including adjacent easements  
858 and leased property), monitoring systems, leak detection systems and location of any  
859 safety protection devices;

860 4. A copy of the material safety data sheet (MSDS) or its equivalent for each oil or groups  
861 of oil with similar characteristics stored, transferred or handled at the facility. To be  
862 equivalent, the submission shall contain the following:

863 a. Generic or chemical name of the oil;

864 b. Hazards involved in handling the oil; and

865 c. A list of fire-fighting procedures and extinguishing agents effective with fires  
866 involving each oil or groups of oil demonstrating similar hazardous properties which  
867 require the same fire-fighting procedures;

868 5. The maximum storage or handling capacity of the facility and the individual tank  
869 capacities or, in the case of a pipeline, the average daily throughput of oil;

870 6. A complete listing, including 24-hour phone numbers, of all federal, state and local  
871 agencies required to be notified in the event of a discharge;

872 7. The position title of the individuals responsible for making the required notifications and  
873 a copy of the notification check-off list;

874 8. The position title, address and phone number of the individuals authorized to act on  
875 behalf of the operator to implement containment and cleanup actions. This individual shall

876 be available on a 24-hour basis to ensure the appropriate containment and cleanup  
877 actions are initiated;

878 9. The position title of the individuals designated by the operator to ensure compliance  
879 during containment and cleanup of a discharge with applicable federal, state and local  
880 requirements for disposal of both solid and liquid wastes;

881 10. Identification and assurance by contract or other means acceptable to the ~~board~~  
882 department of the availability of private personnel and equipment necessary to remove to  
883 the maximum extent practicable the worst case discharge and to mitigate or prevent a  
884 substantial threat of such a discharge. This contract or agreement shall ensure a certain  
885 response within the shortest feasible time. The ~~board~~ department will accept a letter of  
886 understanding between the operator and the response contractors which attests to this  
887 capability being readily available. Membership in a cleanup cooperative or other response  
888 organization is also acceptable. A listing of contractor or cooperative capabilities, including  
889 an inventory of the equipment and specification of the other information required by  
890 subdivision 12 of this subsection, shall be included unless these capabilities are already  
891 on file with the department;

892 11. Assessment of the worst case discharge, including measures to limit the outflow of oil,  
893 response strategy and operational plan. For the purpose of this chapter, the worst case  
894 discharge is the instantaneous release of the volume of the largest tank on the facility  
895 (125% of the volume of the largest tank for facilities with multiple tanks within a single  
896 containment dike) during adverse weather conditions. Facilities shall take into  
897 consideration that due to hydraulic pressure of the release, the secondary containment  
898 will not contain this volume in its entirety. The worst case discharge for a pipeline shall be  
899 based upon the volume of a discharge calculated using the maximum pressure, velocity,  
900 and elevation, and the largest pipe size and pipeline location. If facility design and  
901 operation indicates that this worst case discharge scenario does not meet the intent of this  
902 chapter, the ~~board~~ department may require submission of other worst case scenarios on  
903 a facility-specific basis;

904 12. Inventory of facility containment equipment, including specification of quantity, type,  
905 location, time limits for gaining access to the equipment, and identification of facility  
906 personnel trained in its use;

907 13. Identification and location of natural resources at risk (including, but not limited to,  
908 surface waters as indicated on the applicable USGS quadrangle maps, groundwater,  
909 public water supplies, public and private water wells and springs, state or federal wildlife  
910 management areas, wildlife refuges, management areas, sanctuaries, property listed on  
911 the National Register of Historic Places and property listed on the National Register of  
912 Natural Landmarks), priorities for protection and means of protecting these resources;

913 a. In addition to the requirements set forth in this subdivision, the operator of a facility  
914 with an aggregate aboveground storage or handling capacity of one million gallons or  
915 greater of oil shall conduct a groundwater characterization study (GCS) within the  
916 geographic boundaries of the facility to be submitted as part of the contingency plan.  
917 The operator of such a facility shall utilize upgradient and downgradient GCS  
918 monitoring wells to satisfy this requirement. At the time of a discharge, the operator of  
919 such a facility shall conduct further characterization of the groundwater as required by  
920 the ~~board~~ department;

921 b. For purposes of satisfying the requirement to identify and locate natural resources  
922 at risk, the operator of a pipeline shall identify surface waters as indicated on the  
923 applicable USGS quadrangle maps, public water supplies, state or federal wildlife  
924 management areas, wildlife refuges, management areas, sanctuaries, property listed

925 on the National Register of Historic Places and property listed on the National Register  
926 of Natural Landmarks which could reasonably be expected to be impacted by the  
927 discharge. At the time of a discharge, the operator of a pipeline shall conduct a  
928 complete groundwater characterization study as required by the ~~board~~ department and  
929 identify other natural resources at risk including public and private wells or springs  
930 which could reasonably be expected to be impacted by the discharge;

931 14. Identification and location of any municipal or other services (including, but not limited  
932 to, storm drains, storm water collection systems and sanitary sewer systems) at risk,  
933 notification procedures applicable and means of protection of these services. The  
934 identification and location of all municipal services shall include those services for which  
935 official records are available. The operator of a pipeline shall determine which sections of  
936 the system are located in areas that would require an immediate response by the operator  
937 to prevent hazards to the public if a discharge occurred;

938 15. If applicable, the facility's responsibility for responding to a discharge from a vessel  
939 moored at the facility and the identity of the sizes, types, and number of vessels that the  
940 facility can transfer oil to or from simultaneously;

941 16. A description of training, equipment testing, and periodic unannounced oil discharge  
942 drills conducted by the operator to mitigate or prevent the discharge or the substantial  
943 threat of a discharge;

944 17. The facility's oil inventory control procedures. Facilities shall ensure that this control  
945 procedure is capable of providing for the detection of a discharge of oil within the shortest  
946 feasible time in accordance with recognized engineering practices and industry  
947 measurement standards;

948 18. A detailed description of a system for early detection of a discharge to groundwater,  
949 utilizing upgradient and downgradient leak detection monitoring wells or other  
950 groundwater protection measures acceptable to the ~~board~~ department (i.e., visual,  
951 interstitial, vapor and leak detection groundwater monitoring wells). The system will be  
952 operated, maintained and monitored in the manner approved and be subject to inspection  
953 by the department under the pollution prevention requirements of Part III (9VAC25-91-130  
954 et seq., Pollution Prevention Requirements) of this chapter. Operators subject to  
955 subdivision 13 a of this subsection may utilize such GCS wells to meet this requirement  
956 when approved by the ~~board~~ department;

957 19. The procedures to be followed, upon detection of a discharge of oil, for testing and  
958 inspection of all tanks, piping and all oil transfer associated equipment that could  
959 reasonably be expected to be a point source for the discharge. These procedures shall be  
960 conducted within the shortest feasible time, include a progression of written procedures  
961 from visual inspection to formal testing and be conducted in accordance with recognized  
962 engineering practices;

963 20. The facility's preventive maintenance procedures applicable to the critical equipment  
964 of an oil storage and transfer system as well as the maximum pressure for each oil transfer  
965 system. The term "critical equipment" shall mean equipment that affects the safe operation  
966 of an oil storage and handling system;

967 21. A description of the security procedures used by facility personnel to avoid intentional  
968 or unintentional damage to the facility; and

969 22. A post-discharge review procedure to assess the discharge response in its entirety.

970 B. All nonexempt facility operators shall file with the ~~board~~ department the application form for  
971 approval of the contingency plan. This form shall be submitted with the required contingency plan  
972 and shall be completed insofar as it pertains to the facility. The operator shall sign and date the

973 certification statement on the application form. If the operator is a corporation, the form shall be  
974 signed by an authorized corporate official; if the operator is a municipality, state, federal or other  
975 public agency, the form shall be signed by an authorized executive officer or ranking elected  
976 official; if the operator is a partnership or sole proprietorship, the form shall be signed by a general  
977 partner or the sole proprietor. All forms shall be acknowledged before a Notary Public.

978 C. Contingency plans shall be filed with and approved by the ~~board~~ department. The plan  
979 shall be submitted to the ~~board~~ department at the address specified in 9VAC25-91-60 A. A copy  
980 of the original with the facility-specific information and the approval letter shall be retained at the  
981 facility and shall be readily available for inspection.

982 D. An operator of multiple facilities may submit a single contingency plan encompassing more  
983 than one facility if the facilities are located within the defined boundaries of the same city or county  
984 or if the facilities are similar in design and operation. The plan shall contain site-specific  
985 information as required by subsection A of this section for each facility. The site-specific  
986 information shall be placed in appendices to the plan.

987 Upon renewal of an approved contingency plan submitted under this subsection, the ~~board~~  
988 department shall consider the individual facilities subject to all provisions of subsections E through  
989 J of this section.

990 E. Oil discharge contingency plans shall be reviewed, updated if necessary and resubmitted  
991 to the ~~board~~ department for approval every 60 months from the date of approval unless significant  
992 changes occur sooner. Operators shall notify the ~~board~~ department of significant changes and  
993 make appropriate amendments to the contingency plan within 30 days of the occurrence. For the  
994 purpose of this chapter, a significant change includes the following:

- 995 1. A change of operator of the facility;
- 996 2. An increase in the maximum storage or handling capacity of the facility that would  
997 change the measures to limit the outflow of oil, response strategy or operational plan in  
998 the event of the worst case discharge;
- 999 3. A decrease in the availability of private personnel or equipment necessary to remove to  
1000 the maximum extent practicable the worst case discharge and to mitigate or prevent a  
1001 substantial threat of such a discharge;
- 1002 4. A change in the type of product dealt in, stored or handled by any facility covered by  
1003 the plan for which a MSDS or its equivalent has not been submitted as part of the plan; or
- 1004 5. A change in the method or operation utilized for the early detection of a discharge to  
1005 groundwater (i.e., change in a method of leak detection).

1006 F. Updated plans or certification for renewal of an existing plan shall be submitted to the ~~board~~  
1007 department for review and approval not less than 90 days prior to expiration of approval of the  
1008 current plan. Submittal of the certification for renewal for an existing plan shall be made in  
1009 accordance with the provisions of subsection B of this section. All notifications of changes,  
1010 renewals, submissions and updates of plans required by this chapter shall be directed to the  
1011 respective regional office.

1012 G. An oil discharge exercise may be required by the ~~board~~ department to demonstrate the  
1013 facility's ability to implement the contingency plan. The ~~board~~ department will consult with the  
1014 operator of the facility prior to initiating an exercise. Where appropriate, the ~~board~~ department will  
1015 ensure coordination with federal agencies prior to initiation of an exercise.

1016 H. The ~~board~~ department may, after notice and opportunity for a conference pursuant to §  
1017 2.2-4019 of the Code of Virginia, deny or modify its approval of an oil discharge contingency plan  
1018 if it determines that:

- 1019 1. The plan as submitted fails to provide sufficient information for the ~~board~~ department to  
1020 process, review and evaluate the plan or fails to ensure the applicant can take such steps



- 1021 as are necessary to protect environmentally sensitive areas, to respond to the threat of a  
1022 discharge, and to contain and clean up an oil discharge within the shortest feasible time;  
1023 2. A significant change has occurred in the operation of the facility covered by the plan;  
1024 3. The facility's discharge experience or its inability to implement its plan in an oil spill  
1025 discharge exercise demonstrates a necessity for modification; or  
1026 4. There has been a significant change in the best available technology since the plan was  
1027 approved.

1028 I. The ~~board~~ department, after notice and opportunity for hearing, may revoke its approval of  
1029 an oil discharge contingency plan if it determines that:

- 1030 1. Approval was obtained by fraud or misrepresentation;  
1031 2. The plan cannot be implemented as approved;  
1032 3. A term or condition of approval of this chapter has been violated; or  
1033 4. The facility is no longer in operation.

1034 J. A Facility Response Plan (FRP) developed pursuant to § 4202 of the federal Oil Pollution  
1035 Act of 1990, Pub. L. No. 101-380, 33 USCA § 2716 (1996), may be accepted as meeting the  
1036 requirements of subdivisions A 1 through A 22 of this section. The operator shall submit a copy  
1037 of the FRP and a copy of the currently valid FRP approval letter for the facility for review and  
1038 approval by the ~~board~~ department. The FRP shall contain a cross reference in order to index  
1039 pages for the specific requirements of the ODCP. The FRP shall also contain the satisfaction of  
1040 the requirements of subdivisions A 13 a and A 18 of this section. This information shall be  
1041 resubmitted in accordance with the renewal period established by federal statute or regulation but  
1042 in no instance shall the renewal period exceed five years. The ~~board~~ department shall be notified  
1043 of any plan amendments within 30 days of the amendment.

1044 Part V

1045 Groundwater Characterization Study (GCS) and GCS Well Monitoring Requirements

1046 **9VAC25-91-180. Groundwater characterization study (GCS).**

1047 A. Section 62.1-44.34:15 of the Code of Virginia requires the operator to apply to the ~~board~~  
1048 department for approval of an ODCP. The ODCP shall be accompanied by other relevant  
1049 information required by the ~~board~~ department (e.g., groundwater characterization study (GCS) of  
1050 each facility with an aggregate aboveground storage capacity of one million gallons or greater of  
1051 oil). The purpose of this GCS is to determine baseline conditions and flow of groundwater within  
1052 the geographic boundaries of the facility. The operator's results of the GCS shall be subject to the  
1053 review and approval of the ~~board~~ department and shall be submitted to the department as part of  
1054 the Oil Discharge Contingency Plan (ODCP) referenced in Part IV (9VAC25-91-170, Oil  
1055 Discharge Contingency Plan (ODCP) Requirements) of this chapter. The GCS wells are required  
1056 by 9VAC25-91-170 A 13 a in the ODCP requirements.

1057 B. Section 62.1-44.34:15.1 of the Code of Virginia requires that the operator of a facility with  
1058 an aggregate capacity of one million gallons or greater of oil conduct monthly gauging and  
1059 inspection, monitoring of well headspace, and quarterly sampling and laboratory analysis of all  
1060 groundwater monitoring wells located at the facility to determine the presence of petroleum or  
1061 petroleum byproduct contamination.

1062 C. Although GCS monitoring wells may be approved for use as part of a leak detection system,  
1063 the GCS well monitoring requirement should not be confused with any requirement for leak  
1064 detection monitoring wells required by 9VAC25-91-170 A 18.

1065 **9VAC25-91-210. Response.**

1066 Should any observations or data indicate the presence of petroleum hydrocarbons in  
1067 groundwater, the results shall be immediately reported to the ~~board~~ department and to the local  
1068 director or coordinator of emergency services appointed pursuant to § 44-146.19 of the Code of  
1069 Virginia.

1070 Part VI

1071 Resources Available

1072 **9VAC25-91-220. Resources available.**

1073 A. This chapter (Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91))  
1074 does not contain all requirements for aboveground storage tanks in Virginia. The resources listed  
1075 in this section have been included to assist with complying with requirements of this regulation.  
1076 Section 36-99.6 of the Code of Virginia requires the Board of Housing and Community  
1077 Development to incorporate, as part of the building code, regulations adopted and promulgated  
1078 by the State Water Control Board governing the installation, repair, upgrade, and closure of  
1079 aboveground storage tanks. Portions of this chapter are incorporated into the Virginia Uniform  
1080 Statewide Building Code (USBC). The USBC referenced model codes and standards apply as  
1081 promulgated by the Virginia Department of Housing and Community Development.

1082 B. The following documents or portions thereof are resources referenced or provide guidance  
1083 in this chapter:

- 1084 1. Underwriters Laboratories Standards:
- 1085 a. Specification 142, "Steel Aboveground Tanks for Flammable and Combustible  
1086 Liquids," Ninth Edition;
  - 1087 b. Standard 2245, "Standard for Below-Grade Vaults for Flammable Liquid Storage  
1088 Tanks," Second Edition, December 28, 2006;
- 1089 2. American Petroleum Institute (API) Standards:
- 1090 a. API 12B: Specification 12B October 2008, "Specification for Bolted Tanks for  
1091 Storage of Production Liquids," Fifteenth Edition;
  - 1092 b. API 12D: Specification 12D, October 2008, "Specification for Field Welded Tanks  
1093 for Storage of Production Liquids," Eleventh Edition;
  - 1094 c. API 12F: Specification 12F, October 2008, "Specification for Shop Welded Tanks  
1095 for Storage of Production Liquids," Twelfth Edition;
  - 1096 d. API 575; May 2005, "Inspection of Existing Atmospheric and Low-pressure Storage  
1097 Tanks," Second Edition, May 2005;
  - 1098 e. API 620: Standard 620, February 2008, "Design and Construction of Large, Welded,  
1099 Low-Pressure Storage Tanks," includes Addendum 1 (2009), Addendum 2 (2010), and  
1100 Addendum 3 (2012), Eleventh Edition;
  - 1101 f. API 650: Standard 650, June 2001, "Welded Tanks for Oil Storage," Eleventh  
1102 Edition;
  - 1103 g. API 651: Recommended Practice 651, January 2007, "Cathodic Protection for  
1104 Above Ground Petroleum Storage Tanks," Third Edition;
  - 1105 h. API 652: Recommended Practice 652, October 2005, "Lining of Aboveground  
1106 Petroleum Storage Tank Bottoms," Third Edition;
  - 1107 i. API 2350: Recommended Practice 2350, January 2005, "Overfill Protection for  
1108 Petroleum Storage Tanks," Third Edition;
- 1109 3. Virginia Statewide Fire Prevention Code (SWFPC), (March 1, 2011); and

- 1110 4. Steel Tank Institute (STI), Standards and Recommended Practices:  
1111 a. STI Standard for Diked Aboveground Storage Tanks F911;  
1112 b. STI Standard for Aboveground Tanks with Integral Secondary Containment F921,  
1113 revised July 2011;  
1114 c. STI Fireguard™ Specifications for Fireguard protected Aboveground Storage Tanks  
1115 F941.

1116 C. Standards and codes listed in subsection B of this section are specifically authorized for  
1117 use by the ~~board~~ department. Other standards and codes may be used if specifically authorized  
1118 by the ~~board~~ department.

1119 D. This chapter refers to resources that may be used to comply with provisions of the  
1120 regulations. These resources are available through the Internet; therefore, in order to assist the  
1121 regulated community, the resource reference document owner's contact information, including  
1122 uniform resource locator or Internet address is provided for each of the resource references listed  
1123 in this section.

- 1124 1. Underwriter's Laboratories, <http://ulstandards.ul.com/access-standards/>, Underwriter's  
1125 Laboratories, 2600 NW Lake Road, Camas, WA 98607-8542.  
1126 2. American Petroleum Institute, <http://api.org>, American Petroleum Institute, 1220 L  
1127 Street, NW, Washington, DC 20005-4070.  
1128 3. National Association of Corrosion Engineers, <http://nace.org>, National Association of  
1129 Corrosion Engineers, 1440 South Creek Drive, Houston, TX USA 77084-4906.  
1130 4. Code of Federal Regulations, <http://www.gpo.gov/fdsys/>.  
1131 5. Virginia Uniform Statewide Building Code, [http://www.dhcd.virginia.gov/index.php/va-](http://www.dhcd.virginia.gov/index.php/va-building-codes/building-and-fire-codes/regulations/uniform-statewide-building-code-usbc.html)  
1132 [building-codes/building-and-fire-codes/regulations/uniform-statewide-building-code-](http://www.dhcd.virginia.gov/index.php/va-building-codes/building-and-fire-codes/regulations/uniform-statewide-building-code-usbc.html)  
1133 [usbc.html](http://www.dhcd.virginia.gov/index.php/va-building-codes/building-and-fire-codes/regulations/uniform-statewide-building-code-usbc.html), Virginia Department of Housing and Community Development, Main Street  
1134 Centre, 600 East Main Street, Suite 300, Richmond, VA 23219.  
1135 6. Virginia Statewide Fire Prevention Code, [http://www.dhcd.virginia.gov/StateBuilding](http://www.dhcd.virginia.gov/StateBuildingCodesandRegulations/PDFs/2009/Code%20-%20SFPC.pdf)  
1136 [CodesandRegulations/PDFs/2009/Code%20-%20SFPC.pdf](http://www.dhcd.virginia.gov/StateBuildingCodesandRegulations/PDFs/2009/Code%20-%20SFPC.pdf), Virginia Department of  
1137 Housing and Community Development, Main Street Centre, 600 East Main Street, Suite  
1138 300, Richmond, VA 23219.  
1139 7. Steel Tank Institute, [www.steeltank.com](http://www.steeltank.com), Steel Tank Institute, 944 Donata Court, Lake  
1140 Zurich, IL 60047.

1141 FORMS (9VAC25-91)

- 1142 [Registration for Facility and Aboveground Storage Tank \(AST\), DEQ Form 7540-AST \(rev.](#)  
1143 [11/2015\)](#)  
1144 [Approval Application for Facility Oil Discharge Contingency Plan \(rev. 1/2019\)](#)  
1145 [Renewal Application for Facility Oil Discharge Contingency Plan \(rev. 8/2007\)](#)

1146 DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-91)

- 1147 [American Petroleum Institute \(API\) Standard API 570](#): Piping Inspection Code, November  
1148 2009, "In-service Inspection, Rating Repair, and Alteration, of Piping Systems, Third Edition  
1149 [American Petroleum Institute \(API\) Standard API 653](#), April 2009, "Tank Inspection, Repair,  
1150 Alteration, and Reconstruction," includes Addendum 1 (2010) and Addendum 2 (2012), Fourth  
1151 Edition

- 1152 [American Petroleum Institute \(API\) Standard API 1632](#): Recommended Practice 1632,  
1153 reaffirmed 2010 "Cathodic Protection of Underground Petroleum Storage Tanks and Piping  
1154 Systems," Third Edition
- 1155 [National Association of Corrosion Engineers \(NACE\) SP0285-2011](#)," External Corrosion  
1156 Control of Underground Storage Tank Systems by Cathodic Protection", revised March 13, 2011
- 1157 [Steel Tank Institute \(STI\), Standard STI - SP001](#) "Standard for the Inspection of Aboveground  
1158 Storage Tanks," Fifth Edition, September 2011



[townhall.virginia.gov](http://townhall.virginia.gov)

## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-101
<b>VAC Chapter title(s)</b>	Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Regulation
<b>Action title</b>	Final Exempt CH 101 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 15, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-101) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board.

Changes to the regulations included adding the statutory definition of “Board” and the repeal of the Designation of authority provisions to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-101 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7162 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt- CH101 Changes in response to 2022 Board bill**

4 **9VAC25-101-10. Definitions.**

5 The following words and terms, when used in this chapter, shall have the following meanings  
6 unless the context clearly indicates otherwise:

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

10 "Containment and cleanup" means abatement, containment, removal and disposal of oil and,  
11 to the extent possible, the restoration of the environment to its existing state prior to an oil  
12 discharge.

13 "Department" means the Department of Environmental Quality.

14 "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

15 "Net worth" means the amount of all assets of a tank vessel operator located in the United  
16 States, less all liabilities.

17 "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and  
18 petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes,  
19 crude oils and all other liquid hydrocarbons regardless of specific gravity. For the purpose of this  
20 chapter only, this definition does not include nonpetroleum hydrocarbon-based animal and  
21 vegetable oils or petroleum, including crude oil or any fraction thereof which is specifically listed  
22 or designated as a hazardous substance under subparagraphs (A) through (F) of § 101(14) of the  
23 Comprehensive Environmental Response, Compensation, and Liability Act (42 USC § 9601) and  
24 which is subject to the provisions of that Act.

25 "Operator" means any person who owns, operates, charters by demise, rents or otherwise  
26 exercises control over or responsibility for a facility or a vehicle or vessel.

27 "Person" means an individual, trust, firm, joint stock company, corporation including a  
28 government corporation, partnership, association, any state or agency thereof, municipality,  
29 county, town, commission, political subdivision of a state, any interstate body, consortium, joint  
30 venture, commercial entity, the government of the United States or any unit or agency thereof.

31 "Public vessel" means a vessel owned or bareboat-chartered and operated by the United  
32 States, by a state or political subdivision thereof, or by a foreign nation, except when such vessel  
33 is engaged in commerce.

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

36 "Tank vessel" means any vessel used in the transportation of oil in bulk as cargo. For the  
37 purpose of this chapter, this definition includes tankers, tank ships, tank barges and combination  
38 carriers when carrying oil. It does not include vessels carrying oil in drums, barrels, portable tanks  
39 or other packages or vessels carrying oil as fuel or stores for that vessel. For the purpose of this  
40 chapter only, this definition does not include public vessels.

41 "Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport  
42 whether self-propelled or otherwise, except vessels.

43 "Vessel" includes every description of watercraft or other contrivance used as a means of  
44 transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

45 "Working capital" means the amount of current assets of a tank vessel operator located in the  
46 United States, less all current liabilities.

47 **9VAC25-101-35. Oil discharge contingency plan and vessel response plan requirements**  
48 **for state waters.**

49 No operator of a tank vessel shall cause or permit a tank vessel to transport or transfer oil in  
50 state waters unless an oil discharge contingency plan applicable to the tank vessel is filed with  
51 and approved by the ~~board~~ department in accordance with 9VAC25-101-40 or a Vessel Response  
52 Plan applicable to the tank vessel has been approved by the United States Coast Guard pursuant  
53 to § 4202 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 33 USC § 1321(j).

54 **9VAC25-101-40. ~~Board~~ Department oil discharge contingency plan review and approval.**

55 A. Tank vessel oil discharge contingency plans shall provide for the use of the best available  
56 technology (economically feasible, proven effective and reliable and compatible with the safe  
57 operation of the vessel) at the time the plan is submitted for approval, be written in English, and,  
58 in order to be approvable, shall contain, at a minimum, the following information:

59 1. The vessel name, country of registry, identification number, date of build and certificated  
60 route of the vessel.

61 2. The names of the vessel operators including address and phone number.

62 3. If applicable, name of local agent, address and phone number.

63 4. A copy of the material safety data sheet (MSDS) or its equivalent for each oil, or groups  
64 of oil with similar characteristics, transported or transferred by the tank vessel. To be  
65 equivalent, the submission must contain the following:

66 a. Generic or chemical name of the oil;

67 b. Hazards involved in handling the oil; and

68 c. A list of firefighting procedures and extinguishing agents effective with fires involving  
69 each oil or groups of oil demonstrating similar hazardous properties which require the  
70 same firefighting procedures.

71 5. A complete listing, including 24-hour phone numbers, of all federal, state and local  
72 agencies required to be notified in event of a discharge.

73 6. The position title of the individual(s) responsible for making the required notifications  
74 and a copy of the notification check-off list. The individual(s) must be fluent in English.

75 7. The position title, address and phone number of the individual(s) authorized to act on  
76 behalf of the operator to implement containment and cleanup actions. The individual(s)  
77 must be fluent in English and shall be available on a 24-hour basis to ensure the  
78 appropriate containment and cleanup actions are initiated.

79 8. The position title of the individual(s) designated by the operator to ensure compliance  
80 during containment and cleanup of a discharge, with applicable federal, state and local  
81 requirements for disposal of both solid and liquid wastes.

82 9. A copy of the valid evidence of financial responsibility pursuant to 9VAC25-101-45.

83 10. A complete description of the vessel including vessel drawings providing a complete  
84 view of the location of all cargo tanks as well as the location of fuels and other oils carried  
85 in bulk by the vessel.

86 11. A complete description of each oil transfer system on the vessel, including:

87 a. A line diagram of the vessel's oil transfer piping, including the location of each valve,  
88 pump, control device, vent, safety device and overflow;

89 b. The location of the shutoff valve or other isolation device that separates any bilge  
90 or ballast system from the oil transfer system; and



91 c. The maximum pressure for each oil transfer system.

92 12. Identification and assurance by contract, or other means acceptable to the ~~board~~  
93 department, of the availability of private personnel and equipment necessary to remove to  
94 the maximum extent practicable the worst case discharge and to mitigate or prevent a  
95 substantial threat of such a discharge. This contract or agreement shall ensure a certain  
96 response within the shortest feasible time. The department will accept a letter of  
97 understanding between the operator and response contractors which attests to this  
98 capability being readily available. Membership in a cleanup cooperative or other response  
99 organization is also acceptable. A listing of contractor or cooperative capabilities, including  
100 an inventory of the equipment and specification of the other information required by  
101 subdivision 14 of this subsection shall be included unless these capabilities are already  
102 on file with the department.

103 13. Assessment of the worst case discharge, including measures to limit the outflow of oil,  
104 response strategy and operational plan. For the purpose of this chapter, the worst case  
105 discharge for a tank vessel is a discharge in adverse weather conditions of its entire cargo.

106 14. Inventory of onboard containment equipment, including specification of quantity, type,  
107 location, time limits for gaining access to the equipment, and, if applicable, identification  
108 of tank vessel personnel trained in its use.

109 15. If applicable, a copy of the United States Coast Guard approved oil transfer procedures  
110 and International Oil Pollution Prevention Certificate (IOPP).

111 16. A description of training, equipment testing, and periodic unannounced oil discharge  
112 drills conducted by the operator to mitigate or prevent the discharge, or the substantial  
113 threat of a discharge.

114 17. The tank vessel's cargo inventory control procedures. Tank vessel operators shall  
115 ensure that this control procedure is capable of providing for the detection of a discharge  
116 of oil within the shortest feasible time in accordance with recognized engineering practices  
117 and industry measurement standards.

118 18. A post discharge review procedure to assess the discharge response in its entirety.

119 B. All nonexempt tank vessel operators shall file with the department the Application for  
120 Approval of a Tank Vessel Contingency Plan form available from the department for approval of  
121 the contingency plan. This form identifies the tank vessel operator by name and address and  
122 provides information on the tank vessel or vessels and shall be submitted with the required  
123 contingency plan and shall be completed as far as it pertains to the tank vessel. The operator  
124 must sign and date the certification statement on the application form which certifies to the ~~board~~  
125 department that the information is true and accurate. If the operator is a corporation, the  
126 application form must be signed by an authorized corporate official; if the operator is a  
127 municipality, state, federal or other public agency, the application form must be signed by an  
128 authorized executive officer or ranking elected official; if the operator is a partnership or sole  
129 proprietorship, the application form must be signed by a general partner or the sole proprietor.

130 C. Contingency plans must be filed with and approved by the ~~board~~ department. A signed  
131 original shall be submitted to the department at the address specified in subsection F of this  
132 section. A copy of the original with the tank vessel specific information and the approval letter  
133 shall be retained on the tank vessel and shall be readily available for inspection. An operator of a  
134 tank vessel whose normal operating route does not include entry into state waters shall certify to  
135 the ~~board~~ department, within 24 hours of entering state waters, that the operator has ensured by  
136 contract or other means acceptable to the ~~board~~ department, the availability of personnel and  
137 equipment necessary to remove to the maximum extent practicable the worst case discharge and  
138 to mitigate or prevent the discharge or the substantial threat of a discharge. The operator shall

139 submit a contingency plan to the ~~board~~ department for approval in accordance with this chapter  
140 prior to the next entry of the tank vessel into state waters.

141 D. An operator of multiple tank vessels may submit a single fleet contingency plan. The plan  
142 shall contain vessel specific information required by this section for each vessel. The vessel  
143 specific information shall be included in appendices to the plan. This plan shall be separate from  
144 any required facility contingency plan.

145 E. Oil discharge contingency plans shall be reviewed, updated if necessary, and resubmitted  
146 to the ~~board~~ department for approval every 60 months unless significant changes occur sooner.  
147 Operators must notify the department of significant changes and make appropriate amendments  
148 to the contingency plan within 30 days of the occurrence. For the purpose of this chapter, a  
149 significant change includes the following:

- 150 1. A change of operator of the tank vessel or individual authorized to act on behalf of the  
151 operator;
- 152 2. A substantial increase in the maximum storage or handling capacity of the tank vessel;
- 153 3. A material decrease in the availability of private personnel or equipment necessary to  
154 remove to the maximum extent practicable the worst case discharge and to mitigate or  
155 prevent a substantial threat of such a discharge;
- 156 4. A change in the type of product transported or transferred in or by any tank vessel  
157 covered by the plan for which a MSDS or its equivalent has not been submitted; or
- 158 5. The addition of a tank vessel to a single fleet contingency plan provided this requirement  
159 can be met by submittal of a new or amended appendix to the plan.

160 Renewals for expiring plans shall be submitted to the ~~board~~ department for review and  
161 approval not less than 90 days prior to expiration of the current plan.

162 F. All applications and written communications concerning changes, submissions and updates  
163 of plans required by this chapter, with the exception of applications and submissions accompanied  
164 by fees addressed in subsection J of this section, shall be addressed as follows:

165 Mailing Address:  
166 Virginia Department of Environmental Quality  
167 Office of Spill Response and Remediation  
168 P.O. Box 1105  
169 Richmond, VA 23218  
170 Location Address:  
171 Virginia Department of Environmental Quality  
172 Office of Spill Response and Remediation  
173 1111 East Main Street, Suite 1400  
174 Richmond, VA 23219

175 All applications and submissions accompanied by fees as addressed in subsection J of this  
176 section shall be sent to the addressed listed in subdivision J 2.

177 G. An oil discharge exercise may be required by the ~~board~~ department to demonstrate the  
178 tank vessel's ability to implement the contingency plan. The department will consult with the  
179 operator of the vessel prior to initiating an exercise. Where appropriate, the department will ensure  
180 coordination with federal agencies prior to initiation of an exercise.

181 H. The ~~board~~ department may, after notice and opportunity for a conference pursuant to §  
182 2.2-4019 of the Code of Virginia, deny or modify its approval of an oil discharge contingency plan  
183 if it determines that:

- 184 1. The plan as submitted fails to provide sufficient information for the department to  
185 process, review and evaluate the plan or fails to ensure the applicant can take such steps  
186 as are necessary to protect environmentally sensitive areas, to respond to the threat of a  
187 discharge, and to contain and cleanup an oil discharge within the shortest feasible time;  
188 2. A significant change has occurred in the operation of the tank vessel covered by the  
189 plan;  
190 3. The tank vessel's discharge experience or its inability to implement its plan in an oil spill  
191 discharge exercise demonstrates a necessity for modification; or  
192 4. There has been a significant change in the best available technology since the plan was  
193 approved.

194 I. The ~~board~~ department, after notice and opportunity for hearing, may revoke its approval of  
195 an oil discharge contingency plan if it determines that:

- 196 1. Approval was obtained by fraud or misrepresentation;  
197 2. The plan cannot be implemented as approved; or  
198 3. A term or condition of approval or of this chapter has been violated.

199 J. An application for approval of an oil discharge contingency plan will be accepted only when  
200 the fee established by this section has been paid.

201 1. Fees shall be paid by operators of tank vessels subject to this chapter upon initial  
202 submittal of an oil discharge contingency plan to the ~~board~~ department. Renewals,  
203 additions, deletions or changes to the plan are not subject to the administrative fee.

204 2. Fees shall be paid in United States currency by check, draft or postal money order  
205 made payable to the Treasurer of Virginia. All applications and submissions  
206 accompanying fees shall be sent to:

207 Mailing Address:

208 Virginia Department of Environmental Quality

209 Office of Financial Management

210 P.O. Box 1105

211 Richmond, VA 23218

212 Location Address:

213 Virginia Department of Environmental Quality

214 Office of Financial Management

215 1111 East Main Street, Suite 1400

216 Richmond, VA 23219

217 3. Application fees for approval of tank vessel contingency plans are as follows:

218 a. For a tank vessel with a maximum storage, handling or transporting capacity of  
219 15,000 gallons and up to and including 250,000 gallons of oil the fee is \$718;

220 b. For a tank vessel with a maximum storage, handling or transporting capacity greater  
221 than 250,000 gallons and up to and including 1,000,000 gallons of oil the fee is \$2,155;  
222 and

223 c. For a tank vessel with a maximum storage, handling or transporting capacity greater  
224 than 1,000,000 gallons of oil the fee is \$3,353.

225 4. The fee for approval of contingency plans encompassing more than one tank vessel,  
226 as authorized by subsection D of this section, shall be based on the aggregate capacity  
227 of the tank vessels.

228 5. Application fees are refundable upon receipt of a written request for withdrawal of the  
229 plan and fee refund no later than 30 days after submittal and prior to approval of the plan.

230 6. Overpayments of application fees are refundable upon written request. Overpayments  
231 not refunded will be credited for the applicant's future use under this section.

232 **9VAC25-101-45. Demonstration of financial responsibility.**

233 The operator of any tank vessel entering upon state waters shall have a Certificate of Financial  
234 Responsibility, approved by the United States Coast Guard pursuant to § 4202 of the federal Oil  
235 Pollution Act of 1990, or shall deposit with the ~~board~~ department cash or its equivalent in the  
236 amount of \$500 per gross ton of such vessel in accordance with 9VAC25-101-50.

237 **9VAC25-101-50. ~~Board~~ Department financial responsibility demonstration.**

238 A. The operator of any tank vessel entering upon state waters that does not have a Certificate  
239 of Financial Responsibility approved by the U.S. Coast Guard pursuant to § 4202 of the federal  
240 Oil Pollution Act of 1990 (33 USC § 1321) shall deposit with the ~~board~~ department cash or its  
241 equivalent in the amount of \$500 per gross ton of such vessel. If the operator owns or operates  
242 more than one tank vessel, evidence of financial responsibility need be established only to meet  
243 the maximum liability applicable to the vessel having the greatest maximum liability.

244 1. All documents submitted shall be in English and all monetary terms shall be in United  
245 States currency.

246 2. A copy of the ~~board's~~ department's acceptance of the required evidence of financial  
247 responsibility shall be kept on the tank vessel and readily available for inspection.

248 B. If the ~~board~~ department determines that oil has been discharged in violation of applicable  
249 state law or there is a substantial threat of such discharge from a vessel for which a cash deposit  
250 has been made, any amount held in escrow may be used to pay any fines, penalties or damages  
251 imposed under such law.

252 C. Operators of tank vessels may obtain exemption from the cash deposit requirement if  
253 evidence of financial responsibility is provided in an amount equal to the cash deposit required  
254 for such tank vessel pursuant to § 62.1-44.34:16 of the Code of Virginia and subsection A of this  
255 section. The following means of providing such evidence, or any combination thereof, will be  
256 acceptable:

257 1. Self-insurance. Any operator demonstrating financial responsibility by self-insurance  
258 shall provide evidence of such self-insurance in a manner that is satisfactory to the ~~board~~  
259 department. An operator demonstrating self-insurance shall:

260 a. Maintain, in the United States, working capital and net worth each in the amount  
261 required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section.

262 (1) Maintenance of the required working capital and net worth shall be demonstrated  
263 by submitting with the application form an annual, current nonconsolidated balance  
264 sheet and an annual, current nonconsolidated statement of income and surplus  
265 certified by an independent certified public accountant. Those financial statements  
266 shall be for the operator's last fiscal year preceding the date of application and shall  
267 be accompanied by an additional statement from the operator's treasurer (or  
268 equivalent official) certifying to both the amount of current assets and the amount of  
269 total assets included in the accompanying balance sheet which are located in the  
270 United States and are acceptable for purposes of this chapter.

271 (2) If the balance sheet and statement of income and surplus cannot be submitted in  
272 nonconsolidated form, consolidated statements may be submitted if accompanied by  
273 an additional statement by the involved certified public accountant certifying to the  
274 amount by which the operator's assets, located in the United States and acceptable

275 under this subsection C, exceed total liabilities and that current assets, located in the  
276 United States and acceptable under this subsection C, exceed its current liabilities.

277 (3) When the operator's demonstrated net worth is not at least 10 times the required  
278 amount, an affidavit shall be filed by the operator's treasurer (or equivalent official)  
279 covering the first six months of the operator's fiscal year. Such affidavits shall state  
280 that neither the working capital nor the net worth have fallen below the required  
281 amounts during the first six months.

282 (4) Additional financial information shall be submitted upon request by the department;  
283 or

284 b. Provide evidence in the form of a marine insurance broker's certificate of insurance,  
285 certificate of entry, or other proof satisfactory to the ~~board~~ department that the operator  
286 has obtained oil pollution liability coverage through an operator's membership in a  
287 Protection & Indemnity (P&I) Club that is a member of the international group of P&I  
288 clubs or through coverage provided by a pool of marine underwriters in an amount  
289 sufficient to meet the requirements of § 62.1-44.34:16 of the Code of Virginia and  
290 subsection A of this section.

291 2. Insurance. Any operator demonstrating evidence of financial responsibility by insurance  
292 shall provide evidence of insurance issued by an insurer licensed, approved, or otherwise  
293 authorized to do business in the Commonwealth of Virginia. The amount of insurance shall  
294 be sufficient to cover the amount required by § 62.1-44.34:16 of the Code of Virginia and  
295 subsection A of this section. The operator shall provide evidence of such coverage in the  
296 form of a marine insurance broker's certificate of insurance or by utilizing a form worded  
297 identically to the Insurance Form Furnished as Evidence of Financial Responsibility in  
298 Respect of Liability for Discharge of Oil available from the department. The insurer must  
299 also comply with all requirements in the form available from the department.

300 3. Surety. Any operator demonstrating financial responsibility through a surety bond shall  
301 file a surety bond utilizing a form worded identically to the surety form available from the  
302 department. The surety company issuing the bond must be licensed to operate as a surety  
303 in the Commonwealth of Virginia and must possess an underwriting limitation at least  
304 equal to the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A  
305 of this section. The surety must also comply with all requirements in the Surety Bond Form  
306 Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of  
307 Oil available from the department.

308 4. Guaranty. An operator demonstrating financial responsibility through a guaranty shall  
309 submit the guaranty worded identically to the form available from the department. The  
310 guarantor shall comply with all provisions of subdivision 1 of this subsection for self-  
311 insurance and also comply with all requirements in the Guaranty Form Furnished as  
312 Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil available  
313 from the department.

314 D. To obtain exemption from the cash deposit requirements:

315 1. The operator shall have and maintain an agent for service of process in the  
316 Commonwealth;

317 2. Any insurer, guarantor, or surety shall have and maintain an agent for service of process  
318 in the Commonwealth;

319 3. Any insurer must be authorized by the Commonwealth of Virginia to engage in the  
320 insurance business; and

321 4. Any instrument of insurance, guaranty or surety must provide that actions may be  
322 brought on such instrument of insurance, guaranty or surety directly against the insurer,

323 guarantor or surety for any violation by the operator of Article 11 (§ 62.1-44.34:14 et seq.)  
324 of Chapter 3.1 of Title 62.1 of the Code of Virginia up to, but not exceeding, the amount  
325 insured, guaranteed or otherwise pledged.

326 5. All forms of evidence of financial responsibility shall be accompanied by an  
327 endorsement that certifies that the insurance policy, evidence of self-insurance, surety or  
328 guaranty provides liability coverage for the tank vessels in the amount required by § 62.1-  
329 44.34:16 of the Code of Virginia and subsection A of this section.

330 6. Subdivisions 2, 3 and 4 of this subsection do not apply to operators providing evidence  
331 of financial responsibility in accordance with subdivision C 1 of this section.

332 E. Any operator whose financial responsibility is accepted under this chapter shall notify the  
333 ~~board~~ department at least 30 days before the effective date of a change, expiration or cancellation  
334 of any instrument of insurance, guaranty or surety.

335 F. The ~~board's~~ department's approval of evidence of financial responsibility shall expire:

336 1. One year from the date that the ~~board~~ department exempts an operator from the cash  
337 deposit requirement based on acceptance of evidence of self-insurance;

338 2. On the effective date of any change in the operator's instrument of insurance, guaranty  
339 or surety; or

340 3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

341 G. All nonexempt tank vessel operators shall file with the ~~board~~ department the Application  
342 for Approval of Evidence of Tank Vessel Financial Responsibility which identifies the tank vessel  
343 operator and agent for service of process by name and address, provides identifying information  
344 on the tank vessel or vessels and certifies to the ~~board~~ department that the information is true  
345 and accurate for approval of the evidence of financial responsibility. This form is available. This  
346 form shall be submitted with the required evidence of financial responsibility (cash deposit, proof  
347 of insurance, self-insurance, guaranty or surety), and shall be completed as far as it pertains to  
348 the tank vessel. The operator must sign and date the certification statement on the application  
349 form. If the operator is a corporation, the application form must be signed by an authorized  
350 corporate official; if the operator is a municipality, state, federal or other public agency, the  
351 application form must be signed by an authorized executive officer or ranking elected official; if  
352 the operator is a partnership or sole proprietorship, the application form must be signed by a  
353 general partner or the sole proprietor.

354 H. Application for renewal of approval of tank vessel financial responsibility shall be filed with  
355 the ~~board~~ department 30 days prior to the date of expiration.

356 I. All applications and written communications concerning changes, submissions and updates  
357 required by this chapter, with the exception of applications and submissions accompanied by fees  
358 as addressed in subsection K of this section, shall be addressed as follows:

359 Mailing Address:

360 Virginia Department of Environmental Quality

361 Office of Spill Response and Remediation

362 P.O. Box 1105

363 Richmond, VA 23218

364 Location Address:

365 Virginia Department of Environmental Quality

366 Office of Spill Response and Remediation

367 1111 East Main Street, Suite 1400

368 Richmond, VA 23219

369 All applications and submissions accompanied by fees as addressed in subsection K of this  
370 section shall be sent to the address listed in subdivision K 2.

371 J. The ~~board~~ department, after notice and opportunity for hearing, may revoke its acceptance  
372 of evidence of financial responsibility if it determines that:

- 373 1. Acceptance has been procured by fraud or misrepresentation; or  
374 2. A change in circumstances has occurred that would warrant denial of acceptance of  
375 evidence of financial responsibility.

376 K. An application for approval of the demonstration of financial responsibility will be accepted  
377 only when the fees established by this section have been paid.

378 1. Fees shall only be paid upon initial submittal of the demonstration of financial  
379 responsibility by an operator to the ~~board~~ department. Renewals or changes are not  
380 subject to the administrative fee.

381 2. Fees shall be paid in United States currency by check, draft or postal money order  
382 made payable to Treasurer of Virginia. All fees and accompanying applications and  
383 submissions shall be sent to:

384 Mailing Address:

385 Virginia Department of Environmental Quality

386 Office of Financial Management

387 P.O. Box 1105

388 Richmond, VA 23218

389 Location Address:

390 Virginia Department of Environmental Quality

391 Office of Financial Management

392 1111 East Main Street, Suite 1400

393 Richmond, VA 23219

394 3. Application fees for approval of evidence of financial responsibility for tank vessels are  
395 as follows:

396 a. Applicants shall pay an application fee of \$120.

397 b. Applicants shall pay a fee of \$30 for each additional tank vessel requiring a copy of  
398 the accepted evidence of financial responsibility.

399 4. Application fees are refundable upon receipt of a written notice of withdrawal; of the  
400 proffer of financial responsibility and a request for refund received by the department no  
401 later than 30 days after submittal and prior to approval.

402 5. Overpayments of application fees are refundable upon written request. Overpayments  
403 not refunded will be credited for the applicant's future use under this section.

404 **9VAC25-101-60. Delegation of authority. (Repealed.)**

405 ~~The Director of the Department of Environmental Quality, or his designee, may perform any~~  
406 ~~act of the board under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~



[townhall.virginia.gov](http://townhall.virginia.gov)

## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-580
<b>VAC Chapter title(s)</b>	Underground Storage Tanks: Technical Standards and Corrective Action Requirements
<b>Action title</b>	Final Exempt CH 580 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 15, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-580) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”; and the repeal of the delegation of authority provisions.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.



## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-580 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7160 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt- CH580 Changes in response to 2022 Board bill**

4 **9VAC25-580-10. Definitions.**

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

7 "Aboveground release" means any release to the surface of the land or to surface water. This  
8 includes releases from the aboveground portion of a UST system and aboveground releases  
9 associated with overfills and transfer operations as the regulated substance moves to or from a  
10 UST system.

11 "Airport hydrant fuel distribution system" or "airport hydrant system" means an UST system  
12 that fuels aircraft and operates under high pressure with large diameter piping that typically  
13 terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel  
14 enters one or more tanks from an external source such as a pipeline, barge, rail car, or other  
15 motor fuel carrier.

16 "Ancillary equipment" means any devices including such devices as piping, fittings, flanges,  
17 valves, and pumps used to distribute, meter, or control the flow of regulated substances to and  
18 from an UST.

19 "Belowground release" means any release to the subsurface of the land and to groundwater.  
20 This includes releases from the belowground portions of an underground storage tank system  
21 and belowground releases associated with overfills and transfer operations as the regulated  
22 substance moves to or from an underground storage tank.

23 "Beneath the surface of the ground" means beneath the ground surface or otherwise covered  
24 with earthen materials.

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

28 "Building official" means the executive official of the local government building department  
29 empowered by § 36-105 of the Code of Virginia to enforce and administer the Virginia Uniform  
30 Statewide Building Code (USBC) (§ 36-97 et seq. of the Code of Virginia).

31 "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that  
32 surface the cathode of an electrochemical cell. For example, a tank system can be cathodically  
33 protected through the application of either galvanic anodes or impressed current.

34 "Cathodic protection tester" means a person who can demonstrate an understanding of the  
35 principles and measurements of all common types of cathodic protection systems as applied to  
36 buried or submerged metal piping and tank systems. At a minimum, such persons must have  
37 education and experience in soil resistivity, stray current, structure-to-soil potential, and  
38 component electrical isolation measurements of buried metal piping and tank systems.

39 "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability  
40 Act of 1980, as amended (42 USC § 9601 et seq.).

41 "Compatible" means the ability of two or more substances to maintain their respective physical  
42 and chemical properties upon contact with one another for the design life of the tank system under  
43 conditions likely to be encountered in the UST.

44 "Connected piping" means all underground piping including valves, elbows, joints, flanges,  
45 and flexible connectors attached to a tank system through which regulated substances flow. For

46 the purpose of determining how much piping is connected to any individual UST system, the  
47 piping that joins two UST systems should be allocated equally between them.

48 "Containment sump" means a liquid-tight container that protects the environment by  
49 containing leaks and spills of regulated substances from piping, dispensers, pumps, and related  
50 components in the containment area. Containment sumps may be single walled or secondarily  
51 contained and located at the top of the tank (tank top or submersible turbine pump sump),  
52 underneath the dispenser (under-dispenser containment sump), or at other points in the piping  
53 run (transition or intermediate sump).

54 "Corrosion expert" means a person who, by reason of thorough knowledge of the physical  
55 sciences and the principles of engineering and mathematics acquired by a professional education  
56 and related practical experience, is qualified to engage in the practice of corrosion control on  
57 buried or submerged metal piping systems and metal tanks. Such a person must be accredited  
58 or certified as being qualified by the National Association of Corrosion Engineers or be a  
59 registered professional engineer who has certification or licensing that includes education and  
60 experience in corrosion control of buried or submerged metal piping systems and metal tanks.

61 "De minimis" means trivial and beyond the intent of regulation, as that term is used at 53 FR  
62 37108-37109.

63 "Delivery prohibition" is prohibiting the delivery, deposit, or acceptance of product to an  
64 underground storage tank system that has been determined to be ineligible by the ~~board~~  
65 department for such delivery, deposit, or acceptance.

66 "Delivery prohibition tag" means a tag, device, or mechanism on the tank's fill pipes that clearly  
67 identifies an underground storage tank system as ineligible for product delivery. The tag or device  
68 is easily visible to the product deliverer and clearly states and conveys that it is unlawful to deliver  
69 to, deposit into, or accept product into the ineligible underground storage tank system. The tag,  
70 device, or mechanism is generally tamper resistant.

71 "Department" means the Department of Environmental Quality.

72 "Dielectric material" means a material that does not conduct direct electrical current. Dielectric  
73 coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric  
74 bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

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

76 "Dispenser" means equipment located aboveground that dispenses regulated substances  
77 from the UST system.

78 "Dispenser system" means the dispenser and the equipment necessary to connect the  
79 dispenser to the underground storage tank system.

80 "Electrical equipment" means underground equipment that contains dielectric fluid that is  
81 necessary for the operation of equipment such as transformers and buried electrical cable.

82 "Excavation zone" means the volume containing the tank system and backfill material  
83 bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system  
84 is placed at the time of installation.

85 "Existing tank system" means a tank system used to contain an accumulation of regulated  
86 substances or for which installation has commenced on or before December 22, 1988. Installation  
87 is considered to have commenced if:

- 88 1. The owner or operator has obtained all federal, state, and local approvals or permits  
89 necessary to begin physical construction of the site or installation of the tank system; and  
90 if
- 91 2. a. Either a continuous onsite physical construction or installation program has begun;  
92 or

93 b. The owner or operator has entered into contractual obligations, which cannot be  
94 canceled or modified without substantial loss, for physical construction at the site or  
95 installation of the tank system to be completed within a reasonable time.

96 "Farm tank" is a tank located on a tract of land devoted to the production of crops or raising  
97 animals, including fish, and associated residences and improvements. A farm tank must be  
98 located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with  
99 growing operations.

100 "Field-constructed tank" means a tank constructed in the field. For example, a tank  
101 constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated  
102 in the field is considered field constructed.

103 "Flow-through process tank" is a tank that forms an integral part of a production process  
104 through which there is a steady, variable, recurring, or intermittent flow of materials during the  
105 operation of the process. Flow-through process tanks do not include tanks used for the storage  
106 of materials prior to their introduction into the production process or for the storage of finished  
107 products or by-products from the production process.

108 "Free product" refers to a regulated substance that is present as a nonaqueous phase liquid  
109 (e.g., liquid not dissolved in water).

110 "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation  
111 of oil or gas during oil or gas production or gathering operations.

112 "Hazardous substance UST system" means an underground storage tank system that  
113 contains a hazardous substance defined in § 101(14) of the Comprehensive Environmental  
114 Response, Compensation and Liability Act (CERCLA) of 1980 (42 USC § 9601 et seq.) (but not  
115 including any substance regulated as a hazardous waste under subtitle C of RCRA) or any mixture  
116 of such substances and petroleum, and which is not a petroleum UST system.

117 "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No.  
118 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special  
119 Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating  
120 oil is typically used in the operation of heating equipment, boilers, or furnaces.

121 "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system  
122 that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

123 "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas  
124 production, gathering, and extraction operations (including gas production plants), for the purpose  
125 of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for  
126 subsequent disposition or reinjection into a production or pipeline stream, or may collect and  
127 separate liquids from a gas stream.

128 "Maintenance" means the normal operational upkeep to prevent an underground storage tank  
129 system from releasing product.

130 "Motor fuel" means a complex blend of hydrocarbons typically used in the operation of a motor  
131 engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend  
132 containing one or more of these substances (for example, motor gasoline blended with alcohol).

133 "New tank system" means a tank system that will be used to contain an accumulation of  
134 regulated substances and for which installation has commenced after December 22, 1988 (See  
135 also "existing tank system").

136 "Noncommercial purposes" with respect to motor fuel means not for resale.

137 "On the premises where stored" with respect to heating oil means UST systems located on  
138 the same property where the stored heating oil is used.

139 "Operational life" refers to the period beginning when installation of the tank system has  
140 commenced until the time the tank system is properly closed under Part VII (9VAC25-580-310 et  
141 seq.) of this chapter.

142 "Operator" means any person in control of, or having responsibility for, the daily operation of  
143 the UST system.

144 "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in  
145 a discharge of the regulated substance to the environment.

146 "Owner" means:

147 1. In the case of a UST system in use on November 8, 1984, or brought into use after that  
148 date, any person who owns an UST system used for storage, use, or dispensing of  
149 regulated substances; and

150 2. In the case of any UST system in use before November 8, 1984, but no longer in use  
151 on that date, any person who owned such UST immediately before the discontinuation of  
152 its use.

153 The term "owner" shall not include any person who, without participating in the management  
154 of an underground storage tank or being otherwise engaged in petroleum production, refining,  
155 and marketing, holds indicia of ownership primarily to protect the holder's security interest in the  
156 tank.

157 "Person" means an individual, trust, firm, joint stock company, corporation, including a  
158 government corporation, partnership, association, any state or agency thereof, municipality,  
159 county, town, commission, political subdivision of a state, any interstate body, consortium, joint  
160 venture, commercial entity, the government of the United States or any unit or agency thereof.

161 "Petroleum UST system" means an underground storage tank system that contains petroleum  
162 or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems  
163 include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants,  
164 petroleum solvents, and used oils.

165 "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen  
166 materials.

167 "Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any  
168 associated equipment, facilities, or buildings.

169 "Product deliverer" is any person who delivers or deposits product into an underground  
170 storage tank.

171 "RCRA" means the federal Resource Conservation and Recovery Act of 1976 as amended  
172 (42 USC § 6901 et seq.).

173 "Regulated substance" means an element, compound, mixture, solution, or substance that,  
174 when released into the environment, may present substantial danger to the public health or  
175 welfare, or the environment. The term "regulated substance" includes:

176 1. Any substance defined in § 101(14) of the Comprehensive Environmental Response,  
177 Compensation, and Liability Act (CERCLA) of 1980 (42 USC § 9601 et seq.), but not any  
178 substance regulated as a hazardous waste under subtitle C of the Resource Conservation  
179 and Recovery Act (RCRA) of 1976 (42 USC § 6901 et seq.); and

180 2. Petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions  
181 of temperature and pressure (60°F and 14.7 pounds per square inch absolute). The term  
182 "regulated substance" includes petroleum and petroleum-based substances comprised of  
183 a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual  
184 fuel oils, lubricants, petroleum solvents, and used oils.

185 "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing  
186 from an UST into groundwater, surface water or subsurface soils.

187 "Release detection" means determining whether a release of a regulated substance has  
188 occurred from the UST system into the environment or a leak has occurred into the interstitial  
189 space between the UST system and its secondary barrier or secondary containment around it.

190 "Repair" means to restore to proper operating condition a tank, a pipe, spill prevention  
191 equipment, overflow prevention equipment, corrosion protection equipment, release detection  
192 equipment, or other UST system component that has caused a release of product from the UST  
193 system or has failed to function properly.

194 "Replaced" means:

- 195 1. For a tank - to remove a tank and install another tank.
- 196 2. For piping - to remove 50% or more of piping and install other piping, excluding  
197 connectors, connected to a single tank. For tanks with multiple piping runs, this definition  
198 applies independently to each piping run.

199 "Residential tank" is a tank located on property used primarily for dwelling purposes.

200 "SARA" means the Superfund Amendments and Reauthorization Act of 1986.

201 "Secondary containment" or "secondarily contained" means a release prevention and release  
202 detection system for a tank or piping. This system has an inner and outer barrier with an interstitial  
203 space that is monitored for leaks. This term includes containment sumps when used for interstitial  
204 monitoring of piping.

205 "Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid  
206 separation or biological digestion, the sewage discharged from a building sewer. The effluent from  
207 such receptacle is distributed for disposal through the soil, and settled solids and scum from the  
208 tank are pumped out periodically and hauled to a treatment facility.

209 "Storm water or wastewater collection system" means piping, pumps, conduits, and any other  
210 equipment necessary to collect and transport the flow of surface water run-off resulting from  
211 precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any  
212 areas where treatment is designated to occur. The collection of storm water and wastewater does  
213 not include treatment except where incidental to conveyance.

214 "Surface impoundment" is a natural topographic depression, man-made excavation, or diked  
215 area formed primarily of earthen materials (although it may be lined with man-made materials)  
216 that is not an injection well.

217 "Tank" is a stationary device designed to contain an accumulation of regulated substances  
218 and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural  
219 support.

220 "Under-dispenser containment" or "UDC" means containment underneath a dispenser system  
221 designed to prevent leaks from the dispenser and piping within or above the UDC from reaching  
222 soil or groundwater.

223 "Underground area" means an underground room, such as a basement, cellar, shaft or vault,  
224 providing enough space for physical inspection of the exterior of the tank situated on or above the  
225 surface of the floor.

226 "Underground release" means any belowground release.

227 "Underground storage tank" or "UST" means any one or combination of tanks (including  
228 underground pipes connected thereto) that is used to contain an accumulation of regulated  
229 substances, and the volume of which (including the volume of underground pipes connected  
230 thereto) is 10% or more beneath the surface of the ground. This term does not include any:

- 231 1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for  
232 noncommercial purposes;
- 233 2. Tank used for storing heating oil for consumption on the premises where stored;
- 234 3. Septic tank;
- 235 4. Pipeline facility (including gathering lines):
- 236 a. Regulated under the Natural Gas Pipeline Safety Act of 1968 (49 USC § 1671 et  
237 seq.);
- 238 b. Regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC § 2001  
239 et seq.); or
- 240 c. Which is an intrastate pipeline facility regulated under state laws comparable to the  
241 provisions of the law referred to in subdivision 4 a or 4 b of this definition;
- 242 5. Surface impoundment, pit, pond, or lagoon;
- 243 6. Storm water or wastewater collection system;
- 244 7. Flow-through process tank;
- 245 8. Liquid trap or associated gathering lines directly related to oil or gas production and  
246 gathering operations; or
- 247 9. Storage tank situated in an underground area (such as a basement, cellar,  
248 mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface  
249 of the floor.

250 The term "underground storage tank" or "UST" does not include any pipes connected to any  
251 tank that is described in subdivisions 1 through 9 of this definition.

252 "Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining,  
253 or spill and overfill controls to improve the ability of an underground storage tank system to prevent  
254 the release of product.

255 "UST system" or "tank system" means an underground storage tank, connected underground  
256 piping, underground ancillary equipment, and containment system, if any.

257 "Wastewater treatment tank" means a tank that is designed to receive and treat an influent  
258 wastewater through physical, chemical, or biological methods.

259 **9VAC25-580-50. Performance standards for new UST systems.**

260 In order to prevent releases due to structural failure, corrosion, or spills and overfills for as  
261 long as the UST system is used to store regulated substances, all owners and operators of new  
262 UST systems must meet the requirements in this section.

263 Tanks and piping installed or replaced on or after September 15, 2010, must be secondarily  
264 contained and use interstitial monitoring in accordance with subdivision 7 of 9VAC25-580-160,  
265 except for suction piping that meets the requirements of subdivisions 2 a (2) (a) through (e) of  
266 9VAC25-580-140. Secondary containment must be able to contain regulated substances leaked  
267 from the primary containment until they are detected and removed and prevent the release of  
268 regulated substances to the environment at any time during the operational life of the UST system.  
269 For cases where the piping is considered to be replaced, the entire piping run must be secondarily  
270 contained.

- 271 1. Tanks. Each tank must be properly designed and constructed, and any portion  
272 underground that routinely contains product must be protected from corrosion, in  
273 accordance with a code of practice developed by a nationally recognized association or  
274 independent testing laboratory as specified below:

- 275 a. The tank is constructed of fiberglass-reinforced plastic;

276 NOTE: The following codes of practice may be used to comply with subdivision 1 a of  
277 this section:

278 (1) Underwriters Laboratories Standard 1316, Glass-Fiber-Reinforced Plastic  
279 Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline  
280 Mixtures; or

281 (2) Underwriter's Laboratories of Canada S615 Standard for Reinforced Plastic  
282 Underground Tanks for Flammable and Combustible Liquids.

283 b. The tank is constructed of steel and cathodically protected in the following manner:

284 (1) The tank is coated with a suitable dielectric material;

285 (2) Field-installed cathodic protection systems are designed by a corrosion expert;

286 (3) Impressed current systems are designed to allow determination of current  
287 operating status as required in subdivision 3 of 9VAC25-580-90; and

288 (4) Cathodic protection systems are operated and maintained in accordance with  
289 9VAC25-580-90; or

290 NOTE: The following codes of practice may be used to comply with subdivision 1 b of  
291 this section:

292 (a) Steel Tank Institute Specification for STI-P3<sup>®</sup> Specification and Manual for External  
293 Corrosion Protection of Underground Steel Storage Tanks;

294 (b) Underwriters Laboratories Standard 1746, External Corrosion Protection Systems  
295 for Steel Underground Storage Tanks;

296 (c) Underwriters Laboratories of Canada S603, Standard for Steel Underground Tanks  
297 for Flammable and Combustible Liquids, and S603.1, Standard for External Corrosion  
298 Protection Systems for Steel Underground Tanks for Flammable and Combustible  
299 Liquids, and S631, Standard for Isolating Bushings for Steel Underground Tanks  
300 Protected with External Corrosion Protection Systems

301 (d) Steel Tank Institute Standard F841, Standard for Dual Wall Underground Steel  
302 Storage Tanks; or

303 (e) NACE International Standard Practice SP0285, External Corrosion Control of  
304 Underground Storage Tank Systems by Cathodic Protection, and Underwriters  
305 Laboratories Standard 58, Standard for Steel Underground Tanks for Flammable and  
306 Combustible Liquids.

307 c. The tank is constructed of steel and clad or jacketed with a noncorrodible material;  
308 or

309 NOTE: The following codes of practice may be used to comply with subdivision 1 c of  
310 this section:

311 (1) Underwriters Laboratories Standard 1746, External Corrosion Protection Systems  
312 for Steel Underground Storage Tanks;

313 (2) Steel Tank Institute ACT-100<sup>®</sup> Specification F894, Specification for External  
314 Corrosion Protection of FRP Composite Steel Underground Storage Tanks;

315 (3) Steel Tank Institute ACT-100-U<sup>®</sup> Specification F961, Specification for External  
316 Corrosion Protection of Composite Steel Underground Storage Tanks; or

317 (4) Steel Tank Institute Specification F922, Steel Tank Institute Specification for  
318 Permatank<sup>®</sup>.

319 d. The tank construction and corrosion protection are determined by the ~~board~~  
320 department to be designed to prevent the release or threatened release of any stored



321 regulated substance in a manner that is no less protective of human health and the  
322 environment than subdivisions 1 a, 1 b, and 1 c of this section.

323 2. Piping. The piping that routinely contains regulated substances and is in contact with  
324 the ground must be properly designed, constructed, and protected from corrosion in  
325 accordance with a code of practice developed by a nationally recognized association or  
326 independent testing laboratory as specified below:

327 a. The piping is constructed of a noncorrodible material.

328 NOTE: The following codes of practice may be used to comply with subdivision 2 a of  
329 this section:

330 (1) Underwriters Laboratories Standard 971, Nonmetallic Underground Piping for  
331 Flammable Liquids; or

332 (2) Underwriters Laboratories of Canada Standard S660, Standard for Nonmetallic  
333 Underground Piping for Flammable and Combustible Liquids.

334 b. The piping is constructed of steel and cathodically protected in the following manner:

335 (1) The piping is coated with a suitable dielectric material;

336 (2) Field-installed cathodic protection systems are designed by a corrosion expert;

337 (3) Impressed current systems are designed to allow determination of current  
338 operating status as required in subdivision 3 of 9VAC25-580-90; and

339 (4) Cathodic protection systems are operated and maintained in accordance with  
340 9VAC25-580-90; or

341 NOTE: The following codes of practice may be used to comply with subdivision 2 b of  
342 this section:

343 (a) American Petroleum Institute Recommended Practice 1632, Cathodic Protection  
344 of Underground Petroleum Storage Tanks and Piping Systems;

345 (b) Underwriters Laboratories Subject 971A, Outline of Investigation for Metallic  
346 Underground Fuel Pipe;

347 (c) Steel Tank Institute Recommended Practice R892, Recommended Practice for  
348 Corrosion Protection of Underground Piping Networks Associated with Liquid Storage  
349 and Dispensing Systems;

350 (d) NACE International Standard Practice SP0169, Control of External Corrosion on  
351 Underground or Submerged Metallic Piping Systems; or

352 (e) NACE International Standard Practice SP0285, External Corrosion Control of  
353 Underground Storage Tank Systems by Cathodic Protection.

354 c. The piping construction and corrosion protection are determined by the ~~board~~  
355 department to be designed to prevent the release or threatened release of any stored  
356 regulated substance in a manner that is no less protective of human health and the  
357 environment than the requirements in subdivisions 2 a and 2 b of this section.

358 3. Spill and overfill prevention equipment.

359 a. Except as provided in subdivisions 3 b and 3 c of this section, to prevent spilling and  
360 overfilling associated with product transfer to the UST system, owners and operators  
361 must use the following spill and overfill prevention equipment:

362 (1) Spill prevention equipment that will prevent release of product to the environment  
363 when the transfer hose is detached from the fill pipe (for example, a spill catchment  
364 basin); and

365 (2) Overfill prevention equipment that will:

366 (a) Automatically shut off flow into the tank when the tank is no more than 95% full;

367 (b) Alert the transfer operator when the tank is no more than 90% full by restricting the  
368 flow into the tank or triggering a high-level alarm; or

369 (c) Restrict the flow 30 minutes prior to overfilling, alert the transfer operator with a  
370 high level alarm one minute before overfilling, or automatically shut off flow into the  
371 tank so that none of the fittings located on top of the tank are exposed to product due  
372 to overfilling.

373 b. Owners and operators are not required to use the spill and overfill prevention  
374 equipment specified in subdivision 3 a of this section if:

375 (1) Alternative equipment is used that is determined by the ~~board~~ department to be no  
376 less protective of human health and the environment than the equipment specified in  
377 subdivision 3 a (1) or 3 a (2) of this section; or

378 (2) The UST system is filled by transfers of no more than 25 gallons at one time.

379 c. Flow restrictors used in vent lines may not be used to comply with subdivision 3 a  
380 (2) of this section when overfill protection is installed or replaced on or after January  
381 1, 2018.

382 d. Spill and overfill protection equipment must be periodically tested or inspected in  
383 accordance with 9VAC25-580-82.

#### 384 4. Installation.

385 a. The UST system must be properly installed in accordance with a code of practice  
386 developed by a nationally recognized association or independent testing laboratory  
387 and in accordance with the manufacturer's instructions.

388 b. Owners and operators must obtain a permit and the required inspections in  
389 accordance with the provisions of the Virginia Uniform Statewide Building Code (§ 36-  
390 97 et seq. of the Code of Virginia). No UST system shall be installed or placed into  
391 use without the owner and operator having obtained the required permit and  
392 inspections from the building official under the provisions of the Virginia Uniform  
393 Statewide Building Code.

394 In the case of state-owned facilities, the Department of General Services shall function  
395 as the building official in accordance with § 36-98.1 of the Code of Virginia.

396 In the case of federal facilities, the building official must be contacted. Owners and  
397 operators must obtain a permit and the required inspections must be issued in  
398 accordance with the provisions of the Virginia Uniform Statewide Building Code.

399 NOTE: Tank and piping system installation practices and procedures described in the  
400 following codes of practice may be used to comply with the requirements of subdivision 4  
401 of this section:

402 (1) American Petroleum Institute Publication 1615, Installation of Underground  
403 Petroleum Storage System;

404 (2) Petroleum Equipment Institute Publication RP100, Recommended Practices for  
405 Installation of Underground Liquid Storage Systems; or

406 (3) National Fire Protection Association Standard 30, Flammable and Combustible  
407 Liquids Code and Standard 30A, Code for Motor Fuel Dispensing Facilities and Repair  
408 Garages.

409 NOTE: These industry codes require that prior to bringing the system into use the following  
410 tests be performed: (i) tank tightness test (air); (ii) pipe tightness test (air or hydrostatic);  
411 and (iii) precision system test.

412 5. Certification of installation. All owners and operators must ensure that one or more of  
413 the following methods of certification, testing, or inspection in subdivisions 5 a through 5

414 d of this section is performed, and a permit has been issued in accordance with the  
415 provisions of the Virginia Uniform Statewide Building Code to demonstrate compliance  
416 with subdivision 4 of this section. A certification of compliance on the UST Notification  
417 form must be submitted to the ~~board~~ department in accordance with 9VAC25-580-70.

- 418 a. The installer has been certified by the tank and piping manufacturers;
- 419 b. The installation has been inspected and certified by a registered professional  
420 engineer with education and experience in UST system installation;
- 421 c. All work listed in the manufacturer's installation checklists has been completed; or
- 422 d. The owner and operator have complied with another method for ensuring  
423 compliance with subdivision 4 of this section that is determined by the ~~board~~  
424 department to be no less protective of human health and the environment.

425 6. Release detection. Release detection shall be provided in accordance with Part IV  
426 (9VAC25-580-130 et seq.) of this chapter.

427 7. Dispenser systems. Each UST system must be equipped with under-dispenser  
428 containment for any new dispenser system installed on or after September 15, 2010.

429 a. A dispenser system is considered new when both the dispenser and the equipment  
430 needed to connect the dispenser to the underground storage tank system are installed  
431 at an UST facility. The equipment necessary to connect the dispenser to the  
432 underground storage tank system includes check valves, shear valves, unburied risers  
433 or flexible connectors, or other transitional components that are underneath the  
434 dispenser and connect the dispenser to the underground piping.

435 b. Under-dispenser containment must be liquid-tight on its sides, bottom, and at any  
436 penetrations. Under-dispenser containment must allow for visual inspection and  
437 access to the components in the containment system or be periodically monitored for  
438 leaks from the dispenser system.

#### 439 **9VAC25-580-60. Upgrading of existing UST systems.**

440 Owners and operators must permanently close in accordance with Part VII (9VAC25-580-310  
441 et seq.) of this chapter any UST system that does not meet the new UST system performance  
442 standards in 9VAC25-580-50 or has not been upgraded in accordance with subdivisions 2, 3, and  
443 4 of this section. This does not apply to previously deferred UST systems described in Part X  
444 (9VAC25-580-380 et seq.) of this chapter and where an upgrade is determined to be appropriate  
445 by the ~~board~~ department.

446 Owners and operators must obtain a permit and the required inspections in accordance with  
447 the provisions of the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of  
448 Virginia).

449 A permit from the building official must be obtained prior to upgrading any UST system. No  
450 upgraded UST system shall be placed into use unless and until the system is inspected in  
451 accordance with the provisions of the Virginia Uniform Statewide Building Code (§ 36-97 et seq.  
452 of the Code of Virginia).

453 In the case of state-owned facilities, the Department of General Services shall function as the  
454 building official in accordance with § 36-98.1 of the Code of Virginia.

455 In the case of federal facilities the building official must be contacted. Owners and operators  
456 must obtain a permit and the required inspections in accordance with the provisions of the Virginia  
457 Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia).

458 1. Alternatives allowed. All existing UST systems must comply with one of the following  
459 requirements:

- 460 a. New UST system performance standards under 9VAC25-580-50;

461 b. The upgrading requirements in subdivisions 2, 3, and 4 of this section; or  
462 c. Closure requirements under Part VII of this chapter, including applicable  
463 requirements for corrective action under Part VI (9VAC25-580-230 et seq.) of this  
464 chapter.

465 2. Tank upgrading requirements. Steel tanks must be upgraded to meet one of the  
466 following requirements in accordance with a code of practice developed by a nationally  
467 recognized association or independent testing laboratory:

468 a. Interior lining. Tanks upgraded by internal lining must meet the following:

469 (1) The lining was installed in accordance with the requirements of 9VAC25-580-110;  
470 and

471 (2) Within 10 years after lining, and every five years thereafter, the lined tank is  
472 internally inspected and found to be structurally sound with the lining still performing  
473 in accordance with original design specifications. If the internal lining is no longer  
474 performing in accordance with original design specifications and cannot be repaired in  
475 accordance with a code of practice developed by a nationally recognized association  
476 or independent testing laboratory, then the lined tank must be permanently closed in  
477 accordance with Part VII of this chapter.

478 b. Cathodic protection. Tanks upgraded by cathodic protection must meet the  
479 requirements of 9VAC25-580-50 1 b (2), (3), and (4) and the integrity of the tank must  
480 have been ensured using one of the following methods:

481 (1) The tank was internally inspected and assessed to ensure that the tank was  
482 structurally sound and free of corrosion holes prior to installing the cathodic protection  
483 system;

484 (2) The tank had been installed for less than 10 years and is monitored monthly for  
485 releases in accordance with subdivisions 4 through 9 of 9VAC25-580-160;

486 (3) The tank had been installed for less than 10 years and was assessed for corrosion  
487 holes by conducting two tightness tests that meet the requirements of subdivision 3 of  
488 9VAC25-580-160. The first tightness test must have been conducted prior to installing  
489 the cathodic protection system. The second tightness test must have been conducted  
490 between three and six months following the first operation of the cathodic protection  
491 system; or

492 (4) The tank was assessed for corrosion holes by a method that is determined by the  
493 ~~board~~ department to prevent releases in a manner that is no less protective of human  
494 health and the environment than subdivisions 2 b (1), (2), and (3) of this section.

495 c. Internal lining combined with cathodic protection. Tanks upgraded by both internal  
496 lining and cathodic protection must meet the following:

497 (1) The lining was installed in accordance with the requirements of 9VAC25-580-110;  
498 and

499 (2) The cathodic protection system meets the requirements of subdivisions 1 b (2), (3),  
500 and (4) of 9VAC25-580-50.

501 NOTE: The following historical codes of practice were listed as options for complying  
502 with subdivision 2 of this section:

503 (a) American Petroleum Institute Publication 1631, Recommended Practice for the  
504 Interior Lining of Existing Steel Underground Storage Tanks;

505 (b) National Leak Prevention Association Standard 631, Spill Prevention, Minimum 10  
506 Year Life Extension of Existing Steel Underground Tanks by Lining Without the  
507 Addition of Cathodic Protection;

508 (c) National Association of Corrosion Engineers Standard RP-02-85, Control of  
509 External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage  
510 Systems; and

511 (d) American Petroleum Institute Recommended Practice 1632, Cathodic Protection  
512 of Underground Petroleum Storage Tanks and Piping Systems.

513 NOTE: The following codes of practice may be used to comply with the periodic lining  
514 inspection requirement in subdivision 2 a (2) of this section:

515 (a) American Petroleum Institute Recommended Practice 1631, Interior Lining and  
516 Periodic Inspection of Underground Storage Tanks;

517 (b) National Leak Prevention Association Standard 631, Chapter B Future Internal  
518 Inspection Requirements for Lined Tanks; or

519 (c) Ken Wilcox Associates Recommended Practice, Recommended Practice for  
520 Inspecting Buried Lined Steel Tanks Using a Video Camera.

521 3. Piping upgrading requirements. Metal piping that routinely contains regulated  
522 substances and is in contact with the ground must be cathodically protected in accordance  
523 with a code of practice developed by a nationally recognized association or independent  
524 testing laboratory and must meet the requirements of subdivisions 2 b (2), (3) and (4) of  
525 9VAC25-580-50.

526 NOTE: The codes of practice listed in the note following subdivision 2 b of 9VAC25-580-  
527 50 may be used to comply with this requirement.

528 4. Spill and overfill prevention equipment. To prevent spilling and overfilling associated  
529 with product transfer to the UST system, all existing UST systems must comply with UST  
530 system spill and overfill prevention equipment requirements specified in subdivision 3 of  
531 9VAC25-580-50.

532 5. Release detection. Release detection shall be provided in accordance with Part IV  
533 (9VAC25-580-130 et seq.) of this chapter.

534 **9VAC25-580-70. Notification requirements.**

535 A. After May 8, 1986, an owner must submit notice of a tank system's existence to the ~~board~~  
536 department within 30 days of bringing the underground storage tank system into use. Owners  
537 must use a UST Notification form approved by the ~~board~~ department.

538 B. Any change in ownership, tank status, tank/piping systems, or substance stored requires  
539 the UST owner to submit an amended notification form, or other documentation approved by the  
540 ~~board~~ department, within 30 days after such change or upgrade occurs or is brought into use.  
541 Owners may provide notice for several tanks using one notification form, but owners with tanks  
542 located at more than one place of operation must file a separate notification form for each  
543 separate place of operation.

544 C. Under Virginia UST notification requirements effective July 1, 1987, owners of property  
545 who have actual knowledge of underground storage tanks on such property that were taken out  
546 of service before January 1, 1974, yet are still in the ground, must notify the ~~board~~ department on  
547 the notification form.

548 NOTE: Under the federal UST Notification Program, owners and operators of UST systems  
549 that were in the ground on or after May 8, 1986, unless taken out of operation on or before January  
550 1, 1974, were required to notify the ~~board~~ department in accordance with the Hazardous and Solid  
551 Waste Amendments of 1984, P.L. 98-616 (42 USC § 9603), on a form published by EPA on  
552 November 8, 1985, (50 FR 46602) unless notice was given pursuant to § 103(c) of CERCLA.  
553 Owners and operators who have not complied with the notification requirements may use portions  
554 I through VI of the UST Notification form approved by the ~~board~~ department.

555 D. All owners and operators of new UST systems must certify in the notification form  
556 compliance with the following requirements:

- 557 1. Installation of tanks and piping under subdivision 5 of 9VAC25-580-50.
- 558 2. Cathodic protection of steel tanks and piping under subdivisions 1 and 2 of 9VAC25-  
559 580-50.
- 560 3. Financial responsibility under financial responsibility regulations promulgated by the  
561 board under 9VAC25-590.
- 562 4. Release detection under 9VAC25-580-140 and 9VAC25-580-150.

563 E. All owners and operators of new UST systems must ensure that the installer certifies in the  
564 notification form that the methods used to install the tanks and piping comply with the  
565 requirements in subdivision 4 of 9VAC25-580-50.

566 F. Beginning October 24, 1988, any person who sells a tank intended to be used as an  
567 underground storage tank must notify the purchaser of such tank of the owner's notification  
568 obligations under subsection A of this section. The statement provided in the following note, when  
569 used on shipping tickets and invoices, may be used to comply with this requirement:

570 NOTE: A federal law (the Solid Waste Disposal Act, 42 USC § 6901 et seq.) requires owners  
571 of certain underground storage tanks to notify implementing agencies of the existence of their  
572 tanks. Notifications must be made within 30 days of bringing the tank into use. Consult EPA's  
573 regulations at 40 CFR 280.22 to determine if you are affected by this law.

574 **9VAC25-580-82. Periodic testing of spill prevention equipment and containment sumps  
575 used for interstitial monitoring of piping and periodic inspection of overfill....**

576 A. Owners and operators of UST systems with spill and overfill prevention equipment and  
577 containment sumps used for interstitial monitoring of piping must meet these requirements to  
578 ensure the equipment is operating properly and will prevent releases to the environment:

579 1. Spill prevention equipment (such as a catchment basin, spill bucket, or other spill  
580 containment device) and containment sumps used for interstitial monitoring of piping must  
581 prevent releases to the environment by meeting one of the following:

582 a. The equipment is double walled and the integrity of both walls is periodically  
583 monitored as described in 9VAC25-580-85 A 1 a (1) at a frequency not less than the  
584 frequency of the walkthrough inspections described in 9VAC25-580-85. Within 30  
585 days of discontinuing periodic monitoring under this subdivision, owners and operators  
586 must conduct a test in accordance with subdivision A 1 b of this section and begin  
587 meeting the requirements of that subdivision; or

588 b. The spill prevention equipment and containment sumps used for interstitial  
589 monitoring of piping are tested at least once every three years to ensure the equipment  
590 is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of  
591 the following criteria:

592 (1) Requirements developed by the manufacturer (Note: Owners and operators may  
593 use this option only if the manufacturer has developed requirements);

594 (2) Code of practice developed by a nationally recognized association or independent  
595 testing laboratory; or

596 (3) Requirements determined by the ~~board~~ department to be no less protective of  
597 human health and the environment than the requirements listed in subdivisions A 1 b  
598 (1) and (2) of this section.

599 2. Overfill prevention equipment must be inspected at least once every three years. At a  
600 minimum, the inspection must ensure that overfill prevention equipment is set to activate  
601 at the correct level specified in subdivision 3 of 9VAC25-580-50 and will activate when

602 regulated substance reaches that level. Inspections must be conducted in accordance  
603 with one of the criteria in subdivisions 1 b (1), (2), or (3) of this subsection.

604 NOTE: The following code of practice may be used to comply with subdivisions A 1 b and  
605 A 2 of this section: Petroleum Equipment Institute Publication RP 1200, Recommended  
606 Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary  
607 Containment Equipment at UST Facilities.

608 B. Owners and operators must begin meeting these requirements as follows:

609 1. For UST systems in use before January 1, 2018, the initial spill prevention equipment  
610 test, containment sump test, and overfill prevention equipment inspection must be  
611 conducted not later than January 1, 2021.

612 2. For UST systems brought into use on or after January 1, 2018, these requirements  
613 apply at installation.

614 C. Owners and operators must maintain records as follows in accordance with 9VAC25-580-  
615 120 for spill prevention equipment, containment sumps used for interstitial monitoring of piping,  
616 and overfill prevention equipment:

617 1. All records of testing or inspection must be maintained for three years; and

618 2. For spill prevention equipment and containment sumps used for interstitial monitoring  
619 of piping not tested every three years, documentation showing that the prevention  
620 equipment is double walled and the integrity of both walls is periodically monitored must  
621 be maintained for as long as the equipment is periodically monitored.

622 **9VAC25-580-85. Periodic operation and maintenance walkthrough inspections.**

623 A. To properly operate and maintain UST systems, not later than January 1, 2021, owners  
624 and operators must meet one of the following:

625 1. Conduct a walkthrough inspection that, at a minimum, checks the following equipment  
626 as specified below:

627 a. Every 30 days (Exception: spill prevention equipment at UST systems receiving  
628 deliveries at intervals greater than every 30 days may be checked prior to each  
629 delivery):

630 (1) Spill prevention equipment – visually check for damage; remove liquid or debris;  
631 check for and remove obstructions in the fill pipe; check the fill cap to make sure it is  
632 securely on the fill pipe; and, for double walled spill prevention equipment with  
633 interstitial monitoring, check for a leak in the interstitial area; and

634 (2) Release detection equipment – check to make sure the release detection  
635 equipment is operating with no alarms or other unusual operating conditions present  
636 and ensure records of release detection testing are reviewed and current; and

637 b. Annually:

638 (1) Containment sumps – visually check for damage, leaks to the containment area,  
639 or releases to the environment; remove liquid (in contained sumps) or debris; and, for  
640 double walled sumps with interstitial monitoring, check for a leak in the interstitial area;  
641 and

642 (2) Handheld release detection equipment – check devices such as tank gauge sticks  
643 or groundwater bailers for operability and serviceability;

644 2. Conduct operation and maintenance walkthrough inspections according to a standard  
645 code of practice developed by a nationally recognized association or independent testing  
646 laboratory that checks equipment comparable to subdivision 1 of this subsection; or

647 3. Conduct operation and maintenance walkthrough inspections according to a protocol  
648 developed by the ~~board~~ department that checks equipment comparable to subdivision 1  
649 of this subsection.

650 B. Owners and operators must maintain records (in accordance with 9VAC25-580-120) of  
651 operation and maintenance walkthrough inspections for one year. Records must include a list of  
652 each area checked, whether each area checked was acceptable or needed action taken, a  
653 description of actions taken to correct an issue, and delivery records if spill prevention equipment  
654 is checked less frequently than every 30 days due to infrequent deliveries.

655 NOTE: The following code of practice may be used to comply with subdivision A 2 of this  
656 section: Petroleum Equipment Institute Recommended Practice RP 900, Recommended  
657 Practices for the Inspection and Maintenance of UST Systems.

658 **9VAC25-580-100. Compatibility.**

659 A. Owners and operators must use an UST system made of or lined with materials that are  
660 compatible with the substance stored in the UST system.

661 B. Owners and operators must notify the ~~board~~ department at least 30 days prior to switching  
662 to a regulated substance containing greater than 10% ethanol, greater than 20% biodiesel, or any  
663 other regulated substance identified by the ~~board~~ department. In addition, owners and operators  
664 with UST systems storing these regulated substances must meet one of the following:

665 1. Demonstrate compatibility of the UST system, including the tank, piping, containment  
666 sumps, pumping equipment, release detection equipment, spill equipment, and overflow  
667 equipment. Owners and operators may demonstrate compatibility of the UST system by  
668 using one of the following options:

669 a. Certification or listing of UST system equipment or components by a nationally  
670 recognized, independent testing laboratory for use with the regulated substance  
671 stored; or

672 b. Equipment or component manufacturer approval. The manufacturer's approval  
673 must be in writing, indicate an affirmative statement of compatibility, specify the range  
674 of biofuel blends the equipment or component is compatible with, and be from the  
675 equipment or component manufacturer; or

676 2. Use another option determined by the ~~board~~ department to be no less protective of  
677 human health and the environment than the options listed in subdivision 1 of this  
678 subsection.

679 C. Owners and operators must maintain records in accordance with subdivision 2 of 9VAC25-  
680 580-120 documenting compliance with subsection B of this section for as long as the UST system  
681 is used to store the regulated substance.

682 NOTE: The following code of practice may be useful in complying with this section:

683 American Petroleum Institute Recommended Practice 1626, Storing and Handling Ethanol  
684 and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations.

685 **9VAC25-580-110. Repairs allowed.**

686 Owners and operators must obtain a permit and the required inspections in accordance with  
687 the provisions of the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of  
688 Virginia).

689 A permit from the building official must be obtained prior to repairing any UST system. No  
690 repaired UST system shall be placed into use unless and until the system is inspected in  
691 accordance with the provisions of the Virginia Uniform Statewide Building Code (§ 36-97 et seq.  
692 of the Code of Virginia).



693 In the case of state-owned facilities the Department of General Services shall function as the  
694 building official in accordance with § 36-98.1 of the Code of Virginia.

695 In the case of federal facilities the building official must be contacted. Owners and operators  
696 must obtain a permit and the required inspections in accordance with the provisions of the Virginia  
697 Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia).

698 Owners and operators of UST systems must ensure that repairs will prevent releases due to  
699 structural failure or corrosion as long as the UST system is used to store regulated substances.  
700 The repairs must meet the following requirements:

701 1. Repairs to UST systems must be properly conducted in accordance with a code of  
702 practice developed by a nationally recognized association or an independent testing  
703 laboratory.

704 NOTE: The following codes of practice may be used to comply with subdivision 1 of this  
705 section:

706 a. National Fire Protection Association Standard 30, Flammable and Combustible  
707 Liquids Code;

708 b. American Petroleum Institute Recommended Practice RP 2200, Repairing Crude  
709 Oil, Liquefied Petroleum Gas, and Product Pipelines;

710 c. American Petroleum Institute Recommended Practice RP 1631, Interior Lining and  
711 Periodic Inspection of Underground Storage Tanks;

712 d. National Fire Protection Association Standard 326, Standard for the Safeguarding  
713 of Tanks and Containers for Entry, Cleaning, or Repair;

714 e. National Leak Prevention Association Standard 631, Chapter A, Entry, Cleaning,  
715 Interior Inspection, Repair, and Lining of Underground Storage Tanks;

716 f. Steel Tank Institute Recommended Practice R972, Recommended Practice for the  
717 Addition of Supplemental Anodes to STI-P3® Tanks;

718 g. NACE International Standard Practice SP 0285, External Control of Underground  
719 Storage Tank Systems by Cathodic Protection; or

720 h. Fiberglass Tank and Pipe Institute Recommended Practice T-95-02,  
721 Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks.

722 2. Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's  
723 authorized representatives or in accordance with a code of practice developed by a  
724 nationally recognized association or an independent testing laboratory.

725 3. Metal pipe sections and fittings that have released product as a result of corrosion or  
726 other damage must be replaced. Noncorrodible pipes and fittings may be repaired in  
727 accordance with the manufacturer's specifications.

728 4. Repairs to secondary containment areas of tanks and piping used for interstitial  
729 monitoring and to containment sumps used for interstitial monitoring of piping must have  
730 the secondary containment tested for tightness according to the manufacturer's  
731 instructions, a code of practice developed by a nationally recognized association or  
732 independent testing laboratory, or according to requirements established by the ~~board~~  
733 department within 30 days following the date of completion of the repair.

734 5. All other repairs to tanks and piping must be tightness tested in accordance with  
735 subdivision 3 of 9VAC25-580-160 and subdivision 2 of 9VAC25-580-170 within 30 days  
736 following the date of the completion of the repair except as provided below:

737 a. The repaired tank is internally inspected in accordance with a code of practice  
738 developed by a nationally recognized association or an independent testing laboratory;

739 b. The repaired portion of the UST system is monitored monthly for releases in  
740 accordance with a method specified in subdivisions 4 through 9 of 9VAC25-580-160;  
741 or

742 c. Another test method is used that is determined by the ~~board~~ department to be no  
743 less protective of human health and the environment than those listed in subdivisions  
744 a and b of this subdivision 5.

745 NOTE: The following codes of practice may be used to comply with subdivisions 4 and  
746 5 of this section:

747 (1) Steel Tank Institute Recommended Practice R012, Recommended Practice for  
748 Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks; or

749 (2) Fiberglass Tank and Pipe Institute Protocol, Field Test Protocol for Testing the  
750 Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks  
751 With Dry Annular Space.

752 (3) Petroleum Equipment Institute Recommended Practice RP1200, Recommended  
753 Practices for the Testing and Verification of Spill, Overflow, Leak Detection and  
754 Secondary Containment Equipment at UST Facilities.

755 6. Within six months following the repair of any cathodically protected UST system, the  
756 cathodic protection system must be tested in accordance with subdivisions 2 and 3 of  
757 9VAC25-580-90 to ensure that it is operating properly.

758 7. Within 30 days following any repair to spill or overflow prevention equipment, the  
759 repaired spill or overflow prevention equipment must be tested or inspected as  
760 appropriate, in accordance with 9VAC25-580-82 to ensure it is operating properly.

761 8. UST system owners and operators must maintain records in accordance with 9VAC25-  
762 580-120 of each repair until the UST system is permanently closed or undergoes a  
763 change-in-service pursuant to 9VAC25-580-320.

#### 764 **9VAC25-580-120. Reporting and recordkeeping.**

765 Owners and operators of UST systems must cooperate fully with inspections, monitoring and  
766 testing conducted by the ~~board~~ department, as well as requests for document submission, testing,  
767 and monitoring by the owner or operator pursuant to § 9005 of Subtitle I of the Solid Waste  
768 Disposal Act, as amended.

769 1. Reporting. Owners and operators must submit the following information to the ~~board~~  
770 department:

771 a. Notification for all UST systems (9VAC25-580-70), which includes certification of  
772 installation for new UST systems (subdivision 5 of 9VAC25-580-50) and notification  
773 when any person assumes ownership of an UST system (9VAC25-580-70);

774 b. Notification prior to UST systems switching to certain regulated substances  
775 (subsection B of 9VAC25-580-100);

776 c. Reports of all releases including suspected releases (9VAC25-580-190), spills and  
777 overfills (9VAC25-580-220), and confirmed releases (9VAC25-580-240);

778 d. Corrective actions planned or taken including initial abatement measures (9VAC25-  
779 580-250), site characterization (9VAC25-580-260), free product removal (9VAC25-  
780 580-270), and corrective action plan (9VAC25-580-280); and

781 e. An amended notification form must be submitted within 30 days after permanent  
782 closure or change-in-service (9VAC25-580-320).

783 2. Recordkeeping. Owners and operators must maintain the following information:

- 784 a. Documentation of operation of corrosion protection equipment (subdivision 4 of
- 785 9VAC25-580-90);
- 786 b. Documentation of compatibility for UST systems (subsection C of 9VAC25-580-
- 787 100);
- 788 c. Documentation of UST system repairs (subdivision 8 of 9VAC25-580-110);
- 789 d. Documentation of compliance and applicable installation records for spill and overfill
- 790 prevention equipment and containment sumps used for interstitial monitoring of piping
- 791 (subsection C of 9VAC25-580-82);
- 792 e. Documentation of periodic walkthrough inspections (subsection B of 9VAC25-580-
- 793 85);
- 794 f. Documentation of compliance with release detection requirements (9VAC25-580-
- 795 180);
- 796 g. Results of the site investigation conducted at permanent closure (9VAC25-580-
- 797 350); and
- 798 h. Documentation of operator training required by 9VAC25-580-125, including
- 799 verification of training for current Class A, Class B, and Class C operators, and current
- 800 list of operators and written instructions or procedures for Class C operators (9VAC25-
- 801 580-125).

802 3. Availability and maintenance of records. Owners and operators must keep the records

803 required either:

- 804 a. At the UST site and immediately available for inspection by the ~~board~~ department;
- 805 or
- 806 b. At a readily available alternative site and be provided for inspection to the ~~board~~
- 807 department upon request.

808 In the case of permanent closure records required under 9VAC25-580-350, owners

809 and operators are also provided with the additional alternative of mailing closure

810 records to the ~~board~~ department if they cannot be kept at the site or an alternative site

811 as indicated above.

812 **9VAC25-580-125. Operator training.**

813 A. Definitions.

814 1. For purposes of this section, "Class A operator" means an operator who has primary

815 responsibility to operate and maintain the underground storage tank system and facility.

816 The Class A operator's responsibilities include managing resources and personnel, such

817 as establishing work assignments, to achieve and maintain compliance with regulatory

818 requirements. In general, Class A operators focus on the broader aspects of the

819 underground storage tank statutory and regulatory requirements and standards necessary

820 to properly operate and maintain the underground storage tank system and facility.

821 2. For purposes of this section, "Class B operator" means an operator who implements

822 applicable underground storage tank regulatory requirements and standards in the field

823 or at the underground storage tank facility. A Class B operator oversees and implements

824 the day-to-day aspects of operations, maintenance, and recordkeeping for the

825 underground storage tanks at one or more facilities.

826 3. For purposes of this section, "Class C operator" means the person responsible for

827 responding to alarms or other indications of emergencies caused by spills or releases from

828 underground storage tank systems and equipment failures. A Class C operator, generally,

829 is the first line of response to events indicating emergency conditions.

830 B. Requirements for trained operators.

- 831 1. Owners and operators of UST systems shall designate Class A, Class B, and Class C  
832 operators for each UST system or facility that has underground storage tanks.
- 833 a. A person may be designated for more than one class of operator.  
834 b. Any person designated for more than one class of operator shall successfully  
835 complete the required training under subsection C of this section for each operator  
836 class for which he is designated.  
837 c. Persons trained in accordance with subsection C of this section may perform  
838 operator duties consistent with their training when employed or contracted by the tank  
839 owner or operator to perform these functions.
- 840 2. Class A operators shall be familiar with training requirements for each class of operator  
841 and may provide required training for Class C operators.
- 842 3. Class B operators shall be familiar with Class B and Class C operator responsibilities  
843 and may provide training for Class C operators.
- 844 4. Trained operators shall be readily available to respond to suspected/confirmed  
845 releases, other unusual operating conditions and equipment shut-offs or failures.
- 846 a. The Class A or Class B operator shall be available for immediate telephone  
847 consultation when an UST facility is in operation. A Class A or Class B operator shall  
848 be able to be onsite at the facility within a reasonable time to perform necessary  
849 functions.
- 850 b. For manned facilities, a Class C operator shall be onsite whenever the UST facility  
851 is in operation. After September 15, 2010, written instructions or procedures shall be  
852 maintained and visible at manned UST facilities for persons performing duties of the  
853 Class C operator to follow and to provide notification necessary in the event of  
854 emergency conditions.
- 855 c. For unmanned facilities, a Class C operator shall be available for immediate  
856 telephone consultation and shall be able to be onsite within a reasonable time to  
857 perform necessary functions. Emergency contact information shall be prominently  
858 displayed at the site. After September 15, 2010, written instructions or procedures  
859 shall be maintained and visible at unmanned UST facilities for persons performing  
860 duties of the Class C operator to follow and to provide notification necessary in the  
861 event of emergency conditions.
- 862 C. Required training.
- 863 1. Class A operators shall successfully complete a training course approved by the ~~board~~  
864 department that includes a general knowledge of UST system requirements. Training shall  
865 provide information that should enable the operator to make informed decisions regarding  
866 compliance and ensuring that appropriate persons are fulfilling operation, maintenance,  
867 and recordkeeping requirements and standards of this chapter and/or federal  
868 underground storage tank requirements in 40 CFR Part 280 (relating to technical  
869 standards and corrective action requirements for owners and operators of underground  
870 storage tanks (UST)), including, at a minimum, the following:
- 871 a. Spill and overfill prevention;  
872 b. Release detection and related reporting requirements;  
873 c. Corrosion protection;  
874 d. Emergency response;  
875 e. Product and equipment compatibility;  
876 f. Financial responsibility;

877 g. Notification and storage tank registration requirements;  
878 h. Temporary and permanent closure requirements; and  
879 i. Class B and Class C operator training requirements.

880 2. Class B operators shall successfully complete a training course approved by the ~~board~~  
881 department that includes an in-depth understanding of operation and maintenance  
882 aspects of UST systems and related regulatory requirements. Training shall provide  
883 specific information on the components of UST systems, materials of construction,  
884 methods of release detection and release prevention applied to UST systems and  
885 components. Training shall address operation and maintenance requirements of this  
886 chapter and/or federal underground storage tank requirements in 40 CFR Part 280,  
887 including, at a minimum, the following:

888 a. Spill and overfill prevention;  
889 b. Release detection and related reporting requirements;  
890 c. Corrosion protection and related testing;  
891 d. Emergency response;  
892 e. Product and equipment compatibility;  
893 f. Reporting and recordkeeping requirements; and  
894 g. Class C operator training requirements.

895 3. Class C operators. At a minimum, training provided by the tank owner or Class A or  
896 Class B operator shall enable the Class C operator to take action in response to  
897 emergencies caused by spills or releases and alarms from an underground storage tank.  
898 Training shall include written instructions or procedures for the Class C operator to follow  
899 and to provide notification necessary in the event of emergency conditions.

900 4. Successful completion for Class A and Class B operators means completion of the  
901 entire training course and demonstration of knowledge of the course material as follows:

902 a. Receipt of a passing grade (a score of 80% or better) on an examination of material  
903 presented in the training course, or demonstration through practical (hands-on)  
904 application to the trainer of operation and maintenance checks of underground storage  
905 tank equipment, including performance of release detection at the UST facility, at the  
906 conclusion of onsite training; and  
907 b. Receipt of a training certificate by an approved trainer upon verification of successful  
908 completion of training under this section.

909 5. Reciprocity. The ~~board~~ department may also recognize successful completion of Class  
910 A and Class B operator training on regulatory standards consistent with 40 CFR Part 280,  
911 which is recognized by other state or implementing agencies and which is approved by  
912 EPA as meeting operator training grant guidelines published by EPA.

913 6. The tank owner and operator shall incur the costs of the training.

914 D. Timing of training.

915 1. An owner and operator shall ensure that Class A, Class B and Class C operators are  
916 trained as soon as practicable after September 15, 2010, contingent upon availability of  
917 approved training providers, but not later than August 8, 2012.

918 2. When a Class A or Class B operator is replaced after August 8, 2012, a new operator  
919 shall be trained within 60 days of assuming duties for that class of operator.

920 3. Class C operators shall be trained before assuming duties of a Class C operator. After  
921 September 15, 2010, written instructions or procedures shall be provided to Class C  
922 operators to follow and to provide notification necessary in the event of emergency

923 conditions. Class C operators shall be briefed on these instructions or procedures at least  
924 annually (every 12 months), which may be concurrent with annual safety training required  
925 under Occupational Safety and Health Administration, 29 CFR Part 1910 (relating to  
926 Occupational Safety and Health Standards).

927 E. Retraining.

928 1. Owners and operators of UST systems shall ensure that Class A and B operators in  
929 accordance with subsection C of this section are retrained if the ~~board~~ department  
930 determines that the UST system is out of compliance with the requirements of 9VAC25-  
931 580-30 through 9VAC25-580-190. At a minimum, Class A and Class B operators shall  
932 successfully complete retraining in the areas identified as out of compliance.

933 2. Class A and B operators shall complete training pursuant to this subsection no later  
934 than 90 days from the date the ~~board~~ department identifies the noncompliance.

935 F. Documentation.

936 1. Owners and operators of underground storage tank facilities shall prepare and maintain  
937 a list of designated Class A, Class B, and Class C operators. The list shall represent the  
938 current Class A, Class B, and Class C operators for the UST facility and shall include:

939 a. The name of each operator, class of operation trained for, and the date each  
940 operator successfully completed initial training and refresher training, if any.

941 b. For Class A and Class B operators that are not permanently onsite or assigned to  
942 more than one facility, telephone numbers to contact the operators.

943 2. A copy of the certificates of training for Class A and Class B operators shall be on file  
944 as long as each operator serves in that capacity at the facility or three years, whichever is  
945 longer, and readily available, and a copy of the facility list of Class A, Class B, and Class  
946 C operators and Class C operator instructions or procedures shall be kept onsite and  
947 immediately available for manned UST facilities and readily available for unmanned  
948 facilities (see subdivision 2 h of 9VAC25-580-120 relating to reporting and recordkeeping).

949 3. Class C operator and owner contact information, including names and telephone  
950 numbers, and any emergency information shall be conspicuously posted at unmanned  
951 facilities.

952 **9VAC25-580-130. General requirements for all petroleum and hazardous substance UST**  
953 **systems.**

954 A. Owners and operators of UST systems must provide a method, or combination of methods,  
955 of release detection that:

956 1. Can detect a release from any portion of the tank and the connected underground piping  
957 that routinely contains product;

958 2. Is installed and calibrated in accordance with the manufacturer's instructions, including  
959 routine maintenance and service checks for operability or running condition;

960 3. Beginning on January 1, 2021, is operated and maintained, and electronic and  
961 mechanical components are tested for proper operation, in accordance with one of the  
962 following: (i) manufacturer's instructions; (ii) a code of practice developed by a nationally  
963 recognized association or independent testing laboratory; or (iii) requirements determined  
964 by the ~~board~~ department to be no less protective of human health and the environment  
965 than the two options listed in subdivisions 1 and 2 of this subsection. A test of the proper  
966 operation must be performed at least annually and, at a minimum, as applicable to the  
967 facility, cover the following components and criteria:

968 a. Automatic tank gauge and other controllers: test alarm; verify system configuration;  
969 test battery backup;

- 970 b. Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure
- 971 shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability
- 972 and communication with controller;
- 973 c. Automatic line leak detector: test operation to meet criteria in subdivision 1 of
- 974 9VAC25-580-170 by simulating a leak;
- 975 d. Vacuum pumps and pressure gauges: ensure proper communication with sensors
- 976 and controller; and
- 977 e. Handheld electronic sampling equipment associated with groundwater and vapor
- 978 monitoring: ensure proper operation.

979 NOTE: The following code of practice may be used to comply with subdivision 3 of this  
 980 subsection. Petroleum Equipment Institute Publication RP 1200, Recommended Practices  
 981 for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary  
 982 Containment Equipment at UST Facilities.

983 4. Meets the performance requirements in 9VAC25-580-160 or 9VAC25-580-170 or Part  
 984 X (9VAC25-580-380 et seq.) of this chapter as applicable with any performance claims  
 985 and their manner of determination described in writing by the equipment manufacturer or  
 986 installer. In addition, the methods listed in subdivisions 2, 3, 4, 8, and 9 of 9VAC25-580-  
 987 160; subdivisions 1 and 2 of 9VAC25-580-170; and Part X must be capable of detecting  
 988 the leak rate or quantity specified for that method in the corresponding section of the  
 989 regulation with a probability of detection of 0.95 and a probability of false alarm of 0.05.

990 B. When a release detection method operated in accordance with the performance standards  
 991 in 9VAC25-580-160, 9VAC25-580-170, or Part X of this chapter indicates a release may have  
 992 occurred, owners and operators must notify the ~~board~~ department in accordance with Part V  
 993 (9VAC25-580-190 et seq.) of this chapter.

994 C. Any UST system that cannot apply a method of release detection that complies with the  
 995 requirements of this part must complete the closure procedures in Part VII (9VAC25-580-310 et  
 996 seq.) of this chapter. For previously deferred UST systems described in Parts I (9VAC25-580-10  
 997 et seq.) and X of this chapter, this requirement applies on or after the effective dates described in  
 998 9VAC25-580-20 A 1 b and c and 9VAC25-580-380 A 1.

999 **9VAC25-580-150. Requirements for hazardous substance UST systems.**

1000 Owners and operators of hazardous substance UST systems must provide containment that  
 1001 meets the following requirements and monitor these systems using subdivision 7 of 9VAC25-580-  
 1002 160 at least every 30 days:

- 1003 1. Secondary containment systems must be designed, constructed and installed to:
  - 1004 a. Contain regulated substances leaked from the primary containment until they are
  - 1005 detected and removed;
  - 1006 b. Prevent the release of regulated substances to the environment at any time during
  - 1007 the operational life of the UST system; and
  - 1008 c. Be checked for evidence of a release at least every 30 days.

1009 NOTE: The provisions of 40 CFR 265.193, Containment and Detection of Releases,  
 1010 may be used to comply with these requirements for tanks installed before September  
 1011 15, 2010.

- 1012 2. Double-walled tanks must be designed, constructed, and installed to:
  - 1013 a. Contain a leak from any portion of the inner tank within the outer wall; and
  - 1014 b. Detect the failure of the inner wall.
- 1015 3. External liners (including vaults) must be designed, constructed, and installed to:

- 1016 a. Contain 100% of the capacity of the largest tank within its boundary;
- 1017 b. Prevent the interference of precipitation or groundwater intrusion with the ability to
- 1018 contain or detect a release of regulated substances; and
- 1019 c. Surround the tank completely (i.e., it is capable of preventing lateral as well as
- 1020 vertical migration of regulated substances).
- 1021 4. Underground piping must be equipped with secondary containment that satisfies the
- 1022 requirements of this section (e.g., trench liners, double-walled pipe). In addition,
- 1023 underground piping that conveys regulated substances under pressure must be equipped
- 1024 with an automatic line leak detector in accordance with subdivision 1 of 9VAC25-580-170.
- 1025 5. For hazardous substance UST systems installed before September 15, 2010, other
- 1026 methods of release detection may be used if owners and operators:
- 1027 a. Demonstrate to the ~~board~~ department that an alternate method can detect a release
- 1028 of the stored substance as effectively as any of the methods allowed in subdivisions 2
- 1029 through 9 of 9VAC25-580-160 can detect a release of petroleum;
- 1030 b. Provide information to the ~~board~~ department on effective corrective action
- 1031 technologies, health risks, and chemical and physical properties of the stored
- 1032 substance, and the characteristics of the UST site; and
- 1033 c. Obtain approval from the ~~board~~ department to use the alternate release detection
- 1034 method before the installation and operation of the new UST system.

1035 **9VAC25-580-160. Methods of release detection for tanks.**

1036 Owners and operators must obtain a permit and the required inspections in accordance with

1037 9VAC25-580-50 or 9VAC25-580-60 for the installation of certain release detection equipment

1038 contained in subdivisions 4 through 9 of this section.

1039 Each method of release detection for tanks used to meet the requirements of 9VAC25-580-

1040 140 must be conducted in accordance with the following and be designed to detect releases at

1041 the earliest possible time for the specific method chosen:

- 1042 1. Inventory control. Product inventory control (or another test of equivalent performance)
- 1043 must be conducted monthly to detect a release of at least 1.0% of flow-through plus 130
- 1044 gallons on a monthly basis in the following manner:
- 1045 a. Inventory volume measurements for regulated substance inputs, withdrawals, and
- 1046 the amount still remaining in the tank are recorded each operating day;
- 1047 b. The equipment used is capable of measuring the level of product over the full range
- 1048 of the tank's height to the nearest 1/8 of an inch;
- 1049 c. The regulated substance inputs are reconciled with delivery receipts by
- 1050 measurement of the tank inventory volume before and after delivery;
- 1051 d. Deliveries are made through a drop tube that extends to within one foot of the tank
- 1052 bottom;
- 1053 e. Product dispensing is metered and recorded according to regulations of the Bureau
- 1054 of Weights and Measures of the Virginia Department of Agriculture and Consumer
- 1055 Services for meter calibration within their jurisdiction; for all other product dispensing
- 1056 meter calibration, an accuracy of six cubic inches for every five gallons of product
- 1057 withdrawn is required; and
- 1058 f. The measurement of any water level in the bottom of the tank is made to the nearest
- 1059 1/8 of an inch at least once a month.



1060 NOTE: Practices described in the American Petroleum Institute Recommended  
 1061 Practice RP 1621 Bulk Liquid Stock Control at Retail Outlets, may be used, where  
 1062 applicable, as guidance in meeting the requirements of this subsection.

1063 2. Manual tank gauging. Manual tank gauging must meet the following requirements:

1064 a. Tank liquid level measurements are taken at the beginning and ending of a period  
 1065 using the appropriate minimum duration of test value in the table below during which  
 1066 no liquid is added to or removed from the tank;

1067 b. Level measurements are based on an average of two consecutive stick readings at  
 1068 both the beginning and ending of the period;

1069 c. The equipment used is capable of measuring the level of product over the full range  
 1070 of the tank's height to the nearest 1/8 of an inch;

1071 d. A release is suspected and subject to the requirements of Part V (9VAC25-580-190  
 1072 et seq.) if the variation between beginning and ending measurements exceeds the  
 1073 weekly or monthly standards in the following table:

Nominal Tank Capacity	Minimum Duration of Test	Weekly Standard (One Test)	Monthly Standard (Four Test Average)
550 gallons or less	36 hours	10 gallons	5 gallons
551 - 1,000 gallons (when tank diameter is 64 inches)	44 hours	9 gallons	4 gallons
551 - 1,000 gallons (when tank diameter is 48 inches)	58 hours	12 gallons	6 gallons
551 - 1,000 gallons (also requires periodic tank tightness testing)	36 hours	13 gallons	7 gallons
1001 - 2,000 gallons (also requires periodic tank tightness testing)	36 hours	26 gallons	13 gallons

1074 e. Tanks of 550 gallons or less nominal capacity and tanks with a nominal capacity of  
 1075 551 to 1,000 gallons that meet the tank diameter criteria in the table in subdivision 2 d  
 1076 of this section may use this as the sole method of release detection. All other tanks  
 1077 with a nominal capacity of 551 to 2,000 gallons may use the method in place of  
 1078 inventory control in subdivision 1 of this section. Tanks of greater than 2,000 gallons  
 1079 nominal capacity may not use this method to meet the requirements of this part.

1080 3. Tank tightness testing. Tank tightness testing (or another test of equivalent  
 1081 performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion  
 1082 of the tank that routinely contains product while accounting for the effects of thermal  
 1083 expansion or contraction of the product, vapor pockets, tank deformation, evaporation or  
 1084 condensation, and the location of the water table.

1085 4. Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of  
 1086 product and conducts inventory control must meet the following requirements:

- 1087 a. The automatic product level monitor test can detect a 0.2 gallon per hour leak rate  
1088 from any portion of the tank that routinely contains product;
- 1089 b. The automatic tank gauging equipment must meet the inventory control (or other  
1090 test of equivalent performance) requirements of subdivision 1 of this section; and
- 1091 c. The test must be performed with the system operating in one of the following modes:  
1092 (1) In-tank static testing conducted at least once every 30 days; or  
1093 (2) Continuous in-tank leak detection operating on an uninterrupted basis or operating  
1094 within a process that allows the system to gather incremental measurements to  
1095 determine the leak status of the tank at least once every 30 days.
- 1096 5. Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation  
1097 zone must meet the following requirements:
- 1098 a. The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed  
1099 rock) to readily allow diffusion of vapors from releases into the excavation area;
- 1100 b. The stored regulated substance, or a tracer compound placed in the tank system,  
1101 is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the  
1102 monitoring devices located in the excavation zone in the event of a release from the  
1103 tank;
- 1104 c. The measurement of vapors by the monitoring device is not rendered inoperative  
1105 by the groundwater, rainfall, or soil moisture or other known interferences so that a  
1106 release could go undetected for more than 30 days;
- 1107 d. The level of background contamination in the excavation zone will not interfere with  
1108 the method used to detect releases from the tank;
- 1109 e. The vapor monitors are designed and operated to detect any significant increase in  
1110 concentration above background of the regulated substance stored in the tank system,  
1111 a component or components of that substance, or a tracer compound placed in the  
1112 tank system;
- 1113 f. In the UST excavation zone, the site is assessed to ensure compliance with the  
1114 requirements in subdivisions a through d of this subdivision 5 and to establish the  
1115 number and positioning of monitoring wells that will detect releases within the  
1116 excavation zone from any portion of the tank that routinely contains product; and
- 1117 g. Monitoring wells are clearly marked and secured to avoid unauthorized access and  
1118 tampering.
- 1119 6. Groundwater monitoring. Testing or monitoring for liquids on the groundwater must  
1120 meet the following requirements:
- 1121 a. The regulated substance stored is not readily miscible in water and has a specific  
1122 gravity of less than one;
- 1123 b. Groundwater is never more than 20 feet from the ground surface and the hydraulic  
1124 conductivity of the soils between the UST system and the monitoring wells or devices  
1125 is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium  
1126 sands, coarse silts or other permeable materials);
- 1127 c. The slotted portion of the monitoring well casing must be designed to prevent  
1128 migration of natural soils or filter pack into the well and to allow entry of regulated  
1129 substance on the water table into the well under both high and low groundwater  
1130 conditions;
- 1131 d. Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

- 1132 e. Monitoring wells or devices intercept the excavation zone or are as close to it as is  
1133 technically feasible;
- 1134 f. The continuous monitoring devices or manual methods used can detect the  
1135 presence of at least 1/8 of an inch of free product on top of the groundwater in the  
1136 monitoring wells;
- 1137 g. Within and immediately below the UST system excavation zone, the site is assessed  
1138 to ensure compliance with the requirements in subdivisions a through e of this  
1139 subdivision 6 and to establish the number and positioning of monitoring wells or  
1140 devices that will detect releases from any portion of the tank that routinely contains  
1141 product; and
- 1142 h. Monitoring wells are clearly marked and secured to avoid unauthorized access and  
1143 tampering.
- 1144 7. Interstitial monitoring. Interstitial monitoring between the UST system and a secondary  
1145 barrier immediately around or beneath it may be used, but only if the system is designed,  
1146 constructed and installed to detect a leak from any portion of the tank that routinely  
1147 contains product and also meets one of the following requirements:
- 1148 a. For double-walled UST systems, the sampling or testing method can detect a leak  
1149 through the inner wall in any portion of the tank that routinely contains product;
- 1150 b. For UST systems with a secondary barrier within the excavation zone, the sampling  
1151 or testing method used can detect a leak between the UST system and the secondary  
1152 barrier:
- 1153 (1) The secondary barrier around or beneath the UST system consists of artificially  
1154 constructed material that is sufficiently thick and impermeable (at least  $10^{-6}$  cm/sec for  
1155 the regulated substance stored) to direct a leak to the monitoring point and permit its  
1156 detection;
- 1157 (2) The barrier is compatible with the regulated substance stored so that a leak from  
1158 the UST system will not cause a deterioration of the barrier allowing a release to pass  
1159 through undetected;
- 1160 (3) For cathodically protected tanks, the secondary barrier must be installed so that it  
1161 does not interfere with the proper operation of the cathodic protection system;
- 1162 (4) The groundwater, soil moisture, or rainfall will not render the testing or sampling  
1163 method used inoperative so that a release could go undetected for more than 30 days;
- 1164 (5) The site is assessed to ensure that the secondary barrier is always above the  
1165 groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs  
1166 are for use under such conditions; and
- 1167 (6) Monitoring wells are clearly marked and secured to avoid unauthorized access and  
1168 tampering.
- 1169 c. For tanks with an internally fitted liner, an automated device can detect a leak  
1170 between the inner wall of the tank and the liner, and the liner is compatible with the  
1171 substance stored.
- 1172 8. Statistical inventory reconciliation. Release detection methods based on the application  
1173 of statistical principles to inventory data similar to those described in subdivision 1 of this  
1174 section must meet the following requirements:
- 1175 a. Report a quantitative result with a calculated leak rate;
- 1176 b. Be capable of detecting a leak rate of 0.2 gallon per hour or a release of 150 gallons  
1177 within 30 days; and
- 1178 c. Use a threshold that does not exceed one-half the minimum detectible leak rate.

1179 9. Other methods. Any other type of release detection method, or combination of methods,  
1180 can be used if:

- 1181 a. It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a  
1182 month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or  
1183 b. The ~~board~~ department may approve another method if the owner and operator can  
1184 demonstrate that the method can detect a release as effectively as any of the methods  
1185 allowed in subdivisions 3 through 8 of this section. In comparing methods, the ~~board~~  
1186 department shall consider the size of release that the method can detect and the  
1187 frequency and reliability with which it can be detected. If the method is approved, the  
1188 owner and operator must comply with any conditions imposed by the ~~board~~  
1189 department on its use to ensure the protection of human health and the environment.

1190 **9VAC25-580-180. Release detection recordkeeping.**

1191 All UST system owners and operators must maintain records in accordance with 9VAC25-  
1192 580-120 demonstrating compliance with all applicable requirements of this part. These records  
1193 must include the following:

1194 1. All written performance claims pertaining to any release detection system used, and the  
1195 manner in which these claims have been justified or tested by the equipment manufacturer  
1196 or installer, must be maintained for five years from the date of installation or as long as  
1197 the method of release detection is used, whichever is greater. Not later than January 1,  
1198 2021, records of site assessments required under subdivisions 5 f and 6 g of 9VAC25-  
1199 580-160 must be maintained for as long as the methods are used. Records of site  
1200 assessments developed after January 1, 2018, must be signed by a professional engineer  
1201 or professional geologist, or equivalent licensed professional with experience in  
1202 environmental engineering, hydrogeology, or other relevant technical discipline  
1203 acceptable to the ~~board~~ department;

1204 2. The results of any sampling, testing, or monitoring must be maintained for at least one  
1205 year, or for another reasonable period of time determined by the ~~board~~ department, except  
1206 as follows:

1207 a. The results of annual operation tests conducted in accordance with subdivision A 3  
1208 of 9VAC25-580-130 must be maintained for three years. At a minimum, the results  
1209 must list each component tested, indicate whether each component tested meets  
1210 criteria in subdivision A 3 of 9VAC25-580-130 or needs to have action taken, and  
1211 describe any action taken to correct an issue;

1212 b. The results of tank tightness testing conducted in accordance with subdivision 3 of  
1213 9VAC25-580-160 must be retained until the next test is conducted; and

1214 c. The results of tank tightness testing, line tightness testing, and vapor monitoring  
1215 using a tracer compound placed in the tank system conducted in accordance with  
1216 9VAC25-580-390 D must be retained until the next test is conducted; and

1217 3. Written documentation of all calibration, maintenance, and repair of release detection  
1218 equipment permanently located on-site must be maintained for at least one year after the  
1219 servicing work is completed or for such longer period as may be required by the ~~board~~  
1220 department. Any schedules of required calibration and maintenance provided by the  
1221 release detection equipment manufacturer must be retained for five years from the date  
1222 of installation.

1223 **9VAC25-580-190. Reporting of suspected releases.**

1224 Owners and operators of UST systems must report to the ~~board~~ department within 24 hours  
1225 and follow the procedures in 9VAC25-580-210 for any of the following conditions:

- 1226 1. The discovery by owners and operators or others of released regulated substances at  
 1227 the UST site or in the surrounding area (such as the presence of free product or vapors in  
 1228 soils, basements, sewer and utility lines, and nearby surface water).
- 1229 2. Unusual operating conditions observed by owners and operators (such as the erratic  
 1230 behavior of product dispensing equipment, the sudden loss of product from the UST  
 1231 system, an unexplained presence of water in the tank, or liquid in the interstitial space of  
 1232 secondarily contained systems), unless:
- 1233 a. The system equipment or component is found not to be releasing regulated  
 1234 substances to the environment;
- 1235 b. Any defective system equipment or component is immediately repaired or replaced;  
 1236 and
- 1237 c. For secondarily contained systems, except as provided for in subdivision 7 b (4) of  
 1238 9VAC25-580-160, any liquid in the interstitial space not used as part of the interstitial  
 1239 monitoring method (for example, brine filled) is immediately removed.
- 1240 3. Monitoring results, including investigation of an alarm, from a release detection method  
 1241 required under 9VAC25-580-140 and 9VAC25-580-150 that indicate a release may have  
 1242 occurred unless:
- 1243 a. The monitoring device is found to be defective, and is immediately repaired,  
 1244 recalibrated or replaced, and additional monitoring does not confirm the initial result;
- 1245 b. The leak is contained in the secondary containment and:
- 1246 (1) Except as provided for in subdivision 7 b (4) of 9VAC25-580-160, any liquid in the  
 1247 interstitial space not used as part of the interstitial monitoring method (for example,  
 1248 brine filled) is immediately removed; and
- 1249 (2) Any defective system equipment or component is immediately repaired or  
 1250 replaced;
- 1251 c. In the case of inventory control, described in subdivision 1 of 9VAC25-580-160, a  
 1252 second month of data or in the case of manual tank gauging, a second week or month  
 1253 as prescribed in the chart under subdivision 2 d of 9VAC25-580-160 does not confirm  
 1254 the initial result or the investigation determines no release has occurred; or
- 1255 d. The alarm was investigated and determined to be a nonrelease event (for example,  
 1256 from a power surge or caused by filling the tank during release detection testing).

1257 **9VAC25-580-200. Investigation due to off-site impacts.**

1258 When required by the ~~board~~ department, owners and operators of UST systems must follow  
 1259 the procedures in 9VAC25-580-210 to determine if the UST system is the source of off-site  
 1260 impacts. These impacts include the discovery of regulated substances (such as the presence of  
 1261 free product or vapors in soils, basements, sewer and utility lines, and state waters) that has been  
 1262 observed by the ~~board~~ department or brought to its attention by another party.

1263 **9VAC25-580-210. Release investigation and confirmation steps.**

1264 Unless corrective action is initiated in accordance with Part VI (9VAC25-580-230 et seq.) of  
 1265 this chapter, owners and operators must immediately investigate and confirm all suspected  
 1266 releases of regulated substances requiring reporting under 9VAC25-580-190 within seven days,  
 1267 or another reasonable time period specified by the ~~board~~ department upon written request made  
 1268 and approved within seven days after reporting of the suspected release.

1269 The following steps are required for release investigation and confirmation:

- 1270 1. System test. Owners and operators must conduct tests (according to the requirements  
 1271 for tightness testing in subdivision 3 of 9VAC25-580-160 and subdivision 2 of 9VAC25-

1272 580-170) or, as appropriate, secondary containment testing described in subdivision 4 of  
1273 9VAC25-580-110.

1274 a. The test must determine whether:

1275 (1) A leak exists in that portion of the tank that routinely contains product or in the  
1276 attached delivery piping; or

1277 (2) A breach of either wall of the secondary containment has occurred.

1278 b. If the system test confirms a leak into the interstice or a release, owners and  
1279 operators must repair, replace, upgrade, or close the UST system. In addition, owners  
1280 and operators must begin corrective action in accordance with Part VI of this chapter  
1281 if the test results for the system, tank, or delivery piping indicate that a release exists.

1282 c. Further investigation is not required if the test results for the system, tank, and  
1283 delivery piping do not indicate that a release exists and if environmental contamination  
1284 is not the basis for suspecting a release.

1285 d. Owners and operators must conduct a site check as described in subdivision 2 of  
1286 this section if the test results for the system, tank, and delivery piping do not indicate  
1287 that a release exists but environmental contamination is the basis for suspecting a  
1288 release.

1289 2. Site check. Owners and operators must measure for the presence of a release where  
1290 contamination is most likely to be present at the UST site. In selecting sample types,  
1291 sample locations, and measurement methods, owners and operators must consider the  
1292 nature of the stored substance, the type of initial alarm or cause for suspicion, the type of  
1293 backfill, the depth of groundwater, and other factors appropriate for identifying the  
1294 presence and source of the release. Samples shall be tested according to established  
1295 EPA analytical methods or methods approved by the ~~board~~ department.

1296 a. If the test results for the excavation zone or the UST site indicate that a release has  
1297 occurred, owners and operators must begin corrective action in accordance with Part  
1298 VI of this chapter.

1299 b. If the test results for the excavation zone or the UST site do not indicate that a  
1300 release has occurred, further investigation is not required.

1301 **9VAC25-580-220. Reporting and cleanup of spills and overfills.**

1302 A. Owners and operators of UST systems must contain and immediately clean up a spill or  
1303 overflow and report to the ~~board~~ department within 24 hours and begin corrective action in  
1304 accordance with Part VI of this chapter in the following cases:

1305 1. Spill or overflow of petroleum that results in a release to the environment that exceeds 25  
1306 gallons or that causes a sheen on nearby surface water; and

1307 2. Spill or overflow of a hazardous substance that results in a release to the environment  
1308 that equals or exceeds its reportable quantity under CERCLA (40 CFR Part 302).

1309 B. Owners and operators of UST systems must contain and immediately clean up a spill or  
1310 overflow of petroleum that is less than 25 gallons and a spill or overflow of a hazardous substance  
1311 that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours  
1312 owners and operators must immediately notify the ~~board~~ department.

1313 NOTE: Pursuant to 40 CFR §§ 302.6 and 355.40, a release of a hazardous substance equal  
1314 to or in excess of its reportable quantity must also be reported immediately (rather than within 24  
1315 hours) to the National Response Center under §§ 102 and 103 of the Comprehensive  
1316 Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 USC §§ 9602  
1317 and 9603) and to appropriate state and local authorities under Title III of the Superfund  
1318 Amendments and Reauthorization Act (SARA) of 1986.

**1319 9VAC25-580-240. Initial response.**

**1320** Upon confirmation of a release in accordance with 9VAC25-580-210 or after a release from  
**1321** the UST system is identified in any other manner, owners and operators must perform the  
**1322** following initial response actions within 24 hours of a release:

- 1323** 1. Report the release to the ~~board~~ department (e.g., by telephone or electronic mail);
- 1324** 2. Take immediate action to prevent any further release of the regulated substance into  
**1325** the environment; and
- 1326** 3. Identify and mitigate fire, explosion, and vapor hazards.

**1327 9VAC25-580-250. Initial abatement measures and site check.**

**1328** A. Unless directed to do otherwise by the ~~board~~ department, owners and operators must  
**1329** perform the following abatement measures:

- 1330** 1. Remove as much of the regulated substance from the UST system as is necessary to  
**1331** prevent further release to the environment;
- 1332** 2. Visually inspect any aboveground releases or exposed belowground releases and  
**1333** prevent further migration of the released substance into surrounding soils and  
**1334** groundwater;
- 1335** 3. Continue to monitor and mitigate any additional fire and safety hazards posed by vapors  
**1336** or free product that have migrated from the UST excavation zone and entered into  
**1337** subsurface structures (such as sewers or basements);
- 1338** 4. Remedy hazards posed by contaminated soils that are excavated or exposed as a result  
**1339** of release confirmation, site investigation, abatement, or corrective action activities. If  
**1340** these remedies include treatment or disposal of soils, the owner and operator must comply  
**1341** with applicable state and local requirements;
- 1342** 5. Measure for the presence of a release where contamination is most likely to be present  
**1343** at the UST site, unless the presence and source of the release have been confirmed in  
**1344** accordance with the site check required by subdivision 2 of 9VAC25-580-210 or the  
**1345** closure site assessment of subsection A of 9VAC25-580-330. In selecting sample types,  
**1346** sample locations, and measurement methods, the owner and operator must consider the  
**1347** nature of the stored substance, the type of backfill, depth to groundwater and other factors  
**1348** as appropriate for identifying the presence and source of the release. Samples shall be  
**1349** tested according to established EPA analytical methods or methods approved the ~~board~~  
**1350** department; and
- 1351** 6. Investigate to determine the possible presence of free product, and begin free product  
**1352** removal as soon as practicable and in accordance with 9VAC25-580-270.

**1353** B. Within 20 days after release confirmation, or within another reasonable period of time  
**1354** determined by the ~~board~~ department upon written request made and approved within 20 days  
**1355** after release confirmation, owners and operators must submit a report to the ~~board~~ department  
**1356** summarizing the initial abatement steps taken under subsection A of this section and any resulting  
**1357** information or data.

**1358 9VAC25-580-260. Site characterization.**

**1359** A. Owners and operators must assemble information about the site and the nature of the  
**1360** release, including information gained while confirming the release or completing the initial  
**1361** abatement measures in 9VAC25-580-230 and 9VAC25-580-240. This information must include,  
**1362** but is not necessarily limited to, the following:

- 1363** 1. Data on the material released and the estimated quantity of release;
- 1364** 2. Data from available sources or site investigations concerning the following:

- 1365 a. Site assessment to include: data on the physical/chemical properties of the  
1366 contaminant; nature and quantity and extent of the release; evidence that free product  
1367 is found to need recovery; geologic/hydrologic site characterization; current and  
1368 projected land/water uses; water quality; subsurface soil conditions; evidence that  
1369 contaminated soils are in contact with the groundwater; locations of subsurface  
1370 conduits (e.g., sewers, utility lines, etc.); and climatological conditions. Samples  
1371 collected for this site characterization shall be tested according to established EPA  
1372 analytical methods or methods approved by the ~~board~~ department;
- 1373 b. Risk (exposure) assessment to include: evidence that wells of the area have been  
1374 affected; use and approximate locations of wells potentially affected by the release;  
1375 identification of potential and impacted receptors; migration routes; surrounding  
1376 populations; potential for additional environmental damage;
- 1377 c. Remediation assessment to include: potential for remediation and applicability of  
1378 different remediation technologies to the site.
- 1379 3. Results of the site check required under subdivision A 5 of 9VAC25-580-250; and
- 1380 4. Results of the free product investigations required under subdivision A 6 of 9VAC25-  
1381 580-250, to be used by owners and operators to determine whether free product must be  
1382 recovered under 9VAC25-580-270.
- 1383 B. Within 45 days of release confirmation or another reasonable period of time determined by  
1384 the ~~board~~ department upon written request made and approved within 45 days after release  
1385 confirmation, owners and operators must submit the information collected in compliance with  
1386 subsection A of this section to the ~~board~~ department in a manner that demonstrates its  
1387 applicability and technical adequacy, or in a format and according to the schedule required by the  
1388 ~~board~~ department.
- 1389 **9VAC25-580-270. Free product removal.**
- 1390 At sites where investigations under subdivision A 6 of 9VAC25-580-250 indicate the presence  
1391 of free product, owners and operators must remove free product to the maximum extent  
1392 practicable as determined by the ~~board~~ department while continuing, as necessary, any actions  
1393 initiated under 9VAC25-580-240 through 9VAC25-580-260, or preparing for actions required  
1394 under 9VAC25-580-280. In meeting the requirements of this section, owners and operators must:
- 1395 1. Conduct free product removal in a manner that minimizes the spread of contamination  
1396 into previously uncontaminated zones by using recovery and disposal techniques  
1397 appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges  
1398 or disposes of recovery by-products in compliance with applicable local, state and federal  
1399 regulations;
- 1400 2. Use abatement of free product migration as a minimum objective for the design of the  
1401 free product removal system;
- 1402 3. Handle any flammable products in a safe and competent manner to prevent fires or  
1403 explosions; and
- 1404 4. Unless directed to do otherwise by the ~~board~~ department, prepare and submit to the  
1405 ~~board~~ department, within 45 days after confirming a release, a free product removal report  
1406 that provides at least the following information:
- 1407 a. The name of the persons responsible for implementing the free product removal  
1408 measures;
- 1409 b. The estimated quantity, type, and thickness of free product observed or measured  
1410 in wells, bore holes, and excavations;
- 1411 c. The type of free product recovery system used;



- 1412 d. Whether any discharge will take place on-site or off-site during the recovery
- 1413 operation and where this discharge will be located;
- 1414 e. The type of treatment applied to, and the effluent quality expected from, any
- 1415 discharge;
- 1416 f. The steps that have been or are being taken to obtain necessary permits for any
- 1417 discharge; and
- 1418 g. The disposition of the recovered free product.

1419 **9VAC25-580-280. Corrective action plan.**

1420 A. At any point after reviewing the information submitted in compliance with 9VAC25-580-240,  
1421 9VAC25-580-250, and 9VAC25-580-260, the ~~board~~ department may require owners and  
1422 operators to submit additional information or to develop and submit a corrective action plan for  
1423 responding to contaminated soils and groundwater. If a plan is required, owners and operators  
1424 must submit the plan according to a schedule and format established by the ~~board~~ department.  
1425 Alternatively, owners and operators may, after fulfilling the requirements of 9VAC25-580-240,  
1426 9VAC25-580-250, and 9VAC25-580-260, choose to submit a corrective action plan for responding  
1427 to contaminated soil and groundwater. In either case, owners and operators are responsible for  
1428 submitting a plan that provides for adequate protection of human health and the environment as  
1429 determined by the ~~board~~ department, and must modify their plan as necessary to meet this  
1430 standard.

1431 B. In conjunction with the information provided under subdivision A 2 of 9VAC25-580-260 (site  
1432 assessment, risk (exposure) assessment, and remediation assessment), the corrective action  
1433 plan must include the following information:

- 1434 1. Detailed conceptual design including narrative description of technologies and how they
- 1435 will be applied at the site;
- 1436 2. Projected remediation end points/degree of remediation;
- 1437 3. Schedule of project implementation;
- 1438 4. Schedule to achieve projected end points;
- 1439 5. Operational and post-operational monitoring schedules (to include data submittals);
- 1440 6. Proposed disposition of any wastes and discharges (if applicable);
- 1441 7. Actions taken to obtain any necessary federal, state and local permits to implement the
- 1442 plan; and
- 1443 8. Proposed actions to notify persons directly affected by the release or the planned
- 1444 corrective action.

1445 C. The ~~board~~ department will approve the corrective action plan only after ensuring that  
1446 implementation of the plan will adequately protect human health, safety, and the environment. In  
1447 making this determination, the ~~board~~ department will consider the following factors as appropriate:

- 1448 1. The physical and chemical characteristics of the regulated substance, including its
- 1449 toxicity, persistence, and potential for migration;
- 1450 2. The hydrogeologic characteristics of the facility and the surrounding area;
- 1451 3. The proximity, quality, and current and future uses of nearby surface water and
- 1452 groundwater;
- 1453 4. The potential effects of residual contamination on nearby surface water and
- 1454 groundwater;
- 1455 5. The site, risk (exposure), and remediation assessments as required by subdivision A 2
- 1456 of 9VAC25-580-260; and
- 1457 6. Any information assembled in compliance with this part.

1458 D. Upon approval of the corrective action plan or as directed by the ~~board~~ department, owners  
1459 and operators must implement the plan, including modifications to the plan made by the ~~board~~  
1460 department. They must monitor, evaluate, and report the results of implementing the plan in  
1461 accordance with a schedule and in a format established by the ~~board~~ department.

1462 E. Owners and operators may, in the interest of minimizing environmental contamination and  
1463 promoting more effective cleanup, begin cleanup of soil and groundwater before the corrective  
1464 action plan is approved provided that they:

1465 1. Notify the ~~board~~ department of their intention to begin cleanup and obtain written  
1466 approval to proceed with an agreed upon activity;

1467 2. Comply with any conditions imposed by the ~~board~~ department, including halting cleanup  
1468 or mitigating adverse consequences from cleanup activities; and

1469 3. Incorporate these self-initiated cleanup measures in the corrective action plan that is  
1470 submitted to the ~~board~~ department for approval.

1471 **9VAC25-580-300. Public participation.**

1472 A. For each confirmed release that requires a corrective action plan, the ~~board~~ department  
1473 will require the owner and operator to provide notice to the public by means designed to reach  
1474 those members of the public directly affected by the release or the planned corrective action. This  
1475 notice may include, but is not limited to, public notice in local newspapers, block advertisements,  
1476 public service announcements, publication in a state register, letters to individual households, or  
1477 personal contacts by field staff.

1478 B. The ~~board~~ department must ensure that site release information and decisions concerning  
1479 the corrective action plan are made available to the public for inspection upon request.

1480 C. Before approving a corrective action plan, the ~~board~~ department may hold a public meeting  
1481 to consider comments on the proposed corrective action plan if there is sufficient public interest,  
1482 or for any other reason.

1483 D. The ~~board~~ department will require the owner and operator to give public notice that  
1484 complies with subsection A of this section if implementation of an approved corrective action plan  
1485 does not achieve the established cleanup levels in the plan and termination of that plan is under  
1486 consideration by the ~~board~~ department.

1487 E. These public participation requirements do not supersede any public participation  
1488 requirements of other regulations.

1489 F. In the event the owner and operator have failed to give the required notice to the public,  
1490 the ~~board~~ department will provide such notice to the extent required by applicable federal law.

1491 G. In those cases where the ~~board~~ department implements the corrective plan, the ~~board~~  
1492 department will provide such notice to the extent required by applicable federal law.

1493 **9VAC25-580-320. Permanent closure and changes-in-service.**

1494 Owners and operators must obtain a permit and the required inspections in accordance with  
1495 the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia).

1496 A permit from the building official must be obtained prior to permanent tank closure or a  
1497 change-in-service. No UST system shall be permanently closed or changed-in-service unless and  
1498 until the system is inspected in accordance with the provisions of the Virginia Uniform Statewide  
1499 Building Code (§ 36-97 et seq. of the Code of Virginia).

1500 If such closure is in response to immediate corrective actions that necessitate timely tank  
1501 removal, then the building official must be notified and the official's directions followed until a  
1502 permit is issued.

1503 In the case of state-owned facilities the Department of General Services shall function as the  
1504 building official in accordance with § 36-98.1 of the Code of Virginia.

1505 In the case of federal facilities the building official must be contacted. Owners and operators  
1506 must obtain a permit and the required inspections in accordance with the provisions of the Virginia  
1507 Uniform Statewide Building Code.

1508 1. Owners and operators must within 30 days after either permanent closure or a change-  
1509 in-service submit an amended UST notification form to the ~~board~~ department.

1510 2. The required assessment of the excavation zone under 9VAC25-580-330 must be  
1511 performed after notifying the building official but before completion of the permanent  
1512 closure or a change-in-service.

1513 3. To permanently close a tank, owners and operators must empty and clean it by  
1514 removing all liquids and accumulated sludges. When the owner or operator suspects that  
1515 the residual sludges are hazardous in nature the Department of Environmental Quality  
1516 regulations shall be followed to facilitate the proper treatment, storage, manifesting,  
1517 transport, and disposal. All tanks taken out of service permanently must be removed from  
1518 the ground, filled with an inert solid material, or closed in place in a manner approved by  
1519 the ~~board~~ department.

1520 4. Continued use of an UST system to store a nonregulated substance is considered a  
1521 change-in-service. Before a change-in-service, owners and operators must empty and  
1522 clean the tank by removing all liquid and accumulated sludge and conduct a site  
1523 assessment in accordance with 9VAC25-580-330.

1524 NOTE: The following cleaning and closure procedures may be used to comply with this  
1525 section:

1526 a. American Petroleum Institute Recommended Practice RP 1604, Closure of  
1527 Underground Petroleum Storage Tanks;

1528 b. American Petroleum Institute Standard 2015, Safe Entry and Cleaning of Petroleum  
1529 Storage Tanks, Planning and Managing Tank Entry from Decommissioning through  
1530 Recommissioning;

1531 c. American Petroleum Institute Recommended Practice 2016, Guidelines and  
1532 Procedures for Entering and Cleaning Petroleum Storage Tanks;

1533 d. American Petroleum Institute Recommended Practice RP 1631, Interior Lining and  
1534 Periodic Inspection of Underground Storage Tanks, may be used as guidance for  
1535 compliance with this section;

1536 e. National Fire Protection Association Standard 326, Standard for the Safeguarding  
1537 of Tanks and Containers for Entry, Cleaning, or Repair; and

1538 f. The National Institute for Occupational Safety and Health Publication 80-106,  
1539 Criteria for a Recommended Standard \*\*\* Working in Confined Space may be used as  
1540 guidance for conducting safe closure procedures at some hazardous substance tanks.

1541 **9VAC25-580-330. Assessing the site at closure or change-in-service.**

1542 A. Before permanent closure or a change-in-service is completed, owners and operators must  
1543 measure for the presence of a release where contamination is most likely to be present at the  
1544 UST site. In selecting sample type or types (soil or water) and sample location or locations, and  
1545 measurement methods, owners and operators must consider the method of closure, the nature  
1546 of the stored substance, the type of backfill, the depth to groundwater and other factors  
1547 appropriate for identifying the presence of a release. Samples shall be tested according to  
1548 established EPA analytical methods or methods approved by the ~~board~~ department. Where the  
1549 suspected release is a petroleum product, the samples shall be analyzed for total petroleum  
1550 hydrocarbons (TPH). The requirements of this section are satisfied if one of the external release  
1551 detection methods allowed in subdivisions 5 and 6 of 9VAC25-580-160 is operating in accordance

1552 with the requirements in 9VAC25-580-160 at the time of closure, and indicates no release has  
1553 occurred.

1554 B. In all cases where a sample or samples are analyzed, the owner and operator shall submit,  
1555 along with the amended UST notification form as required in subdivision 1 of 9VAC25-580-320,  
1556 a copy of the laboratory results (including a statement as to the test method used), a description  
1557 of the area sampled, and a site map depicting tanks, piping, and sample location or locations.

1558 C. If contaminated soils, contaminated groundwater or free product as a liquid or vapor is  
1559 discovered under subsection A of this section, or by any other manner, owners and operators  
1560 must begin corrective action in accordance with Part VI (9VAC25-580-230 et seq.) of this chapter.

1561 **9VAC25-580-340. Applicability to previously closed UST systems.**

1562 When directed by the ~~board~~ department, the owner and operator of an UST system  
1563 permanently closed before December 22, 1988, must assess the excavation zone and close the  
1564 UST system in accordance with this part if releases from the UST may, in the judgment of the  
1565 ~~board~~ department, pose a current or potential threat to human health and the environment.

1566 **9VAC25-580-350. Closure records.**

1567 Owners and operators must maintain records in accordance with 9VAC25-580-120 that are  
1568 capable of demonstrating compliance with closure requirements under this part. The results of  
1569 the excavation zone assessment required in 9VAC25-580-330 must be maintained for at least  
1570 three years after completion of permanent closure or change-in-service in one of the following  
1571 ways:

- 1572 1. By the owners and operators who took the UST system out of service;
- 1573 2. By the current owners and operators of the UST system site; or
- 1574 3. By mailing these records to the ~~board~~ department if they cannot be maintained at the  
1575 closed facility.

1576 **Part VIII**

1577 **Delegation**

1578 **~~9VAC25-580-360. Delegation of authority. (Repealed.)~~**

1579 ~~The Director of the Department of Environmental Quality, or in his absence a designee acting~~  
1580 ~~for him, may perform any act of the board provided under this chapter, except as limited by §~~  
1581 ~~62.1-44.14 of the Code of Virginia.~~

1582 **9VAC25-580-370. Requirements for delivery prohibition.**

1583 A. No person shall deliver to, deposit into, or accept a petroleum product or other regulated  
1584 substance into an underground storage tank that has been identified under subdivision G 2 of this  
1585 section by the ~~board~~ department to be ineligible for such delivery, deposit, or acceptance. Unless  
1586 authorized in writing by the ~~board~~ department, no person shall alter, deface, remove, or attempt  
1587 to remove a tag that prohibits delivery, deposit, or acceptance of a petroleum product or other  
1588 regulated substance to an underground storage tank.

1589 B. When an inspection or other information provides reason to believe one or more of the  
1590 following violations exists, the ~~board~~ department shall initiate a proceeding in accordance with  
1591 subsection D of this section:

- 1592 1. Spill prevention equipment is not installed on the UST system properly as required by  
1593 9VAC25-580-50 or 9VAC25-580-60 or is disabled;
- 1594 2. Overfill protection equipment is not installed on the UST system properly as required  
1595 by 9VAC25-580-50 or 9VAC25-580-60 or is disabled;

1596 3. Release detection equipment is not installed on the UST system properly or is disabled  
1597 or a release detection method is not being performed as required by 9VAC25-580-50 or  
1598 9VAC25-580-60;

1599 4. Corrosion protection equipment is not installed on the UST system properly as required  
1600 by 9VAC25-580-50 or 9VAC25-580-60 or is disabled;

1601 5. Secondary containment is not installed on the UST system properly as required by  
1602 9VAC25-580-50, 9VAC25-580-60, or 9VAC25-580-150 or is disabled; or

1603 6. The ~~board~~ department has reason to believe that an UST system is leaking and the  
1604 owner or operator has failed to initiate and complete the investigation and confirmation  
1605 requirements of 9VAC25-580-190, 9VAC25-580-200, and 9VAC25-580-210.

1606 C. For purposes of subsection B of this section, spill prevention, overfill prevention, corrosion  
1607 protection, release detection, or secondary containment equipment that is not verifiable as  
1608 installed is not installed.

1609 D. The ~~board~~ department shall provide written notice to the owner and operator pursuant to  
1610 subdivision G 1 of this section that it will conduct an informal fact finding pursuant to § 2.2-4019  
1611 of the Code of Virginia to determine whether the underground storage tank shall be ineligible for  
1612 delivery, deposit, or acceptance of a petroleum product or other regulated substance. The fact  
1613 finding shall be scheduled as soon as practicable after the notice, and within 10 business days in  
1614 any event. Upon a finding to impose delivery prohibition, the ~~board~~ department shall affix a tag to  
1615 the fill pipe of the underground storage tank prohibiting delivery, deposit, or acceptance of a  
1616 petroleum product or other regulated substance.

1617 E. When the ~~board~~ department issues a notice of alleged violation based on an inspection or  
1618 other information that provides reason to believe a UST system is not in compliance with the  
1619 requirements of Part II (9VAC25-580-50 et seq.), III (9VAC25-580-80 et seq.), IV (9VAC25-580-  
1620 130 et seq.), or X (9VAC25-580-380 et seq.) of this chapter not listed in subsection B of this  
1621 section, the requirements of 9VAC25-580-240 through 9VAC25-580-280, or the requirements of  
1622 9VAC25-590 (Petroleum Underground Storage Tank Financial Responsibility Requirements), and  
1623 the owner or operator fails to comply with the notice of alleged violation within the time prescribed  
1624 by the ~~board~~ department, the ~~board~~ department may proceed in accordance with subsection D of  
1625 this section.

1626 F. The ~~board~~ department may classify all underground storage tanks containing petroleum or  
1627 any other regulated substance at a facility as ineligible for delivery, deposit, or acceptance of a  
1628 petroleum product or other regulated substance if one or more underground storage tanks at the  
1629 facility has been classified as ineligible for more than 90 days and the ineligible underground  
1630 storage tank has neither been closed in accordance with 9VAC25-580-310 or 9VAC25-580-320  
1631 nor returned to compliance. The ~~board~~ department shall provide written notice to the owner and  
1632 operator pursuant to subdivision G 1 of this section that it will conduct an informal fact finding  
1633 pursuant to § 2.2-4019 of the Code of Virginia to determine whether all the underground storage  
1634 tanks shall be ineligible for delivery, deposit, or acceptance of a petroleum product or other  
1635 regulated substance. The fact finding shall be scheduled as soon as practicable after the notice,  
1636 and within 10 business days in any event.

1637 G. Notice.

1638 1. The ~~board~~ department shall provide written notice of an informal fact finding to consider  
1639 delivery prohibition to the owner and operator. The notice shall meet the requirements of  
1640 § 2.2-4019 of the Code of Virginia. The notice shall further advise the owner and operator  
1641 of the possibility of a special order pursuant to subsection I of this section.

1642 2. The presence of the delivery prohibition tag on the fill pipe of an ineligible underground  
1643 storage tank shall be sufficient notice to any person, including the owner, the operator,

1644 and product deliverers, that the underground storage tank is ineligible for delivery or  
1645 deposit. The ~~board~~ department may use other methods in addition to the delivery  
1646 prohibition tag to provide notice to product deliverers.

1647 H. An owner or operator shall notify the ~~board~~ department in writing once an ineligible  
1648 underground storage tank has been returned to compliance and provide a written report detailing  
1649 all actions that have been taken to return the UST system to compliance, as well as supporting  
1650 evidence such as test reports, invoices, receipts, inventory records, etc. As soon as practicable  
1651 after confirming that the underground storage tank is in compliance with the requirements of this  
1652 chapter or 9VAC25-590, or both, but in no event later than two business days, the ~~board~~  
1653 department shall remove or authorize the owner or operator, in writing, to remove the delivery  
1654 prohibition tag.

1655 I. If the ~~board~~ department determines that a violation exists that warrants the imposition of  
1656 delivery prohibition, the ~~board~~ department may further consider whether the threat posed by the  
1657 violation is outweighed by the need for fuel from the underground storage tank in question to meet  
1658 an emergency situation or the need for availability of or access to motor fuel in any rural and  
1659 remote area. If the ~~board~~ department finds that such a condition outweighs the immediate risk of  
1660 the violation, the ~~board~~ department may defer imposition of delivery prohibition for up to 180 days.  
1661 In every such case the director shall consider (i) issuing a special order under the authority of  
1662 subdivision 9 of § 10.1-1186 of the Code of Virginia prescribing a prompt schedule for abating the  
1663 violation and (ii) imposing a civil penalty.

1664 J. The ~~board~~ department may temporarily authorize an owner or operator to accept delivery  
1665 into an ineligible underground storage tank if such activity is necessary to test or calibrate the  
1666 underground storage tank or dispenser system.

1667 K. Nothing in this section shall prevent the ~~board~~ department or the director from exercising  
1668 any other enforcement authority including, without limitation, their authority to issue emergency  
1669 orders and their authority to seek injunctive relief.

1670 **9VAC25-580-380. General requirements.**

1671 A. Implementation of requirements. Owners and operators must comply with the requirements  
1672 of this part for UST systems with field-constructed tanks and airport hydrant systems as follows:

1673 1. For UST systems installed before January 1, 2018, the requirements are effective  
1674 according to the following schedule:

Requirement	Effective Date
Upgrading UST systems; general operating requirements; and operator training	January 1, 2021
Release detection	January 1, 2021
Release reporting, response, and investigation; closure; financial responsibility and notification (except as provided in subsection B of this section)	January 1, 2018

1675 2. For UST systems installed on or after January 1, 2018, the requirements apply at  
1676 installation.

1677 B. Not later than January 1, 2021, all owners of previously deferred UST systems must submit  
1678 a one-time notice of tank system existence to the ~~board~~ department, using the UST Notification  
1679 Form. Owners and operators of UST systems in use as of January 1, 2018, must demonstrate  
1680 financial responsibility at the time of submission of the notification form.

1681 C. Except as provided in 9VAC25-580-390, owners and operators must comply with the  
1682 requirements of Parts I (9VAC25-580-10 et seq.) through VII (9VAC25-580-310 et seq.) and IX  
1683 (9VAC25-580-370 et seq.) of this chapter and 9VAC25-590.

1684 D. In addition to the codes of practice listed in 9VAC25-580-50, owners and operators may  
1685 use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, Petroleum  
1686 Fuel Facilities, when designing, constructing, and installing airport hydrant systems and UST  
1687 systems with field-constructed tanks.

1688 **9VAC25-580-390. Additions, exceptions, and alternatives for UST systems with field-**  
1689 **constructed tanks and airport hydrant systems.**

1690 A. Exception to piping secondary containment requirements. Owners and operators may use  
1691 single walled piping when installing or replacing piping associated with UST systems with field-  
1692 constructed tanks greater than 50,000 gallons and piping associated with airport hydrant systems.  
1693 Piping associated with UST systems with field-constructed tanks less than or equal to 50,000  
1694 gallons not part of an airport hydrant system must meet the secondary containment requirement  
1695 when installed or replaced.

1696 B. Upgrade requirements. Not later than January 1, 2021, airport hydrant systems and UST  
1697 systems with field-constructed tanks where installation commenced before January 1, 2018, must  
1698 meet the following requirements or be permanently closed pursuant to Part VII (9VAC25-580-310  
1699 et seq.) of this chapter.

1700 1. Corrosion protection. UST system components in contact with the ground that routinely  
1701 contain regulated substances must meet one of the following:

1702 a. Except as provided in subsection A of this section, the new UST system  
1703 performance standards for tanks at subdivision 1 of 9VAC25-580-50 and for piping at  
1704 subdivision 2 at 9VAC25-580-50; or

1705 b. Be constructed of metal and cathodically protected according to a code of practice  
1706 developed by a nationally recognized association or independent testing laboratory  
1707 and meets the following:

1708 (1) Cathodic protection must meet the requirements of subdivisions 1 b (2), (3), and  
1709 (4) of 9VAC25-580-50 for tanks and subdivisions 2 b (2), (3), and (4) of 9VAC25-580-  
1710 50 for piping.

1711 (2) Tanks older than 10 years without cathodic protection must be assessed to ensure  
1712 the tank is structurally sound and free of corrosion holes prior to adding cathodic  
1713 protection. The assessment must be by internal inspection or another method  
1714 determined by the ~~board~~ department to adequately assess the tank for structural  
1715 soundness and corrosion holes.

1716 Note: The following codes of practice may be used to comply with subsection B of this  
1717 section:

1718 (a) NACE International Standard Practice SP0285, External Control of Underground  
1719 Storage Tank Systems by Cathodic Protection;

1720 (b) NACE International Standard Practice SP0169, Control of External Corrosion on  
1721 Underground or Submerged Metallic Piping Systems;

1722 (c) National Leak Prevention Association Standard 631, Chapter C, Internal Inspection  
1723 of Steel Tanks for Retrofit of Cathodic Protection; or

1724 (d) American Society for Testing and Materials Standard G158, Standard Guide for  
1725 Three Methods of Assessing Buried Steel Tanks.

1726 2. Spill and overflow prevention equipment. To prevent spilling and overflowing associated  
1727 with product transfer to the UST system, all UST systems with field-constructed tanks and

1728 airport hydrant systems must comply with new UST system spill and overfill prevention  
1729 equipment requirements specified in subdivision 3 of 9VAC25-580-50.

1730 C. Walkthrough inspections. In addition to the walkthrough inspection requirements in  
1731 9VCA25-580-85, owners and operators must inspect the following additional areas for airport  
1732 hydrant systems at least once every 30 days if confined space entry according to the Occupational  
1733 Safety and Health Administration (see 29 CFR Part 1910) is not required or at least annually if  
1734 confined space entry is required and keep documentation of the inspection according to 9VAC25-  
1735 580-85 B.

1736 1. Hydrant pits – visually check for any damage, remove any liquid or debris, and check  
1737 for any leaks; and

1738 2. Hydrant piping vaults – check for any hydrant piping leaks.

1739 D. Release detection. Owners and operators of UST systems with field-constructed tanks and  
1740 airport hydrant systems must begin meeting the release detection requirements described in this  
1741 part not later than January 1, 2021.

1742 1. Methods of release detection for field-constructed tanks and airport hydrant systems.  
1743 Owners and operators of shop fabricated USTs that are part of airport hydrant systems  
1744 and field-constructed tanks with a capacity less than or equal to 50,000 gallons must meet  
1745 the release detection requirements in Part IV (9VAC25-580-130 et seq.) of this chapter.  
1746 Owners and operators of field-constructed tanks with a capacity greater than 50,000  
1747 gallons must meet either the requirements in Part IV of this chapter (except subdivisions  
1748 5 and 6 of 9VAC25-580-160 must be combined with inventory control as stated in this  
1749 subdivision) or use one or a combination of the following alternative methods of release  
1750 detection:

1751 a. Conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak  
1752 rate;

1753 b. Use an automatic tank gauging system to perform release detection at least every  
1754 30 days that can detect a leak rate less than or equal to one gallon per hour. This  
1755 method must be combined with a tank tightness test that can detect a 0.2 gallon per  
1756 hour leak rate performed at least every three years;

1757 c. Use an automatic tank gauging system to perform release detection at least every  
1758 30 days that can detect a leak rate less than or equal to two gallons per hour. This  
1759 method must be combined with a tank tightness test that can detect a 0.2 gallon per  
1760 hour leak rate performed at least every two years;

1761 d. Perform vapor monitoring (conducted in accordance with subdivision 5 of 9VAC25-  
1762 580-160 for a tracer compound placed in the tank system) capable of detecting a 0.1  
1763 gallon per hour leak rate at least every two years;

1764 e. Perform inventory control (conducted in accordance with Department of Defense  
1765 Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance  
1766 Manual, or equivalent procedures) at least every 30 days that can detect a leak equal  
1767 to or less than 0.5% of flow-through; and

1768 (1) Perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least  
1769 every two years; or

1770 (2) Perform vapor monitoring or groundwater monitoring (conducted in accordance  
1771 with subdivision 5 or 6 of 9VAC25-580-160, respectively, for the stored regulated  
1772 substance) at least every 30 days; or

1773 f. Another method approved by the ~~board~~ department if the owner and operator can  
1774 demonstrate that the method can detect a release as effectively as any of the methods  
1775 allowed in subdivisions D 1 a through D 1 e of this section. In comparing methods, the



1776 ~~board~~ department shall consider the size of release that the method can detect and  
 1777 the frequency and reliability of detection.

1778 2. Methods of release detection for piping. Owners and operators of underground piping  
 1779 associated with field-constructed tanks less than or equal to 50,000 gallons must meet the  
 1780 release detection requirements in Part IV of this chapter. Owners and operators of  
 1781 underground piping associated with airport hydrant systems and field-constructed tanks  
 1782 greater than 50,000 gallons must follow either the requirements in Part IV (except  
 1783 subdivisions 5 and 6 of 9VAC25-580-160 must be combined with inventory control as  
 1784 stated in this subdivision) or use one or a combination of the following alternative methods  
 1785 of release detection:

1786 a. (1) Perform a semiannual or annual line tightness test at or above the piping  
 1787 operating pressure in accordance with the following table:

Maximum Leak Detection Rate Per Test Section Volume		
Test Section Volume (Gallons)	Semiannual Test - Leak Detection Rate Not To Exceed (Gallons Per Hour)	Annual Test - Leak Detection Rate Not To Exceed (Gallons Per Hour)
< 50,000	1.0	0.5
≥ 50,000 to < 75,000	1.5	0.75
≥ 75,000 to < 100,000	2.0	1.0
≥ 100,000	3.0	1.5

1788 (2) Piping segment volumes equal to or greater than 100,000 gallons not capable of  
 1789 meeting the maximum 3.0 gallons per hour leak rate for the semiannual test may be  
 1790 tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

Phase in for Piping Segments ≥ 100,000 Gallons in Volume	
First test	Not later than January 1, 2021, (may use up to 6.0 gph leak rate)
Second test	Between January 1, 2021, and January 1, 2024, (may use up to 6.0 gph leak rate)
Third test	Between January 1, 2024, and January 1, 2025, (must use 3.0 gph for leak rate)
Subsequent tests	After January 1, 2025, begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume table above

1791 b. Perform vapor monitoring (conducted in accordance with subdivision 5 of 9VAC25-  
 1792 580-160 for a tracer compound placed in the tank system) capable of detecting a 0.1  
 1793 gallon per hour leak rate at least every two years;

1794 c. Perform inventory control (conducted in accordance with Department of Defense  
 1795 Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance  
 1796 Manual, or equivalent procedures) at least every 30 days that can detect a leak equal  
 1797 to or less than 0.5% of flow-through; and

1798 (1) Perform a line tightness test (conducted in accordance with subdivision 2 a of this  
 1799 subsection using the leak rates for the semiannual test) at least every two years; or

1800 (2) Perform vapor monitoring or groundwater monitoring (conducted in accordance  
1801 with subdivision 5 or 6 of 9VAC25-580-160, respectively, for the stored regulated  
1802 substance) at least every 30 days; or

1803 d. Another method approved by the ~~board~~ department if the owner and operator can  
1804 demonstrate that the method can detect a release as effectively as any of the methods  
1805 allowed in subdivisions D 2 a, D 2 b, and D 2 c of this section. In comparing methods,  
1806 the ~~board~~ department shall consider the size of release that the method can detect  
1807 and the frequency and reliability of detection.

1808 3. Recordkeeping for release detection. Owners and operators must maintain release  
1809 detection records according to the recordkeeping requirements in 9VAC25-580-180.

1810 E. Applicability of closure requirements to previously closed UST systems. When directed by  
1811 the ~~board~~ department, the owner and operator of an UST system with field-constructed tanks or  
1812 airport hydrant system permanently closed before January 1, 2018, must assess the excavation  
1813 zone and close the UST system in accordance with Part VII of this chapter if releases from the  
1814 UST may, in the judgment of the ~~board~~ department, pose a current or potential threat to human  
1815 health and the environment.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-590
<b>VAC Chapter title(s)</b>	Petroleum Underground Storage Tank Financial Responsibility Requirements
<b>Action title</b>	Final Exempt CH 590 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 15, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-590) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”; and the repeal of the delegation of authority provisions.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-590 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7159 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt- CH590 Changes in response to 2022 Board bill**

4 **9VAC25-590-10. Definitions.**

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

7 "Accidental release" means any sudden or nonsudden release of petroleum arising from  
8 operating an underground storage tank that results in a need for corrective action or  
9 compensation for bodily injury or property damage, or both, neither expected nor intended by the  
10 tank owner or operator.

11 "Annual aggregate" means the maximum financial responsibility requirement that an owner or  
12 operator is required to demonstrate annually.

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

16 "Bodily injury" means the death or injury of any person incident to an accidental release from  
17 a petroleum underground storage tank; but not including any death, disablement, or injuries  
18 covered by workers' compensation, disability benefits or unemployment compensation law or  
19 other similar law. Bodily injury may include payment of medical, hospital, surgical, and funeral  
20 expenses arising out of the death or injury of any person. This term shall not include those  
21 liabilities which, consistent with standard insurance industry practices, are excluded from  
22 coverage in liability insurance policies for bodily injury.

23 "Chief financial officer" in the case of local government owners and operators, means the  
24 individual with the overall authority and responsibility for the collection, disbursement, and use of  
25 funds by the local government.

26 "Controlling interest" means direct ownership of at least 50% of the voting stock of another  
27 entity.

28 "Corrective action" means all actions necessary to abate, contain and cleanup a release from  
29 an underground storage tank to mitigate the public health or environmental threat from such  
30 releases and to rehabilitate state waters in accordance with Parts V (9VAC25-580-190 et seq.)  
31 and VI (9VAC25-580-230 et seq.) of 9VAC25 Chapter 580, Underground Storage Tanks:  
32 Technical Standards and Corrective Action Requirements. The term does not include those  
33 actions normally associated with closure or change in service as set out in Part VII (9VAC25-580-  
34 310 et seq.) of 9VAC25 Chapter 580 or the replacement of an underground storage tank.

35 "Department" means the Department of Environmental Quality.

36 "Facility" means any development or installation within the Commonwealth that deals in,  
37 stores or handles oil, and includes a pipeline.

38 "Financial reporting year" means the latest consecutive 12-month period for which any of the  
39 following reports used to support a financial test is prepared: (i) a 10 K report submitted to the  
40 U.S. Securities and Exchange Commission (SEC); (ii) an annual report of tangible net worth  
41 submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information  
42 Administration or the Rural Utilities Service; or (iv) a year-end financial statement authorized  
43 under 9VAC25-590-60 B or C of this chapter. "Financial reporting year" may thus comprise a  
44 fiscal or calendar year period.

45 "Gallons of petroleum pumped" means either the amount pumped into or the amount pumped  
46 out of a petroleum underground storage tank.

47 "Group self-insurance pool" or "pool" means a pool organized by two or more owners and/or  
48 operators of underground storage tanks for the purpose of forming a group self-insurance pool in  
49 order to demonstrate financial responsibility as required by § 62.1-44.34:12 of the Code of  
50 Virginia.

51 "Legal defense cost" means any expense that an owner or operator or provider of financial  
52 assurance incurs in defending against claims or actions brought (i) by the federal government or  
53 the ~~board~~ department to require corrective action or to recover the costs of corrective action, or  
54 to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia  
55 Petroleum Storage Tank Fund; (ii) by or on behalf of a third party for bodily injury or property  
56 damage caused by an accidental release; or (iii) by any person to enforce the terms of a financial  
57 assurance mechanism.

58 "Local government" means a municipality, county, town, commission, separately chartered  
59 and operated special district, school board, political subdivision of a state, or other special  
60 purpose government which provides essential services.

61 "Member" means an owner or operator of an underground storage tank who has entered into  
62 a member agreement and thereby becomes a member of a group self-insurance pool.

63 "Member agreement" means the written agreement executed between each member and the  
64 pool, which sets forth the conditions of membership in the pool, the obligations, if any, of each  
65 member to the other members, and the terms, coverages, limits, and deductibles of the pool plan.

66 "Occurrence" means an accident, including continuous or repeated exposure to conditions,  
67 which results in a release from an underground storage tank.

68 NOTE: This definition is intended to assist in the understanding of this chapter and is not  
69 intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance  
70 usage or to prevent the use of other standard insurance terms in place of "occurrence."

71 "Operator" means any person in control of, or having responsibility for, the daily operation of  
72 the UST system.

73 "Owner" means:

74 1. In the case of an UST system in use on November 8, 1984, or brought into use after  
75 that date, any person who owns an UST system used for storage, use, or dispensing of  
76 regulated substances; and

77 2. In the case of any UST system in use before November 8, 1984, but no longer in use  
78 on that date, any person who owned such UST immediately before the discontinuation of  
79 its use.

80 The term "owner" shall not include any person, who, without participating in the management  
81 of an underground storage tank or being otherwise engaged in petroleum production, refining,  
82 and marketing, holds indicia of ownership primarily to protect the holder's security interest in the  
83 tank.

84 "Owner" or "operator," when the owner or operator are separate parties, refers to the person  
85 that is obtaining or has obtained financial assurances.

86 "Person" means an individual, trust, firm, joint stock company, corporation, including a  
87 government corporation, partnership, association, any state or agency thereof, municipality,  
88 county, town, commission, political subdivision of a state, any interstate body, consortium, joint  
89 venture, commercial entity, the government of the United States or any unit or agency thereof.

90 "Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at  
91 standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch  
92 absolute).

93 "Petroleum marketing facilities" includes all facilities at which petroleum is produced or refined  
94 and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the  
95 public.

96 "Pool plan" means the plan of self-insurance offered by the pool to its members as specifically  
97 designated in the member agreement.

98 "Property damage" means the loss or destruction of, or damage to, the property of any third  
99 party including any loss, damage or expense incident to an accidental release from a petroleum  
100 underground storage tank. This term shall not include those liabilities which, consistent with  
101 standard insurance industry practices, are excluded from coverage in liability insurance policies  
102 for property damage. However, such exclusions for property damage shall not include corrective  
103 action associated with releases from tanks which are covered by the policy.

104 "Provider of financial assurance" means a person that provides financial assurance to an  
105 owner or operator of an underground storage tank through one of the mechanisms listed in  
106 9VAC25-590-60 through 9VAC25-590-110 and 9VAC25-590-250, including a guarantor, insurer,  
107 group self-insurance pool, surety, issuer of a letter of credit or certificate of deposit.

108 "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing  
109 from an UST into ground water, surface water, or upon lands, subsurface soils or storm drain  
110 systems.

111 "Substantial business relationship" means the extent of a business relationship necessary  
112 under Virginia law to make a guarantee contract issued incident to that relationship valid and  
113 enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and  
114 depends on existing economic transactions between the guarantor and the owner or operator.

115 "Tangible net worth" means the tangible assets that remain after deducting liabilities; such  
116 assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes  
117 of this definition, "assets" means all existing and all probable future economic benefits obtained  
118 or controlled by a particular entity as a result of past transactions.

119 "Termination" under Appendix III and Appendix IV means only those changes that could result  
120 in a gap in coverage as where the insured has not obtained substitute coverage or has obtained  
121 substitute coverage with a different retroactive date than the retroactive date of the original policy.

122 "Underground storage tank" or "UST" means any one or combination of tanks (including  
123 underground pipes connected thereto) that is used to contain an accumulation of regulated  
124 substances, and the volume of which (including the volume of underground pipes connected  
125 thereto) is 10% or more beneath the surface of the ground. This term does not include any:

- 126 1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for  
127 noncommercial purposes;
- 128 2. Tank used for storing heating oil for consumption on the premises where stored;
- 129 3. Septic tank;
- 130 4. Pipeline facility (including gathering lines) regulated under:
  - 131 a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.),
  - 132 b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.), or
  - 133 c. Which is an intrastate pipeline facility regulated under state laws comparable to the  
134 provisions of the law referred to in subdivision 4 a or 4 b of this definition;
- 135 5. Surface impoundment, pit, pond, or lagoon;

- 136 6. Stormwater or wastewater collection system;  
137 7. Flow-through process tank;  
138 8. Liquid trap or associated gathering lines directly related to oil or gas production and  
139 gathering operations; or  
140 9. Storage tank situated in an underground area (such as a basement, cellar,  
141 mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface  
142 of the floor.

143 The term "underground storage tank" or "UST" does not include any pipes connected to any  
144 tank which is described in subdivisions 1 through 9 of this definition.

145 "UST system" or "tank system" means an underground storage tank, connected underground  
146 piping, underground ancillary equipment, and containment system, if any.

147 "9VAC25-580" means the Underground Storage Tanks: Technical Standards and Corrective  
148 Action Requirements regulation promulgated by the board.

149 **9VAC25-590-40. Amount and scope of financial responsibility requirement.**

150 A. Owners or operators of petroleum underground storage tanks shall demonstrate financial  
151 responsibility for taking corrective action and for compensating third parties for bodily injury and  
152 property damage caused by accidental releases arising from the operation of petroleum  
153 underground storage tanks at least in the following per-occurrence amounts:

- 154 1. For owners or operators of petroleum underground storage tanks that are located at  
155 petroleum marketing facilities, or that handle an average of more than 10,000 gallons of  
156 petroleum per month based on annual throughput for the previous calendar year; \$1  
157 million.  
158 2. For all other owners or operators of petroleum underground storage tanks; \$500,000.

159 B. Owners and operators of petroleum underground storage tanks shall demonstrate financial  
160 responsibility for taking corrective action and for compensating third parties for bodily injury and  
161 property damage caused by accidental releases arising from the operation of petroleum  
162 underground storage tanks in at least the following annual aggregate amounts:

- 163 1. For owners and operators of 1 to 100 petroleum underground storage tanks, \$1 million;  
164 and  
165 2. For owners and operators of 101 or more petroleum underground storage tanks, \$2  
166 million.

167 C. Owners and operators of petroleum underground storage tanks may use the Virginia  
168 Petroleum Storage Tank Fund in combination with one or more of the mechanisms specified in  
169 9VAC25-590-60 through 9VAC25-590-110 and 9VAC25-590-250 to satisfy the financial  
170 responsibility as required by this section. The fund may be used to demonstrate financial  
171 responsibility for the owner or operator in excess of the amounts specified in 9VAC25-590-210 C  
172 1 up to the per occurrence and annual aggregate requirements specified in this section for both  
173 taking corrective action and compensating third parties for bodily injury and property damage  
174 caused by accidental releases from petroleum underground storage tanks.

175 D. Owners and operators who demonstrate financial responsibility shall maintain copies of  
176 those records on which the determination is based. The following documents may be used for  
177 purposes of demonstrating financial responsibility by owners or operators to support a financial  
178 responsibility requirement determination:

- 179 1. Copies of invoices from petroleum suppliers which indicate the gallons of petroleum  
180 pumped into all underground storage tanks on an annual basis.  
181 2. Copies of disposal or recycling receipts which indicate the gallons of petroleum pumped  
182 out of all underground storage tanks on an annual basis.



183 3. Letters from petroleum suppliers or disposal or recycling firms on the supplier's,  
184 disposer's or recycler's letterhead, which are signed by the appropriate financial officer  
185 and which indicate the gallons of petroleum pumped into or out of all of the owner's or  
186 operator's underground storage tanks on an annual basis.

187 4. Any other form of documentation which the ~~board~~ department may deem to be  
188 acceptable evidence to support the financial responsibility requirement determination.

189 E. For the purposes of this section, "a petroleum underground storage tank" means a single  
190 containment unit and does not mean combinations of single containment units.

191 F. If the owner or operator uses separate mechanisms or separate combinations of  
192 mechanisms to demonstrate financial responsibility for: (i) taking corrective action; (ii)  
193 compensating third parties for bodily injury and property damage caused by sudden accidental  
194 releases; or (iii) compensating third parties for bodily injury and property damage caused by  
195 nonsudden accidental releases, the amount of assurance provided by each mechanism or  
196 combination of mechanisms shall be in the full amount specified in subsections A and B of this  
197 section.

198 G. If an owner or operator uses separate mechanisms or separate combinations of  
199 mechanisms to demonstrate financial responsibility for different petroleum underground storage  
200 tanks, the annual aggregate required for each mechanism shall be the amount specified in  
201 subsection B of this section.

202 H. If assurance is being demonstrated by a combination of mechanisms, the owner or operator  
203 shall demonstrate financial responsibility in the appropriate amount of annual aggregate  
204 assurance specified in subsection B of this section, by the first-occurring effective date  
205 anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to  
206 provide assurance.

207 I. The amounts of assurance required under this section exclude legal defense costs.

208 J. The required per-occurrence and annual aggregate coverage amounts do not in any way  
209 limit the liability of the owner or operator.

210 **9VAC25-590-60. Financial test of self-insurance.**

211 A. An owner or operator and/or guarantor, may satisfy the requirements of 9VAC25-590-40  
212 by passing a financial test as specified in this section. To pass the financial test of self-insurance,  
213 the owner or operator and/or guarantor shall meet the requirements of subsection B or C and  
214 subsection D of this section based on year-end financial statements for the latest completed  
215 financial reporting year.

216 B. 1. The owner or operator and/or guarantor shall have a tangible net worth at least equal to  
217 the total of:

218 a. The applicable aggregate financial responsibility amount required by 9VAC25-590-  
219 40 B for which a financial test is used to demonstrate financial responsibility, except  
220 as provided in 9VAC25-590-210; and

221 b. The aggregate aboveground storage tank financial responsibility amount required  
222 under 9VAC25-640, for which a financial test is used to demonstrate financial  
223 responsibility.

224 2. In addition to the requirements set forth in subdivision 1 of this subsection, the owner  
225 or operator and/or guarantor shall also have a tangible net worth of at least 10 times:

226 a. The sum of the corrective action cost estimates, the current closure and postclosure  
227 care cost estimates, and amount of liability coverage for which a financial test for self-  
228 insurance is used in each state of business operations to demonstrate financial  
229 responsibility to the EPA under 40 CFR §§ 264.101(b), 264.143, 264.145, 265.143,

230 265.145, 264.147, and 265.147, to another state implementing agency under a state  
 231 program authorized by EPA under 40 CFR Part 271 or the Virginia Waste  
 232 Management Board under 40 CFR 264.143, 264.145 and 264.147 (as incorporated by  
 233 reference in 9VAC20-60-264) and 40 CFR 265.143, 265.145 and 265.147 (as  
 234 incorporated by reference in 9VAC20-60-265) of the Virginia Hazardous Waste  
 235 Management Regulations; and

236 b. The sum of current plugging and abandonment cost estimates for which a financial  
 237 test for self-insurance is used in each state of business operations to demonstrate  
 238 financial responsibility to EPA under 40 CFR 144.63 or to a state implementing agency  
 239 under a state program authorized by EPA under 40 CFR Part 145 (Underground  
 240 Injection Control Program).

241 3. The owner or operator, and/or guarantor shall comply with either subdivision a or b of  
 242 this subdivision:

243 a. (1) The financial reporting year-end financial statements of the owner or operator  
 244 and/or guarantor shall be examined by an independent certified public accountant and  
 245 be accompanied by the accountant's report of the examination; and

246 (2) The financial reporting year-end financial statements of the owner or operator  
 247 and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion,  
 248 or a "going concern" qualification.

249 b. (1) (a) File financial statements annually with the U.S. Securities and Exchange  
 250 Commission, the Energy Information Administration, or the Rural Utilities Service; or

251 (b) Report annually the tangible net worth of the owner or operator and/or guarantor  
 252 to Dun and Bradstreet, and Dun and Bradstreet shall have assigned a financial  
 253 strength rating which at least equals the amount of financial responsibility required by  
 254 the owner or operator under subdivisions 1 and 2 of this subsection. Relevant Dun and  
 255 Bradstreet ratings are as follows (current Dun and Bradstreet ratings will be used for  
 256 demonstration requirements which exceed the annual aggregate amounts listed  
 257 below):

Annual Aggregate Requirement	Dun and Bradstreet Rating
\$20,000	EE (\$20,000 to \$34,999)
\$40,000	DC (\$50,000 to \$74,999)
\$80,000	CB (\$125,000 to \$199,999)
\$150,000	BB (\$200,000 to \$299,999)
\$200,000	BB (\$200,000 to \$299,999)
\$300,000	BA (\$300,000 to \$499,999)
\$500,000	1A (\$500,000 to \$749,999)
\$750,000	2A (\$750,000 to \$999,999)
\$1,000,000	3A (\$1,000,000 to 9,999,999); and

258 (2) The financial reporting year-end financial statements of the owner or operator  
 259 and/or guarantor, if, independently audited, cannot include an adverse auditor's  
 260 opinion, a disclaimer of opinion, or a "going concern" qualification.

261 4. The owner or operator and/or guarantor shall have a letter signed by the chief financial  
 262 officer worded identically as specified in Appendix I/Alternative I or Appendix XI.

263 C. 1. The owner or operator and/or guarantor shall have a tangible net worth at least equal to  
264 the total of:

265 a. The applicable aggregate amount required by 9VAC25-590-40 B for which a  
266 financial test is used to demonstrate financial responsibility, except as provided in  
267 9VAC25-590-210; and

268 b. The aggregate aboveground storage tank financial responsibility amount required  
269 under 9VAC25-640 for which a financial test is used to demonstrate financial  
270 responsibility.

271 2. In addition to the requirements set forth in subdivision 1 of this subsection, the owner  
272 or operator and/or guarantor shall also have a tangible net worth of at least six times:

273 a. The financial test requirements for self insurance of the corrective action cost  
274 estimates, the current closure and post-closure care cost estimates, and amount of  
275 liability coverage in each state of business operations to the EPA under 40 CFR  
276 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147, to another  
277 state implementing agency under a state program authorized by EPA under 40 CFR  
278 Part 271 or the Virginia Waste Management Board under 40 CFR 264.143, 264.145  
279 and 264.147 (as incorporated by reference in 9VAC20-60-264) and 40 CFR 265.143,  
280 265.145, and 265.147 (as incorporated by reference in 9VAC20-60-265) of the Virginia  
281 Hazardous Waste Management Regulations; and

282 b. The financial test requirements for self-insurance of current plugging and  
283 abandonment cost estimates in each state of business operations to EPA under 40  
284 CFR 144.63 or to a state implementing agency under a state program authorized by  
285 EPA under 40 CFR Part 145 (Underground Injection Control Program).

286 3. The financial reporting year-end financial statements of the owner or operator and/or  
287 guarantor shall be examined by an independent certified public accountant and be  
288 accompanied by the accountant's report of the examination.

289 4. The financial reporting year-end financial statements of the owner or operator and/or  
290 guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going  
291 concern" qualification.

292 5. If the financial statements of the owner or operator and/or guarantor are not submitted  
293 annually to the U.S. Securities and Exchange Commission, the Energy Information  
294 Administration or the Rural Utilities Service, the owner or operator and/or guarantor shall  
295 obtain a special report by an independent certified public accountant stating that:

296 a. The accountant has compared the data that the letter from the chief financial officer  
297 specified as having been derived from the latest financial reporting year-end financial  
298 statements of the owner or operator and/or guarantor with the amounts in such  
299 financial statements; and

300 b. In connection with that comparison, no matters came to the accountant's attention  
301 which caused him to believe that the specified data should be adjusted.

302 6. The owner or operator and/or guarantor shall have a letter signed by the chief financial  
303 officer, worded identically as specified in Appendix I/Alternative II or Appendix XI.

304 D. To meet the financial demonstration test under subsection B or C of this section, the chief  
305 financial officer of the owner or operator and/or guarantor shall sign, within 120 days of the close  
306 of each financial reporting year, as defined by the 12-month period for which financial statements  
307 used to support the financial test are prepared, a letter worded identically as specified in Appendix  
308 I with the appropriate alternative or Appendix XI, except that the instructions in brackets are to be  
309 replaced by the relevant information and the brackets deleted.

310 E. If an owner or operator using the financial test to provide financial assurance finds that he  
311 no longer meets the requirements of the financial test based on the financial reporting year-end  
312 financial statements, the owner or operator shall obtain alternative coverage within 150 days of  
313 the end of the year for which financial statements have been prepared.

314 F. The ~~board~~ department may require reports of financial condition at any time from the owner  
315 or operator and/or guarantor. If the ~~board~~ department finds, on the basis of such reports or other  
316 information, that the owner or operator and/or guarantor no longer meets the financial test  
317 requirements of subsection B or C and subsection D of this section, the owner or operator shall  
318 obtain alternate coverage within 30 days after notification of such finding.

319 G. If the owner or operator fails to obtain alternate assurance within 150 days of finding that  
320 he no longer meets the requirements of the financial test based on the financial reporting year-  
321 end financial statements, or within 30 days of notification by the ~~board~~ department that he or she  
322 no longer meets the requirements of the financial test, the owner or operator shall notify the ~~board~~  
323 department of such failure within 10 days.

324 **9VAC25-590-70. Guarantee.**

325 A. An owner or operator may satisfy the requirements of 9VAC25-590-40 by obtaining a  
326 guarantee that conforms to the requirements of this section. The guarantor shall be:

327 1. A firm that:

328 a. Possesses a controlling interest in the owner or operator;

329 b. Possesses a controlling interest in a firm described under subdivision A 1 a of this  
330 section; or

331 c. Is controlled through stock ownership by a common parent firm that possesses a  
332 controlling interest in the owner or operator; or

333 2. A firm engaged in a substantial business relationship with the owner or operator and  
334 issuing the guarantee as an act incident to that business relationship.

335 B. Within 120 days of the close of each financial reporting year, the guarantor shall  
336 demonstrate that it meets the financial test criteria of 9VAC25-590-60 B or C and D based on  
337 year-end financial statements for the latest completed financial reporting year by completing the  
338 letter from the chief financial officer described in Appendix I or Appendix XI and shall deliver the  
339 letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test  
340 at the end of any financial reporting year, within 120 days of the end of that financial reporting  
341 year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the  
342 guarantee, notice to the owner or operator, and the ~~board~~ department. If the ~~board~~ department  
343 notifies the guarantor that he no longer meets the requirements of the financial test of 9VAC25-  
344 590-60 B or C and D, the guarantor shall notify the owner or operator within 10 days of receiving  
345 such notification from the ~~board~~ department. In both cases, the guarantee will terminate no less  
346 than 120 days after the date the owner or operator and the ~~board~~ department receive the  
347 notification, as evidenced by the return receipts. The owner or operator shall obtain alternate  
348 coverage as specified in 9VAC25-590-190.

349 C. The guarantee shall be worded identically as specified in Appendix II, except that  
350 instructions in brackets are to be replaced with the relevant information and the brackets deleted.

351 D. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee  
352 will be paid directly to the ~~board~~ department in accordance with instructions from the ~~board~~  
353 department under 9VAC25-590-170.

354 **9VAC25-590-90. Surety bond.**

355 A. An owner or operator may satisfy the requirements of 9VAC25-590-40 by obtaining a surety  
356 bond that conforms to the requirements of this section. The surety company issuing the bond shall

357 be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed  
358 as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the  
359 Treasury.

360 B. The surety bond shall be worded identically as specified in Appendix V, except that  
361 instructions in brackets shall be replaced with the relevant information and the brackets deleted.

362 C. Under the terms of the bond, the surety will become liable on the bond obligation when the  
363 owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is  
364 limited to the per-occurrence and annual aggregate penal sums.

365 Under the terms of the bond, all amounts paid by the surety under the bond will be paid directly  
366 to the ~~board~~ department in accordance with instructions from the ~~board~~ department under  
367 9VAC25-590-170.

368 **9VAC25-590-100. Letter of credit.**

369 A. An owner or operator may satisfy the requirements of 9VAC25-590-40 by obtaining an  
370 irrevocable standby letter of credit that conforms to the requirements of this section. The issuing  
371 institution shall be an entity that has the authority to issue letters of credit in the Commonwealth  
372 of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency  
373 or the State Corporation Commission.

374 B. The letter of credit shall be worded identically as specified in Appendix VI, except that  
375 instructions in brackets are to be replaced with the relevant information and the brackets deleted.

376 C. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the ~~board~~  
377 department will be paid by the issuing institution directly to the ~~board~~ department in accordance  
378 with instructions from the ~~board~~ department under 9VAC25-590-170.

379 D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The  
380 letter of credit shall provide that credit will be automatically renewed for the same term as the  
381 original term, unless, at least 120 days before the current expiration date, the issuing institution  
382 notifies the owner or operator, and the ~~board~~ department by certified mail of its decision not to  
383 renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the  
384 date when the owner or operator and the ~~board~~ department receive the notice, as evidenced by  
385 the return receipts.

386 **9VAC25-590-105. Certificate of deposit.**

387 A. An owner or operator may satisfy the requirements of 9VAC25-590-40, wholly or in part,  
388 by assigning all rights, title, and interest of a certificate of deposit to the ~~State Water Control Board~~  
389 Department of Environmental Quality, Commonwealth of Virginia. The owner or operator shall  
390 maintain the certificate of deposit until the requirements of 9VAC25-590-180 are met. The original  
391 assignment and the certificate of deposit, if applicable, must be submitted to the ~~board~~ department  
392 to prove that the certificate of deposit has been obtained and meets the requirements of this  
393 section. A copy of the certificate of deposit shall be maintained at the underground storage tank  
394 site or the owner's or operator's place of work located in Virginia. The issuing institution shall be  
395 a bank or other financial institution whose deposits are insured by the Federal Deposit Insurance  
396 Corporation (FDIC) and whose operations are regulated and examined by the Commonwealth of  
397 Virginia, by a federal agency, or by an agency of another state.

398 B. The owner or operator shall be entitled to demand, receive, and recover the interest and  
399 income from the certificate of deposit as it becomes due and payable as long as the market value  
400 of the certificate of deposit plus any other mechanisms used continue to at least equal the amount  
401 of financial responsibility the owner or operator is required to demonstrate under 9VAC25-590-  
402 40.

403 C. In the event of failure of the owner or operator to comply with the requirements of 9VAC25-  
404 590-140, the ~~board~~ department shall cash the certificate of deposit.

405 D. Payments made under the terms of the certificate of deposit will be deposited by the issuing  
406 institution directly into the Virginia Petroleum Storage Tank Fund. Payments from the fund shall  
407 be approved by the board department.

408 E. The wording of the assignment shall be identical to the wording specified in Appendix XIII.  
409 **9VAC25-590-110. Trust fund.**

410 A. An owner or operator may satisfy the requirements of 9VAC25-590-40 by establishing an  
411 irrevocable trust fund that conforms to the requirements of this section. The trustee shall be an  
412 entity that has the authority to act as a trustee and whose trust operations are regulated and  
413 examined by a federal agency or the State Corporation Commission.

414 B. The trust fund shall be irrevocable and shall continue until terminated at the written direction  
415 of the grantor and the trustee, or by the trustee and the ~~State Water Control Board~~ board department, if  
416 the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final  
417 trust administration expenses, shall be delivered to the owner or operator. The wording of the  
418 trust agreement shall be identical to the wording specified in Appendix VII, and shall be  
419 accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

420 C. The irrevocable trust fund, when established, shall be funded for the full required amount  
421 of coverage, or funded for part of the required amount of coverage and used in combination with  
422 other mechanism or mechanisms that provide the remaining required coverage.

423 D. If the value of the trust fund is greater than the required amount of coverage, the owner or  
424 operator may submit a written request to the board department for release of the excess.

425 E. If other financial assurance as specified in this chapter is substituted for all or part of the  
426 trust fund, the owner or operator may submit a written request to the board department for release  
427 of the excess.

428 F. Within 60 days after receiving a request from the owner or operator for release of funds as  
429 specified in subsection D or E of this section, the board department will instruct the trustee to  
430 release to the owner or operator such funds as the board department specifies in writing.

431 **9VAC25-590-140. Cancellation or nonrenewal by a provider of financial assurance.**

432 A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew  
433 an assurance mechanism by sending a notice of termination by certified mail to the owner or  
434 operator, and the board department.

435 1. Termination of a local government guarantee, a guarantee, a surety bond, or a letter of  
436 credit may not occur until 120 days after the date on which the owner or operator, and the  
437 board department receive the notice of termination, as evidenced by the return receipts.

438 2. Termination of insurance or group self-insurance pool coverage, except for nonpayment  
439 or misrepresentation by the insured, may not occur until 60 days after the date on which  
440 the owner or operator and the board department receive the notice of termination, as  
441 evidenced by the return receipts. Termination for nonpayment of premium or  
442 misrepresentation by the insured may not occur until a minimum of 15 days after the date  
443 on which the owner or operator and the board department receive the notice of  
444 termination, as evidenced by the return receipts.

445 B. If a provider of financial responsibility cancels or fails to renew for reasons other than  
446 incapacity of the provider as specified in 9VAC25-590-190, the owner or operator shall obtain  
447 alternate coverage as specified in this section within 60 days after receipt of the notice of  
448 termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt  
449 of the notice of termination, the owner or operator shall immediately notify the board department  
450 of such failure and submit:

451 1. The name and address of the provider of financial assurance;

- 452 2. The effective date of termination; and  
453 3. The evidence of the financial assurance mechanism subject to the termination  
454 maintained in accordance with 9VAC25-590-160 B.

455 **9VAC25-590-150. Reporting by owner or operator.**

456 A. An owner or operator shall submit the appropriate original forms listed in 9VAC25-590-160  
457 B documenting current evidence of financial responsibility to the ~~board~~ department within 30 days  
458 after the owner or operator identifies or confirms a release from an underground storage tank  
459 required to be reported under 9VAC25-580-220 or 9VAC25-580-240. For all subsequent releases  
460 within the same period of time for which the documents submitted according to this subsection  
461 are still effective, the owner or operator shall submit a letter which identifies the owner's or  
462 operator's name and address and the underground storage tanks' location by site name, street  
463 address, ~~board~~ department incident designation number and a statement that the financial  
464 responsibility documentation previously provided to the ~~board~~ department is currently in force.

465 B. An owner or operator shall submit the appropriate forms listed in 9VAC25-590-160 B  
466 documenting current evidence of financial responsibility to the ~~board~~ department if the owner or  
467 operator fails to obtain alternate coverage as required by this chapter within 30 days after the  
468 owner or operator receives notice of:

- 469 1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy),  
470 U.S. Code, naming a provider of financial assurance as a debtor;  
471 2. Suspension or revocation of the authority of a provider of financial assurance to issue  
472 a financial assurance mechanism;  
473 3. Failure of a guarantor to meet the requirements of the financial test; or  
474 4. Other incapacity of a provider of financial assurance.

475 C. An owner or operator shall submit the appropriate forms listed in 9VAC25-590-160 B  
476 documenting current evidence of financial responsibility to the ~~board~~ department as required by  
477 9VAC25-590-60 G and 9VAC25-590-140 B.

478 D. An owner or operator shall certify compliance with the financial responsibility requirements  
479 of this chapter as specified in the new tank notification form (Form 7530) when notifying the ~~board~~  
480 department of the installation of a new underground storage tank under 9VAC25-580-70.

481 E. The ~~board~~ department may require an owner or operator to submit evidence of financial  
482 assurance as described in 9VAC25-590-160 B or other information relevant to compliance with  
483 this chapter at any time.

484 **9VAC25-590-160. Recordkeeping.**

485 A. Owners or operators shall maintain evidence of all financial assurance mechanisms used  
486 to demonstrate financial responsibility under this chapter for an underground storage tank until  
487 released from the requirements of this chapter under 9VAC25-590-180. An owner or operator  
488 shall maintain such evidence at the underground storage tank site or the owner's or operator's  
489 place of work in this Commonwealth. Records maintained off-site shall be made available upon  
490 request of the ~~board~~ department.

491 B. Owners or operators shall maintain the following types of evidence of financial  
492 responsibility:

- 493 1. An owner or operator using an assurance mechanism specified in 9VAC25-590-60  
494 through 9VAC25-590-110 and 9VAC25-590-250 shall maintain a copy of the instrument  
495 worded as specified.  
496 2. An owner or operator using a financial test or guarantee, or a local government financial  
497 test or a local government guarantee supported by the local government financial test,  
498 shall maintain a copy of the chief financial officer's letter based on year-end financial

499 statements for the most recent completed financial reporting year. Such evidence shall be  
500 on file no later than 120 days after the close of the financial reporting year.

501 3. A local government owner or operator using the local government bond rating test under  
502 9VAC25-590-250 shall maintain a copy of its bond rating published within the last 12  
503 months by Moody's or Standard & Poor's.

504 4. A local government owner or operator using the local government guarantee under  
505 9VAC25-590-250, where the guarantor's demonstration of financial responsibility relies on  
506 the bond rating test under 9VAC25-590-250 shall maintain a copy of the guarantor's bond  
507 rating published within the last 12 months by Moody's or Standard & Poor's.

508 5. An owner or operator using an insurance policy or group self-insurance pool coverage  
509 shall maintain a copy of the signed insurance policy or group self-insurance pool plan and  
510 membership agreement, with the endorsement or certificate of insurance and any  
511 amendments to the agreements.

512 6. An owner or operator using a local government fund under 9VAC25-590-250 shall  
513 maintain the following documents:

514 a. A copy of the state constitutional provision or local government statute, charter,  
515 ordinance or order dedicating the fund; and

516 b. Year-end financial statements for the most recent completed financial reporting year  
517 showing the amount in the fund. If the fund is established under 40 CFR 280.107(c)  
518 (as incorporated by reference in 9VAC25-590-250) using incremental funding backed  
519 by bonding authority, the financial statements shall show the previous year's balance,  
520 the amount of funding during the year, and the closing balance in the fund.

521 If the fund is established under 40 CFR 280.107(c) (as incorporated by reference in  
522 9VAC25-590-250) using incremental funding backed by bonding authority, the owner or  
523 operator shall also maintain documentation of the required bonding authority, including  
524 either the results of a voter referendum (under 40 CFR 280.107(c)(1)) (as incorporated by  
525 reference in 9VAC25-590-250), or attestation by the Virginia Attorney General as specified  
526 under 40 CFR 280.107(c)(2) (as incorporated by reference in 9VAC25-590-250).

527 7. A local government owner or operator using the local government guarantee supported  
528 by the local government fund shall maintain a copy of the guarantor's year-end financial  
529 statements for the most recent completed financial reporting year showing the amount of  
530 the fund.

531 8. a. An owner or operator using an assurance mechanism specified in 9VAC25-590-60  
532 through 9VAC25-590-110, 9VAC25-590-210, or 9VAC25-590-250 shall maintain an  
533 updated copy of a certification of financial responsibility worded identically as specified in  
534 Appendix IX, except that instructions in brackets are to be replaced with the relevant  
535 information and the brackets deleted.

536 b. The owner or operator shall update this certification whenever the financial  
537 assurance mechanism or mechanisms used to demonstrate financial responsibility  
538 changes.

539 **9VAC25-590-170. Drawing on financial assurance mechanism.**

540 A. Except as specified in subsection D of this section, the ~~board~~ department shall require the  
541 guarantor, surety, or institution issuing a letter of credit or certificate of deposit to pay to the ~~board~~  
542 department an amount up to the limit of funds provided by the financial assurance mechanism if:

543 1. The owner or operator fails to establish alternate financial assurance within 60 days  
544 after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or  
545 certificate of deposit; or



546 2. The conditions of subsection B of this section are satisfied.

547 B. The ~~board~~ department shall deposit the financial assurance funds forfeited pursuant to  
548 subsection A of this section into the Virginia Petroleum Storage Tank Fund. The ~~board~~ department  
549 may use the financial responsibility funds obtained pursuant to subsection A of this section to  
550 conduct corrective action or to pay a third party claim when:

551 1. The ~~board~~ department makes a final determination that a release has occurred and  
552 immediate or long-term corrective action for the release is needed, and the owner or  
553 operator, after appropriate notice and opportunity to comply, has not conducted corrective  
554 action as required under Part VI (9VAC25-580-230 et seq.) of 9VAC25-580; or

555 2. The ~~board~~ department has received either:

556 a. Certification from the owner or operator and the third party liability claimant or  
557 claimants and from attorneys representing the owner or operator and the third party  
558 liability claimant or claimants that a third party liability claim should be paid. The  
559 certification shall be worded identically as specified in Appendix X, except that  
560 instructions in brackets are to be replaced with the relevant information and the  
561 brackets deleted; or

562 b. A valid final court order establishing a judgment against the owner or operator for  
563 bodily injury or property damage caused by an accidental release from an underground  
564 storage tank covered by financial assurance under this chapter and the ~~board~~  
565 department determines that the owner or operator has not satisfied the judgment.

566 C. If the ~~board~~ department determines that the amount of corrective action costs and third  
567 party liability claims eligible for payment under subsection B of this section may exceed the  
568 obligation of the provider of financial assurance, the first priority for payment shall be corrective  
569 action costs necessary to protect human health and the environment. The ~~board~~ department shall  
570 direct payment of the financial responsibility funds for third party liability claims in the order in  
571 which the ~~board~~ department receives certifications under subdivision B 2 a of this section and  
572 valid court orders under subdivision B 2 b of this section.

573 D. A local government acting as guarantor under 40 CFR 280.106(e) (as incorporated by  
574 reference in 9VAC25-590-250), the local government guarantee without standby trust, shall make  
575 payments as directed by the ~~board~~ department under the circumstances described in subsection  
576 A, B or C of this section.

577 **9VAC25-590-190. Bankruptcy or other incapacity of owner, operator or provider of financial**  
578 **assurance.**

579 A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title  
580 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall  
581 notify the ~~board~~ department by certified mail of such commencement and submit the appropriate  
582 forms listed in 9VAC25-590-160 B documenting current financial responsibility.

583 B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title  
584 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such  
585 guarantor shall notify the owner or operator and the ~~board~~ department by certified mail of such  
586 commencement as required under the terms of the guarantee specified in 9VAC25-590-70.

587 C. Within 10 days after commencement of a voluntary or involuntary proceeding under Title  
588 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local  
589 government owner or operator shall notify the ~~board~~ department by certified mail of such  
590 commencement and submit the appropriate forms listed in 9VAC25-590-160 B documenting  
591 current financial responsibility.

592 D. Within 10 days after commencement of a voluntary or involuntary proceeding under Title  
593 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance

594 as debtor, such guarantor shall notify the local government owner or operator and the ~~board~~  
595 department by certified mail of such commencement as required under the terms of the guarantee  
596 specified in 40 CFR 280.106 (as incorporated by reference in 9VAC25-590-250).

597 E. An owner or operator that obtains financial assurance by a mechanism other than the  
598 financial test of self-insurance will be deemed to be without the required financial assurance in  
599 the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or  
600 revocation of the authority of the provider of financial assurance to issue a guarantee, insurance  
601 policy, group self-insurance pool plan, surety bond, letter of credit, or certificate of deposit. The  
602 owner or operator shall obtain alternate financial assurance as specified in this regulation within  
603 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate  
604 coverage within 30 days after such notification, he shall immediately notify the ~~board~~ department  
605 in writing.

606 F. Within 30 days after receipt of written notification that the Virginia Petroleum Storage Tank  
607 Fund has become incapable of covering assured corrective action or third party compensation  
608 costs, the owner or operator shall obtain alternate financial assurance in accordance with  
609 9VAC25-590-40.

610 **9VAC25-590-200. Replenishment of guarantees, letters of credit, certificates of deposit, or**  
611 **surety bonds.**

612 A. If at any time a letter of credit, certificate of deposit, surety bond, or guarantee is drawn  
613 upon by instruction of the ~~board~~ department and the ~~board~~ department has expended all or part  
614 of the funds for corrective action or to pay a third party liability claim(s), the owner or operator by  
615 the anniversary date of the financial assurance mechanism shall:

- 616 1. Replenish the value of the financial assurance mechanism to equal the full amount of  
617 coverage required; or  
618 2. Acquire another financial assurance mechanism for the amount by which the face value  
619 of the letter of credit, certificate of deposit, surety bond, or guarantee has been reduced.

620 B. For purposes of this section, the full amount of coverage required is the amount of coverage  
621 to be provided by 9VAC25-590-40. If a combination of mechanisms was used to provide the  
622 assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary  
623 date among the mechanisms.

624 **9VAC25-590-210. Virginia Petroleum Storage Tank Fund.**

625 A. The Virginia Petroleum Storage Tank Fund will be used for costs in excess of the financial  
626 responsibility requirements specified under subsection C of this section up to \$1 million per  
627 occurrence for both taking corrective action and compensating third parties for bodily injury and  
628 property damage caused by accidental releases from petroleum underground storage tanks in  
629 accordance with the following:

- 630 1. Corrective action disbursements for accidental releases with no associated third party  
631 disbursements from the fund shall not exceed:
- 632 a. \$995,000 for the \$5,000 corrective action requirement;
  - 633 b. \$990,000 for the \$10,000 corrective action requirement;
  - 634 c. \$980,000 for the \$20,000 corrective action requirement;
  - 635 d. \$970,000 for the \$30,000 corrective action requirement;
  - 636 e. \$950,000 for the \$50,000 corrective action requirement.

637 Third party disbursements for accidental releases with no corrective action disbursements  
638 from the fund shall not exceed:

- 639 a. \$985,000 for the \$15,000 third party requirement;

- 640           b. \$970,000 for the \$30,000 third party requirement;  
641           c. \$940,000 for the \$60,000 third party requirement;  
642           d. \$880,000 for the \$120,000 third party requirement;  
643           e. \$850,000 for the \$150,000 third party requirement.
- 644       Combined corrective action and third party disbursements from the fund shall not exceed:  
645           a. \$980,000 for the \$20,000 combined requirement;  
646           b. \$960,000 for the \$40,000 combined requirement;  
647           c. \$920,000 for the \$80,000 combined requirement;  
648           d. \$850,000 for the \$150,000 combined requirement;  
649           e. \$800,000 for the \$200,000 combined requirement.
- 650       The first priority for disbursements from the fund shall be for corrective action costs  
651       necessary to protect human health and the environment.
- 652       2. Reasonable and necessary costs of compensating third parties for bodily injury and  
653       property damage shall be paid only (i) in accordance with final court orders in cases which  
654       have been tried to final judgment no longer subject to appeal, (ii) in accordance with final  
655       arbitration awards not subject to appeal, or (iii) where the board department approved the  
656       settlement of claim between the owner or operator and the third party prior to execution  
657       by the parties. The reasonableness and necessity of costs shall be determined based  
658       upon documented or actual damage, loss in value, and other relevant factors.
- 659       The Commonwealth has not waived its sovereign immunity and does not believe that it is  
660       a necessary party to a private action against an owner or operator for third party bodily  
661       injury and property damage.
- 662       3. Owner or operator managed cleanups. An owner or operator, including an operator of  
663       a facility or an owner or operator of an underground storage tank exempted in subdivisions  
664       1 and 2 of the definition of an underground storage tank in 9VAC25-590-10 and an  
665       aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating  
666       oil for consumption on the premises where stored, responding to a release and conducting  
667       a board department approved corrective action plan in accordance with Parts V and VI  
668       (9VAC25-580-190 through 9VAC25-580-310) may proceed to pay for all costs incurred  
669       for such activities. An accounting submitted to the board department of all costs incurred  
670       will be reviewed and those costs in excess of the financial responsibility requirements up  
671       to \$1 million which are reasonable and have been approved by the board department will  
672       be reimbursed from the fund.
- 673       4. Owners or operators shall pay the financial responsibility requirement specified in this  
674       section for each occurrence.
- 675       5. No person shall receive reimbursement from the fund for third party bodily injury or  
676       property damage:
- 677           a. Where the release, occurrence, injury or property damage is caused, in whole or in  
678           part, by the willful misconduct or negligence of the owner or operator, his employee,  
679           contractor, or agent, or anyone within his privity or knowledge;
- 680           b. Where the claim cost has been reimbursed or is reimbursable by an insurance  
681           policy;
- 682           c. Where the costs or damages were incurred pursuant to § 10.1-1232 of the Code of  
683           Virginia and the regulations promulgated thereunder;
- 684           d. Where the release was reported before December 22, 1989; or

685 e. Where the owner or operator does not demonstrate the reasonableness and  
686 necessity of the claim costs.

687 B. No person, including an operator of a facility or an owner or operator of an underground  
688 storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank  
689 in 9VAC25-590-10 and an aboveground storage tank with a capacity of 5,000 gallons or less used  
690 for storing heating oil for consumption on the premises where stored, shall receive reimbursement  
691 from the fund for any costs or damages incurred:

692 1. Where the person, his employee, contractor or agent, or anyone within the privity or  
693 knowledge of that person, has violated substantive environmental regulations under  
694 9VAC25-580 or this chapter;

695 2. Where the release occurrence is caused, in whole or in part, by the willful misconduct  
696 or negligence of the person, his employee, contractor or agent, or anyone within the privity  
697 or knowledge of that person;

698 3. Where the person, his employee, contractor or agent, or anyone within the privity or  
699 knowledge of that person has (i) failed to carry out the instructions of the ~~board~~  
700 department, committed willful misconduct or been negligent in carrying out or conducting  
701 actions under Part V or VI (9VAC25-580-190 through 9VAC25-580-310) or (ii) has violated  
702 applicable federal or state safety, construction or operating laws or regulations in carrying  
703 out or conducting actions under Parts V or VI (9VAC25-580-190 through 9VAC25-580-  
704 310);

705 4. Where the claim has been reimbursed or is reimbursable by an insurance policy;

706 5. Where the costs or damages were incurred pursuant to § 10.1-1232 of the Code of  
707 Virginia and the regulations promulgated thereunder;

708 6. For corrective action taken prior to December 22, 1989, by an owner or operator of an  
709 underground storage tank, or an owner of an underground storage tank exempted in  
710 subdivisions 1 and 2 of the definition of an underground storage tank in 9VAC25-590-10,  
711 or an owner of an aboveground storage tank with a capacity of 5,000 gallons or less used  
712 for storing heating oil for consumption on the premises where stored; or

713 7. Prior to January 1, 1992, by an operator of a facility for containment and cleanup of a  
714 release from a facility of a product subject to 62.1-44.34:13 of the Code of Virginia.

715 C. 1. The fund will be used to demonstrate financial responsibility requirements for owners or  
716 operators in excess of the amounts specified in this subdivision up to the per occurrence and  
717 annual aggregate requirements specified in 9VAC25-590-40 for both taking corrective action and  
718 compensating third parties for bodily injury and property damage caused by accidental releases  
719 from petroleum underground storage tanks.

720 a. Owners and operators with 600,000 gallons or less of petroleum pumped on an  
721 annual basis into all underground storage tanks owned or operated, \$5,000 per  
722 occurrence for taking corrective action and \$15,000 per occurrence for compensating  
723 third parties, with an annual aggregate of \$20,000.

724 b. Owners and operators with between 600,001 to 1,200,000 gallons of petroleum  
725 pumped on an annual basis into all underground storage tanks owned or operated,  
726 \$10,000 per occurrence for taking corrective action and \$30,000 per occurrence for  
727 compensating third parties, with an annual aggregate of \$40,000.

728 c. Owners and operators with between 1,200,001 to 1,800,000 gallons of petroleum  
729 pumped on an annual basis into all underground storage tanks owned or operated,  
730 \$20,000 per occurrence for taking corrective action and \$60,000 per occurrence for  
731 compensating third parties, with an annual aggregate of \$80,000.

732 d. Owners and operators with between 1,800,001 to 2,400,000 gallons of petroleum  
733 pumped on an annual basis into all underground storage tanks owned or operated,  
734 \$30,000 per occurrence for taking corrective action and \$120,000 per occurrence for  
735 compensating third parties, with an annual aggregate of \$150,000.

736 e. Owners and operators with in excess of 2,400,000 gallons of petroleum pumped on  
737 an annual basis into all underground storage tanks owned or operated, \$50,000 per  
738 occurrence for taking corrective action and \$150,000 per occurrence for compensating  
739 third parties, with an annual aggregate of \$200,000.

740 2. The fund may be used to satisfy only the portion of an owner or operator's financial  
741 responsibility requirement specified in subdivision 1 of this subsection and, therefore, shall  
742 be used in combination with one or more of the mechanisms specified in 9VAC25-590-60  
743 through 9VAC25-590-110 and 9VAC25-590-250.

744 3. The requirements of 9VAC25-590-40 B apply solely to financial responsibility  
745 demonstration requirements under this section, and shall not affect reimbursements paid  
746 under this section.

747 D. This fund may also be used for the following:

748 1. Costs incurred by the ~~board~~ department for taking immediate corrective action to  
749 contain or mitigate the effects of any release of petroleum into the environment from an  
750 underground storage tank if such action is necessary, in the judgment of the ~~board~~  
751 department to protect human health and the environment.

752 2. Costs incurred by the ~~board~~ department for taking corrective action up to \$1 million for  
753 any release of petroleum into the environment from an underground storage tank:

754 a. Whose owner or operator cannot be determined by the ~~board~~ department within 90  
755 days; or

756 b. Whose owner or operator is incapable, in the judgment of the ~~board~~ department, of  
757 carrying out such corrective action properly.

758 3. Costs incurred by the ~~board~~ department for taking corrective action for any release of  
759 petroleum into the environment from tanks which are otherwise specifically listed in  
760 9VAC25-590-10 as exemptions in the definition of an underground storage tank.

761 4. All other uses authorized by § 62.1-44.34:11 of the Code of Virginia.

762 E. The ~~board~~ department shall seek recovery of fund moneys expended for corrective action  
763 in accordance with § 62.1-44.34:11 of the Code of Virginia where the owner or operator has  
764 violated substantive environmental regulations under 9VAC25-580 or this chapter.

765 F. The ~~board~~ department shall have the right of subrogation for moneys expended from the  
766 fund as compensation for bodily injury, death, or property damage against any person who is  
767 liable for such injury, death or damage.

768 G. No funds shall be paid for reimbursement of costs incurred by an owner or operator for  
769 corrective action and for compensating third parties for bodily injury and property damage prior to  
770 December 22, 1989.

771 H. No disbursements shall be made from the fund for owners or operators who are federal  
772 government entities or whose debts and liabilities are the debts and liabilities of the United States.

773 I. No funds shall be paid in excess of the minimum disbursement necessary to cleanup each  
774 occurrence to the acceptable level of risk, as determined by the ~~board~~ department in its sole  
775 discretion.

776 **9VAC25-590-220. Notices to the ~~State Water Control Board~~ Department.**

777 All requirements of this regulation for notification to the ~~State Water Control Board~~ department  
778 shall be addressed as follows:

Director
Department of Environmental Quality
1111 East Main Street, Suite 1400
P.O. Box 1105
Richmond, Virginia 23218

779 **9VAC25-590-230. Delegation of authority. (Repealed.)**

780 ~~The Director of the Department of Environmental Quality or a designee acting for him may~~  
781 ~~perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the~~  
782 ~~Code of Virginia.~~



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-640
<b>VAC Chapter title(s)</b>	Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements
<b>Action title</b>	Final Exempt CH 640 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 15, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-640) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”; and the repeal of the delegation of authority provisions.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-640 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.



1 **Project 7163 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt- CH640 Changes in response to 2022 Board bill**

4 Chapter 640

5 Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements

6 **9VAC25-640-10. Definitions.**

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

9 "Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes,  
10 used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including  
11 the volume of the pipes, is more than 90% above the surface of the ground. This term does not  
12 include line pipe and breakout tanks of an interstate pipeline regulated under the federal  
13 Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 et seq.).

14 "Accidental discharge" means any sudden or nonsudden discharge of oil from a facility that  
15 results in a need for containment and clean up which was neither expected nor intended by the  
16 operator.

17 "Annual aggregate" means the maximum financial responsibility requirement that an operator  
18 is required to demonstrate annually.

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

22 "Change in service" means change in operation, conditions of the stored product, specific  
23 gravity, corrosivity, temperature or pressure that has occurred from the original that may affect  
24 the tank's suitability for service.

25 "Containment and clean up" means abatement, containment, removal and disposal of oil and,  
26 to the extent possible, the restoration of the environment to its existing state prior to an oil  
27 discharge.

28 "Controlling interest" means direct ownership of at least 50% of the voting stock of another  
29 entity.

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

31 "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

32 "Facility" means any development or installation within the Commonwealth that deals in,  
33 stores or handles oil, and includes a pipeline.

34 "Financial reporting year" means the latest consecutive 12-month period for which any of the  
35 following reports used to support a financial test is prepared: (i) a 10-K report submitted to the  
36 U.S. Securities & Exchange Commission (SEC); (ii) an annual report of tangible net worth  
37 submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information  
38 Administration or the Rural Utilities Service; or (iv) a year-end financial statement authorized  
39 under 9VAC25-640-70 B or C. "Financial reporting year" may thus comprise a fiscal or calendar  
40 year period.

41 "Group self-insurance pool" or "pool" means a pool organized by two or more operators of  
42 facilities for the purpose of forming a group self-insurance pool in order to demonstrate financial  
43 responsibility as required by § 62.1-44.34:16 of the Code of Virginia.

44 "Legal defense cost" means any expense that an operator or provider of financial assurance  
45 incurs in defending against claims or actions brought (i) by the federal government or the ~~board~~  
46 department to require containment or clean up or to recover the costs of containment and clean  
47 up, or to collect civil penalties under federal or state law or to assert any claim on behalf of the  
48 Virginia Petroleum Storage Tank Fund; or (ii) by any person to enforce the terms of a financial  
49 assurance mechanism.

50 "Local government entity" means a municipality, county, town, commission, separately  
51 chartered and operated special district, school board, political subdivision of a state or other  
52 special purpose government which provides essential services.

53 "Member" means an operator of an aboveground storage tank or pipeline who has entered  
54 into a member agreement and thereby becomes a member of a group self-insurance pool.

55 "Member agreement" means the written agreement executed between each member and the  
56 pool, which sets forth the conditions of membership in the pool, the obligations, if any, of each  
57 member to the other members, and the terms, coverages, limits, and deductibles of the pool plan.

58 "Occurrence" means an accident, including continuous or repeated exposure to conditions,  
59 that results in a discharge from an AST. Note: This definition is intended to assist in the  
60 understanding of this chapter and is not intended either to limit the meaning of "occurrence" in a  
61 way that conflicts with standard insurance usage or to prevent the use of other standard insurance  
62 terms in place of "occurrence."

63 "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and  
64 petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes,  
65 crude oil and all other liquid hydrocarbons regardless of specific gravity.

66 "Operator" means any person who owns, operates, charters by demise, rents or otherwise  
67 exercises control over or responsibility for a facility or a vehicle or a vessel. For purposes of this  
68 chapter, the definition of operator is restricted to operators of facilities.

69 "Person" means an individual; trust; firm; joint stock company; corporation, including a  
70 government corporation; partnership; association; any state or agency thereof; municipality;  
71 county; town; commission; political subdivision of a state; any interstate body; consortium; joint  
72 venture; commercial entity; the government of the United States or any unit or agency thereof.

73 "Pipeline" means all new and existing pipe, rights of way, and any equipment, facility, or  
74 building used in the transportation of oil, including, but not limited to, line pipe, valves and other  
75 appurtenances connected to line pipe, pumping units, fabricated assemblies associated with  
76 pumping units, metering and delivery stations and fabricated assemblies therein, and breakout  
77 tanks.

78 "Pool plan" means the plan of self-insurance offered by the pool to its members as specifically  
79 designated in the member agreement.

80 "Provider of financial assurance" means a person that provides financial assurance to an  
81 operator of an aboveground storage tank through one of the mechanisms listed in 9VAC25-640-  
82 70 through 9VAC25-640-120, including a guarantor, insurer, group self-insurance pool, surety,  
83 certificate of deposit, or issuer of a letter of credit.

84 "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing  
85 from an underground storage tank or facility into groundwater, surface water, or upon lands,  
86 subsurface soils or storm drain systems.

87 "Storage capacity" means the total capacity of an AST or a container, whether filled in whole  
88 or in part with oil, a mixture of oil, or mixtures of oil with nonhazardous substances, or empty. An  
89 AST that has been permanently closed in accordance with the requirements of 9VAC25-91 has  
90 no storage capacity.

91 "Substantial business relationship" means the extent of a business relationship necessary  
92 under Virginia law to make a guarantee contract issued incident to that relationship valid and  
93 enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and  
94 depends on existing economic transactions between the guarantor and the operator.

95 "Tangible net worth" means the tangible assets that remain after deducting liabilities; such  
96 assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes  
97 of this definition, "assets" means all existing and all probable future economic benefits obtained  
98 or controlled by a particular entity as a result of past transactions.

99 "Tank" means a device designed to contain an accumulation of oil and constructed of  
100 nonearthen materials, such as concrete, steel, or plastic, that provides structural support. For  
101 purposes of 9VAC25-640-220, a tank means a device, having a liquid capacity of more than 60  
102 gallons, designed to contain an accumulation of oil and constructed of nonearthen materials, such  
103 as concrete, steel, or plastic, that provides structural support. This term does not include flow-  
104 through process tanks as defined in 40 CFR Part 280.

105 "Termination" under Appendix III and Appendix IV means only those changes that could result  
106 in a gap in coverage as where the insured has not obtained substitute coverage or has obtained  
107 substitute coverage with a different retroactive date than the retroactive date of the original policy.

108 "Underground storage tank" means any one or combination of tanks, including connecting  
109 pipes, used to contain an accumulation of regulated substances, and the volume of which,  
110 including the volume of underground connecting pipes, is 10% or more beneath the surface of  
111 the ground. This term does not include any:

- 112 1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing  
113 motor fuel for noncommercial purposes;
- 114 2. Tanks used for storing heating oil for consumption on the premises where stored;
- 115 3. Septic tanks;
- 116 4. Pipeline facilities (including gathering lines) regulated under:
  - 117 a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671 et seq.);
  - 118 b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001 et seq.); or
  - 119 c. Any intrastate pipeline facility regulated under state laws comparable to the  
120 provisions of the law referred to in subdivision 4 a or 4 b of this definition;
- 121 5. Surface impoundments, pits, ponds, or lagoons;
- 122 6. Storm water or wastewater collection systems;
- 123 7. Flow-through process tanks;
- 124 8. Liquid traps or associated gathering lines directly related to oil or gas production and  
125 gathering operations; or
- 126 9. Storage tanks situated in an underground area, such as a basement, cellar,  
127 mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface  
128 of the floor.

129 The term "underground storage tank" does not include any pipes connected to any tank which  
130 is described in subdivisions 1 through 9 of this definition.

131 "Vehicle" means any motor vehicle, rolling stock, or other artificial contrivance for transport  
132 whether self-propelled or otherwise, except vessels.

133 "Vessel" means every description of watercraft or other contrivance used as a means of  
134 transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

135 **9VAC25-640-50. Amount and scope of required financial responsibility.**

136 A. Operators shall demonstrate per occurrence and annual aggregate financial responsibility  
137 for containment and clean up of discharges of oil in an amount equal to (i) five cents per gallon of  
138 the aggregate aboveground storage capacity for ASTs in all Virginia facilities up to a maximum of  
139 \$1 million and (ii) \$5 million for pipelines.

140 B. If the operator uses separate mechanisms or combinations of mechanisms to demonstrate  
141 financial responsibility for the containment and clean up of oil, (i) the amount of assurance  
142 provided by the combination of mechanisms shall be in the full amount specified in subsection A  
143 of this section, and (ii) the operator shall demonstrate financial responsibility in the appropriate  
144 amount of annual aggregate assurance specified in subsection A of this section by the first-  
145 occurring effective date anniversary of any one of the mechanisms combined (other than a  
146 financial test or guarantee) to provide assurance.

147 C. The amounts of assurance required under this section exclude legal defense costs.

148 D. The required demonstration of financial responsibility does not in any way limit the liability  
149 of the operator under § 62.1-44.34:18 of the Code of Virginia.

150 E. Operators which demonstrate financial responsibility shall maintain copies of those records  
151 on which the determination is based. The following documents may be used by operators to  
152 support a financial responsibility requirement determination:

- 153 1. Copies of the registration form required under 9VAC25-91.
- 154 2. Any other form of documentation that the ~~board~~ department may deem to be acceptable  
155 evidence to support the financial responsibility requirement determination.

156 F. For purposes of the financial test of self-insurance, an operator and/or guarantor shall have  
157 a tangible net worth at least equal to the applicable amount required by subsection A of this  
158 section plus any aggregate amount required to be demonstrated under 9VAC25-590-40 for which  
159 a financial test is used to demonstrate financial responsibility.

160 **9VAC25-640-70. Financial test of self-insurance.**

161 A. An operator and/or guarantor may satisfy the requirements of 9VAC25-640-50 by passing  
162 a financial test as specified in this section. To pass the financial test of self-insurance, the operator  
163 and/or guarantor shall meet the requirements of subsection B or C and subsection D of this  
164 section based on year-end financial statements for the latest completed financial reporting year.

165 B. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total  
166 of the applicable amount required by 9VAC25-640-50 for which a financial test is used to  
167 demonstrate financial responsibility.

168 2. The operator and/or guarantor shall comply with either subdivision a or b below:

169 a. (1) The financial reporting year-end financial statements of the operator and/or  
170 guarantor shall be examined by an independent certified public accountant and be  
171 accompanied by the accountant's report of the examination; and

172 (2) The financial reporting year-end financial statements of the operator and/or  
173 guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a  
174 "going concern" qualification.

175 b. (1) (a) File financial statements annually with the U.S. Securities and Exchange  
176 Commission, the Energy Information Administration, or the Rural Utilities Service; or

177 (b) Report annually the tangible net worth of the operator and/or guarantor to Dun and  
178 Bradstreet, and Dun and Bradstreet must have assigned a financial strength rating  
179 which at least equals the amount of financial responsibility required by the operator in  
180 9VAC25-640-50.

181 (2) The financial reporting year-end financial statements of the operator and/or  
182 guarantor, if independently audited, cannot include an adverse auditor's opinion, a  
183 disclaimer of opinion, or a "going concern" qualification.

184 3. The operator and/or guarantor shall have a letter signed by the chief financial officer  
185 worded identically as specified in Appendix I/Alternative I.

186 C. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total  
187 of the applicable amount required by 9VAC25-640-50 for which a financial test is used to  
188 demonstrate financial responsibility.

189 2. The financial reporting year-end financial statements of the operator and/or guarantor  
190 shall be examined by an independent certified public accountant and be accompanied by  
191 the accountant's report of the examination.

192 3. The financial reporting year-end financial statements cannot include an adverse  
193 auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

194 4. If the financial statements of the operator and/or guarantor are not submitted annually  
195 to the U.S. Securities and Exchange Commission, the Energy Information Administration  
196 or the Rural Utilities Service, the operator and/or guarantor shall obtain a special report  
197 by an independent certified public accountant stating that:

198 a. The accountant has compared the data that the letter from the chief financial officer  
199 specified as having been derived from the latest financial reporting year-end financial  
200 statements of the operator and/or guarantor with the amounts in such financial  
201 statements; and

202 b. In connection with that comparison, no matters came to the accountant's attention  
203 that caused him to believe that the specified data should be adjusted.

204 5. The operator and/or guarantor shall have a letter signed by the chief financial officer,  
205 worded identically as specified in Appendix I/Alternative II.

206 D. To meet the financial demonstration test under subsections B or C of this section, the chief  
207 financial officer of the operator and/or guarantor shall sign, within 120 days of the close of each  
208 financial reporting year, as defined by the 12-month period for which financial statements used to  
209 support the financial test are prepared, a letter worded identically as specified in Appendix I with  
210 the appropriate alternative, except that the instructions in brackets are to be replaced by the  
211 relevant information and the brackets deleted.

212 E. If an operator using the test to provide financial assurance finds that he no longer meets  
213 the requirements of the financial test based on the financial reporting year-end financial  
214 statements, the operator shall obtain alternative coverage and submit to the ~~board~~ department  
215 the appropriate original forms listed in 9VAC25-640-170 B within 150 days of the end of the year  
216 for which financial statements have been prepared.

217 F. The ~~board~~ department may require reports of financial condition at any time from the  
218 operator and/or guarantor. If the ~~board~~ department finds, on the basis of such reports or other  
219 information, that the operator and/or guarantor no longer meets the financial test requirements of  
220 subsection B or C and D of this section, the operator shall obtain alternate coverage and submit  
221 to the ~~board~~ department the appropriate original forms listed in 9VAC25-640-170 B within 30 days  
222 after notification of such finding.

223 G. If the operator fails to obtain alternate assurance within 150 days of finding that he no  
224 longer meets the requirements of the financial test based on the financial reporting year-end  
225 financial statements, or within 30 days of notification by the ~~board~~ department that he no longer  
226 meets the requirements of the financial test, the operator shall notify the ~~board~~ department of  
227 such failure within 10 days.

228 **9VAC25-640-80. Guarantee.**

229 A. An operator may satisfy the requirements of 9VAC25-640-50 by obtaining a guarantee that  
230 conforms to the requirements of this section. The guarantor shall be:

231 1. A firm that:

232 a. Possesses a controlling interest in the operator;

233 b. Possesses a controlling interest in a firm described under subdivision A 1 a of this  
234 section; or

235 c. Is controlled through stock ownership by a common parent firm that possesses a  
236 controlling interest in the operator; or

237 2. A firm engaged in a substantial business relationship with the operator and issuing the  
238 guarantee as an act incident to that business relationship.

239 B. Within 120 days of the close of each financial reporting year, the guarantor shall  
240 demonstrate that it meets the financial test criteria of 9VAC25-640-70 B or C and D based on  
241 year-end financial statements for the latest completed financial reporting year by completing the  
242 letter from the chief financial officer described in Appendix I and shall deliver the letter to the  
243 operator. If the guarantor fails to meet the requirements of the financial test at the end of any  
244 financial reporting year, within 120 days of the end of that financial reporting year the guarantor  
245 shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the  
246 operator and the ~~board~~ department. If the ~~board~~ department notifies the guarantor that he no  
247 longer meets the requirements of the financial test of 9VAC25-640-70 B or C and D, the guarantor  
248 shall notify the operator within 10 days of receiving such notification from the ~~board~~ department.  
249 In both cases, the guarantee will terminate no less than 120 days after the date the operator  
250 receives the notification, as evidenced by the return receipt. The operator shall obtain alternate  
251 coverage as specified in 9VAC25-640-200.

252 C. The guarantee shall be worded identically as specified in Appendix II, except that  
253 instructions in brackets are to be replaced with the relevant information and the brackets deleted.

254 **9VAC25-640-110. Letter of credit.**

255 A. An operator may satisfy the requirements of 9VAC25-640-50 by obtaining an irrevocable  
256 standby letter of credit that conforms to the requirements of this section. The issuing institution  
257 shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia  
258 and whose letter-of-credit operations are regulated and examined by a federal agency or the State  
259 Corporation Commission.

260 B. The letter of credit shall be worded identically as specified in Appendix VI, except that  
261 instructions in brackets are to be replaced with the relevant information and the brackets deleted.

262 C. The letter of credit shall be irrevocable with a term specified by the issuing institution. The  
263 letter of credit shall provide that credit will be automatically renewed for the same term as the  
264 original term, unless, at least 120 days before the current expiration date, the issuing institution  
265 notifies the operator and the ~~board~~ department by certified mail of its decision not to renew the  
266 letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when  
267 the operator and the ~~board~~ department receives the notice, as evidenced by the return receipts.

268 **9VAC25-640-115. Certificate of deposit.**

269 A. An operator may satisfy the requirements of 9VAC25-640-50, wholly or in part, by assigning  
270 all rights, title, and interest of a certificate of deposit to the ~~State Water Control Board~~ Department  
271 of Environmental Quality, Commonwealth of Virginia. The operator shall maintain the certificate  
272 of deposit until the requirements of 9VAC25-640-190 are met. The original assignment and the  
273 certificate of deposit, if applicable, must be submitted to the ~~board~~ department to prove that the  
274 certificate of deposit has been obtained and meets the requirements of this section. A copy of the

275 certificate of deposit shall be maintained at the aboveground storage tank site or the operator's  
276 place of work located in Virginia. The issuing institution shall be a bank or other financial institution  
277 whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC) and whose  
278 operations are regulated and examined by the Commonwealth of Virginia, by a federal agency,  
279 or by an agency of another state.

280 B. The operator shall be entitled to demand, receive, and recover the interest and income  
281 from the certificate of deposit as it becomes due and payable as long as the market value of the  
282 certificate of deposit plus any other mechanisms used continue to at least equal the amount of  
283 financial responsibility the operator is required to demonstrate.

284 C. In the event of failure of the operator to comply with the requirements of 9VAC25-640-150,  
285 the ~~board~~ department shall cash the certificate of deposit.

286 D. Payments made under the terms of the certificate of deposit will be deposited by the issuing  
287 institution directly into the Virginia Petroleum Storage Tank Fund. Payments from the fund shall  
288 be approved by the ~~board~~ department.

289 E. The wording of the assignment shall be identical to the wording specified in Appendix X.

#### 290 **9VAC25-640-120. Trust fund.**

291 A. An operator may satisfy the requirements of 9VAC25-640-50 by establishing an irrevocable  
292 trust fund that conforms to the requirements of this section. The trustee shall be an entity that has  
293 the authority to act as a trustee and whose trust operations are regulated and examined by a  
294 federal agency or the State Corporation Commission.

295 B. The trust fund shall be irrevocable and shall continue until terminated at the written direction  
296 of the grantor and the trustee, or by the trustee and the ~~State Water Control Board~~ department, if  
297 the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final  
298 trust administration expenses, shall be delivered to the operator. The wording of the trust  
299 agreement shall be identical to the wording specified in Appendix VII.

300 C. The irrevocable trust fund, when established, shall be funded for the full required amount  
301 of coverage, or funded for part of the required amount of coverage and used in combination with  
302 other mechanisms that provide the remaining required coverage.

303 D. If the value of the trust fund is greater than the required amount of coverage, the operator  
304 may submit a written request to the ~~board~~ department for release of the excess.

305 E. If other financial assurance as specified in this chapter is substituted for all or part of the  
306 trust fund, the operator may submit a written request to the ~~board~~ department for release of the  
307 excess.

308 F. Within 60 days after receiving a request from the operator for release of funds as specified  
309 in subsection D or E of this section, the ~~board~~ department will instruct the trustee to release to the  
310 operator such funds as the ~~board~~ department specifies in writing.

#### 311 **9VAC25-640-150. Cancellation or nonrenewal by a provider of financial assurance.**

312 A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew  
313 an assurance mechanism by sending a notice of termination by certified mail to the operator and  
314 the ~~board~~ department.

315 Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days  
316 after the date on which the operator and the ~~board~~ department receives the notice of termination,  
317 as evidenced by the return receipts.

318 Termination of insurance or group self-insurance pool coverage, except for nonpayment or  
319 misrepresentation by the insured, may not occur until 60 days after the date on which the operator  
320 and the ~~board~~ department receives the notice of termination, as evidenced by the return receipts.  
321 Termination for nonpayment of premium or misrepresentation by the insured may not occur until

322 a minimum of 15 days after the date on which the operator and the ~~board~~ department receives  
323 the notice of termination, as evidenced by the return receipts.

324 B. If a provider of financial responsibility cancels or fails to renew for reasons other than  
325 incapacity of the provider as specified in 9VAC25-640-200, the operator shall obtain alternate  
326 coverage as specified in this section and shall submit to the ~~board~~ department the appropriate  
327 original forms listed in 9VAC25-640-170 B documenting the alternate coverage within 60 days  
328 after receipt of the notice of termination. If the operator fails to obtain alternate coverage within  
329 60 days after receipt of the notice of termination, the operator shall immediately notify the ~~board~~  
330 department of such failure and submit:

- 331 1. The name and address of the provider of financial assurance;
- 332 2. The effective date of termination; and
- 333 3. A copy of the financial assurance mechanism subject to the termination maintained in  
334 accordance with 9VAC25-640-170.

335 **9VAC25-640-160. Reporting by operator.**

336 A. An operator shall submit the appropriate original forms listed in 9VAC25-640-170 B  
337 documenting current evidence of financial responsibility to the ~~board~~ department within 30 days  
338 after the operator identifies or confirms a discharge from an aboveground storage tank or pipeline  
339 required to be reported under 9VAC25-91. For all subsequent discharges within the same period  
340 of time for which the documents submitted according to this subsection are still effective, the  
341 operator shall submit a letter that identifies the operator's name and address and the aboveground  
342 storage tank's or pipeline's location by site name, street address, ~~board~~ department incident  
343 designation number and a statement that the financial responsibility documentation previously  
344 provided to the ~~board~~ department is currently in force.

345 B. An operator shall notify the ~~board~~ department if the operator fails to obtain alternate  
346 coverage as required by this chapter within 30 days after the operator receives notice of:

- 347 1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy),  
348 U.S. Code, naming a provider of financial assurance as a debtor.
- 349 2. Suspension or revocation of the authority of a provider of financial assurance to issue  
350 a financial assurance mechanism.
- 351 3. Failure of a guarantor to meet the requirements of the financial test.
- 352 4. Other incapacity of a provider of financial assurance.

353 C. An operator shall submit the appropriate original forms listed in 9VAC25-640-170 B  
354 documenting current evidence of financial responsibility to the ~~board~~ department as required by  
355 9VAC25-640-70 E and F and 9VAC25-640-150 B.

356 D. An operator shall submit to the ~~board~~ department the appropriate original forms listed in  
357 9VAC25-640-170 B documenting current evidence of financial responsibility upon substitution of  
358 its financial assurance mechanisms as provided by 9VAC25-640-140.

359 E. The ~~board~~ department may require an operator to submit evidence of financial assurance  
360 as described in 9VAC25-640-170 B or other information relevant to compliance with this chapter  
361 at any time. The ~~board~~ department may require submission of originals or copies at its sole  
362 discretion.

363 **9VAC25-640-170. Recordkeeping.**

364 A. Operators shall maintain evidence of all financial assurance mechanisms used to  
365 demonstrate financial responsibility under this chapter for an aboveground storage tank or  
366 pipeline, or both, until released from the requirements of this regulation under 9VAC25-640-190.  
367 An operator shall maintain such evidence at the aboveground storage tank site or the operator's



368 place of work in this Commonwealth. Records maintained off-site shall be made available upon  
369 request of the ~~board~~ department.

370 B. Operators shall maintain the following types of evidence of financial responsibility:

371 1. An operator using an assurance mechanism specified in 9VAC25-640-70 through  
372 9VAC25-640-120 shall maintain the original instrument worded as specified.

373 2. An operator using a financial test or guarantee shall maintain (i) the chief financial  
374 officer's letter, and (ii) year-end financial statements for the most recent completed  
375 financial reporting year or the Dun and Bradstreet rating on which the chief financial  
376 officer's letter was based. Such evidence shall be on file no later than 120 days after the  
377 close of the financial reporting year.

378 3. An operator using an insurance policy or group self-insurance pool coverage shall  
379 maintain a copy of the signed insurance policy or group self-insurance pool coverage  
380 policy, with the endorsement or certificate of insurance and any amendments to the  
381 agreements.

382 4. a. An operator using an assurance mechanism specified in 9VAC25-640-70 through  
383 9VAC25-640-120 shall maintain an original certification of financial responsibility worded  
384 identically as specified in Appendix IX, except that instructions in brackets are to be  
385 replaced with the relevant information and the brackets deleted.

386 b. The operator shall maintain a new original certification at or before the time specified  
387 in 9VAC25-640-160 or whenever the financial assurance mechanisms used to  
388 demonstrate financial responsibility changes.

389 5. For submissions required under 9VAC25-640-160:

390 a. The operator must provide an insurance endorsement or certificate, or a notice of  
391 extension from the provider of financial assurance evidencing continuation of coverage  
392 in lieu of a new original surety bond or letter of credit, provided the form of the  
393 insurance endorsement or certificate, or notice of extension is approved by the ~~board~~  
394 department;

395 b. The operator need not provide a new original guarantee, letter of credit, certificate  
396 of deposit, or trust fund, provided the same mechanism is to continue to act as the  
397 operator's demonstration mechanism for the subsequent year or years;

398 c. The operator must provide a new original mechanism as specified in subdivision 2  
399 of this subsection;

400 d. The operator need not provide a new original certification of acknowledgment,  
401 provided the associated trust agreement has not changed;

402 e. The operator must provide a new original certification of financial responsibility.

403 **9VAC25-640-180. Drawing on financial assurance mechanisms.**

404 A. The ~~board~~ department may require the guarantor, surety, or institution issuing a letter of  
405 credit or certificate of deposit to pay to the ~~board~~ department an amount up to the limit of funds  
406 provided by the financial assurance mechanism if:

407 1. a. The operator fails to establish alternate financial assurance within 60 days after  
408 receiving notice of cancellation of the guarantee, surety bond, letter of credit, certificate of  
409 deposit; and

410 b. The ~~board~~ department determines or suspects that a discharge from an  
411 aboveground storage tank or pipeline covered by the mechanism has occurred and so  
412 notifies the operator, or the operator has notified the ~~board~~ department pursuant to  
413 9VAC25-91 of a discharge from an aboveground storage tank or pipeline covered by  
414 the mechanism; or

415 2. The conditions of subsection B of this section are satisfied.

416 B. The ~~board~~ department shall deposit the financial assurance funds forfeited pursuant to  
417 subsection A of this section into the Virginia Petroleum Storage Tank Fund. The ~~board~~ department  
418 may use the financial responsibility funds obtained pursuant to subsection A of this section to  
419 conduct containment and cleanup when it makes a final determination that a discharge has  
420 occurred and immediate or long-term containment and/or clean up for the discharge is needed,  
421 and the operator, after appropriate notice and opportunity to comply, has not conducted  
422 containment and clean up as required under 9VAC25-91.

423 **9VAC25-640-190. Release from the requirements.**

424 An operator is no longer required to maintain financial responsibility under this chapter for an  
425 aboveground storage tank or pipeline after the tank or pipeline has been permanently closed  
426 pursuant to the requirements of 9VAC25-91, except when the ~~board~~ department determines clean  
427 up of a discharge from the aboveground storage tank or pipeline is required.

428 **9VAC25-640-200. Bankruptcy or other incapacity of operator provider of financial**  
429 **assurance.**

430 A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title  
431 11 (Bankruptcy), U.S. Code, naming an operator as debtor, the operator shall notify the ~~board~~  
432 department by certified mail of such commencement.

433 B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title  
434 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such  
435 guarantor shall notify the operator and the ~~board~~ department by certified mail of such  
436 commencement as required under the terms of the guarantee specified in 9VAC25-640-80.

437 C. An operator who obtains financial assurance by a mechanism other than the financial test  
438 of self-insurance will be deemed to be without the required financial assurance in the event of a  
439 bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of  
440 the authority of the provider of financial assurance to issue a guarantee, insurance policy, group  
441 self-insurance pool coverage policy, surety bond, certificate of deposit, or letter of credit. The  
442 operator shall obtain alternate financial assurance as specified in this chapter and submit to the  
443 ~~board~~ department the appropriate original forms specified in 9VAC25-640-170 B within 30 days  
444 after receiving notice of such an event. If the operator does not obtain alternate coverage within  
445 30 days after such notification, he shall immediately notify the ~~board~~ department in writing.

446 **9VAC25-640-210. Replenishment of guarantees, letters of credit, certificate of deposit, or**  
447 **surety bonds.**

448 A. If at any time a guarantee, letter of credit, certificate of deposit, or surety bond is drawn  
449 upon by instruction of the ~~board~~ department and the ~~board~~ department has expended all or part  
450 of the funds for containment and cleanup, the operator by the anniversary date of the financial  
451 mechanism from which the funds were drawn shall:

- 452 1. Replenish the value of financial assurance to equal the full amount of coverage  
453 required; or
- 454 2. Acquire another financial assurance mechanism for the amount by which the face value  
455 of the letter of credit, certificate of deposit, surety bond, or guarantee has been reduced.

456 B. For purposes of this section, the full amount of coverage required is the amount of coverage  
457 to be provided by 9VAC25-640-50. If a combination of mechanisms was used to provide the  
458 assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary  
459 date among the mechanisms.

460 **9VAC25-640-220. Virginia Petroleum Storage Tank Fund.**

461 A. The Virginia Petroleum Storage Tank Fund will be used for reasonable and necessary  
462 costs, in excess of the financial responsibility amounts specified below, incurred by an operator  
463 for containment and cleanup of a petroleum release from a facility of a product subject to § 62.1-  
464 44.34:13 of the Code of Virginia as follows:

465 1. Reasonable and necessary per occurrence containment and cleanup costs incurred by  
466 an operator whose net annual profits from all facilities in Virginia do not exceed \$10 million:

467 a. For a release from a facility with a storage capacity less than 25,000 gallons, per  
468 occurrence costs in excess of \$2,500 up to \$1 million;

469 b. For a release from a facility with a storage capacity from 25,000 gallons to 100,000  
470 gallons, per occurrence costs in excess of \$5,000 up to \$1 million;

471 c. For a release from a facility with a storage capacity from 100,000 gallons to four  
472 million gallons, per occurrence costs in excess of \$.05 per gallon of aboveground  
473 storage capacity up to \$1 million; and

474 d. For a release from a facility with a storage capacity greater than four million gallons,  
475 per occurrence costs in excess of \$200,000 up to \$1 million.

476 e. For purposes of this subdivision, the per occurrence financial responsibility  
477 requirements for an operator shall be based on the total storage capacity for the facility  
478 from which the discharge occurs.

479 2. Reasonable and necessary per occurrence containment and cleanup costs incurred by  
480 an operator whose net annual profits from all facilities in Virginia exceed \$10 million:

481 a. For a release from a facility with a storage capacity less than four million gallons,  
482 per occurrence costs in excess of \$200,000 up to \$1 million;

483 b. For a release from a facility with a storage capacity from four million gallons to 20  
484 million gallons, per occurrence costs in excess of \$.05 per gallon of aboveground  
485 storage capacity of up to \$1 million; and

486 c. For a release from a facility with a storage capacity greater than 20 million gallons  
487 no access to the fund will be permitted.

488 d. For purposes of this subdivision, the financial responsibility requirements for an  
489 operator are based on the total aboveground storage capacity for all facilities operated  
490 in Virginia.

491 B. The Virginia Petroleum Storage Tank Fund will be used for reasonable and necessary per  
492 occurrence costs of containment and cleanup incurred for releases reported after December 22,  
493 1989, by the operator of a facility in excess of \$500 up to \$1 million for any release of petroleum  
494 into the environment from an aboveground storage tank with a capacity of 5,000 gallons or less  
495 used for storing heating oil for consumption on the premises where stored.

496 C. The Virginia Petroleum Storage Tank Fund may be used for all other uses authorized in §  
497 62.1-44.34:11 of the Code of Virginia.

498 D. An operator of a facility responding to a release and conducting ~~board-approved~~  
499 department-approved corrective action may proceed to pay for all costs incurred for such  
500 activities. Documentation submitted to the ~~board~~ department of all costs incurred will be reviewed  
501 and those documented costs in excess of the financial responsibility requirements up to \$1 million  
502 that are reasonable and necessary and have been approved by the ~~board~~ department will be  
503 reimbursed from the fund.

504 E. Operators shall pay the financial responsibility requirement specified in this section for each  
505 occurrence.

506 F. Section 62.1-44.34:11 A of the Code of Virginia provides that no person shall receive  
507 reimbursement from the fund:

508 1. For costs incurred for corrective action taken prior to December 22, 1989 by an owner  
509 or operator of an underground storage tank exempted in subdivisions 1 and 2 of the  
510 definition of an underground storage tank in § 62.1-44.34:10 of the Code of Virginia, or an  
511 owner of an aboveground storage tank with a capacity of 5,000 gallons or less used for  
512 storing heating oil for consumption on the premises where stored.

513 2. For costs incurred prior to January 1, 1992, by an operator of a facility for containment  
514 and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 of the Code  
515 of Virginia.

516 3. For containment and cleanup costs that are reimbursed or are reimbursable from other  
517 applicable state or federal programs.

518 4. If the operator of a facility has not complied with applicable statutes or regulations  
519 governing reporting, prevention, containment and cleanup of a discharge of oil.

520 5. If the owner or operator of an underground storage tank or the operator of an  
521 aboveground storage tank facility fails to report a release of petroleum or a discharge of  
522 oil to the ~~board~~ department as required by applicable statutes, laws or regulations.

523 6. Unless a reimbursement claim has been filed with the ~~board~~ department within two  
524 years from the date the ~~board~~ department issues a site remediation closure letter for that  
525 release or July 1, 2000, whichever is later.

526 G. In addition to the statutory prohibitions quoted in subsection F of this section, no person  
527 shall receive reimbursement from the fund for containment and cleanup:

528 1. Where the release is caused, in whole or in part, by the willful misconduct or negligence  
529 of the operator, his employee, contractor, or agent, or anyone within his privity or  
530 knowledge;

531 2. Where the claim cost has been reimbursed or is reimbursable by an insurance policy;

532 3. Where the operator does not demonstrate the reasonableness and necessity of the  
533 claim costs;

534 4. Where the person, his employee, contractor or agent, or anyone within the privity or  
535 knowledge of that person has (i) failed to carry out the instructions of the ~~board~~  
536 department, (ii) committed willful misconduct or been negligent in carrying out the  
537 instructions of the ~~board~~ department, or (iii) has violated applicable federal or state safety,  
538 construction or operating laws or regulations in carrying out the instructions of the ~~board~~  
539 department; and

540 5. Where the costs or damages were incurred pursuant to § 10.1-1232 of the Code of  
541 Virginia and the regulations promulgated thereunder.

542 H. No disbursements shall be made from the fund for operators who are federal government  
543 entities or whose debts and liabilities are the debts and liabilities of the United States.

544 I. No funds shall be paid in excess of the minimum disbursement necessary to contain and  
545 cleanup each occurrence to the acceptable level of risk, as determined by the ~~board~~ department.

546 J. The ~~board~~ department may perform a detailed review of all documentation associated with  
547 a reimbursement claim up to seven years following payment of the claim. Based upon the results  
548 of the review, the ~~board~~ department may take actions to address any deficiencies found in the  
549 claim documentation. Such actions may include, but are not limited to, publishing a list of audit  
550 concerns associated with the claim, withholding payment of future claims, and/or recovering costs  
551 paid on prior claims.

552 K. The ~~board~~ department shall seek recovery of all costs and expenses incurred by the  
553 Commonwealth for investigation, containment and cleanup of a discharge of oil or threat of  
554 discharge against any person liable for a discharge of oil as specified in Article 11 (§ 62.1-44.34:14  
555 et seq.) of the State Water Control Law; however, the ~~board~~ department shall seek recovery from  
556 an operator of expenditures from the fund only in the amount by which such expenditures exceed  
557 the amount authorized to be disbursed to the operator under subdivisions A 1 and A 2 of this  
558 section. This limitation on recovery shall not apply if the release was caused, in whole or in part,  
559 by the willful misconduct or negligence of the owner or operator, his employee, contractor, or  
560 agent, or anyone within his privity or knowledge.

561 **9VAC25-640-230. Notices to the ~~State Water Control Board~~ Department.**

562 All requirements of this chapter for notification to the ~~State Water Control Board~~ department  
563 shall be addressed as follows:

564 Director, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O.  
565 Box 1105, Richmond, Virginia 23218.

566 **9VAC25-640-240. ~~Delegation of authority.~~ (Repealed.)**

567 ~~The Director of the Department of Environmental Quality or a designee acting for him may~~  
568 ~~perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the~~  
569 ~~Code of Virginia.~~

570 **9VAC25-640-250:1. APPENDIX I. LETTER FROM CHIEF FINANCIAL OFFICER.**

571 APPENDIX I. LETTER FROM CHIEF FINANCIAL OFFICER.

572 (Note: The instructions in brackets are to be replaced by the relevant information and the  
573 brackets deleted.)

574 I am the chief financial officer of [insert: name and address of the operator or guarantor]. This  
575 letter is in support of the use of [insert: "the financial test of self-insurance," and/or "Guarantee"]  
576 to demonstrate financial responsibility for the containment and clean up of discharges of oil in the  
577 amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual  
578 aggregate arising from operating [insert: "(an) aboveground storage tank(s)" and/or "(a)  
579 pipeline(s)"].

580 Aboveground storage tanks at the following facilities and/or pipelines are assured by this  
581 financial test by this [insert: "operator" and/or "guarantor"]:

582 [List for each facility: the name and address of the facility where tanks assured by this financial  
583 test are located, either the registration identification number assigned by the Department or the  
584 Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by  
585 this financial test. If separate mechanisms or combinations of mechanisms are being used to  
586 assure any of the tanks at this facility, list each tank assured by this financial test.

587 List for each pipeline: the home office address and the names of the cities and counties in the  
588 Commonwealth where the pipeline is located.]

589 This [insert: "operator " or "guarantor"] has not received an adverse opinion, a disclaimer of  
590 opinion, or a "going concern" qualification from an independent auditor on the financial statements  
591 for the latest completed fiscal year.

592 [Fill in the information for Alternative I if the criteria of 9VAC25-640-70 B are being used to  
593 demonstrate compliance with the financial test requirements. Fill in the information for Alternative  
594 II if the criteria of 9VAC25-640-70 C are being used to demonstrate compliance with the financial  
595 test requirements.]

596 ALTERNATIVE I

1. Amount of AST annual aggregate coverage being assured by a financial test, and/or guarantee	\$ _____	
2. Amount of pipeline annual aggregate coverage covered by a financial test, and/or guarantee	\$ _____	
3. Amount of annual underground storage tank (UST) aggregate coverage being assured by a financial test and/or guarantee pursuant to 9 VAC 25-590	\$ _____	
4. Total AST/Pipeline/UST financial responsibility obligations assured by a financial test and/or guarantee (Sum of lines 1, 2 and 3)	\$ _____	
5. Total tangible assets	\$ _____	
6. Total liabilities [if any of the amount reported on line 4 is included in total liabilities, you may deduct that amount from this line or add that amount to line 7]	\$ _____	
7. Tangible net worth [subtract line 6 from line 5]	\$ _____	
8. Is line 7 at least equal to line 4 above?	Yes	No
	_____	_____
9. Have financial statements for the latest financial reporting year been filed with the Securities and Exchange Commission?	_____	_____
10. Have financial statements for the latest financial reporting year been filed with the Energy Information Administration?	_____	_____
11. Have financial statements for the latest financial reporting year been filed with the Rural Utilities Service?	_____	_____
12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of at least equal to the amount of annual AST/pipeline aggregate coverage being assured? [Answer Yes only if both criteria have been met.]	_____	_____
13. If you did not answer Yes to one of lines 9 through 12, please attach a report from an independent certified public accountant certifying that there are no material differences between the data reported in lines 5 through 8 above and the financial statements for the latest financial reporting year.		

**597**      **ALTERNATIVE II**

1. Amount of AST annual aggregate coverage being assured by a financial test, and/or guarantee	\$ _____	
2. Amount of pipeline annual aggregate coverage covered by a financial test, and/or guarantee	\$ _____	
3. Amount of annual underground storage tank (UST) aggregate coverage being assured by a financial test and/or guarantee pursuant to 9VAC25-590	\$ _____	

4. Total AST/Pipeline?UST financial responsibility obligations assured by a financial test and/or guarantee (Sum of lines 1, 2 and 3)	\$ _____	
5. Total tangible assets	\$ _____	
6. Total liabilities [if any of the amount reported on line 4 is included in total liabilities, you may deduct that amount from this line or add that amount to line]	\$ _____	
7. Tangible net worth [subtract line 6 from line 5]	\$ _____	
8. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.]	\$ _____	
9. Is line 7 at least equal to line 4 above?	Yes _____	No _____
10. Are at least 90 percent of assets located in the U.S.? [If No, complete line 11.]	_____	_____
11. Is line 8 at least equal to line 4?	_____	_____
[Fill in either lines 12-15 or lines 16-18:]		
12. Current assets	\$ _____	
13. Current liabilities	\$ _____	
14. Net working capital [subtract line 13 from line 12]	\$ _____	
15. Is line 14 at least equal to line 4?	Yes _____	No _____
16. Current bond rating of most recent bond issue	_____	
17. Name of rating service	_____	
18. Date of maturity of bond	_____	
19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Utilities Service?	Yes _____	No _____

598 [If "No," please attach a report from an independent certified public accountant certifying that  
599 there are no material differences between the data as reported in lines 5-18 above and the  
600 financial statements for the latest financial reporting year.]

601 [For Alternatives I and II, complete the certification with this statement.]

602 I hereby certify that the wording of this letter is identical to the wording specified in Appendix  
603 I of 9VAC25-640 as such regulations were constituted on the date shown immediately below.

604 [Signature]

605 [Name]

606 [Title]

607 [Date]

608 **9VAC25-640-250:2. APPENDIX II. GUARANTEE.**

609 APPENDIX II. GUARANTEE.

610 (Note: The instructions in brackets are to be replaced by the relevant information and the  
611 brackets deleted.)

612 Guarantee made this [date] by [name of guaranteeing entity], a business entity organized  
613 under the laws of the state of [insert name of state], herein referred to as guarantor, to the ~~State~~  
614 ~~Water Control Board~~ Department of Environmental Quality of the Commonwealth of Virginia and  
615 obligees, on behalf of [operator] of [business address].

616 Recitals.

617 (1) Guarantor meets or exceeds the financial test criteria of 9VAC25-640-70 B or C and D and  
618 agrees to comply with the requirements for guarantors as specified in 9VAC25-640-80.

619 (2) Operator operates the following aboveground storage tank(s) and/or pipelines covered by  
620 this guarantee:

621 [List for each facility: the name and address of facility where tanks assured by this financial  
622 test are located, either the registration identification number assigned by the Department or the  
623 Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by  
624 this guarantee. If more than one instrument is used to assure different tanks at any one facility,  
625 list each tank assured by this mechanism.

626 List for each pipeline: the home office address and the names of the cities and counties in the  
627 Commonwealth where the pipeline is located.]

628 This guarantee satisfies the requirements of 9VAC25-640 for assuring funding for taking  
629 containment and clean up measures necessitated by a discharge of oil; [if coverage is different  
630 for different tanks or locations, indicate the type of coverage applicable to each tank or location]  
631 arising from operating the above-identified aboveground storage tank(s) and/or pipelines in the  
632 amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

633 (3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent  
634 of the operator); "On behalf of our affiliate" (if guarantor is a related firm of the operator); or  
635 "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident  
636 to a substantial business relationship with operator)] [operator], guarantor guarantees to the ~~State~~  
637 ~~Water Control Board~~ Department of Environmental Quality that:

638 In the event that operator fails to provide alternate coverage within 60 days after receipt of a  
639 notice of cancellation of this guarantee and the ~~State Water Control Board~~ Department of  
640 Environmental Quality has determined or suspects that a discharge has occurred at an  
641 aboveground storage tank and/or pipeline covered by this guarantee, the guarantor, upon  
642 instructions from the ~~State Water Control Board~~ Department of Environmental Quality, shall pay  
643 the funds to the ~~State Water Control Board~~ Department of Environmental Quality in accordance  
644 with the provisions of 9VAC25-640-180, in an amount not to exceed the coverage limits specified  
645 above.

646 In the event that the ~~State Water Control Board~~ Department of Environmental Quality  
647 determines that operator has failed to perform containment and clean up for discharges arising  
648 out of the operation of the above-identified tank(s) and/or pipelines in accordance with 9VAC25-  
649 91, the guarantor upon written instructions from the ~~State Water Control Board~~ Department of  
650 Environmental Quality shall pay the funds to the ~~State Water Control Board~~ Department of  
651 Environmental Quality in accordance with the provisions of 9VAC25-640-180, in an amount not  
652 to exceed the coverage limits specified above.

653 (4) Guarantor agrees that if, at the end of any financial reporting year before cancellation of  
654 this guarantee, the guarantor fails to meet the financial test criteria of 9VAC25-640-70 B or C and  
655 D, guarantor shall send within 120 days of such failure, by certified mail, notice to operator and



656 the ~~State Water Control Board~~ Department of Environmental Quality. The guarantee will terminate  
657 120 days from the date of receipt of the notice by operator and the ~~State Water Control Board~~  
658 Department of Environmental Quality, as evidenced by the return receipt.

659 (5) Guarantor agrees to notify operator and the ~~State Water Control Board~~ Department of  
660 Environmental Quality by certified mail of a voluntary or involuntary proceeding under Title 11  
661 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement  
662 of the proceeding.

663 (6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification  
664 or alteration of any obligation of operator pursuant to 9VAC25-91 or 9VAC25-640.

665 (7) Guarantor agrees to remain bound under this guarantee for so long as operator shall  
666 comply with the applicable financial responsibility requirements of 9VAC25-640 for the above-  
667 identified tank(s) and/or pipelines, except that guarantor may cancel this guarantee by sending  
668 notice by certified mail to operator and the ~~State Water Control Board~~ Department of  
669 Environmental Quality, such cancellation to become effective no earlier than 120 days after  
670 receipt of such notice by operator and the ~~State Water Control Board~~ Department of  
671 Environmental Quality, as evidenced by the return receipt.

672 (8) The guarantor's obligation does not apply to any of the following:

673 (a) Any obligation of operator under a workers' compensation, disability benefits, or  
674 unemployment compensation law or other similar law;

675 (b) Bodily injury to an employee of operator arising from, and in the course of, employment  
676 by operator;

677 (c) Bodily injury or property damage arising from the ownership, maintenance, use, or  
678 entrustment to others of any aircraft, motor vehicle, or watercraft;

679 (d) Property damage to any property owned, rented, loaned to, in the care, custody, or  
680 control of, or occupied by operator that is not the direct result of a discharge from an  
681 aboveground storage tank and/or pipeline;

682 (e) Bodily damage or property damage for which operator is obligated to pay damages by  
683 reason of the assumption of liability in a contract or agreement other than a contract or  
684 agreement entered into to meet the requirements of 9VAC25-640.

685 (9) Guarantor expressly waives notice of acceptance of this guarantee by the ~~State Water~~  
686 ~~Control Board~~ Department of Environmental Quality or by operator.

687 I hereby certify that the wording of this guarantee is identical to the wording specified in  
688 Appendix II of 9VAC25-640 as such regulations were constituted on the effective date shown  
689 immediately below.

690 [Name of guarantor]

691 [Authorized signature for guarantor]

692 [Name of person signing]

693 [Title of person signing]

694 Signature of witness or notary:

695 **9VAC25-640-250:3. APPENDIX III. ENDORSEMENT.**

696 APPENDIX III. ENDORSEMENT.

697 (Note: The instructions in brackets are to be replaced by the relevant information and the  
698 brackets deleted.)

699 Name: \_\_\_\_\_ [name of each covered location] \_\_\_\_\_

700 Address: \_\_\_\_\_ [address of each covered location] \_\_\_\_\_

701 Policy Number: \_\_\_\_\_

702 Period of Coverage: \_\_\_\_\_ [current policy period] \_\_\_\_\_

703 Name of Insurer:

704 \_\_\_\_\_

705 \_\_\_\_\_

706 Address of Insurer:

707 \_\_\_\_\_

708 \_\_\_\_\_

709 Name of Insured: \_\_\_\_\_

710 Address of Insured:

711 \_\_\_\_\_

712 \_\_\_\_\_

713 \_\_\_\_\_

714 Endorsement:

715 1. This endorsement certifies that the policy to which the endorsement is attached  
716 provides liability insurance covering the following aboveground storage tanks and/or  
717 pipelines in connection with the insured's obligation to demonstrate financial responsibility  
718 under 9VAC25-640:

719 [List for each facility: the name and address of the facility where tanks assured by this  
720 mechanism are located, either the registration identification number assigned by the  
721 department or the Oil Discharge Contingency Plan facility identification number, and  
722 whether tanks are assured by this mechanism. If more than one instrument is used to  
723 assure different tanks at any one facility, list each tank assured by this mechanism.

724 List for each pipeline: the home office address and the names of the cities and counties  
725 in the Commonwealth where the pipeline is located.]

726 for containment and clean up of a discharge of oil in accordance with and subject to the  
727 limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is  
728 different for different tanks or locations, indicate the type of coverage applicable to each  
729 tank or location] arising from operating the aboveground storage tank(s) and/or pipelines  
730 identified above.

731 The limits of liability are [insert the dollar amount of the containment and clean up "each  
732 occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount  
733 of coverage is different for different types of coverage or for different aboveground storage  
734 tanks, pipelines or locations, indicate the amount of coverage for each type of coverage  
735 and/or for each aboveground storage tank, pipeline or location], exclusive of legal defense  
736 costs, which are subject to a separate limit under the policy. This coverage is provided  
737 under [policy number]. The effective date of said policy is [date].

738 2. The insurance afforded with respect to such occurrences is subject to all of the terms  
739 and conditions of the policy; provided, however, that any provisions inconsistent with  
740 subsections (a) through (d) for occurrence policies and (a) through (e) for claims-made  
741 policies of this Paragraph 2 are hereby amended to conform with subsections (a) through  
742 (e):

743 a. Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations  
744 under the policy to which this endorsement is attached.

745 b. The Insurer is liable for the payment of amounts within any deductible applicable to  
746 the policy to the provider of containment and clean up, with a right of reimbursement  
747 by the insured for any such payment made by the Insurer.

748 This provision does not apply with respect to that amount of any deductible for which  
749 coverage is demonstrated under another mechanism or combination of mechanisms  
750 as specified in 9VAC25-640-70 through 9VAC25-640-120.

751 c. Whenever requested by the ~~State Water Control Board~~ Department of  
752 Environmental Quality, the Insurer agrees to furnish to ~~State Water Control Board~~  
753 Department of Environmental Quality a signed duplicate original of the policy and all  
754 endorsements.

755 d. Cancellation or any other termination of the insurance by the Insurer, except for on-  
756 payment of premium or misrepresentation by the insured, will be effective only upon  
757 written notice and only after the expiration of 60 days after a copy of such written notice  
758 is received by the insured and the ~~State Water Control Board~~ Department of  
759 Environmental Quality. Cancellation for non-payment of premium or misrepresentation  
760 by the insured will be effective only upon written notice and only after expiration of a  
761 minimum of 15 days after a copy of such written notice is received by the insured and  
762 the ~~State Water Control Board~~ Department of Environmental Quality.

763 [Insert for claims-made policies:

764 e. The insurance covers claims otherwise covered by the policy that are reported to  
765 the Insurer within six months of the effective date of cancellation or nonrenewal of the  
766 policy except where the new or renewed policy has the same retroactive date or a  
767 retroactive date earlier than that of the prior policy, and which arise out of any covered  
768 occurrence that commenced after the policy retroactive date, if applicable, and prior to  
769 such policy renewal or termination date. Claims reported during such extended  
770 reporting period are subject to the terms, conditions, limits, including limits of liability,  
771 and exclusions of the policy.]

772 I hereby certify that the wording of this endorsement is in no respect less favorable than the  
773 coverage specified in Appendix III of 9VAC25-640 and has been so certified by the State  
774 Corporation Commission of the Commonwealth of Virginia. I further certify that the Insurer is  
775 licensed to transact the business of insurance or eligible to provide insurance as an excess or  
776 surplus lines insurer in the Commonwealth of Virginia.

777 [Signature of authorized representative of Insurer]

778 [Name of person signing]

779 [Title of person signing], Authorized Representative of [name of Insurer]

780 [Address of Representative]

781 **9VAC25-640-250:4. APPENDIX IV. CERTIFICATE OF INSURANCE.**

782 APPENDIX IV. CERTIFICATE OF INSURANCE.

783 (Note: The instructions in brackets are to be replaced by the relevant information and the  
784 brackets deleted.)

785 Name: \_\_\_\_\_ [name of each covered location] \_\_\_\_\_

786 Address: \_\_\_\_\_ [address of each covered location] \_\_\_\_\_

787 \_\_\_\_\_

788 \_\_\_\_\_

789 Policy Number: \_\_\_\_\_

790 Endorsement (if applicable): \_\_\_\_\_

791 Period of Coverage: \_\_\_\_\_ [current policy period] \_\_\_\_\_

792 Name of Insurer:

793 \_\_\_\_\_

794 \_\_\_\_\_  
795 Address of Insurer:  
796 \_\_\_\_\_  
797 \_\_\_\_\_  
798 Name of Insured: \_\_\_\_\_  
799 Address of Insured: \_\_\_\_\_  
800 Certification:

801 1. [Name of Insurer], [the Insurer, as identified above, hereby certifies that it has issued  
802 liability insurance covering the following aboveground storage tank(s) and/or pipelines in  
803 connection with the insured's obligation to demonstrate financial responsibility under  
804 9VAC25-640:

805 [List for each facility: the name and address of the facility where tanks assured by this  
806 mechanism are located, either the registration identification number assigned by the  
807 Department or the Oil Discharge Contingency Plan facility identification number, and  
808 whether tanks are assured by this mechanism. If more than one instrument is used to  
809 assure different tanks at any one facility, list each tank assured by this mechanism.

810 List for each pipeline: the home office address and the names of the cities and counties  
811 in the Commonwealth where the pipeline is located.]

812 for containment and clean up of discharges of oil; in accordance with and subject to the  
813 limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is  
814 different for different tanks, pipelines or locations, indicate the type of coverage applicable  
815 to each tank, pipeline or location] arising from operating the aboveground storage tank(s)  
816 and/or pipelines identified above.

817 The limits of liability are [insert the dollar amount of the containment and clean up "each  
818 occurrence" and "annual aggregate" limits of the Insurer's liability; if the amount of  
819 coverage is different for different types of coverage or for different aboveground storage  
820 tanks or locations, indicate the amount of coverage for each type of coverage and/or for  
821 each aboveground storage tank, pipeline or location], exclusive of legal defense costs,  
822 which are subject to a separate limit under the policy. This coverage is provided under  
823 [policy number]. The effective date of said policy is [date].

824 2. The Insurer further certifies the following with respect to the insurance described in  
825 Paragraph 1:

826 a. Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations  
827 under the policy to which this certificate applies.

828 b. The Insurer is liable for the payment of amounts within any deductible applicable to  
829 the policy to the provider of containment and clean up with a right of reimbursement  
830 by the insured for any such payment made by the Insurer.

831 This provision does not apply with respect to that amount of any deductible for which  
832 coverage is demonstrated under another mechanism or combination of mechanisms  
833 as specified in 9VAC25-640-70 through 9VAC25-640-120.

834 c. Whenever requested by the ~~State Water Control Board~~ Department of  
835 Environmental Quality, the Insurer agrees to furnish to the ~~State Water Control Board~~  
836 Department of Environmental Quality a signed duplicate original of the policy and all  
837 endorsements.

838 d. Cancellation or any other termination of the insurance by the Insurer, except for  
839 non-payment of premium or misrepresentation by the insured, will be effective only  
840 upon written notice and only after the expiration of 60 days after a copy of such written

841 notice is received by the insured and the ~~State Water Control Board~~ Department of  
842 Environmental Quality. Cancellation for non-payment of premium or misrepresentation  
843 by the insured will be effective only upon written notice and only after expiration of a  
844 minimum of 15 days after a copy of such written notice is received by the insured and  
845 the ~~State Water Control Board~~ Department of Environmental Quality.

846 [Insert for claims-made policies:

847 e. The insurance covers claims otherwise covered by the policy that are reported to  
848 the Insurer within six months of the effective date of cancellation or nonrenewal of the  
849 policy except where the new or renewed policy has the same retroactive date or a  
850 retroactive date earlier than that of the prior policy, and which arise out of any covered  
851 occurrence that commenced after the policy retroactive date, if applicable, and prior to  
852 such policy renewal or termination date. Claims reported during such extended  
853 reporting period are subject to the terms, conditions, limits, including limits of liability,  
854 and exclusions of the policy.]

855 I hereby certify that the wording of this instrument is identical to the wording in Appendix IV of  
856 9VAC25-640 and that the Insurer is licensed to transact the business of insurance, or eligible to  
857 provide insurance as an excess or approved surplus lines insurer, in the Commonwealth of  
858 Virginia.

859 [Signature of authorized representative of Insurer]

860 [Type name] [Title], Authorized Representative of [name of Insurer]

861 [Address of Representative]

862 **9VAC25-640-250:5. APPENDIX V. PERFORMANCE BOND.**

863 APPENDIX V. PERFORMANCE BOND.

864 (Note: The instructions in brackets are to be replaced by the relevant information and the  
865 brackets deleted.)

866 Date bond executed: \_\_\_\_\_

867 Effective date: \_\_\_\_\_

868 Principal: [legal name and address of operator] \_\_\_\_\_

869 Type of organization: [insert "individual" "joint venture," "partnership," "corporation," or  
870 appropriate identification of type of organization] \_\_\_\_\_

871 State of incorporation (if applicable): \_\_\_\_\_

872 Surety(ies): [name(s) and business address(es)] \_\_\_\_\_

873 Scope of Coverage:

874 [List for each facility: the name and address of the facility where tanks assured by this  
875 mechanism are located, either the registration identification number assigned by the Department  
876 or the Oil Discharge Contingency Plan facility identification number, and whether tanks are  
877 assured by this mechanism. If more than one instrument is used to assure different tanks at any  
878 one facility, list each tank assured by this mechanism. For pipelines, list the home office address  
879 and the names of the cities and counties in the Commonwealth where the pipeline is located.

880 List the coverage guaranteed by the bond: containment and clean up of oil from a discharge  
881 arising from operating the aboveground storage tank and/or pipeline.]

882 Penal sums of bond:

883 Containment and Clean up (per discharge) \$ \_\_\_\_\_

884 Annual Aggregate \$ \_\_\_\_\_

885 Surety's bond number: \_\_\_\_\_

886 Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly  
887 bound to the ~~State Water Control Board~~ Department of Environmental Quality of the  
888 Commonwealth of Virginia, in the above penal sums for the payment of which we bind ourselves,  
889 our heirs, executors, administrators, successors, and assigns jointly and severally; provided that,  
890 where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in  
891 such sums jointly and severally only for the purpose of allowing a joint action or actions against  
892 any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the  
893 Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but  
894 if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

895 Whereas said Principal is required under § 62.1-44.34:16 of the Code of Virginia and under  
896 9VAC25-640 to provide financial assurance for containment and clean up necessitated by  
897 discharges of oil; [if coverage is different for different tanks or locations or pipelines, indicate the  
898 type of coverage applicable to each tank or location or pipeline] arising from operating the  
899 aboveground storage tanks and/or pipelines identified above;

900 Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully  
901 contain and clean up, in accordance with the ~~State Water Control Board's~~ Department of  
902 Environmental Quality's instructions for containment and clean up of discharges of oil arising from  
903 operating the tank(s) identified above, or if the Principal shall provide alternate financial  
904 assurance, as specified in 9VAC25-640, within 120 days after the date the notice of cancellation  
905 is received by the Principal from the Surety(ies), then this obligation shall be null and void;  
906 otherwise it is to remain in full force and effect.

907 Such obligation does not apply to any of the following:

- 908 (a) Any obligation of operator under a workers' compensation, disability benefits, or  
909 unemployment compensation law or other similar law;
- 910 (b) Bodily injury to an employee of operator arising from, and in the course of, employment  
911 by operator;
- 912 (c) Bodily injury or property damage arising from the ownership, maintenance, use, or  
913 entrustment to others of any aircraft, motor vehicle, or watercraft;
- 914 (d) Property damage to any property owned, rented, loaned to, in the care, custody, or  
915 control of, or occupied by operator that is not the direct result of a discharge from an  
916 aboveground storage tank and/or pipeline;
- 917 (e) Bodily injury or property damage for which operator is obligated to pay damages by  
918 reason of the assumption of liability in a contract or agreement other than a contract or  
919 agreement entered into to meet the requirements of 9VAC25-640.

920 The Surety(ies) shall become liable on this bond obligation only when the Principal has failed  
921 to fulfill the conditions described above.

922 Upon notification by the ~~State Water Control Board~~ Department of Environmental Quality that  
923 the Principal has failed to contain and clean up in accordance with 9VAC25-91 and the ~~State~~  
924 ~~Water Control Board's~~ Department of Environmental Quality's instructions, the Surety(ies) shall  
925 either perform containment and clean up in accordance with 9VAC25-91 and the ~~board's~~  
926 department's instructions, or pay funds in an amount up to the annual aggregate penal sum to the  
927 ~~State Water Control Board~~ Department of Environmental Quality as directed by the ~~State Water~~  
928 ~~Control Board~~ Department of Environmental Quality under 9VAC25-640-180. The ~~State Water~~  
929 ~~Control Board~~ Department of Environmental Quality in its sole discretion may elect to require the  
930 surety to pay the funds or to perform containment and cleanup up to the annual aggregate penal  
931 sum.

932 Upon notification by the ~~State Water Control Board~~ Department of Environmental Quality that  
933 the Principal has failed to provide alternate financial assurance within 60 days after the date the

934 notice of cancellation is received by the Principal from the Surety(ies) and that the ~~State Water~~  
935 ~~Control Board~~ Department of Environmental Quality has determined or suspects that a discharge  
936 has occurred, the Surety(ies) shall pay funds in an amount not exceeding the annual aggregate  
937 penal sum to the ~~State Water Control Board~~ Department of Environmental Quality as directed by  
938 the ~~State Water Control Board~~ Department of Environmental Quality under 9VAC25-640-180.

939 The Surety(ies) submit to the jurisdiction of the Circuit Court of the City of Richmond to  
940 adjudicate any claim against it (them) by the ~~State Water Control Board~~ Department of  
941 Environmental Quality and waive any objection to venue in that court. Interest shall accrue at the  
942 judgment rate of interest on the amount due beginning seven days after the date of notification  
943 by the ~~State Water Control Board~~ Department of Environmental Quality. In the event the ~~State~~  
944 ~~Water Control Board~~ Department of Environmental Quality shall institute legal action to compel  
945 performance by the Surety under this agreement, the Surety shall be liable for all costs and legal  
946 fees incurred by the ~~board~~ department to enforce this agreement.

947 The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules,  
948 and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation  
949 on this bond. The Surety(ies) hereby agrees that it(they) has been notified of all material facts  
950 regarding this contract of suretyship and waiver(s) any defense founded in concealment of  
951 material facts. The Surety(ies) represents that the person executing this agreement has full  
952 authority to execute the agreement. Surety(ies) hereby waive(s) any right to notice of breach or  
953 default of the Principal. The ~~State Water Control Board~~ Department of Environmental Quality may  
954 enforce this agreement against the Surety(ies) without bringing suit against the Principal. The  
955 ~~State Water Control Board~~ Department of Environmental Quality shall not be required to exhaust  
956 the assets of the Principal before demanding performance by the Surety. No lawful act of the  
957 ~~State Water Control Board~~ Department of Environmental Quality, including without limitation any  
958 extension of time to the Principal, shall serve to release any surety, whether or not that act may  
959 be construed to alter or vary this agreement. Release of one cosurety shall not act as the release  
960 of another. This agreement shall be construed to affect its purpose to provide remedial action for  
961 discharges of petroleum.

962 The liability of the Surety(ies) shall not be discharged by any payment or succession of  
963 payments hereunder, unless and until such payment or payments shall amount in the annual  
964 aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of  
965 the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

966 The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail or  
967 overnight courier to the Principal and the ~~State Water Control Board~~ Department of Environmental  
968 Quality, provided, however, that cancellation shall not occur during the 120 days beginning on the  
969 date of receipt of the notice of cancellation by the Principal and the ~~State Water Control Board~~  
970 Department of Environmental Quality, as evidenced by the return receipt.

971 The Principal may terminate this bond by sending written notice to the Surety(ies).

972 In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed  
973 their seals on the date set forth above.

974 The persons whose signatures appear below hereby certify that they are authorized to  
975 execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this  
976 surety bond is identical to the wording specified in Appendix V of 9VAC25-640 as such regulations  
977 were constituted on the date this bond was executed.

978 PRINCIPAL

979 [Signature(s)]

980 [Name(s)]

981 [Title(s)]

982 [Corporate seal]  
983 CORPORATE SURETY(IES)  
984 [Name and address]  
985 State of Incorporation:  
986 Liability limit: \$ \_\_\_\_\_  
987 [Signature(s)]  
988 [Name(s) and title(s)]  
989 [Corporate seal]

990 [For every co-surety, provide signature(s), corporate seal, and other information in the same  
991 manner as for Surety above.]

992 Bond premium: \$ \_\_\_\_\_

993 **9VAC25-640-250:6. APPENDIX VI. IRREVOCABLE STANDBY LETTER OF CREDIT.**

994 APPENDIX VI. IRREVOCABLE STANDBY LETTER OF CREDIT.

995 (Note: The instructions in brackets are to be replaced by the relevant information and the  
996 brackets deleted.)

997 [Name and address of issuing institution]

998 [Name and address of the Director]

999 Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit  
1000 No. \_\_\_\_\_ in your favor, at the request and for the account of [operator name] of [address] up  
1001 to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon  
1002 presentation of

- 1003 (1) Your sight draft, bearing reference to this letter of credit, No. \_\_\_\_\_; and
- 1004 (2) Your signed statement reading as follows: "I certify that the amount of the draft is
- 1005 payable pursuant to regulations issued under authority of § 62.1- 44.34:16 of the Code of
- 1006 Virginia."

1007 This letter of credit may be drawn on to cover containment and clean up necessitated by  
1008 discharges of oil arising from operating the aboveground storage tank(s) and pipelines identified  
1009 below in the amount of [in words] \$ [insert dollar amount] per occurrence and [in words] \$ [insert  
1010 dollar amount] annual aggregate:

1011 [List for each facility: the name and address of the facility where tanks assured by this  
1012 mechanism are located, either the registration identification number assigned by the Department  
1013 or the Oil Discharge Contingency Plan facility identification number, and whether tanks are  
1014 assured by this mechanism. If more than one instrument is used to assure different tanks at any  
1015 one facility, list each tank covered by this instrument.

1016 For pipelines, list: the home office address and the names of the cities and counties in the  
1017 Commonwealth where the pipeline is located.]

1018 The letter of credit may not be drawn on to cover any of the following:

- 1019 (a) Any obligation of operator under a workers' compensation, disability benefits, or
- 1020 unemployment compensation law or other similar law;
- 1021 (b) Bodily injury to an employee of operator arising from, and in the course of, employment
- 1022 by operator;
- 1023 (c) Bodily injury or property damage arising from the ownership, maintenance, use, or
- 1024 entrustment to others of any aircraft, motor vehicle, or watercraft;



1025 (d) Property damage to any property owned, rented, loaned to, in the care, custody, or  
1026 control of, or occupied by an operator that is not the direct result of a discharge of oil from  
1027 an aboveground storage tank and/or pipeline;

1028 (e) Bodily injury or property damage for which an operator is obligated to pay damages by  
1029 reason of the assumption of liability in a contract or agreement other than a contract or  
1030 agreement entered into to meet the requirements of 9VAC25-640-50.

1031 This letter of credit is effective as of [date] and shall expire on [date], but such expiration date  
1032 shall be automatically extended for a period of [at least the length of the original term] on  
1033 [expiration date] and on each successive expiration date, unless, at least 120 days before the  
1034 current expiration date, we notify operator and the ~~State Water Control Board~~ Department of  
1035 Environmental Quality by certified mail or overnight courier that we have decided not to extend  
1036 this letter of credit beyond the current expiration date. In the event that operator and the ~~State~~  
1037 ~~Water Control Board~~ Department of Environmental Quality are so notified, any unused portion of  
1038 the credit shall be available upon presentation of your sight draft for 120 days after the date of  
1039 receipt by the ~~State Water Control Board~~ Department of Environmental Quality, as shown on the  
1040 signed return receipt, or until the current expiration date, whichever is later.

1041 Whenever this letter of credit is drawn on under and in compliance with the terms of this credit,  
1042 we shall duly honor such draft upon presentation to us, and we shall pay to you the amount of the  
1043 draft promptly and directly in accordance with your instructions.

1044 We certify that the wording of this letter of credit is identical to the wording specified in  
1045 Appendix VI of 9VAC25-640 as such regulations were constituted on the date shown immediately  
1046 below.

1047 [Signature(s) and title(s) of official(s) of issuing institution]

1048 [Date]

1049 This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice  
1050 for Documentary Credits, published by the International Chamber of Commerce" or "the Uniform  
1051 Commercial Code"].

1052 **9VAC25-640-250:7. APPENDIX VII. TRUST AGREEMENT.**

1053 APPENDIX VII. TRUST AGREEMENT.

1054 (Note: The instructions in brackets are to be replaced by the relevant information and the  
1055 brackets deleted.)

1056 Trust agreement, the "Agreement," entered into as of [date] by and between [name of the  
1057 operator], a [name of state] [insert "corporation," "partnership," "association," "proprietorship," or  
1058 appropriate identification of type of entity], the "Grantor," and [name of corporate trustee], [insert  
1059 "Incorporated in the state of \_\_\_\_\_" or "a national bank"], the "Trustee."

1060 Whereas, the ~~State Water Control Board~~ Department of Environmental Quality of the  
1061 Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring  
1062 that an operator of an aboveground storage tank and/or pipeline shall provide assurance that  
1063 funds will be available when needed for containment and clean up of a discharge of oil arising  
1064 from the operation of the aboveground storage tank and/or pipeline. The attached Schedule A  
1065 contains for each facility the name and address of the facility where tanks covered by this trust  
1066 agreement are located, either the registration identification number assigned by the Department  
1067 or the Oil Discharge Contingency Plan facility identification number and for pipelines the home  
1068 office address and names of the cities and counties in the Commonwealth where the pipeline is  
1069 located;

1070 Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to  
1071 be the trustee under this agreement, and the Trustee is willing to act as trustee;

1072 Now, therefore, the Grantor and the Trustee agree as follows:

1073 Section 1. Definitions. As used in this Agreement:

1074 (a) The term "Grantor" means the operator who enters into this Agreement and any  
1075 successors or assigns of the Grantor.

1076 (b) The term "Trustee" means the Trustee who enters into this Agreement and any  
1077 successor Trustee.

1078 (c) "9 VAC 25-640" is the Aboveground Storage Tank and Pipeline Facility Financial  
1079 Responsibility Requirements Regulation promulgated by the ~~State Water Control Board~~  
1080 Department of Environmental Quality for the Commonwealth of Virginia.

1081 Section 2. Establishment of Fund.

1082 The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the  
1083 ~~State Water Control Board~~ Department of Environmental Quality of the Commonwealth of  
1084 Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except  
1085 as herein provided. Payments made by the provider of financial assurance pursuant to the ~~State~~  
1086 ~~Water Control Board's~~ Department of Environmental Quality's instruction are transferred to the  
1087 Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any  
1088 payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be  
1089 held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor  
1090 shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from  
1091 the Grantor as provider of financial assurance, any payments necessary to discharge any liability  
1092 of the Grantor established by the ~~State Water Control Board~~ Department of Environmental  
1093 Quality.

1094 Section 3. Payment for Containment and Clean up.

1095 The Trustee shall make payments from the Fund as the ~~State Water Control Board~~  
1096 Department of Environmental Quality shall direct, in writing, to provide for the payment of the  
1097 costs of containment and clean up of a discharge of oil arising from operating the tanks and/or  
1098 pipelines covered by this Agreement.

1099 The Fund may not be drawn upon to cover any of the following:

1100 (a) Any obligation of operator under a workers' compensation, disability benefits, or  
1101 unemployment compensation law or other similar law;

1102 (b) Bodily injury to an employee of operator arising from, and in the course of, employment  
1103 by operator;

1104 (c) Bodily injury or property damage arising from the ownership, maintenance, use, or  
1105 entrustment to others of any aircraft, motor vehicle, or watercraft;

1106 (d) Property damage to any property owned, rented, loaned to, in the care, custody, or  
1107 control of, or occupied by operator that is not the direct result of a discharge from an oil  
1108 aboveground storage tank or pipeline;

1109 (e) Bodily injury or property damage for which operator is obligated to pay damages by  
1110 reason of the assumption of liability in a contract or agreement other than a contract or  
1111 agreement entered into to meet the requirements of 9VAC25-640-50.

1112 The Trustee shall reimburse the Grantor, or other persons as specified by the ~~State Water~~  
1113 ~~Control Board~~ Department of Environmental Quality, from the Fund for containment and clean up  
1114 in such amounts as the ~~State Water Control Board~~ Department of Environmental Quality shall  
1115 direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the ~~State~~  
1116 ~~Water Control Board~~ Department of Environmental Quality specifies in writing. Upon refund, such  
1117 funds shall no longer constitute part of the Fund as defined herein.

1118 Section 4. Payments Comprising the Fund.

1119 Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to  
1120 the Trustee.

1121 Section 5. Trustee Management.

1122 The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund  
1123 invested as a single fund, without distinction between principal and income, in accordance with  
1124 general investment policies and guidelines which the Grantor may communicate in writing to the  
1125 Trustee from time to time, subject, however, to the provisions of this Section. In investing,  
1126 reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties  
1127 with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill,  
1128 prudence, and diligence under the circumstances then prevailing which persons of prudence,  
1129 acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise  
1130 of a like character and with like aims; except that:

1131 (a) Securities or other obligations of the Grantor, or any other operator of the tanks, or any  
1132 of their affiliates as defined in the Investment Company Act of 1940, as amended, 15  
1133 U.S.C. § 80a-2(a), shall not be acquired or held, unless they are securities or other  
1134 obligations of the federal or a state government;

1135 (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee,  
1136 to the extent insured by an agency of the federal or state government; and

1137 (c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested  
1138 for a reasonable time and without liability for the payment of interest thereon.

1139 Section 6. Commingling and Investment.

1140 The Trustee is expressly authorized in its discretion:

1141 (a) To transfer from time to time any or all of the assets of the Fund to any common,  
1142 commingled, or collective trust fund created by the Trustee in which the Fund is eligible to  
1143 participate, subject to all of the provisions thereof, to be commingled with the assets of  
1144 other trusts participating therein; and

1145 (b) To purchase shares in any investment company registered under the Investment  
1146 Company Act of 1940, 15 U.S.C. § 80a-1 et seq., including one which may be created,  
1147 managed, underwritten, or to which investment advice is rendered or the shares of which  
1148 are sold by the Trustee. The Trustee may vote such shares in its discretion.

1149 Section 7. Express Powers of Trustee.

1150 Without in any way limiting the powers and discretions conferred upon the Trustee by the  
1151 other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

1152 (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by  
1153 public or private sale. No person dealing with the Trustee shall be bound to see to the  
1154 application of the purchase money or to inquire into the validity or expediency of any such  
1155 sale or other disposition;

1156 (b) To make, execute, acknowledge, and deliver any and all documents of transfer and  
1157 conveyance and any and all other instruments that may be necessary or appropriate to  
1158 carry out the powers herein granted;

1159 (c) To register any securities held in the Fund in its own name or in the name of a nominee  
1160 and to hold any security in bearer form or in book entry, or to combine certificates  
1161 representing such securities with certificates of the same issue held by the Trustee in other  
1162 fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified  
1163 central depository even though, when so deposited, such securities may be merged and  
1164 held in bulk in the name of the nominee of such depository with other securities deposited  
1165 therein by another person, or to deposit or arrange for the deposit of any securities issued

1166 by the United States Government, or any agency or instrumentality thereof, with a Federal  
1167 Reserve bank, but the books and records of the Trustee shall at all times show that all  
1168 such securities are part of the Fund;

1169 (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings  
1170 certificates issued by the Trustee, in its separate corporate capacity, or in any other  
1171 banking institution affiliated with the Trustee, to the extent insured by an agency of the  
1172 federal or state government; and

1173 (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

1174 Section 8. Taxes and Expenses.

1175 All taxes of any kind that may be assessed or levied against or in respect of the Fund and all  
1176 brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses  
1177 incurred by the Trustee in connection with the administration of this Trust, including fees for legal  
1178 services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly  
1179 by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from  
1180 the Fund.

1181 Section 9. Advice of Counsel.

1182 The Trustee may from time to time consult with counsel, who may be counsel to the Grantor,  
1183 with respect to any questions arising as to the construction of this Agreement or any action to be  
1184 taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting  
1185 upon the advice of counsel.

1186 Section 10. Trustee Compensation.

1187 The Trustee shall be entitled to reasonable compensation for its services as agreed upon in  
1188 writing from time to time with the Grantor.

1189 Section 11. Successor Trustee.

1190 The Trustee may resign or the Grantor may replace the Trustee, but such resignation or  
1191 replacement shall not be effective until the Grantor has appointed a successor trustee and this  
1192 successor accepts the appointment. The successor trustee shall have the same powers and  
1193 duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance  
1194 of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the  
1195 funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not  
1196 act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent  
1197 jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee  
1198 shall specify the date on which it assumes administration of the trust in writing sent to the Grantor  
1199 and the present Trustee by certified mail 10 days before such change becomes effective. Any  
1200 expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall  
1201 be paid as provided in Section 8.

1202 Section 12. Instructions to the Trustee.

1203 All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed  
1204 by such persons as are designated in the attached Schedule B or such other designees as the  
1205 Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting  
1206 without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders,  
1207 requests and instructions by the ~~State Water Control Board~~ Department of Environmental Quality  
1208 to the Trustee shall be in writing, signed by the Executive Director of the Department of  
1209 Environmental Quality, and the Trustee shall act and shall be fully protected in acting in  
1210 accordance with such orders, requests, and instructions. The Trustee shall have the right to  
1211 assume, in the absence of written notice to the contrary, that no event constituting a change or a  
1212 termination of the authority of any person to act on behalf of the Grantor or the ~~State Water Control~~  
1213 ~~Board~~ Department of Environmental Quality hereunder has occurred. The Trustee shall have no

1214 duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the  
1215 ~~State Water Control Board~~ Department of Environmental Quality, except as provided for herein.

1216 Section 13. Amendment of Agreement.

1217 This Agreement may be amended by an instrument in writing executed by the Grantor and  
1218 the Trustee, or by the Trustee and the ~~State Water Control Board~~ Department of Environmental  
1219 Quality if the Grantor ceases to exist.

1220 Section 14. Irrevocability and Termination.

1221 Subject to the right of the parties to amend this Agreement as provided in Section 13, this  
1222 Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor  
1223 and the Trustee, or by the Trustee and the ~~State Water Control Board~~ Department of  
1224 Environmental Quality, if the Grantor ceases to exist. Upon termination of the Trust, all remaining  
1225 trust property, less final trust administration expenses, shall be delivered to the Grantor.

1226 Section 15. Immunity and Indemnification.

1227 The Trustee shall not incur personal liability of any nature in connection with any act or  
1228 omission, made in good faith, in the administration of this Trust, or in carrying out any directions  
1229 by the Grantor or the ~~State Water Control Board~~ Department of Environmental Quality issued in  
1230 accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the  
1231 Grantor, from and against any personal liability to which the Trustee may be subjected by reason  
1232 of any act or conduct in its official capacity, including all expenses reasonably incurred in its  
1233 defense in the event the Grantor fails to provide such defense.

1234 Section 16. Choice of Law.

1235 This Agreement shall be administered, construed, and enforced according to the laws of the  
1236 Commonwealth of Virginia, or the Comptroller of the Currency in the case of National Association  
1237 banks.

1238 Section 17. Interpretation.

1239 As used in this Agreement, words in the singular include the plural and words in the plural  
1240 include the singular. The descriptive headings for each section of this Agreement shall not affect  
1241 the interpretation or the legal efficacy of this Agreement.

1242 In Witness whereof the parties have caused this Agreement to be executed by their respective  
1243 officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and  
1244 attested as of the date first above written. The parties below certify that the wording of this  
1245 Agreement is identical to the wording specified in Appendix VII of 9VAC25-640 as such  
1246 regulations were constituted on the date written above.

1247 [Signature of Grantor]

1248 [Name of the Grantor]

1249 [Title]

1250 Attest:

1251 [Signature of Trustee]

1252 [Name of the Trustee]

1253 [Title]

1254 [Seal]

1255 [Signature of Witness]

1256 [Name of Witness]

1257 [Title]

1258 [Seal]

1259 [Signature of notary]  
1260 [Name of notary] [Date] My Commision expires: \_\_\_\_\_.  
1261 State of \_\_\_\_\_  
1262 County of \_\_\_\_\_

1263 Of this [date], before me personally came [operator's representative] to me known, who, being  
1264 by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of  
1265 [corporation], the corporation described in and which executed the above instrument; that she/he  
1266 knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal;  
1267 that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed  
1268 her/his name thereto by like order.

1269 [Signature of notary public]  
1270 [Name of notary public]  
1271 My Commission expires: \_\_\_\_\_

1272 **9VAC25-640-250:8. APPENDIX VIII. CERTIFICATE OF GROUP SELF-INSURANCE [POOL**  
1273 **MEMBERSHIP].**

1274 APPENDIX VIII. CERTIFICATE OF GROUP SELF-INSURANCE [POOL MEMBERSHIP].

1275 (NOTE: The instructions in brackets are to be replaced by the relevant information and the  
1276 brackets deleted.)

1277 Name: [name of each covered location]

1278 Address: [address of each covered location]

1279 Policy number:

1280 Endorsement (if applicable):

1281 Period of coverage: [current policy period]

1282 Name of Group self-insurance pool:

1283 Address of Group self-insurance pool:

1284 Name of Member:

1285 Address of Member:

1286 Certification:

1287 1. [Name of Group Self-Insurance Pool], the group self-insurance pool, "Pool," as  
1288 identified above, hereby certifies that it has entered into a Membership Agreement  
1289 (Agreement) with the member to provide liability coverage for the following aboveground  
1290 storage tank(s) and/or pipelines in connection with the insured's obligation to demonstrate  
1291 financial responsibility under the Virginia Petroleum Aboveground Storage Tank and  
1292 Pipeline Facility Financial Responsibility Requirements Regulation (9VAC25-590-640) for  
1293 [insert: "taking corrective action" and/or "compensating third parties for bodily injury and  
1294 property damage containment and cleanup of discharges of oil"] caused by either sudden  
1295 accidental releases or nonsudden accidental releases; in accordance with and subject to  
1296 the limits of liability, exclusions, conditions, and other terms of the Pool Plan (Plan) and  
1297 Agreement; [if coverage is different for different tanks, pipelines, or locations, indicate the  
1298 type of coverage applicable to each tank, pipeline, or location] arising from operating the  
1299 aboveground storage tank(s) and/or pipelines identified above.

1300 The limits of liability of the Pool are [insert the dollar amount] of the containment and  
1301 cleanup "each occurrence" and "annual aggregate" limits of the Group's liability; if the  
1302 amount of coverage is different for different types of coverage or for different aboveground  
1303 storage tanks, pipelines, or locations, indicate the amount of coverage for each type of  
1304 coverage and/or for each aboveground storage tank, pipeline or location insert the dollar

1305 amount] corrective action per occurrence and [insert dollar amount] third party liability per  
1306 occurrence and [insert dollar amount] annual aggregate [If the amount of coverage is  
1307 different for different types of coverage or for different underground storage tanks or  
1308 locations, indicate the amount of coverage for each type of coverage and/or for each  
1309 underground storage tank or location], exclusive of legal defense costs, which are subject  
1310 to a separate limit under the Plan or Agreement. This coverage is provided under the Plan  
1311 dated [insert date] and the Agreement entered into between [name of member] and [name  
1312 of Pool]. The effective date of said Agreement is [date].

1313 2. The Pool further certifies the following with respect to the coverage described in  
1314 paragraph 1:

1315 a. Bankruptcy or insolvency of the member shall not relieve the Pool of its obligations  
1316 under the policy to which this certificate applies.

1317 b. The Pool is liable for the payment of amounts within any deductible applicable to  
1318 the policy to the provider of corrective action or a damaged third party, containment  
1319 and cleanup with a right of reimbursement by the member for any such payment made  
1320 by the Pool. This provision does not apply with respect to that amount of any deductible  
1321 for which coverage is demonstrated under another mechanism or combination of  
1322 mechanisms as specified in 9VAC25-640-70 through 9VAC25-640-120.

1323 c. Whenever requested by the ~~State Water Control Board~~ Department of  
1324 Environmental Quality, the Pool agrees to furnish to the ~~State Water Control Board~~  
1325 Department of Environmental Quality a signed duplicate original of the Agreement and  
1326 Plan and all endorsements.

1327 d. Cancellation or any other termination of the coverage by the Pool, except for  
1328 nonpayment of premium or misrepresentation by the member, will be effective only  
1329 upon written notice and only after the expiration of 60 days after a copy of such written  
1330 notice is received by the member and the ~~State Water Control Board~~ Department of  
1331 Environmental Quality. Cancellation for nonpayment of premium or misrepresentation  
1332 by the member will be effective only upon written notice and only after expiration of a  
1333 minimum of 15 days after a copy of such written notice is received by the member and  
1334 the ~~State Water Control Board~~ Department of Environmental Quality.

1335 e. The Pool covers claims otherwise covered by the Agreement and Plan that are  
1336 reported to the Pool within six months of the effective date of cancellation or  
1337 nonrenewal of the Agreement except where the new or renewed Agreement has the  
1338 same retroactive date or a retroactive date earlier than that of the prior Agreement and  
1339 which arise out of any covered occurrence that commenced after the policy retroactive  
1340 date, if applicable, and prior to such Agreement renewal or termination date. Claims  
1341 reported during such extended reporting period are subject to the terms, conditions,  
1342 limits, including limits of liability, and exclusions of the Agreement and Plan.

1343 I hereby certify that the wording of this instrument is identical to the wording in APPENDIX XII  
1344 of 9VAC25-640 and that the Pool is licensed by the Commonwealth of Virginia's State Corporation  
1345 Commission pursuant to 14VAC5-3805.

1346 [Signature of Authorized Representative of Pool]

1347 [Type name], [Authorized Representative] of [name of Pool]

1348 [Address of representative]

1349 **9VAC25-640-250:9. APPENDIX IX. CERTIFICATION OF FINANCIAL RESPONSIBILITY.**

1350 APPENDIX IX. CERTIFICATION OF FINANCIAL RESPONSIBILITY.

1351 (Note: The instructions in brackets are to be replaced by the relevant information and the  
1352 brackets deleted.)

1353 Operator hereby certifies that it is in compliance with the requirements of 9VAC25-640.

1354 The financial assurance mechanism[s] used to demonstrate financial responsibility under

1355 9VAC25-640 is [are] as follows:

1356 Indicate type of Mechanism:

1357  Letter from Chief Financial Officer

1358  Guarantee

1359  Insurance Endorsement or Certificate

1360  Letter of Credit

1361  Certificate of Deposit

1362  Surety Bond

1363  Trust Fund

1364 Name of Issuer: \_\_\_\_\_

1365 Mechanism Number (if applicable): \_\_\_\_\_

1366 Total number of gallons of aboveground storage capacity for which demonstration is provided:

1367 \_\_\_\_\_

1368 Amount of coverage for mechanism:

1369 \$\_\_\_\_\_ containment and clean up per occurrence and annual aggregate

1370 Effective period of coverage: \_\_\_\_\_ to \_\_\_\_\_

1371 Do(es) mechanism(s) cover(s): containment and clean up caused by either sudden accidental

1372 discharges or nonsudden accidental discharges or accidental discharges?  Yes  No

1373 If "No," specify in the following space the items the mechanism covers:

1374 [Signature of operator]

1375 [Name of operator]

1376 [Title] [Date]

1377 [Signature of notary]

1378 [Name of notary] [Date] My Commission expires: \_\_\_\_\_

1379 **9VAC25-640-250:10. APPENDIX X. ASSIGNMENT OF CERTIFICATE OF DEPOSIT**

1380 **ACCOUNT.**

1381 APPENDIX X. ASSIGNMENT OF CERTIFICATE OF DEPOSIT ACCOUNT.

1382 (Note: The instructions in brackets are to be replaced by the relevant information and the

1383 brackets deleted.)

1384 [Name and Address of Bank]

1385 City \_\_\_\_\_, 20\_\_

1386  FOR VALUE RECEIVED, the undersigned assigns all right, title, and interest to the ~~State~~

1387 ~~Water Control Board~~ Department of Environmental Quality, Commonwealth of Virginia, and its

1388 successors and assigns the ~~State Water Control Board~~ Department of Environmental Quality the

1389 principal amount of the instrument, including all moneys deposited now or in the future to that

1390 instrument, indicated below:

1391  If checked here, this assignment includes all interest now and hereafter accrued.

1392 Certificate of Deposit Account No. \_\_\_\_\_

1393 This assignment is given as security to the ~~State Water Control Board~~ Department of

1394 Environmental Quality in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).



1395 Continuing Assignment. This assignment shall continue to remain in effect for all subsequent  
1396 terms of the automatically renewable certificate of deposit.

1397 Assignment of Document. The undersigned also assigns any certificate or other document  
1398 evidencing ownership to the ~~State Water Control Board~~ Department of Environmental Quality.

1399 Additional Security. This assignment shall secure the payment of any financial obligation of  
1400 [name of operator] to the ~~State Water Control Board~~ Department of Environmental Quality to cover  
1401 containment and clean up necessitated by discharges of oil arising from operating the  
1402 aboveground storage tank(s) and pipelines identified below in the amount of [in words] \$ [insert  
1403 dollar amount] per occurrence and [in words] \$ [insert dollar amount] annual aggregate:

1404 [List for each facility: the name and address of the facility where tanks assured by this  
1405 mechanism are located, either the registration identification number assigned by the Department  
1406 or the Oil Discharge Contingency Plan facility identification number, and whether tanks are  
1407 assured by this mechanism. If more than one instrument is used to assure different tanks at any  
1408 one facility, list each tank covered by this instrument.

1409 For pipelines, list: the home office address and the names of the cities and counties in the  
1410 Commonwealth where the pipeline is located.]

1411 The certificate of deposit may not be drawn on to cover any of the following:

1412 (a) Any obligation of operator under a workers' compensation, disability benefits, or  
1413 unemployment compensation law or other similar law;

1414 (b) Bodily injury to an employee of operator arising from, and in the course of, employment by  
1415 operator;

1416 (c) Bodily injury or property damage arising from the ownership, maintenance, use, or  
1417 entrustment to others of any aircraft, motor vehicle, or watercraft;

1418 (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control  
1419 of, or occupied by an operator that is not the direct result of a discharge of oil from an aboveground  
1420 storage tank and/or pipeline;

1421 (e) Bodily injury or property damage for which an operator is obligated to pay damages by  
1422 reason of the assumption of liability in a contract or agreement other than a contract or agreement  
1423 entered into to meet the requirements of 9VAC25-640-50.

1424 Application of Funds. The undersigned agrees that all or any part of the funds of the indicated  
1425 account or instrument may be applied to the payment of any and all financial responsibility  
1426 obligations of [name of operator] to the ~~State Water Control Board~~ Department of Environmental  
1427 Quality to cover containment and clean up necessitated by discharges of oil arising from operating  
1428 the aboveground storage tank(s) and pipelines at the [facility name and address]. The  
1429 undersigned authorizes the ~~State Water Control Board~~ Department of Environmental Quality to  
1430 withdraw any principal amount on deposit in the indicated account or instrument including any  
1431 interest, if indicated, and to apply it in the ~~State Water Control Board's~~ Department of  
1432 Environmental Quality's discretion to fund containment and clean up necessitated by discharges  
1433 of oil arising from operating the aboveground storage tank(s) and pipelines at the [facility name]  
1434 or in the event of [operator's] failure to comply with the Aboveground Storage Tank and Pipeline  
1435 Facility Financial Responsibility Requirements, 9VAC25-640. The undersigned agrees that the  
1436 ~~State Water Control Board~~ Department of Environmental Quality may withdraw any principal  
1437 and/or interest from the indicated account or instrument without demand or notice. [The  
1438 undersigned] agrees to assume any and all loss of penalty due to federal regulations concerning  
1439 the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this  
1440 assignment.

1441 The party or parties to this Assignment set their hand or seals, or if corporate, has caused this  
1442 assignment to be signed in its corporate name by its duly authorized officers and its seal to be  
1443 affixed by authority of its Board of Directors the day and year above written.

1444 The party or parties to this Assignment also certify that the wording of this Assignment is  
1445 identical to the wording specified in Appendix X of 9VAC25-640 as such regulations were  
1446 constituted on the date this Assignment was executed.

	SEAL
[Operator]	
[print Operator's name]	[Date]
	SEAL
[Operator]	
[print Operator's name]	[Date]

1447 THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING  
1448 OFFICE:

1449 The signature(s) as shown above compare correctly with the name(s) as shown on record as  
1450 owner(s) of the Certificate of Deposit indicated above. The above assignment has been properly  
1451 recorded by placing a hold in the amount of \$ \_\_\_\_\_ for the benefit of the  
1452 ~~State Water Control Board~~ Department of Environmental Quality, Commonwealth of Virginia.

1453 \_\_\_ If checked here, the accrued interest on the Certificate of Deposit indicated above has  
1454 been maintained to capitalize versus being mailed by check or transferred to a deposit account.

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1455



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-210
<b>VAC Chapter title(s)</b>	VWP Permit Program
<b>Action title</b>	Final Exempt CH 210 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 14, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-210) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits and provide procedures for public comment on pending controversial permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”; the addition of a definition for “controversial permit”; the addition of language establishing “permit rationale”; the addition of language establishing “criteria for requesting and granting a public hearing in a permit action”; the addition of language related to “controversial permits” and “controversial permits reporting”; the repeal of the delegation of authority provisions, and the correction of Code references where necessary to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

### Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

### Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-210 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7150 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 210 changes in response to 2022 Board Bill**

4 **9VAC25-210-10. Definitions.**

5 Part I

6 VWP Permit Program Definitions, Exclusions, Prohibitions and Requirements

7 A. Definitions specific to surface water withdrawals are in 9VAC25-210-300.

8 B. Unless a different meaning is required by the context, the following terms as used in this  
9 chapter shall have the following meanings:

10 "Adjacent" means bordering, contiguous, or neighboring wetlands separated from other  
11 surface water by man-made dikes or barriers, natural river berms, sand dunes, and the like.

12 "Administratively withdrawn" means a decision by the ~~board~~ department that permanently  
13 discontinues the review or processing of a VWP permit application.

14 "Applicant" means a person applying for a VWP individual permit or for coverage under a  
15 VWP general permit.

16 "Aquatic environment" means surface waters and the habitat they provide, including both plant  
17 and animal communities.

18 "Avoidance" means not taking or modifying a proposed action or parts of an action so that  
19 there is no adverse impact to the aquatic environment.

20 "Beneficial use" means both instream and offstream uses. Instream beneficial uses include  
21 the protection of fish and wildlife resources and habitat, maintenance of waste assimilation,  
22 recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for  
23 purposes of the protection of navigation, maintenance of waste assimilation capacity, the  
24 protection of fish and wildlife resources and habitat, recreation, and cultural and aesthetic values  
25 is an instream beneficial use of Virginia's waters. Offstream beneficial uses include domestic uses  
26 (including public water supply), agricultural uses, electric power generation, commercial uses,  
27 and industrial uses.

28 "Best management practices" or "BMPs" means a schedule of activities, prohibition of  
29 practices, maintenance procedures, and other management practices that prevent or reduce the  
30 pollution of surface waters.

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

34 "Channelization" means the alteration of a stream channel by widening, deepening,  
35 straightening, cleaning, or paving certain areas.

36 "Compensation" or "compensatory mitigation" means (i) the restoration (reestablishment or  
37 rehabilitation), establishment (creation), enhancement, or in certain circumstances preservation  
38 of aquatic resources or (ii) in certain circumstances an out-of-kind measure having a water quality,  
39 habitat, or other desirable benefit for the purposes of offsetting unavoidable adverse impacts to  
40 aquatic resources that remain after all appropriate and practicable avoidance and minimization  
41 has been achieved.

42 "Controversial permit" means a water permitting action for which a public hearing has been  
43 granted pursuant to 9VAC25-210-160 and 9VAC25-210-165.

44 "Construction site" means any site where land-disturbing activity is conducted or physically  
45 located for the purpose of erecting buildings, roads, or other discrete structures, including on-site  
46 or off-site areas used for dependent, support facilities, such as quarries, mines, or temporary  
47 stormwater management or erosion control structures.

48 "Conversion" means those impacts to surface waters that permanently change an existing  
49 wetland or aquatic resource type to a different wetland or aquatic resource type.

50 "Coverage" means authorization to conduct a project in accordance with a VWP general  
51 permit.

52 "Cowardin classification" or "Cowardin classification method," unless otherwise specified in  
53 this chapter, means the waters classification system in Classification of Wetlands and Deepwater  
54 Habitats of the United States (Cowardin, Lewis M. II, et al., U.S. Fish and Wildlife Service,  
55 December 1979, Reprinted 1992).

56 "Creation" means the establishment of a wetland or other aquatic resource where one did not  
57 formerly exist.

58 "Cross-sectional drawing" means a scaled graph or plot that represents the plane made by  
59 cutting across an object at right angles to its length. Objects may include a surface water body or  
60 a portion of it, a man-made channel, an above-ground structure, a below-ground structure, a  
61 geographical feature, or the ground surface itself.

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

63 "Director" means the Director of the Department of Environmental Quality (DEQ) or an  
64 authorized representative.

65 "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition  
66 of any pollutant or combination of pollutants, to state waters.

67 "Draft VWP permit" means a document indicating the ~~board's~~ department's tentative decision  
68 relative to a VWP permit action.

69 "Draining" means human-induced activities such as ditching, excavation, installation of tile  
70 drains, hydrologic modification by surface water runoff diversion, pumping water from wells, or  
71 similar activities such that the activities have the effect of artificially dewatering the wetland or  
72 altering its hydroperiod.

73 "Dredged material" means material that is excavated or dredged from surface waters.

74 "Dredging" means a form of excavation in which material is removed or relocated from  
75 beneath surface waters.

76 "Ecologically and environmentally preferable" means capable of providing a higher likelihood  
77 than alternative proposals of replacing existing wetland acreage and functions, stream functions,  
78 water quality, and fish and wildlife resources.

79 "Emergent wetland" means a class of wetlands dominated by erect, rooted, herbaceous plants  
80 growing in water or on a substrate, excluding mosses and lichens. This vegetation is present for  
81 most of the growing season in most years and is usually dominated by perennial plants.

82 "Enhancement" means activities conducted in existing wetlands or other portions of the  
83 aquatic environment that increase one or more aquatic functions.

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

86 "Fill" means replacing portions of surface water with upland, or raising the bottom elevation of  
87 a surface water for any purpose, by placement of any pollutant or material including rock, sand,  
88 earth, and man-made materials and debris.

89 "Fill material" means any pollutant that replaces portions of surface water with dry land or that  
90 raises the bottom elevation of a surface water for any purpose.

91 "Forested wetland" means a class of wetlands dominated by woody vegetation that is  
92 approximately 20 feet (six meters) tall or taller and three inches (7.6 centimeters) or larger in  
93 diameter at breast height (DBH). These areas typically possess an overstory of trees, an  
94 understory of trees or shrubs, and an herbaceous layer.

95 "Hydrologic regime" means the entire state of water movement in a given area. It is a function  
96 of the climate and includes the phenomena by which water first occurs as atmospheric water  
97 vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground  
98 surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

99 "Impacts" means results caused by those activities specified in § 62.1-44.15:20 A of the Code  
100 of Virginia.

101 "Impairment" means the damage, loss, or degradation of the acreage or functions of wetlands  
102 or the functions of state waters.

103 "Independent utility" means a test to determine what constitutes a single and complete project.  
104 A project is considered to have independent utility if it would be constructed absent the  
105 construction of other projects in the project area. Portions of a phased development project that  
106 depend upon other phases of the project do not have independent utility. Portions of a phased  
107 development project that would be constructed even if the other phases are not built can be  
108 considered as separate single complete projects with independent public and economic utility.

109 "In-lieu fee program" means a program operated by a nonprofit organization or governmental  
110 agency that receives moneys from persons impacting wetlands or streams pursuant to an  
111 authorized, permitted activity and that expends the moneys received to provide consolidated  
112 compensatory mitigation for permitted wetland or stream impacts.

113 "Isolated wetlands of minimal ecological value" means those wetlands that (i) do not have a  
114 surface water connection to other state waters, (ii) are less than one-tenth of an acre (0.10 acre  
115 or 4,356 square feet) in size, (iii) are not located in a Federal Emergency Management Agency  
116 designated 100-year floodplain, (iv) are not identified by the Virginia Natural Heritage Program as  
117 a rare or state significant natural community, (v) are not forested, and (vi) do not contain listed  
118 federal or state threatened or endangered species.

119 "Joint Permit Application" or "JPA" means an application form that is used to apply for permits  
120 from the Norfolk District Army Corps of Engineers, the Virginia Marine Resources Commission,  
121 the Virginia Department of Environmental Quality, and local wetland boards for work in waters of  
122 the United States and in surface waters of Virginia.

123 "Law" means the State Water Control Law of Virginia.

124 "Legal name" means the full legal name of an individual, business, or other organization. For  
125 an individual, legal name means the first name, middle initial, last name, and suffix. For an entity  
126 authorized to do business in Virginia, the legal name means the exact name set forth in the entity's  
127 articles of incorporation, organization or trust, or formation agreement, as applicable.

128 "Minimization" means lessening impacts by reducing the degree or magnitude of the proposed  
129 action and its implementation.

130 "Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent  
131 practicable, and then compensating for remaining unavoidable impacts of a proposed action.

132 "Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is  
133 developed and approved in accordance with all applicable federal and state laws or regulations  
134 for the establishment, use, and operation of mitigation banks and is operating under a signed  
135 banking agreement.

136 "Mitigation banking" means compensating for unavoidable wetland or stream losses in  
137 advance of development actions through the sale or purchase of credits from a mitigation bank.

138 "Nationwide permit" means a general permit issued by the U.S. Army Corps of Engineers  
139 (USACE) under 33 CFR Part 330 and, except where suspended by individual USACE Corps  
140 Districts, applicable nationwide.

141 "Nontidal wetland" means those wetlands other than tidal wetlands that are inundated or  
142 saturated by surface water or groundwater at a frequency and duration sufficient to support, and  
143 that under normal circumstances do support, a prevalence of vegetation typically adapted for life  
144 in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to  
145 § 404 of the federal Clean Water Act in 40 CFR 230.3(t). Wetlands generally include swamps,  
146 marshes, bogs, and similar areas.

147 "Normal agricultural activities" means those activities defined as an agricultural operation in §  
148 3.2-300 of the Code of Virginia and any activity that is conducted as part of or in furtherance of  
149 such agricultural operation but shall not include any activity for which a permit would have been  
150 required as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant  
151 thereto.

152 "Normal residential gardening and lawn and landscape maintenance" means ongoing  
153 noncommercial residential activities conducted by or on behalf of an individual occupant, including  
154 mowing; planting; fertilizing; mulching; tilling; vegetation removal by hand or by hand tools; and  
155 placement of decorative stone, fencing, and play equipment. Other appurtenant noncommercial  
156 activities, provided that they do not result in the conversion of a wetland to upland or to a different  
157 wetland type, may also be included.

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

162 "Notice of project completion" means a statement submitted by the permittee or authorized  
163 agent that the authorized activities and any required compensatory mitigation have been  
164 completed.

165 "Open water" means an area that, during a year with normal patterns of precipitation, has  
166 standing water for sufficient duration to establish an ordinary high water mark. The term "open  
167 water" includes lakes and ponds but does not include ephemeral waters, stream beds, or  
168 wetlands.

169 "Ordinary high water" or "ordinary high water mark" means that line on the shore established  
170 by the fluctuations of water and indicated by physical characteristics such as a clear, natural line  
171 impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial  
172 vegetation; the presence of litter and debris; or other appropriate means that consider the  
173 characteristics of the surrounding areas.

174 "Out-of-kind compensatory mitigation" or "out-of-kind mitigation" means a measure that does  
175 not replace the same type of wetland or surface water as was impacted but does replace lost  
176 wetland or surface water functions or provide a water quality, habitat, or other desirable benefit.

177 "Perennial stream" means a well-defined channel that contains water year round during a year  
178 of normal rainfall. Generally, the water table is located above the stream bed for most of the year  
179 and groundwater is the primary source for stream flow. A perennial stream exhibits the typical  
180 biological, hydrological, and physical characteristics commonly associated with the continuous  
181 conveyance of water.

182 "Permanent flooding or impounding" means a permanent increase in the duration or depth of  
183 standing water on a land surface, such as from a dam. Permanent increases in duration or depth



184 of standing water that result from extended-detention basins and enhanced extended-detention  
185 basins, when designed, constructed, and maintained to function in accordance with Virginia  
186 Department of Conservation and Recreation (DCR) standards for such facilities (Virginia  
187 Stormwater Management Handbook, First Edition, 1999, Volume 1, Chapter 3), or when designed  
188 in accordance with local standards that, at a minimum, meet the DCR standards, are not  
189 considered to be permanent flooding and impounding.

190 "Permanent impacts" means those impacts to surface waters, including wetlands, that cause  
191 a permanent alteration of the physical, chemical, or biological properties of the surface waters or  
192 of the acreage or functions of a wetland.

193 "Permittee" means the person who holds a VWP individual or general permit.

194 "Permittee-responsible compensatory mitigation" or "permittee-responsible mitigation" means  
195 compensation or compensatory mitigation, as defined in this section, that is undertaken by the  
196 permittee, or an authorized agent or contractor, for which the permittee retains full responsibility.

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

199 "Phased development" means more than one project proposed for a single piece of property  
200 or an assemblage of contiguous properties under consideration for development by the same  
201 person, or by related persons, that will begin and be completed at different times. Depending on  
202 the relationship between the projects, a phased development may be considered a single and  
203 complete project or each project may be considered a single and complete project if each project  
204 has independent utility, as defined in this section.

205 "Plan view drawing" means a scaled graph or plot that represents the view of an object as  
206 projected onto orthogonal planes. Objects may include structures, contours, or boundaries.

207 "Pollutant" means any substance, radioactive material, or heat that causes or contributes to  
208 or may cause or contribute to pollution.

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

221 "Practicable" means available and capable of being done after taking into consideration cost,  
222 existing technology, and logistics in light of overall project purposes.

223 "Preservation" means the protection of resources in perpetuity through the implementation of  
224 appropriate legal and physical mechanisms.

225 "Profile drawing" means a scaled graph or plot that represents the side view of an object.  
226 Objects may include a surface water body or a portion of it, a man-made channel, an above-  
227 ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

228 "Public hearing" means a fact finding proceeding held to afford interested persons an  
229 opportunity to submit factual data, views, and comments to the board pursuant to ~~§ 62.1-44.15:02~~  
230 of the Code of Virginia department.

231 "Regional permit" means a general permit issued by the U.S. Army Corps of Engineers under  
232 33 CFR Part 330 and applicable within a specified geographic area.

233 "Restoration" means the reestablishment of a wetland or other aquatic resource in an area  
234 where it previously existed. Wetland restoration means the reestablishment of wetland hydrology  
235 and vegetation in an area where a wetland previously existed. Stream restoration means the  
236 process of converting an unstable, altered, or degraded stream corridor, including adjacent areas  
237 and floodplains, to its natural conditions.

238 "Riprap" means a layer of nonerodible material such as stone or chunks of concrete.

239 "Section 401" means § 401 of the Clean Water Act, or 33 USC § 1341, as amended in 1987.

240 "Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation, excluding  
241 woody vines, approximately three to 20 feet (one to six meters) tall. The species include true  
242 shrubs, young trees, and trees or shrubs that are small or stunted because of environmental  
243 conditions.

244 "Significant alteration or degradation of existing wetland acreage or function" means human-  
245 induced activities that cause either a diminution of the areal extent of the existing wetland or cause  
246 a change in wetland community type resulting in the loss or more than minimal degradation of its  
247 existing ecological functions.

248 "Single and complete project" means the total project proposed or accomplished by a person,  
249 which also has independent utility as defined in this section. For linear projects, the single and  
250 complete project (e.g., a single and complete crossing) will apply to each crossing of a separate  
251 surface water (e.g., a single water body) and to multiple crossings of the same water body at  
252 separate and distinct locations. Phases of a project that have independent utility may each be  
253 considered single and complete.

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

256 "Stream bed" or "stream channel" means the substrate of a stream, as measured between  
257 the ordinary high water mark along each side of a stream. The substrate may consist of organic  
258 matter, bedrock, or inorganic particles that range in size from clay to boulders, or a combination  
259 of both. Areas contiguous to the stream bed, but outside of the ordinary high water mark along  
260 each side of a stream, are not considered part of the stream bed.

261 "Surface water" means all state waters that are not groundwater as groundwater is defined in  
262 § 62.1-255 of the Code of Virginia.

263 "Suspend" or "suspension" means a decision by the ~~board~~ department that stops the review  
264 or processing of a permit application or request to modify a permit or permit coverage until such  
265 time that information requested by the ~~board~~ department is provided, reviewed, and deemed  
266 adequate.

267 "Temporal loss" means the time lag between the loss of aquatic resource functions caused  
268 by the impacts and the replacement of aquatic resource functions by compensatory mitigation.

269 "Temporary impacts" means impacts to wetlands or other surface waters that do not cause a  
270 permanent alteration of the physical, chemical, or biological properties of surface waters or the  
271 permanent alteration or degradation of existing wetland acreage or functions. Temporary impacts  
272 include activities in which the impact area is restored to its preconstruction elevations and  
273 contours with topsoil from the impact area where practicable, such that previous wetland acreage  
274 and functions or surface water functions are restored.

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

277 "Toxic pollutant" means any agent or material including those listed under § 307(a) of the  
278 Water Pollution Prevention and Control Act (33 USC § 1317(a)), which after discharge will, on the  
279 basis of available information, cause toxicity. Toxicity means the inherent potential or capacity of  
280 a material to cause adverse effects in a living organism, including acute or chronic effects to  
281 aquatic life, detrimental effects on human health, or other adverse environmental effects.

282 "Undesirable plant species" means any species that invades, naturally colonizes, or otherwise  
283 dominates a compensatory mitigation site or mitigation bank, such that it causes or contributes to  
284 the failure of the vegetative success criteria for a particular compensatory mitigation site,  
285 mitigation bank, or in-lieu fee program project, or it otherwise prohibits the restoration of the same  
286 vegetation cover type that was originally present.

287 "VWP general permit" means the general permit text, terms, requirements, and conditions set  
288 forth in a regulation that constitutes a VWP permit authorizing a specified category of activities.

289 "VWP permit" means an individual ~~or general~~ permit issued by the ~~board~~ department or a  
290 general permit issued as a regulation adopted by the board under § 62.1-44.15:20 of the Code of  
291 Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or  
292 otherwise serves as the Commonwealth of Virginia's § 401 certification. For any applicant to the  
293 Federal Energy Regulatory Commission for a certificate of public convenience and necessity  
294 pursuant to § 7c of the federal Natural Gas Act (15 USC § 717f(c)) to construct any natural gas  
295 transmission pipeline greater than 36 inches inside diameter, issuance of an individual VWP  
296 permit pursuant to this chapter and a certification issued pursuant to Article 2.6 (§ 62.1-44.15:80  
297 et seq.) of the State Water Control Law shall together constitute the certification required under §  
298 401 of the federal Clean Water Act.

299 "Water quality standards" means water quality standards adopted by the board and approved  
300 by the administrator of the U.S. Environmental Protection Agency under § 303 of the Clean Water  
301 Act as defined in 9VAC25-260-5.

302 "Watershed approach" means an analytical process for making compensatory mitigation  
303 decisions that support the sustainability or improvement of aquatic resources in a watershed and  
304 that ensures authorized impacts and mitigation have been considered on a watershed scale.

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

### 309 **9VAC25-210-40. Permit Rationale.**

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

### 317 **9VAC25-210-45. Surface waters delineations.**

318 A. Wetlands. Each wetland delineation, including those for isolated wetlands, shall be  
319 conducted in accordance with the U.S. Army Corps of Engineers (USACE) "Wetland Delineation  
320 Manual, Technical Report Y-87-1, January 1987, Final Report" (Federal Manual) and any regional  
321 wetland supplements approved for use by USACE. These Federal Manuals shall be interpreted  
322 in a manner consistent with USACE guidance and the requirements of this chapter, and any  
323 delineation guidance adopted by the ~~board~~ department as necessary to ensure consistency with  
324 the USACE implementation of delineation practices. USACE regulatory guidance letters or

325 Department of Environmental Quality policy or guidance may be used to supplement preparation  
326 of wetlands delineations.

327 B. Other surface waters. Delineations for surface waters other than wetlands may be  
328 conducted in accordance with USACE or DEQ policy or USACE or DEQ guidance and shall take  
329 into consideration the location of an ordinary high water mark, if present.

330 **9VAC25-210-50. Prohibitions and requirements for VWP permits.**

331 A. Except in compliance with a VWP permit, unless the activity is otherwise exempted or  
332 excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface  
333 waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of  
334 state waters regulated under this chapter and make them detrimental to the public health, to  
335 animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for  
336 recreation, or for other uses; excavate in wetlands; or on or after October 1, 2001, conduct the  
337 following activities in a wetland:

- 338 1. New activities to cause draining that significantly alters or degrades existing wetland  
339 acreage or functions;
- 340 2. Filling or dumping;
- 341 3. Permanent flooding or impounding; or
- 342 4. New activities that cause significant alteration or degradation of existing wetland  
343 acreage or functions.

344 B. No VWP permit shall be issued:

- 345 1. Where the proposed activity or the terms or conditions of the VWP permit do not comply  
346 with state law or regulations including § 10.1-1408.5 of the Code of Virginia;
- 347 2. For the discharge of any radiological, chemical, or biological warfare agent or high level  
348 radioactive material into surface waters.

349 C. An individual VWP permit shall be required for impacts to state waters for the construction  
350 of any natural gas transmission pipeline greater than 36 inches inside diameter pursuant to a  
351 certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 USC  
352 § 717f(c)). For purposes of this subsection:

- 353 1. Each wetland and stream crossing shall be considered as a single and complete project;  
354 however, only one individual VWP permit addressing all such crossings shall be required  
355 for any such pipeline. Notwithstanding the requirement for only one such individual permit  
356 addressing all such crossings, individual review of each proposed water body crossing  
357 with an upstream drainage area of five square miles or greater shall be performed.
- 358 2. All pipelines shall be constructed in a manner that minimizes temporary and permanent  
359 impacts to state waters and protects water quality to the maximum extent practicable,  
360 including by the use of applicable best management practices that the ~~board~~ department  
361 determines to be necessary to protect water quality.
- 362 3. The department shall assess an administrative charge to any applicant for such project  
363 to cover the direct costs of services rendered associated with its responsibilities pursuant  
364 to this subsection. This administrative charge shall be in addition to any fee assessed  
365 pursuant to § 62.1-44.15:6 of the Code of Virginia and as provided in 9VAC25-20.

366 **9VAC25-210-55. Statewide information requirements.**

367 The ~~board~~ department may request (i) such plans, specifications, and other pertinent  
368 information as may be necessary to determine the effect of an applicant's discharge on the quality  
369 of state waters or (ii) such other information as may be necessary to accomplish the purposes of  
370 this chapter. Any owner, permittee, or person applying for a VWP permit or general permit  
371 coverage shall provide the information requested by the ~~board~~ department.

372 **9VAC25-210-60. Exclusions.**

373 The activities in this section do not require a VWP permit but may require other permits under  
374 state and federal law. Upon request by the ~~board~~ department, any person claiming one of these  
375 exclusions shall demonstrate to the satisfaction of the ~~board~~ department that he qualifies for the  
376 exclusion. Exclusions pertaining to surface water withdrawals are established in 9VAC25-210-  
377 310.

378 1. Discharges of dredged or fill material into state waters, except wetlands, which are  
379 addressed under a USACE Regional, General, or Nationwide Permit, and for which no §  
380 401 Water Quality Certificate is required.

381 2. Any discharge of stormwater from municipal separate storm sewer systems or land  
382 disturbing activities authorized by 9VAC25-870, or the discharge of sewage, industrial  
383 wastes, or other wastes or any noxious or deleterious substances into surface waters that  
384 is authorized by a Virginia Pollutant Discharge Elimination System (VPDES) permit in  
385 accordance with 9VAC25-31 or a Virginia Pollution Abatement (VPA) permit in accordance  
386 with 9VAC25-32.

387 3. Any activity governed under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code  
388 of Virginia, unless state certification is required by § 401 of the Clean Water Act. State  
389 certification is waived if the activity meets the provisions of subdivision 10 a of this section.  
390 The activity does not require a VWP permit pursuant to § 62.1-44.15:21 G of the Code of  
391 Virginia.

392 4. Normal residential gardening and lawn and landscape maintenance in a wetland, or  
393 other similar activity, that is incidental to an occupant's ongoing residential use of property  
394 and is of minimal ecological impact. The criteria governing this exclusion are set forth in  
395 the definition of "normal residential gardening and lawn and landscape maintenance" in  
396 9VAC25-210-10.

397 5. Maintenance of currently serviceable structures, such as purpose-built stormwater and  
398 utility structures, transportation structures, dikes, groins, levees, dams, riprap  
399 breakwaters, causeways, or bridge abutments or approaches. Maintenance includes the  
400 emergency reconstruction of recently damaged parts but does not include modifications  
401 that change the character, scope, or size of the original design. If the original design is not  
402 available, the permittee shall submit the best available information on the design for  
403 consideration and approval by the ~~board~~ department. In order to qualify for this exclusion,  
404 emergency reconstruction shall occur as soon as practicable after damage occurs.

405 6. Impacts to open waters that do not have a detrimental effect on public health, animal  
406 life, or aquatic life or to the uses of such waters for domestic or industrial consumption,  
407 recreation, or other uses.

408 7. Flooding or back-flooding impacts to surface waters resulting from the construction of  
409 temporary sedimentation basins on a construction site when such structures are  
410 necessary for erosion and sediment control or stormwater management purposes.

411 8. Normal agriculture and silviculture activities in a wetland such as plowing; seeding;  
412 cultivating; minor drainage and harvesting for the production of food, fiber, and forest  
413 products; or upland soil and water conservation practices.

414 a. To fall under this exclusion, the activities specified in this subdivision 8 must be part  
415 of an established (i.e., ongoing) agriculture or silviculture operation, and must be in  
416 accordance with applicable best management practices set forth in either Forestry  
417 Best Management Practices for Water Quality in Virginia Technical Guide (Fourth  
418 Edition, July 2002) or Virginia Agricultural BMP Manual (2000), which facilitate  
419 compliance with the § 404(b)(1) Guidelines (40 CFR Part 230). Activities on areas

420 lying fallow as part of a conventional, rotational cycle are part of an established  
421 operation.

422 b. Activities which bring a new area into agricultural or silvicultural use are not part of  
423 an established operation. An operation ceases to be established when the area in  
424 which it was conducted has been converted to another use or has lain idle so long that  
425 modifications to the hydrological regime are necessary to resume operation. If the  
426 activity takes place outside surface waters, it does not need a VWP permit, whether  
427 or not it is part of an established agriculture or silviculture operation.

428 c. For the purposes of this subdivision 8, cultivating, harvesting, minor drainage,  
429 plowing, and seeding are defined as follows:

430 (1) "Cultivating" means physical methods of soil treatment employed within  
431 established agriculture and silviculture lands on farm or forest crops to aid and improve  
432 their growth, quality, or yield.

433 (2) "Harvesting" means physical measures employed directly upon farm, forest, or  
434 crops within established agricultural and silviculture lands to bring about their removal  
435 from farm or forest land, but does not include the construction of farm or forest roads.

436 (3) "Minor drainage" means:

437 (a) The discharge of dredged or fill material incidental to connecting upland drainage  
438 facilities to surface waters, adequate to effect the removal of excess soil moisture from  
439 upland croplands. Construction and maintenance of upland (dryland) facilities, such  
440 as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of  
441 crops;

442 (b) The discharge of dredged or fill material for the purpose of installing ditching or  
443 other water control facilities incidental to planting, cultivating, protecting, or harvesting  
444 of rice, or other wetland crop species, where these activities and the discharge occur  
445 in surface waters which are in established use for such agricultural and silviculture  
446 wetland crop production;

447 (c) The discharge of dredged or fill material for the purpose of manipulating the water  
448 levels of, or regulating the flow or distribution of water within, existing impoundments  
449 that have been constructed in accordance with applicable requirements of the Clean  
450 Water Act, and that are in established use for the production of rice, or other wetland  
451 crop species;

452 (d) The discharge of dredged or fill material incidental to the emergency removal of  
453 sandbars, gravel bars, or other similar blockages which are formed during flood flows  
454 or other events, where such blockages close or constrict previously existing  
455 drainageways and, if not promptly removed, would result in damage to or loss of  
456 existing crops or would impair or prevent the plowing, seeding, harvesting, or  
457 cultivating of crops on land in established use for crop production. Such removal does  
458 not include enlarging or extending the dimensions of, or changing the bottom  
459 elevations of, the affected drainageway as it existed prior to the formation of the  
460 blockage. Removal must be accomplished within one year after such blockages are  
461 discovered in order to be eligible for exclusion; and

462 (e) Minor drainage in surface waters is limited to drainage within areas that are part of  
463 an established agriculture or silviculture operation. It does not include drainage  
464 associated with the immediate or gradual conversion of a wetland to a nonwetland (for  
465 example, wetland species to upland species not typically adapted to life in saturated  
466 soil conditions), or conversion from one wetland use to another (for example,  
467 silviculture to agriculture). In addition, minor drainage does not include the construction

468 of any canal, ditch, dike, or other waterway or structure which drains or otherwise  
469 significantly modifies a stream, lake, swamp, bog, or any other wetland or aquatic area  
470 constituting surface water. Any discharge of dredged or fill material into surface water  
471 incidental to the construction of any such structure or waterway requires a VWP permit,  
472 unless otherwise excluded or exempted by this chapter.

473 (4) "Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-  
474 blade plowing, discing, harrowing, and similar physical means used on farm or forest  
475 land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the  
476 planting of crops. Plowing does not include the redistribution of soil, rock, sand, or  
477 other surficial materials in a manner which changes any area of surface water to dry  
478 land. For example, the redistribution of surface materials by blading, grading, or other  
479 means to fill in wetland areas is not plowing. Rock crushing activities which result in  
480 the loss of natural drainage characteristics, the reduction of water storage and  
481 recharge capabilities, or the overburden of natural water filtration capacities does not  
482 constitute plowing. Plowing as described above will never involve a discharge of  
483 dredged or fill material.

484 (5) "Seeding" means the sowing of seed and placement of seedlings to produce farm  
485 or forest crops and includes the placement of soil beds for seeds or seedlings on  
486 established farm and forest lands.

487 9. Discharges of dredged or fill material into wetlands when addressed under a U.S. Army  
488 Corps of Engineers Regional, General, or Nationwide Permit and that meet the provisions  
489 of subdivision 10 a of this section.

490 10. Construction or maintenance of farm ponds or impoundments, stock ponds or  
491 impoundments, or irrigation ditches, or the maintenance (but not construction) of drainage  
492 ditches.

493 a. The exclusion for the construction and maintenance of farm or stock ponds and farm  
494 or stock impoundments applies to those structures that are operated for normal  
495 agricultural or silvicultural purposes, and are less than 25 feet in height or create a  
496 maximum impoundment capacity smaller than 100 acre-feet.

497 b. The exclusion for the construction and maintenance of farm or stock ponds and farm  
498 or stock impoundments does not include the impacts associated with the withdrawal  
499 of surface water from, within, or behind such structures. A VWP permit may be  
500 required for the surface water withdrawal.

501 c. Discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion  
502 structures, and such other facilities as are appurtenant and functionally related to  
503 irrigation ditches are included in this exclusion.

504 d. The maintenance dredging of existing ditches is included in this exclusion provided  
505 that the final dimensions of the maintained ditch do not exceed the average  
506 dimensions of the original ditch. This exclusion does not apply to the construction of  
507 new ditches or to the channelization of streams.

508 11. Construction or maintenance of farm roads, forest roads, or temporary roads for  
509 moving mining equipment, where such roads are constructed and maintained in  
510 accordance with applicable best management practices (BMPs) set forth in either Forestry  
511 Best Management Practices for Water Quality in Virginia, Technical Guide, Fourth Edition,  
512 July 2002, or Virginia Agricultural BMP Manual, 2000, to ensure that flow and circulation  
513 patterns and chemical and biological characteristics of surface waters are not impaired,  
514 that the reach of such waters is not reduced, and that any adverse effect on the aquatic  
515 environment will otherwise be minimized. The BMPs which must be applied to satisfy this  
516 provision include the following baseline provisions:

- 517 a. Permanent roads (for agriculture or forestry activities), temporary access roads (for  
518 mining, forestry, or farm purposes), and skid trails (for logging) in surface waters shall  
519 be held to the minimum feasible number, width, and total length consistent with the  
520 purpose of specific agriculture, silviculture or mining operations, and local topographic  
521 and climatic conditions;
- 522 b. All roads, temporary or permanent, shall be located sufficiently far from streams or  
523 other water bodies (except for portions of such roads which must cross water bodies)  
524 to minimize discharges of dredged or fill material into surface waters;
- 525 c. The road fill shall be bridged, piped, culverted, or otherwise designed to prevent the  
526 restriction of expected flood flows;
- 527 d. The fill shall be properly stabilized and maintained to prevent erosion during and  
528 following construction;
- 529 e. Discharges of dredged or fill material into surface waters to construct road fill shall  
530 be made in a manner which minimizes the encroachment of trucks, tractors,  
531 bulldozers, or other heavy equipment within state waters (including adjacent wetlands)  
532 that lie outside the lateral boundaries of the fill itself;
- 533 f. In designing, constructing, and maintaining roads, vegetative disturbance in surface  
534 waters shall be kept to a minimum;
- 535 g. The design, construction, and maintenance of the road crossing shall not disrupt  
536 the migration or other movement of those species of aquatic life inhabiting the water  
537 body;
- 538 h. Borrow material shall be taken from upland sources whenever feasible;
- 539 i. The discharge shall not take, or jeopardize the continued existence of a state-listed  
540 or federally-listed threatened or endangered species as defined under the Endangered  
541 Species Act (16 USC § 1531 et seq.), in § 29.1-566 of the Code of Virginia and in  
542 4VAC15-20-130 B and C, except as provided in § 29.1-568 of the Code of Virginia, or  
543 adversely modify or destroy the critical habitat of such species;
- 544 j. Discharges into the nesting and breeding areas for migratory waterfowl, spawning  
545 areas, and wetlands shall be avoided if practical on-site or off-site alternatives exist;
- 546 k. The discharge shall not be located in proximity of a public water supply or intake;
- 547 l. The discharge shall not occur in areas of concentrated shellfish production;
- 548 m. The discharge shall not occur in a component to the National Wild and Scenic River  
549 System;
- 550 n. The discharge material shall consist of suitable material free from toxic pollutants in  
551 toxic amounts; and
- 552 o. All temporary fills shall be removed in their entirety and the area restored to its  
553 original elevation.

554 12. Wetland and open water impacts to a stormwater management facility that was  
555 created on dry land for the purpose of conveying, treating, or storing stormwater.

556 **9VAC25-210-65. Administrative continuance.**

557 A. Administrative continuance provisions shall apply to all VWP permits.

558 B. When the permittee has submitted a timely and complete application for reissuance of an  
559 existing VWP individual permit, but through no fault of the permittee, the ~~board~~ department does  
560 not reissue or reissue with conditions a VWP individual permit or the ~~board~~ department does not  
561 provide notice of its tentative decision to deny the application before an existing VWP individual  
562 permit expires, the conditions of the expiring VWP individual permit shall be administratively



563 continued in full force and effect until the effective date of a reissued permit or the date on which  
564 the ~~board~~ department denies the application. Complete application requirements for a VWP  
565 individual permit are located in 9VAC25-210-80 and 9VAC25-210-340. Timely application shall  
566 be a minimum of 180 days for an individual permit or a minimum of 270 days for an individual  
567 permit for a surface water withdrawal, unless otherwise specified in the existing permit.

568 C. Administrative continuance of a specific VWP general permit shall be in accordance with  
569 the corresponding VWP general permit regulation.

570 **9VAC25-210-80. Application for a VWP permit.**

571 A. Application for a VWP Permit. Any person who is required to obtain a VWP permit, except  
572 those persons applying for an emergency VWP permit for a public water supply emergency, shall  
573 submit a complete VWP permit application to the Department of Environmental Quality through  
574 the most current Joint Permit Application procedures established within each type of Joint Permit  
575 Application. The Virginia Department of Transportation (VDOT) may use its Interagency  
576 Coordination Meeting (IACM) process for submitting JPAs. There shall be no commencement of  
577 any activity subject to this chapter prior to the issuance of a VWP permit or granting VWP general  
578 permit coverage.

579 B. Informational requirements for all VWP individual permit applications are identified in this  
580 subsection with the exception of applications for emergency VWP permits to address a public  
581 water supply emergency, for which the information required in 9VAC25-210-340 C shall be  
582 submitted. In addition to the information in this subsection, applications involving a surface water  
583 withdrawal or a Federal Energy Regulatory Commission (FERC) license or relicense associated  
584 with a surface water withdrawal shall also submit the information required in 9VAC25-210-340 B.

585 1. A complete application for a VWP individual permit, at a minimum, consists of the  
586 following information, if applicable to the project:

587 a. The applicant's legal name, mailing address, telephone number, and if applicable,  
588 electronic mail address and fax number.

589 b. If different from applicant, legal name, mailing address, telephone number, and if  
590 applicable, electronic mail address and fax number of property owner.

591 c. If applicable, the authorized agent's name, mailing address, telephone number, and  
592 if applicable, fax number and electronic mail address.

593 d. Project name and proposed project schedule. This schedule will be used to  
594 determine the VWP permit term.

595 e. The following information for the project site location, and any related permittee-  
596 responsible compensatory mitigation site:

597 (1) The physical street address, nearest street, or nearest route number; city or county;  
598 zip code; and if applicable, parcel number of the site or sites.

599 (2) Name of the impacted water body or water bodies, or receiving waters, as  
600 applicable, at the site or sites.

601 (3) The latitude and longitude to the nearest second at the center of the site or sites.

602 (4) The fourth order subbasin, as defined by the hydrologic unit boundaries of the  
603 National Watershed Boundary Dataset, for the site or sites.

604 (5) A detailed map depicting the location of the site or sites, including the project  
605 boundary and existing preservation areas on the site or sites. The map (e.g., a U.S.  
606 Geologic Survey topographic quadrangle map) should be of sufficient detail to easily  
607 locate the site or sites for inspection.

608 f. A narrative description of the project, including project purpose and need.

609 g. An alternatives analysis for the proposed project detailing the specific on-site and  
610 off-site measures taken during project design and development to first avoid and then  
611 minimize impacts to surface waters to the maximum extent practicable in accordance  
612 with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40  
613 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific  
614 on-site and off-site measures taken to reduce the size, scope, configuration, or density  
615 of the proposed project, including review of alternative sites where required for the  
616 project, which would avoid or result in less adverse impact to surface waters, and  
617 documentation demonstrating the reason the applicant determined less damaging  
618 alternatives are not practicable. The analysis shall demonstrate to the satisfaction of  
619 the ~~board~~ department that avoidance and minimization opportunities have been  
620 identified and measures have been applied to the proposed activity such that the  
621 proposed activity in terms of impacts to state waters and fish and wildlife resources is  
622 the least environmentally damaging practicable alternative.

623 h. A narrative description of all impacts proposed to surface waters, including the type  
624 of activity to be conducted in surface waters and any physical alteration to surface  
625 waters. Surface water impacts shall be identified as follows:

626 (1) Wetland impacts identified according to their Cowardin classification (i.e.,  
627 emergent, scrub-shrub, or forested); and for each classification, the individual impacts  
628 quantified in square feet to the nearest whole number, cumulatively summed in square  
629 feet, and then the sum converted to acres and rounded to two decimal places using  
630 commonly accepted arithmetic principles of rounding.

631 (2) Individual stream impacts (i) quantified by length in linear feet to the nearest whole  
632 number and by average width in feet to the nearest whole number; (ii) quantified in  
633 square feet to the nearest whole number; and (iii) when compensatory mitigation is  
634 required, the impacts identified according to the assessed type using the Unified  
635 Stream Methodology.

636 (3) Open water impacts identified according to type; and for each type, the individual  
637 impacts quantified in square feet to the nearest whole number, cumulatively summed  
638 in square feet, and then the sum converted to acres and rounded to two decimal places  
639 using commonly accepted arithmetic principles of rounding.

640 (4) A copy of the approved jurisdictional determination when available, or when  
641 unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps  
642 of Engineers (USACE), U.S. Department of Agriculture Natural Resources  
643 Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE,  
644 NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface  
645 waters, including wetlands data sheets if applicable.

646 (5) A delineation map that (i) depicts the geographic area or areas of all surface water  
647 boundaries delineated in accordance with 9VAC25-210-45 and confirmed in  
648 accordance with the jurisdictional determination process; (ii) identifies such areas in  
649 accordance with subdivisions 1 h (1), 1 h (2), and 1 h (3) of this subsection; and (iii)  
650 quantifies and identifies any other surface waters according to their Cowardin  
651 classification (i.e., emergent, scrub-shrub, or forested) or similar terminology.

652 i. Plan view drawing or drawings of the project site sufficient to assess the project,  
653 including at a minimum the following:

654 (1) North arrow, graphic scale, and existing and proposed topographic or bathymetric  
655 contours.

656 (2) Limits of proposed impacts to surface waters.

657 (3) Location of all existing and proposed structures.

658 (4) All delineated wetlands and all jurisdictional surface waters on the site, including  
659 the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface  
660 waters and waterway name, if designated; ebb and flood or direction of flow; ordinary  
661 high water mark in nontidal areas; tidal wetlands boundary; and mean low water and  
662 mean high water lines in tidal areas.

663 (5) The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified  
664 by the applicant, and if available, the limits as approved by the locality in which the  
665 project site is located, unless the proposed use is exempt from the Chesapeake Bay  
666 Preservation Area Designation and Management Regulations (9VAC25-830).

667 (6) The limits of any areas that are under a deed restriction, conservation easement,  
668 restrictive covenant, or other land use protective instrument (i.e., protected areas).

669 j. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or  
670 drawings of each proposed impact area includes at a minimum a graphic scale,  
671 existing structures, existing and proposed elevations, limits of surface water areas,  
672 ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal  
673 areas, tidal wetland boundary, mean low water and mean high water lines in tidal  
674 areas, impact limits, and location of all existing and proposed structures. Profile  
675 drawing or drawings with this information may be required on a case-by-case basis to  
676 demonstrate minimization of impacts. Any application that proposes piping or  
677 culverting stream flows shall provide a longitudinal profile of the pipe or culvert position  
678 and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the  
679 beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond  
680 the limits of the proposed impact.

681 k. Materials assessment. Upon request by the ~~board~~ department, the applicant shall  
682 provide evidence or certification that the material is free from toxic contaminants prior  
683 to disposal or that the dredging activity will not cause or contribute to a violation of  
684 water quality standards during dredging. The applicant may be required to conduct  
685 grain size and composition analyses, tests for specific parameters or chemical  
686 constituents, or elutriate tests on the dredge material.

687 l. An assessment of potential impacts to federal and state listed threatened or  
688 endangered species, including any correspondence or documentation from federal or  
689 state resource agencies addressing potential impacts to listed species.

690 m. A compensatory mitigation plan to achieve no net loss of wetland acreage and  
691 functions or stream functions and water quality benefits.

692 (1) If permittee-responsible compensation is proposed for wetland impacts, a  
693 conceptual wetland compensatory mitigation plan shall be submitted in order for an  
694 application to be deemed complete and shall include at a minimum (i) the goals and  
695 objectives in terms of replacement of wetland acreage and functions; (ii) a detailed  
696 location map including latitude and longitude to the nearest second and the fourth  
697 order subbasin, as defined by the hydrologic unit boundaries of the National  
698 Watershed Boundary Dataset, at the center of the site; (iii) a description of the  
699 surrounding land use; (iv) a hydrologic analysis including a draft water budget for  
700 nontidal areas based on expected monthly inputs and outputs that will project water  
701 level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation  
702 data, if available, or the proposed location of groundwater monitoring wells to collect  
703 these data; (vi) wetland delineation confirmation, data sheets, and maps for existing  
704 surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii)  
705 a conceptual planting scheme including suggested plant species and zonation of each

706 vegetation type proposed; (ix) a description of existing soils including general  
707 information on both topsoil and subsoil conditions, permeability, and the need for soil  
708 amendments; (x) a draft design of water control structures; (xi) inclusion of buffer  
709 areas; (xii) a description of any structures and features necessary for the success of  
710 the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv)  
711 measures for the control of undesirable species.

712 (2) If permittee-responsible compensation is proposed for stream impacts, a  
713 conceptual stream compensatory mitigation plan shall be submitted in order for an  
714 application to be deemed complete and shall include at a minimum (i) the goals and  
715 objectives in terms of water quality benefits and replacement of stream functions; (ii)  
716 a detailed location map including the latitude and longitude to the nearest second and  
717 the fourth order subbasin, as defined by the hydrologic unit boundaries of the National  
718 Watershed Boundary Dataset, at the center of the site; (iii) a description of the  
719 surrounding land use; (iv) the proposed stream segment restoration locations including  
720 plan view and cross-section drawings; (v) the stream deficiencies that need to be  
721 addressed; (vi) data obtained from a DEQ-approved, stream impact assessment  
722 methodology such as the Unified Stream Methodology; (vii) the proposed restoration  
723 measures to be employed including channel measurements, proposed design flows,  
724 types of instream structures, and conceptual planting scheme; (viii) reference stream  
725 data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities;  
726 and (xi) measures for the control of undesirable species.

727 (3) For any permittee-responsible compensatory mitigation, the conceptual  
728 compensatory mitigation plan shall also include a draft of the intended protective  
729 mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but  
730 not limited to, a conservation easement held by a third party in accordance with the  
731 Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or  
732 the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly  
733 recorded declaration of restrictive covenants, or other protective instrument. The draft  
734 intended protective mechanism shall contain the information in subdivisions (a), (b),  
735 and (c) of this subdivision B 1 m (3) or in lieu thereof shall describe the intended  
736 protective mechanism or mechanisms that contain or contains the information required  
737 as follows:

738 (a) A provision for access to the site;

739 (b) The following minimum restrictions: no ditching, land clearing, or discharge of  
740 dredge or fill material, and no activity in the area designated as compensatory  
741 mitigation area with the exception of maintenance; corrective action measures; or  
742 DEQ-approved activities described in the approved final compensatory mitigation plan  
743 or long-term management plan; and

744 (c) A long-term management plan that identifies a long-term steward and adequate  
745 financial assurances for long-term management in accordance with the current  
746 standard for mitigation banks and in-lieu fee program sites, except that financial  
747 assurances will not be necessary for permittee-responsible compensation provided by  
748 government agencies on government property. If approved by DEQ, permittee-  
749 responsible compensation on government property and long-term protection may be  
750 provided through federal facility management plans, integrated natural resources  
751 management plans, or other alternate management plans submitted by a government  
752 agency or public authority.

753 (4) Any compensatory mitigation plan proposing the purchase of mitigation bank or in-  
754 lieu fee program credits shall include the number and type of credits proposed to be

755 purchased, documentation from the approved bank or in-lieu fee program sponsor of  
756 the availability of credits at the time of application, and all information required by §  
757 62.2-44.15:23 of the Code of Virginia.

758 n. A written description and a graphical depiction identifying all upland areas including  
759 buffers, wetlands, open water, other surface waters, and compensatory mitigation  
760 areas located within the proposed project boundary or permittee-responsible  
761 compensatory mitigation areas, that are under a deed restriction, conservation  
762 easement, restrictive covenant, or other land use protective instrument (i.e., protected  
763 areas). Such description and a graphical depiction shall include the nature of the  
764 prohibited activities within the protected areas and the limits of Chesapeake Bay  
765 Resource Protection Areas (RPAs) as field-verified by the applicant, and if available,  
766 the limits as approved by the locality in which the project site is located, unless the  
767 proposed use is exempt from the Chesapeake Bay Preservation Area Designation and  
768 Management Regulations (9VAC25-830), as additional state or local requirements  
769 may apply if the project is located within an RPA.

770 o. Signature page that has been signed, dated, and certified by the applicant in  
771 accordance with 9VAC25-210-100. If the applicant is a business or other organization,  
772 the signature must be made by an individual with the authority to bind the business or  
773 organization, and the title of the signatory must be provided. The application signature  
774 page, either on the copy submitted to the Virginia Marine Resources Commission or  
775 to DEQ, must have an original signature. Electronic submittals containing the original  
776 signature page, such as that contained in a scanned document file, are acceptable.

777 p. Permit application fee. The applicant will be notified by the ~~board~~ department as to  
778 the appropriate fee for the project in accordance with 9VAC25-20. The ~~board~~  
779 department will continue to process the application, but the fee must be received prior  
780 to release of a draft VWP permit.

781 2. Reserved.

782 C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ.  
783 When required, the method selected for the analysis shall assess water quality or habitat metrics  
784 and shall be coordinated with DEQ in advance of conducting the analysis.

785 1. No analysis shall be required when:

786 a. Wetland impacts per each single and complete project total 1.00 acre or less; or

787 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
788 in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-  
789 shrub, and 1:1 for emergent, or higher.

790 2. Analysis shall be required when wetland impacts per each single and complete project  
791 total 1.01 acres or more, and when any of the following applies:

792 a. The proposed compensatory mitigation consists of permittee-responsible  
793 compensatory mitigation, including water quality enhancements as replacement for  
794 wetlands; or

795 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
796 in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest,  
797 1.5:1 for scrub-shrub, and 1:1 for emergent.

798 D. Incomplete application.

799 1. Where an application for an individual permit or general permit coverage is not accepted  
800 as complete by the ~~board~~ department within 15 days of receipt, the ~~board~~ department shall  
801 require the submission of additional information from the applicant and may suspend  
802 processing of any application until such time as the applicant has supplied the requested

803 information and the ~~board~~ department considers the application complete. Where the  
804 applicant becomes aware that he omitted one or more relevant facts from a VWP permit  
805 application or submitted incorrect information in a VWP permit application or in any report  
806 to the ~~board~~ department, the applicant shall immediately submit such facts or the correct  
807 information. A revised application with new information shall be deemed a new application  
808 for purpose of review but shall not require an additional notice or an additional permit  
809 application fee.

810 2. An incomplete application for an individual permit or general permit coverage may be  
811 administratively withdrawn from processing by the ~~board~~ department for failure to provide  
812 the required information after 60 days from the date of the latest written information  
813 request made by the ~~board~~ department. The ~~board~~ department shall provide (i) notice to  
814 the applicant and (ii) an opportunity for an informal fact-finding proceeding when  
815 administratively withdrawing an incomplete application. Resubmittal of an application for  
816 the same or similar project, after such time that the original permit application was  
817 administratively withdrawn, shall require submittal of an additional permit application fee  
818 and may be subject to additional noticing requirements.

819 3. An applicant may request a suspension of application review by the ~~board~~ department.  
820 A submission by the applicant making such a request shall not preclude the ~~board~~  
821 department from administratively withdrawing an incomplete application.

822 **9VAC25-210-90. Conditions applicable to all VWP permits.**

823 A. Duty to comply. The permittee shall comply with all conditions and limitations of the VWP  
824 permit. Nothing in this chapter shall be construed to relieve the permittee of the duty to comply  
825 with all applicable federal and state statutes, regulations, toxic standards, and prohibitions. Any  
826 VWP permit violation or noncompliance is a violation of the Clean Water Act and State Water  
827 Control Law and is grounds for enforcement action, VWP permit termination, VWP permit  
828 revocation, VWP permit modification, or denial of an application for a VWP permit extension or  
829 reissuance.

830 B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement  
831 action that it would have been necessary to halt or reduce the activity for which a VWP permit has  
832 been granted in order to maintain compliance with the conditions of the VWP permit.

833 C. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any  
834 impacts in violation of the VWP permit that may have a reasonable likelihood of adversely  
835 affecting human health or the environment.

836 D. Inspection and entry. Upon presentation of credentials, the permittee shall allow the ~~board~~  
837 department or any duly authorized agent of the ~~board~~ department, at reasonable times and under  
838 reasonable circumstances, to conduct the actions listed in this section. For the purpose of this  
839 section, the time for inspection shall be deemed reasonable during regular business hours.  
840 Nothing contained herein shall make an inspection time unreasonable during an emergency.

841 1. Enter upon permittee's property, public or private, and have access to, inspect and copy  
842 any records that must be kept as part of the VWP permit conditions;

843 2. Inspect any facilities, operations or practices (including monitoring and control  
844 equipment) regulated or required under the VWP permit; and

845 3. Sample or monitor any substance, parameter, or activity for the purpose of ensuring  
846 compliance with the conditions of the VWP permit or as otherwise authorized by law.

847 E. Duty to provide information. Plans, maps, conceptual reports, and other relevant  
848 information shall be submitted as required by the ~~board~~ department prior to commencing  
849 construction.

850 F. Monitoring and records requirements.

851 1. Monitoring of parameters, other than pollutants, shall be conducted according to  
852 approved analytical methods as specified in the VWP permit. Analysis of pollutants will be  
853 conducted according to 40 CFR Part 136 as published in the 40 CFR July 1, 2017, update  
854 and 82 FR 40836 (August 28, 2017).

855 2. Samples and measurements taken for the purpose of monitoring shall be representative  
856 of the monitored activity.

857 3. The permittee shall retain records of all monitoring information, including all calibration  
858 and maintenance records and all original strip chart or electronic recordings for continuous  
859 monitoring instrumentation, copies of all reports required by the VWP permit, and records  
860 of all data used to complete the application for the VWP permit, for a period of at least  
861 three years from the date of permit expiration. This period may be extended by request of  
862 the ~~board~~ department at any time.

863 4. Records of monitoring information shall include as appropriate:

864 a. The date, exact place and time of sampling or measurements;

865 b. The name of the individuals who performed the sampling or measurements;

866 c. The date and time the analyses were performed;

867 d. The name of the individuals who performed the analyses;

868 e. The analytical techniques or methods supporting the information such as  
869 observations, readings, calculations, and bench data used;

870 f. The results of such analyses; and

871 g. Chain of custody documentation.

872 G. Duty to reapply. Any permittee desiring to continue a previously permitted activity after the  
873 expiration date of the VWP permit shall apply for and obtain a new permit or, if applicable, shall  
874 request an extension in accordance with 9VAC25-210-180.

875 **9VAC25-210-100. Signatory requirements.**

876 A. Application. Any application for a VWP permit under this chapter shall bear the applicant's  
877 signature or the signature of a person acting in the applicant's behalf, with the authority to bind  
878 the applicant. Electronic submittals containing the original signature page, such as that contained  
879 in a scanned document file, are acceptable.

880 B. Reports. All reports required by VWP permits and other information requested by the ~~board~~  
881 department shall be signed by:

882 1. One of the persons described in subsection A of this section; or

883 2. A duly authorized representative of that person. A person is a duly authorized  
884 representative only if:

885 a. The authorization is made in writing by a person described in subsection A of this  
886 section; and

887 b. The authorization specifies either an individual or a position having responsibility for  
888 the overall operation of the regulated facility or activity, such as the position of plant  
889 manager, superintendent, or position of equivalent responsibility. A duly authorized  
890 representative may thus be either a named individual or any individual occupying a  
891 named position.

892 c. If an authorization is no longer accurate because a different individual or position  
893 has responsibility for the overall operation of the facility, a new authorization must be  
894 submitted to the ~~board~~ department prior to or together with any separate information,  
895 or applications to be signed by an authorized representative.

896 C. Certification of application and reports. Any person signing a document under subsection  
897 A or B of this section shall make the following certification: "I certify under penalty of law that this  
898 document and all attachments were prepared under my direction or supervision in accordance  
899 with a system designed to assure that qualified personnel properly gather and evaluate the  
900 information submitted. Based on my inquiry of the person or persons who manage the system or  
901 those persons directly responsible for gathering the information, the information submitted is to  
902 the best of my knowledge and belief true, accurate, and complete. I am aware that there are  
903 significant penalties for submitting false information including the possibility of fine and  
904 imprisonment for knowing violations."

905 **9VAC25-210-110. Establishing applicable standards, limitations, or other VWP permit**  
906 **conditions.**

907 A. In addition to the conditions established in 9VAC25-210-90 and 9VAC25-210-100, and for  
908 surface water withdrawals in 9VAC25-210-370, each VWP permit shall include conditions meeting  
909 the requirements established in this section where applicable.

910 B. Water quality standards and state requirements. The VWP permit shall include  
911 requirements to comply with all appropriate provisions of state laws and regulations.

912 C. Toxic pollutants.

913 1. Where the ~~board~~ department finds that appropriate limitations may not ensure  
914 compliance with the law or state water quality standards the ~~board~~ department shall  
915 require the permittee to follow a program of biological or chemical toxics monitoring. The  
916 requirement may include a VWP permit reopener to allow the imposition of toxicity  
917 reduction or elimination measures determined to be necessary as a result of the ~~board's~~  
918 department's evaluation of the results of the toxic monitoring and other available  
919 information. Based upon this determination, appropriate limitations will be included in the  
920 VWP permit to ensure the reduction or elimination of toxic pollutants and allow the ~~board~~  
921 department to ensure that the proposed project will comply with water quality standards  
922 and other appropriate requirements of the law.

923 2. Limitations will be included in the VWP permit to control all toxic pollutants which the  
924 ~~board~~ department determines (based on information reported in a VWP permit application  
925 or a notification or on other information) are or may be discharged at a level which would  
926 adversely affect the beneficial use of the receiving waters.

927 D. Monitoring requirements as conditions of VWP permits may include but are not limited to:

928 1. Requirements concerning the proper use, maintenance and installation, when  
929 appropriate, of monitoring equipment or methods (including biological monitoring methods  
930 when appropriate) when required as a condition of the VWP permit;

931 2. Required monitoring including type, intervals, and frequency sufficient to yield data  
932 which are representative of the monitored activity and including, when appropriate,  
933 continuous monitoring and composite samples;

934 3. Applicable reporting requirements based upon the impact of the regulated activity on  
935 water quality; and

936 4. Requirements to report monitoring results with a frequency dependent on the nature  
937 and effect of the regulated activity.

938 E. Best management practices (BMPs). The VWP permit may require the use of BMPs to  
939 control or abate the discharge of pollutants.

940 F. Reissued VWP permits. When a VWP permit is renewed or reissued, limitations, standards,  
941 or conditions must be in conformance with current limitations, standards, or conditions.



942 G. Reopening VWP permits. Each VWP permit shall have a condition allowing the reopening  
943 of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new  
944 regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but  
945 is not limited to when the circumstances on which the previous VWP permit was based have  
946 materially and substantially changed, or special studies conducted by the ~~board~~ department or  
947 the permittee show material and substantial change, since the time the VWP permit was issued  
948 and thereby constitute cause for VWP permit modification or revocation and reissuance.

949 **9VAC25-210-116. Compensation.**

950 A. No net loss. Compensatory mitigation for project impacts shall be sufficient to achieve no  
951 net loss of existing wetland acreage and no net loss of functions in all surface waters.  
952 Compensatory mitigation ratios appropriate for the type of aquatic resource impacted and the type  
953 of compensation provided shall be applied to permitted impacts to help meet this requirement.  
954 Credit may be given for preservation of upland buffers already protected under other ordinances  
955 to the extent that additional protection and water quality and fish and wildlife resource benefits  
956 are provided.

957 B. Practicable and ecologically and environmentally preferable compensation alternatives.

958 1. An analysis shall be required to justify that permittee-responsible compensatory  
959 mitigation is ecologically and environmentally preferable to the purchase of mitigation bank  
960 credits or in-lieu fee program credits with a primary service area that covers the impact  
961 site if such credits are available in sufficient quantity for the project at the projected time  
962 of need. The analysis shall address the ability of the permittee-responsible compensatory  
963 mitigation sites to replace lost wetland acreage and functions or lost stream functions and  
964 water quality benefits. The analysis comparing the impacted and compensation sites may  
965 use a method that assesses water quality or habitat metrics, such as that required by  
966 9VAC25-210-80 C, or a method that assesses such criteria as water quality benefits,  
967 distance from impacts, hydrologic source and regime, watershed, vegetation type, soils,  
968 constructability, timing of compensation versus impact, property acquisition, and cost.

969 2. The applicant shall demonstrate that permittee-responsible compensatory mitigation  
970 can be protected in perpetuity through a protective mechanism approved by the  
971 Department of Environmental Quality, such as, but not limited to, a conservation easement  
972 held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-  
973 1009 et seq. of the Code of Virginia) or the Virginia Open-Space Act (§ 10.1-1700 et seq.  
974 of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other  
975 protective instrument.

976 C. Compensatory mitigation proposals shall be evaluated as follows:

977 1. The purchase of mitigation bank credits and in-lieu fee program credits with a primary  
978 service area that covers the impact site when available shall in most cases be deemed  
979 the ecologically and environmentally preferable form of compensation for project impacts.  
980 However, permittee-responsible compensatory mitigation may be considered when the  
981 applicant satisfactorily demonstrates that permittee-responsible compensatory mitigation  
982 is ecologically and environmentally preferable in accordance with subdivision B 1 of this  
983 section.

984 2. Compensatory mitigation for unavoidable wetland impacts may be met through the  
985 following options, which are preferred in the following sequence: mitigation banking, in-  
986 lieu fee program, and permittee-responsible compensatory mitigation. However, the ~~board~~  
987 department shall evaluate the appropriate compensatory mitigation option on a case-by-  
988 case basis with consideration for which option is practicable and ecologically and  
989 environmentally preferable, including, in terms of replacement of acreage and functions,  
990 which option offers the greatest likelihood of success and avoidance of temporal loss of

- 991 acreage and function. This evaluation shall be consistent with the U.S. Army Corps of  
992 Engineers Compensatory Mitigation for Losses of Aquatic Resources as provided in 33  
993 CFR Part 332. When considering options for providing the required compensatory  
994 mitigation, DEQ shall consider the type and location options in the following order:
- 995 a. Mitigation bank credits;
  - 996 b. In-lieu fee program credits;
  - 997 c. Permittee-responsible mitigation under a watershed approach;
  - 998 d. Permittee-responsible mitigation through on-site and in-kind mitigation;
  - 999 e. Permittee-responsible mitigation through off-site or out-of-kind mitigation;
  - 1000 f. Restoration, enhancement, or preservation of upland buffers adjacent to wetlands  
1001 when utilized in conjunction with subdivision 2 a, 2 b, 2 c, 2 d, or 2 e of this subsection  
1002 and when consistent with subsection A of this section; and
  - 1003 g. Preservation of wetlands when utilized in conjunction with subdivision 2 a, 2 b, 2 c,  
1004 2 d, or 2 e of this subsection and when consistent with subsection A of this section.
- 1005 3. Compensatory mitigation for unavoidable stream impacts may be met through the  
1006 following options, which are preferred in the following sequence: mitigation banking, in-  
1007 lieu fee program, and permittee-responsible mitigation. However, the ~~board~~ department  
1008 shall evaluate the appropriate compensatory mitigation option on a case-by-case basis  
1009 with consideration for which option is practicable and ecologically and environmentally  
1010 preferable, including, in terms of replacement of acreage and functions, which option  
1011 offers the greatest likelihood of success and avoidance of temporal loss of acreage and  
1012 function. This evaluation shall be consistent with the U.S. Army Corps of Engineers  
1013 Compensatory Mitigation for Losses of Aquatic Resources as provided in 33 CFR Part  
1014 332. One factor in determining the required compensation shall be an analysis of stream  
1015 impacts utilizing a stream impact assessment methodology approved by the ~~board~~  
1016 department. When considering options for providing the required compensatory  
1017 mitigation, DEQ shall consider the type and location options in the following order:
- 1018 a. Mitigation bank stream credits;
  - 1019 b. In-lieu fee program credits;
  - 1020 c. Permittee-responsible mitigation under a watershed approach;
  - 1021 d. Permittee-responsible mitigation through on-site and in-kind mitigation;
  - 1022 e. Permittee-responsible mitigation through off-site or out-of-kind mitigation;
  - 1023 f. Restoration, enhancement, or preservation of upland buffers adjacent to streams  
1024 when utilized in conjunction with subdivision 3 a, 3 b, 3 c, 3 d, or 3 e of this subsection  
1025 and when consistent with subsection A of this section; and
  - 1026 g. Preservation of stream channels and adjacent riparian buffers when utilized in  
1027 conjunction with subdivision 3 a, 3 b, 3 c, 3 d, or 3 e of this subsection and when  
1028 consistent with subsection A of this section.
- 1029 4. Compensatory mitigation for open water impacts may be required to protect state  
1030 waters and fish and wildlife resources from significant impairment, as appropriate.  
1031 Compensation shall not be required for permanent or temporary impacts to open waters  
1032 that are identified as palustrine by the Cowardin classification method, but compensation  
1033 may be required when such open waters are located in areas of karst topography in  
1034 Virginia and are formed by the natural solution of limestone.
- 1035 D. In-lieu fee program approval.

- 1036 1. The ~~board~~ department may approve the use of a program by issuing a VWP permit for  
1037 a specific project or by taking an enforcement action and following applicable public notice  
1038 and comment requirements, or by granting approval of a program after publishing a notice  
1039 of its intent in the Virginia Register of Regulations and accepting public comments on its  
1040 approval for a minimum of 30 days.
- 1041 2. Where a program is mandated by the Code of Virginia to be implemented and such  
1042 program is approved by the U.S. Army Corps of Engineers, the program may be used as  
1043 deemed appropriate for any VWP permit or enforcement action.
- 1044 3. An approved program must meet the following criteria:
- 1045 a. Demonstration of a no net loss policy in terms of wetland acreage and functions or  
1046 stream functions and water quality benefits by adoption of operational goals or  
1047 objectives for restoration, creation, enhancement, or preservation;
- 1048 b. DEQ approval of each site for inclusion in the program;
- 1049 c. A commitment to provide annual reports to the ~~board~~ department detailing  
1050 contributions received and acreage and type of wetlands or streams preserved,  
1051 created or restored in each watershed with those contributions, as well as the  
1052 compensatory mitigation credits contributed for each watershed of project impact;
- 1053 d. A mechanism to establish fee amounts that will ensure each contribution will be  
1054 adequate to compensate for the wetland acreage and functions or stream functions  
1055 and water quality benefits lost in the impacted watershed; and
- 1056 e. Such terms and conditions as the ~~board~~ department deems necessary to ensure a  
1057 no net loss of wetland acreage and functions or stream functions and water quality  
1058 benefits from permitted projects providing compensatory mitigation.
- 1059 4. Approval may be granted for up to 10 years and may be renewed by the ~~board~~  
1060 department upon a demonstration that the program has met the criteria in subdivision 3 of  
1061 this subsection.
- 1062 E. Use of mitigation banks. The use of mitigation banks for compensating project impacts shall  
1063 be deemed appropriate if the following criteria are met:
- 1064 1. The bank meets the criteria and conditions found in § 62.1-44.15:23 of the Code of  
1065 Virginia;
- 1066 2. The bank is ecologically and environmentally preferable to practicable on-site and off-  
1067 site individual compensatory mitigation options;
- 1068 3. The banking instrument, if approved after July 1, 1996, has been approved by a process  
1069 that involved public review and comment in accordance with federal guidelines; and
- 1070 4. The applicant provides verification to DEQ of purchase of the required amount of credits.
- 1071 F. For permittee-responsible mitigation, the final compensatory mitigation plan shall include  
1072 complete information on all components of the conceptual compensatory mitigation plan detailed  
1073 in 9VAC25-210-80 B 1 m and:
- 1074 1. For wetlands, the final compensation plan for review and approval by DEQ shall also  
1075 include a summary of the type and acreage of existing wetland impacts anticipated during  
1076 the construction of the compensation site and the proposed compensation for these  
1077 impacts; a site access plan; a monitoring plan, including proposed success criteria,  
1078 monitoring goals, and the location of photo-monitoring stations, monitoring wells,  
1079 vegetation sampling points, and reference wetlands or streams if available; an abatement  
1080 and control plan for undesirable plant species; an erosion and sedimentation control plan;  
1081 a construction schedule; and the final protective mechanism for the compensation site or  
1082 sites, including all surface waters and buffer areas within its boundaries. The approved

1083 protective mechanism shall be recorded in the chain of title to the property, or an  
1084 equivalent instrument for government-owned lands, and proof of recordation shall be  
1085 submitted to DEQ prior to commencing impacts in surface waters.

1086 2. For streams, the final compensation plan for review and approval by DEQ shall also  
1087 include a site access plan; an erosion and sedimentation control plan, if appropriate; an  
1088 abatement and control plan for undesirable plant species; a monitoring plan, including a  
1089 monitoring and reporting schedule, monitoring design, and methodologies for success;  
1090 proposed success criteria; location of photo-monitoring stations, vegetation sampling  
1091 points, survey points, bank pins, scour chains, and reference streams; a plan view drawing  
1092 depicting the pattern and all compensation measures being employed; a profile drawing;  
1093 cross-sectional drawing or drawings of the proposed compensation stream; and the final  
1094 protective mechanism for the compensation site or sites, including all surface waters and  
1095 buffer areas within its boundaries. The approved protective mechanism shall be recorded  
1096 in the chain of title to the property, or an equivalent instrument for government-owned  
1097 lands, and proof of recordation shall be submitted to DEQ prior to commencing impacts in  
1098 surface waters.

1099 **9VAC25-210-120. Draft VWP permit formulation.**

1100 A. After evaluation of a complete application, the ~~board~~ department shall make a decision to  
1101 tentatively issue or deny the VWP permit pursuant to this section.

1102 B. If the tentative decision is to issue the VWP permit then a draft VWP permit shall be  
1103 prepared in advance of public notice. The following tentative determinations shall be incorporated  
1104 into a draft VWP permit:

- 1105 1. Conditions, discharge limitations, standards and other requirements applicable to the  
1106 VWP permit;
- 1107 2. Monitoring requirements; and
- 1108 3. Requirements for mitigation of adverse environmental impacts.

1109 C. If the tentative decision is to deny the application, the ~~board~~ department shall do so in  
1110 accordance with 9VAC25-210-230.

1111 D. Should a decision be made to waive the requirement for a VWP permit, the ~~board~~  
1112 department shall do so in accordance with 9VAC25-210-220.

1113 **9VAC25-210-130. VWP general permits.**

1114 A. The board may issue VWP general permits by regulation for certain specified categories of  
1115 activities as it deems appropriate, except as limited by subdivision D 2 of § 62.1-44.15:21 of the  
1116 State Water Control Law.

1117 B. When the ~~board~~ department determines on a case-by-case basis that concerns for water  
1118 quality and the aquatic environment so indicate, the ~~board~~ department may require individual  
1119 applications and VWP individual permits rather than approving coverage under a VWP general  
1120 permit regulation. Cases where an individual VWP permit may be required include the following:

- 1121 1. Where the activity may be a significant contributor to pollution;
- 1122 2. Where the applicant or permittee is not in compliance with the conditions of the VWP  
1123 general permit regulation or coverage;
- 1124 3. When an applicant or permittee no longer qualifies for coverage under the VWP general  
1125 permit; and
- 1126 4. When a permittee operating under VWP general permit coverage requests to be  
1127 excluded from coverage by applying for a VWP individual permit.

1128 C. When a VWP individual permit is issued to a permittee, the applicability of the VWP general  
1129 permit coverage to the individual permittee is automatically terminated on the effective date of the  
1130 VWP individual permit.

1131 D. When a VWP general permit regulation is issued, which applies to a permittee that is  
1132 already covered by a VWP individual permit, such person may request exclusion from the  
1133 provisions of the VWP general permit regulation and subsequent coverage under a VWP  
1134 individual permit.

1135 E. VWP general permit coverage may be revoked from an individual permittee for any of the  
1136 reasons set forth in 9VAC25-210-180 subject to appropriate opportunity for a hearing.

1137 F. The permittee shall be required to submit a written notice of project completion and request  
1138 a permit termination by consent within 30 days following the completion of all activities in all  
1139 permitted impact areas in accordance with subsection 90 A of the applicable VWP general permit  
1140 regulation.

1141 G. Activities authorized under a VWP general permit and general permit regulation shall be  
1142 authorized for the fixed term stated in the applicable VWP general permit and VWP general permit  
1143 regulation.

1144 H. Unless prohibited from coverage under a VWP general permit, the ~~board~~ department may  
1145 certify or certify with conditions a general, regional, or nationwide permit proposed by the U.S.  
1146 Army Corps of Engineers (USACE) in accordance with § 401 of the federal Clean Water Act as  
1147 meeting the requirements of this chapter and a VWP general permit, provided that the nationwide  
1148 or regional permit and the certification conditions:

- 1149 1. Require that wetland or stream impacts be avoided and minimized to the maximum  
1150 extent practicable;
- 1151 2. Prohibit impacts that cause or contribute to a significant impairment of state waters or  
1152 fish and wildlife resources;
- 1153 3. Require compensatory mitigation sufficient to achieve no net loss of existing wetland  
1154 acreage and functions or stream functions and water quality benefits;
- 1155 4. Require that compensatory mitigation for unavoidable wetland impacts be provided in  
1156 accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116; and
- 1157 5. Require that compensatory mitigation for unavoidable stream impacts be provided in  
1158 accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116, including  
1159 an analysis of stream impacts utilizing a stream impact assessment methodology  
1160 approved by the ~~board~~ department.

1161 I. The certifications allowed by subsection H of this section may be provided only after the  
1162 ~~board~~ department has advertised and accepted public comment on its intent to provide  
1163 certification for at least 30 days.

1164 J. Coverage under a general, regional, or nationwide permit promulgated by the USACE and  
1165 certified by the ~~board~~ department in accordance with this section shall be deemed coverage under  
1166 a VWP general permit regulation upon submission of proof of coverage under the general,  
1167 regional, or nationwide permit and any other information required by the ~~board~~ department  
1168 through the certification process. Notwithstanding the provisions of 9VAC25-20, no fee shall be  
1169 required from applicants seeking coverage under this subsection.

1170 **9VAC25-210-140. Public notice of VWP individual permit actions and public comment**  
1171 **periods.**

1172 A. Every draft VWP individual permit, with the exception of a VWP Emergency Virginia Water  
1173 Protection Permit, shall be given public notice paid for by the applicant, by publication once in a  
1174 newspaper of general circulation in the area affected by the proposed activity. The public notice

1175 must be published within 14 days of the applicant's receipt of a draft VWP permit, or the 120-day  
1176 VWP permit processing timeframe will be suspended until such publication.

1177 B. The ~~board~~ department shall provide a comment period of at least 30 days following the  
1178 date of the public notice for interested persons to submit written comments on the tentative  
1179 decision and to request a public hearing on the VWP permit. All written comments submitted  
1180 during the comment period shall be retained by the ~~board~~ department and considered during its  
1181 final decision on the VWP permit.

1182 C. The contents of the public notice for a VWP permit application or proposed VWP permit  
1183 action shall include:

- 1184 1. Name and mailing address of the applicant;
- 1185 2. The permit application number;
- 1186 3. Project location. If the location of the activity differs from the address of the applicant  
1187 the notice shall also state the location in sufficient detail such that the specific location  
1188 may be easily identified;
- 1189 4. Brief description of the business or activity to be conducted at the site of the proposed  
1190 activity;
- 1191 5. Description of the area affected. Information on the number of acres of wetlands and  
1192 the number of linear feet of streams affected, as well as the name of the receiving  
1193 waterway and the name of the affected watershed should be included;
- 1194 6. Description of what the applicant plans to do to compensate for the affected area;
- 1195 7. A statement of the tentative determination to issue or deny a VWP permit;
- 1196 8. A brief description of the final determination procedure;
- 1197 9. The address, email address and phone number of a specific person or persons at the  
1198 state office from whom further information may be obtained; and
- 1199 10. A brief description on how to submit comments and request a public hearing.

1200 D. Public notice shall not be required for submission or approval of plans and specifications  
1201 or conceptual engineering reports not required to be submitted as part of the application.

1202 E. When a VWP permit is denied, the ~~board~~ department shall do so in accordance with  
1203 9VAC25-210-230.

1204 **9VAC25-210-150. Public access to information.**

1205 All information (i) pertaining to VWP permit or VWP general permit coverage processing or (ii)  
1206 in reference to any activity requiring a VWP permit or VWP general permit coverage under this  
1207 chapter shall be available to the public, unless prohibited by § 62.1-44.21 of the Code of Virginia.  
1208 All information claimed confidential must be identified as such at the time of submission to the  
1209 ~~board~~ department and the Virginia Marine Resources Commission.

1210 **9VAC25-210-160. Public comments and hearing.**

1211 A. The ~~board~~ department shall consider all written comments and requests for a public hearing  
1212 received during the VWP individual permit comment period and shall make a determination on  
1213 the necessity of a public hearing in accordance with ~~§ 62.1-44.15:02 of the Code of Virginia~~  
1214 9VAC25-210-165. All proceedings, public hearings and decisions from it will be in accordance  
1215 with ~~§ 62.1-44.15:02 of the Code of Virginia~~ 9VAC25-210-165.

1216 B. Should the ~~board~~, in accordance with ~~§ 62.1-44.15:02 of the Code of Virginia~~ department,  
1217 determine to dispense with the public hearing, it may grant the VWP individual permit ~~or, at its~~  
1218 ~~discretion, transmit the application or request, together with all written comments from it and~~  
1219 ~~relevant staff documents and staff recommendations, if any, to the board for its decision.~~

1220 C. Any applicant or permittee aggrieved by an action of the board taken without a public  
1221 hearing, or inaction of the ~~board~~ department, may request in writing a hearing pursuant to ~~§ 62.1-~~  
1222 ~~44.15:02~~ of the Code of Virginia 9VAC25-210-165.

1223 **9VAC25-210-165. Criteria for requesting and granting a public hearing on an individual**  
1224 **permit action.**

1225 A. During the public comment period on a permit action in those instances where a public  
1226 hearing is not mandatory under state or federal law or regulation, interested persons may request  
1227 a public hearing to contest the action or terms and conditions of the permit.

1228 B. Requests for a public hearing shall contain the following information:

1229 1. The name and postal mailing or email address of the requester.

1230 2. The names and addresses of all persons for whom the requester is acting as a  
1231 representative.

1232 3. The reason for the request for a public hearing.

1233 4. A brief, informal statement setting forth the factual nature and extent of the interest of  
1234 the requester or of the persons for whom the requester is acting as representative in the  
1235 application or tentative determination, including an explanation of how and to what extent  
1236 such interest would be directly and adversely affected by the issuance, denial,  
1237 modification, or revocation of the permit in question, and.

1238 5. Where possible, specific references to the terms and the conditions of the permit in  
1239 question, together with suggested revisions and alterations to those terms and conditions  
1240 that the requester considers are needed to conform the permit to the intent and provisions  
1241 of the basic laws of the State Water Control Board.

1242 C. Upon completion of the public comment period on a permit action, the director shall review  
1243 all timely requests for public hearing filed during the comment period on the permit action, and  
1244 within 30 calendar days following the expiration of the time period for the submission of requests  
1245 shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director  
1246 finds the following:

1247 1. That there is a significant public interest in the issuance, denial, modification or  
1248 revocation of the permit in question as evidenced by receipt of a minimum of 25 individual  
1249 requests for a public hearing.

1250 2. That the requesters raise substantial, disputed issues relevant to the issuance, denial,  
1251 modification, or revocation of the permit in question, and.

1252 3. That the action requested by the interested party is not on its face inconsistent with, or  
1253 in violation of, the basic laws of the State Water Control Board for a water permit action,  
1254 federal law, or any regulation promulgated thereunder.

1255 D. The director of DEQ shall notify by email or mail at his last known address: (i) each  
1256 requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

1257 E. If the request for a public hearing is granted, the director shall:

1258 1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the  
1259 notice of the decision to grant the public hearing.

1260 2. Cause, or require the applicant to publish, notice of a public hearing to be published  
1261 once, in a newspaper of general circulation in the city or county where the facility or  
1262 operation that is the subject of the permit or permit application is located, at least 30 days  
1263 before the hearing date.

1264 F. The public comment period shall remain open for 15 days after the close of the public  
1265 hearing if required by §62.1-44.15:01 of the Code of Virginia.

1266 G. The director may, at his discretion, convene a public hearing on a permit action.

1267 **9VAC25-210-170. Public notice of hearing.**

1268 A. Public notice of any public hearing held pursuant to 9VAC25-210-160 and 9VAC25-210-  
1269 165 shall be circulated as follows:

- 1270 1. Notice shall be published once in a newspaper of general circulation in the county or  
1271 city where the activity is to occur; and
- 1272 2. Notice of the public hearing shall be sent to all persons and government agencies that  
1273 received a copy of the notice of VWP permit application and to those persons requesting  
1274 a public hearing or having commented in response to the public notice.

1275 B. Notice shall be effected pursuant to subdivisions A 1 and 2 of this section at least 30 days  
1276 in advance of the public hearing.

1277 C. The content of the public notice of any public hearing held pursuant to 9VAC25-210-160  
1278 and 9VAC25-210-165 shall include at least the following:

- 1279 1. Name and mailing address of each person whose application will be considered at the  
1280 public hearing and a brief description of the person's activities or operations including  
1281 information on the number of acres of wetlands and the number of linear feet of streams  
1282 affected, a description of the nature of the withdrawal and the amount of the withdrawal;  
1283 as well as the name of the receiving waterway and the name of the affected watershed;
- 1284 2. The precise location of the proposed activity and the surface waters that will, or may,  
1285 be affected including, where possible, reference to route numbers, road intersections, map  
1286 coordinates or similar information;
- 1287 3. Description of what the applicant plans to do to compensate for the affected area;
- 1288 4. A brief reference to the public notice issued for the VWP permit application or permit  
1289 action, including the permit application number and date of issuance, unless the public  
1290 notice includes the public hearing notice;
- 1291 5. Information regarding the time and location for the public hearing;
- 1292 6. The purpose of the public hearing;
- 1293 7. A concise statement of the relevant water quality, or fish and wildlife resource issues  
1294 raised by the persons requesting the public hearing;
- 1295 8. Contact person and the mailing address, email address, name of the Department of  
1296 Environmental Quality regional office and phone number of the DEQ office at which the  
1297 interested persons may obtain further information or request a copy of the draft VWP  
1298 permit prepared pursuant to 9VAC25-210-120; and
- 1299 9. A brief reference to the rules and procedures to be followed at the public hearing.

1300 D. Public notice of any hearing held pursuant to 9VAC25-210-160 C shall be in accordance  
1301 with § 62.1-44.15:02 of the Code of Virginia this section.

1302 E. The public comment period shall remain open for 15 days after the close of the public  
1303 hearing if required by § 62.1-44.15:01 of the Code of Virginia.

1304 **9VAC25-210-172. Controversial Permits.**

1305 Before rendering a final decision on a controversial permit, the department shall publish a  
1306 summary of public comments received during the applicable public comment period and public  
1307 hearing. After such publication, the department shall publish responses to the public comment  
1308 summary and hold a public hearing to provide an opportunity for individuals who previously  
1309 commented, either at a public hearing or in writing during the applicable public comment period,  
1310 to respond to the department's public comment summary and response. No new information will  
1311 be accepted at that time. In making its decision, the department shall consider: (i) the verbal and



1312 written comments received during the comment period and the public hearing made part of the  
1313 record, (ii) any commentary of the board, and (iii) the agency files.

1314 **9VAC25-210-174. Controversial permits reporting.**

1315 At each regular meeting of the board, the department shall provide an overview and update  
1316 regarding any controversial permits pending before the department that are relevant. Immediately  
1317 after such presentation by the department, the board shall have an opportunity to respond to the  
1318 department's presentation and provide commentary regarding such pending permits.

1319 **9VAC25-210-180. Rules for modification, revocation and reissuance, extension, transfer,**  
1320 **and termination of VWP individual permits.**

1321 A. VWP individual permits may be modified in whole or in part, revoked and reissued,  
1322 extended, transferred, or terminated only as authorized by this section.

1323 B. VWP permits may be modified upon the request of the permittee or upon ~~board~~ department  
1324 initiative when any of the following developments occur:

1325 1. When new information becomes available about the project or activity covered by the  
1326 VWP permit, including project additions or alterations, that was not available at VWP  
1327 permit issuance and would have justified the application of different VWP permit conditions  
1328 at the time of VWP permit issuance;

1329 2. When a change is made in the promulgated standards or regulations on which the VWP  
1330 permit was based;

1331 3. When changes occur that are subject to "reopener clauses" in the VWP permit; or

1332 4. When developments applicable to surface water withdrawals as specified in 9VAC25-  
1333 210-380 occur.

1334 C. A request for a modification, except those addressed in subsection E of this section, shall  
1335 include the applicable informational requirements of 9VAC25-210-80 B, updated to reflect the  
1336 proposed changes to the project. The ~~board~~ department may request additional information as  
1337 necessary to review and prepare a draft permit. If the ~~board~~ department tentatively decides to  
1338 modify a permit, it shall prepare a draft permit incorporating the proposed changes in accordance  
1339 with 9VAC25-210-120 and process the draft permit in accordance with 9VAC25-210-140 through  
1340 9VAC25-210-170.

1341 D. During the drafting and authorization of a permit modification under this section, only those  
1342 conditions to be modified shall be addressed with preparing a draft modified permit. VWP permit  
1343 terms and conditions of the existing permit shall remain in full force and effect during the  
1344 modification of the permit.

1345 E. Upon request of the permittee, or upon ~~board~~ department initiative with the consent of the  
1346 permittee, minor modifications may be made in the VWP permit without following the public  
1347 involvement procedures contained in 9VAC25-210-140, 9VAC25-210-160, or 9VAC25-210-170.  
1348 Any request for a minor modification shall be in writing and shall contain the facts or reasons  
1349 supporting the request. The ~~board~~ department may request additional information as necessary  
1350 to review a request for minor modification. The ~~board~~ department, at its discretion, may require  
1351 that the changes proposed under a minor modification to be processed as a modification in  
1352 accordance with subsections B and C of this section. For VWP permits, a minor modification may  
1353 only be processed to:

1354 1. Correct typographical errors.

1355 2. Require monitoring and reporting by the permittee at a different frequency than required  
1356 in the VWP permit, based on new information justifying the change in conditions.

1357 3. Change a compliance date provided it will not result in a net loss of wetland acreage or  
1358 of functions in all surface waters.

- 1359 4. Allow for a change in permittee provided that a written agreement containing a specific  
1360 date for transfer of VWP permit responsibility, authorization, and liability from the current  
1361 to the new permittee has been submitted to the board department. A VWP permit shall be  
1362 transferred only if the VWP permit has been modified to reflect the transfer, has been  
1363 revoked and reissued to the new permittee, or has been automatically transferred. Any  
1364 individual VWP permit shall be automatically transferred to a new permittee if the current  
1365 permittee:
- 1366 a. Notifies the board department of the proposed transfer of the permit and provides a  
1367 written agreement between the current and proposed permittees containing the date  
1368 of transfer of VWP permit responsibility, authorization, and liability to the new  
1369 permittee; and
  - 1370 b. The board department does not within 15 days notify the current and new permittees  
1371 of its intent to modify the VWP permit.
- 1372 5. Change project plans or uses that do not result in a change to permitted project impacts  
1373 other than allowable by subdivisions 6 and 7 of this subsection.
- 1374 6. Reduce wetland or stream impacts. Compensatory mitigation requirements may be  
1375 modified in relation to the adjusted impacts, provided that the adjusted compensatory  
1376 mitigation meets the initial compensatory mitigation goals. The Department of  
1377 Environmental Quality shall not be responsible for ensuring refunds for mitigation bank  
1378 credit purchases or in-lieu fee program credit purchases.
- 1379 7. Authorize additional impacts to surface waters that are proposed prior to impacting the  
1380 additional areas. Proposed additional impacts shall meet the following requirements:
- 1381 a. The proposed additional impacts are located within the project boundary as depicted  
1382 in the application for permit issuance, or are located in areas of directly related off-site  
1383 work.
  - 1384 b. The permittee has provided sufficient documentation that the board department may  
1385 reasonably determine that the additional impacts will not impact federal or state listed  
1386 threatened or endangered species or designated critical habitat, or result in a taking  
1387 of threatened or endangered species. The board department recommends that the  
1388 permittee verify that the project will not impact any proposed threatened or endangered  
1389 species or proposed critical habitat.
  - 1390 c. The cumulative, additional permanent wetland or open water impacts for one or  
1391 more minor modifications do not exceed one-quarter of an acre (0.25 acre or 10,890  
1392 square feet).
  - 1393 d. The cumulative, additional permanent stream impacts for one or more minor  
1394 modifications do not exceed 100 linear feet.
  - 1395 e. Documentation is provided demonstrating that the proposed surface water impacts  
1396 have been avoided to the maximum extent practicable in accordance with the  
1397 informational requirements of 9VAC25-210-80 B 1 g.
  - 1398 f. Compensatory mitigation for the proposed impacts, if required, meets the  
1399 requirements of § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-80 B 1 m, and  
1400 9VAC25-210-116. Prior to a minor modification approval, DEQ may require  
1401 submission of a compensatory mitigation plan for the additional impacts.
  - 1402 g. Where such additional impacts are temporary, and prior to initiating the impacts, the  
1403 permittee provides a written statement to the board department that the area to be  
1404 temporarily impacted will be restored to its preconstruction elevations and contours  
1405 with topsoil from the impact area where practicable, such that the previous acreage  
1406 and functions are restored. The proposed temporary impacts shall be deemed

1407 approved if DEQ does not respond within 10 days of receipt of the request for  
1408 authorization to temporarily impact additional surface waters.

1409 8. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another  
1410 DEQ-approved mitigation bank or in-lieu fee program, or substitute all or a portion of the  
1411 prior authorized permittee-responsible compensatory mitigation with a purchase of  
1412 mitigation credits in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-  
1413 210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of  
1414 credits proposed to be purchased shall be sufficient to meet the compensatory mitigation  
1415 requirement for which the compensatory mitigation is proposed to replace.

1416 9. Allow for extension of the expiration date of the VWP permit. Any permittee with an  
1417 effective VWP permit for an activity that is expected to continue after the expiration date  
1418 of the VWP permit, without any change in the activity authorized by the VWP permit other  
1419 than as may be allowed under this section, shall submit written notification requesting an  
1420 extension. The permittee must file the request 90 days prior to the expiration date of the  
1421 VWP permit. VWP permit modifications shall not be used to extend the term of a VWP  
1422 permit beyond 15 years from the date of original issuance.

1423 10. Activities or development applicable to surface water withdrawals as specified in  
1424 9VAC25-210-380 B.

1425 F. After notice and opportunity for a formal hearing pursuant to ~~§ 62.1-44.15:02~~ § 2.2-4020 of  
1426 the Code of Virginia , a VWP permit can be terminated for cause. Reasons for termination for  
1427 cause are as follows:

- 1428 1. Noncompliance by the permittee with any condition of the VWP permit;
- 1429 2. The permittee's failure in the application or during the VWP permit process to disclose  
1430 fully all relevant facts or the permittee's misrepresentation of any relevant facts at any  
1431 time;
- 1432 3. The permittee's violation of a special or judicial order;
- 1433 4. A determination by the ~~board~~ department that the permitted activity endangers human  
1434 health or the environment and can be regulated to acceptable levels by VWP permit  
1435 modification or termination;
- 1436 5. A change in any condition that requires either a temporary or permanent reduction or  
1437 elimination of any activity controlled by the VWP permit; or
- 1438 6. A determination that the permitted activity has ceased and that the compensation for  
1439 unavoidable adverse impacts has been successfully completed.

1440 G. The ~~board~~ department may terminate the permit without cause when the permittee is no  
1441 longer a legal entity due to death, dissolution, or when a company is no longer authorized to  
1442 conduct business in the Commonwealth. The termination shall be effective 30 days after notice  
1443 of the proposed termination is sent to the last known address of the permittee or registered agent,  
1444 unless the permittee objects within that time. If the permittee does object during that period, the  
1445 ~~board~~ department shall follow the applicable procedures for termination under § 62.1-44.15:25 of  
1446 the Code of Virginia and 9VAC25-230.

1447 H. A VWP permit may be terminated by consent, as initiated by the permittee. The permittee  
1448 shall submit a request for termination by consent within 30 days of completing or canceling all  
1449 permitted activities and all required compensatory mitigation requirements. When submitted for  
1450 project completion, the request for termination by consent shall constitute a notice of project  
1451 completion. The director may accept this termination on behalf of the ~~board~~ department. The  
1452 permittee shall submit the following information:

- 1453 1. Name, mailing address, and telephone number;

- 1454 2. Name and location of the activity;
- 1455 3. The VWP permit number; and
- 1456 4. One of the following certifications:
- 1457 a. For project completion: "I certify under penalty of law that all activities and any
- 1458 required compensatory mitigation authorized by a VWP permit have been completed.
- 1459 I understand that by submitting this notice of termination that I am no longer authorized
- 1460 to perform activities in surface waters in accordance with the VWP permit, and that
- 1461 performing activities in surface waters is unlawful where the activity is not authorized
- 1462 by a VWP permit, unless otherwise excluded from obtaining a permit. I also understand
- 1463 that the submittal of this notice does not release me from liability for any violations of
- 1464 this VWP permit."
- 1465 b. For project cancellation: "I certify under penalty of law that the activities and any
- 1466 required compensatory mitigation authorized by this VWP permit will not occur. I
- 1467 understand that by submitting this notice of termination that I am no longer authorized
- 1468 to perform activities in surface waters in accordance with the VWP permit, and that
- 1469 performing activities in surface waters is unlawful where the activity is not authorized
- 1470 by a VWP permit, unless otherwise excluded from obtaining a permit. I also understand
- 1471 that the submittal of this notice does not release me from liability for any violations of
- 1472 this VWP permit, nor does it allow me to resume the permitted activities without
- 1473 reapplication and issuance of another permit."
- 1474 c. For events beyond permittee control, the permittee shall provide a detailed
- 1475 explanation of the events, to be approved by DEQ, and the following certification
- 1476 statement: "I certify under penalty of law that the activities or the required
- 1477 compensatory mitigation authorized by this VWP permit have changed as the result of
- 1478 events beyond my control (see attached). I understand that by submitting this notice
- 1479 of termination that I am no longer authorized to perform activities in surface waters in
- 1480 accordance with the VWP permit, and that performing activities in surface waters is
- 1481 unlawful where the activity is not authorized by a VWP permit, unless otherwise
- 1482 excluded from obtaining a permit. I also understand that the submittal of this notice
- 1483 does not release me from liability for any violations of this VWP permit, nor does it
- 1484 allow me to resume the permitted activities without reapplication and issuance of
- 1485 another permit.

1486 **9VAC25-210-220. Waiver of VWP permit or § 401 certification.**

1487 A. The ~~board~~ department may waive permitting requirements when the ~~board~~ department

1488 determines that a proposed project impacts an isolated wetland that is of minimal ecological value

1489 as defined in 9VAC25-210-10. Upon request by the ~~board~~ department, any person claiming this

1490 waiver shall demonstrate to the satisfaction of the ~~board~~ department that he qualifies for the

1491 waiver.

1492 B. The ~~board~~ department may waive the requirement for a VWP individual permit when the

1493 proposed activity qualifies for a permit issued by the U.S. Army Corps of Engineers and receives

1494 a permit from the Virginia Marine Resources Commission or wetlands boards, pursuant to

1495 Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of

1496 Virginia, and the activity does not impact instream flows.

1497 C. The ~~board~~ department shall not require coverage under a VWP general permit or a VWP

1498 individual permit when the proposed activity meets the exclusion set forth in subdivision 10 a of

1499 9VAC25-210-60 regardless of the issuance of a permit by the U.S. Army Corps of Engineers.

1500 **9VAC25-210-230. Denial of the VWP permit or variance request.**

1501 A. The ~~board~~ department shall make a decision to tentatively deny the VWP permit or variance  
1502 request if the requirements of this chapter are not met. Basis for denial include, but are not limited  
1503 to, the following:

1504 1. The project will result in violations of water quality standards or will impair the beneficial  
1505 uses of state waters.

1506 2. As a result of project implementation, shellfish waters would be condemned in  
1507 accordance with 9VAC25-260.

1508 3. The project that the applicant proposed fails to adequately avoid and minimize impacts  
1509 to state waters to the maximum extent practicable.

1510 4. The proposed compensatory mitigation plan is insufficient or unsatisfactory for the  
1511 proposed impacts and fails to achieve no net loss of existing wetland acreage and function  
1512 and no net loss of functions in all surface waters.

1513 5. The Department of Wildlife Resources indicates that natural or stockable trout waters  
1514 would be permanently and negatively impacted by the proposed activity.

1515 6. The proposed activity is prohibited by 9VAC25-210-50.

1516 7. The effect of project impacts, together with other existing or proposed impacts to  
1517 wetlands, will cause or contribute to a significant impairment of state waters or fish and  
1518 wildlife resources.

1519 8. Failure to submit the required permit fee in accordance with 9VAC25-210-80 B 1 g or  
1520 9VAC25-210-340 C 1 g.

1521 9. The ~~board~~ department determines that the applicant for an Emergency Virginia Water  
1522 Protection Permit has not demonstrated that there is a substantial threat to public health  
1523 and safety, and that normal Virginia Water Protection Permit procedures, including public  
1524 comment provisions, should be followed.

1525 B. The applicant shall be notified by letter of the ~~board's~~ department's preliminary decision to  
1526 tentatively deny the VWP permit requested.

1527 C. Should the applicant withdraw his application, no VWP permit or variance will be issued.

1528 D. Should the applicant elect to proceed as originally proposed, the ~~board~~ department may  
1529 deny the application and advise the applicant pursuant to ~~§ 62.1-44.15:02 of the Code of Virginia~~  
1530 9VAC25-210-160 and 9VAC25-210-165 of his right to a public hearing to consider the denial.

1531 **9VAC25-210-310. Exclusions from permits for surface water withdrawals.**

1532 A. The following surface water withdrawals are excluded from VWP permit requirements.  
1533 Activities other than the surface water withdrawal that are contained in 9VAC25-210-50 and are  
1534 associated with the construction and operation of the surface water withdrawal are subject to  
1535 VWP permit requirements, unless excluded by 9VAC25-210-60. Other permits under state and  
1536 federal law may be required.

1537 1. Any surface water withdrawal in existence on July 1, 1989; however, a permit shall be  
1538 required if a new § 401 certification is required to increase a withdrawal. To qualify for this  
1539 exclusion, the surface water withdrawal shall be deemed to be in existence on July 1,  
1540 1989, if there was an actual withdrawal on or before that date and the withdrawal has not  
1541 been abandoned.

1542 a. Abandonment of a surface water withdrawal. A surface water withdrawal shall be  
1543 deemed to be abandoned if the owner of the surface water withdrawal system (i)  
1544 notifies the Department of Environmental Quality in writing that the withdrawal has  
1545 been abandoned or (ii) removes or disables the surface water withdrawal system with  
1546 the intent to permanently cease such withdrawal. Transfer of ownership or operational

1547 control of the surface water withdrawal system, a change in use of the water, or  
1548 temporary cessation of the withdrawal shall not be deemed evidence of abandonment.  
1549 The notification shall be signed by the owner of record or shall include evidence  
1550 satisfactory to DEQ that the signatory is authorized to submit the notice on behalf of  
1551 the owner of record. Evidence may include, but shall not be limited to, a resolution of  
1552 the governing body of the owner or corporate minutes.

1553 b. Information to be furnished to DEQ. Each owner or operator of a permanent surface  
1554 water withdrawal system engaging in a withdrawal that is subject to this exclusion shall  
1555 provide DEQ the estimated maximum capacity of the intake structure, the location of  
1556 the existing intake structure, and any other information that may be required by the  
1557 ~~board~~ department. Each owner or operator of a temporary surface water withdrawal  
1558 system engaging in a withdrawal that is subject to this exclusion, where the purpose  
1559 of the withdrawal is for agriculture, shall provide to DEQ the maximum annual surface  
1560 water withdrawal over the last 10 years. The information shall be provided within one  
1561 year of the date that notice of such request is received from DEQ and shall be updated  
1562 when the maximum capacity of the existing intake structure changes. The information  
1563 provided to DEQ shall not constitute a limit on the exempted withdrawal. Such  
1564 information shall be utilized by DEQ ~~and board~~ to protect existing beneficial uses and  
1565 shall be considered when evaluating applications for new withdrawal permits.

1566 2. Any surface water withdrawal not in existence on July 1, 1989, if the person proposing  
1567 to make the withdrawal received a § 401 certification before January 1, 1989, that  
1568 authorized the installation of any necessary withdrawal structures to make such  
1569 withdrawal. However, a permit shall be required before any such withdrawal is increased  
1570 beyond the amount authorized by the certification.

1571 3. Any existing lawful unpermitted surface water withdrawal initiated between July 1, 1989,  
1572 and July 25, 2007, that has complied with the Water Withdrawal Reporting regulations  
1573 (9VAC25-200) and that is not subject to other exclusions contained in this section. Any  
1574 increase in that withdrawal above the limited amount identified in subdivision a of this  
1575 subdivision A 3 shall require an application for a permit for the surface water withdrawal  
1576 system.

1577 a. The largest 12-consecutive month surface water withdrawal that occurred in the 10  
1578 years prior to July 25, 2007, shall constitute a limit on the withdrawal that is excluded  
1579 from permit requirements. For agricultural surface water withdrawals that did not report  
1580 annually as required by the Water Withdrawal Reporting regulations (9VAC25-200)  
1581 prior to July 25, 2007, the limit excluded from permit requirements was established for  
1582 the operations that were in existence during the 10 years prior to July 25, 2007, by  
1583 estimating the largest 12-consecutive month withdrawal based upon the following  
1584 information associated with that timeframe: the area irrigated, depth of irrigation, and  
1585 annual number of irrigations; pumping capacity and annual pumping time; annual  
1586 energy consumption for pumps; number and type of livestock watered annually; and  
1587 number and type of livestock where water is used for cooling purposes.

1588 b. All owners and operators of surface water withdrawals excluded from permit  
1589 requirements by this section shall annually report withdrawals as required by the Water  
1590 Withdrawal Reporting regulations (9VAC25-200). Failure to file annual reports either  
1591 reporting actual withdrawals or the fact that withdrawals did not occur may result in the  
1592 owner or operator being required to cease withdrawals, file an application, and receive  
1593 a permit prior to resuming any withdrawal. Information regarding excluded withdrawal  
1594 amounts shall be utilized by DEQ ~~and the board~~ to protect existing beneficial uses and  
1595 shall be considered when evaluating applications for new withdrawal permits.

- 1596 4. Agricultural surface water withdrawals that total less than:  
 1597 a. One million gallons in a single month from nontidal waters.  
 1598 b. 60 million gallons in a single month from tidal waters.  
 1599 5. Surface water withdrawals from tidal waters for nonconsumptive uses.  
 1600 6. Surface water withdrawals from nontidal or tidal waters, regardless of the volume  
 1601 withdrawn, for the following uses:  
 1602 a. Firefighting or for the training activities related to firefighting, such as dry hydrants  
 1603 and emergency surface water withdrawals.  
 1604 b. Hydrostatic pressure testing of water tight containers, pipelines, and vessels.  
 1605 c. Normal single-family home residential gardening and lawn and landscape  
 1606 maintenance.  
 1607 7. Surface water withdrawals placed into portable containers by persons owning property  
 1608 on or holding easements to riparian lands.  
 1609 8. Surface water withdrawals that return withdrawn water to the stream of origin; do not  
 1610 divert more than half of the instantaneous flow of the stream; have the withdrawal point  
 1611 and the return point not separated by more than 1,000 feet of stream channel; and have  
 1612 both banks of the affected stream segment located within one property boundary.  
 1613 9. Surface water withdrawals from quarry pits that do not alter the physical, biological, or  
 1614 chemical properties of surface waters connected to the quarry pit.  
 1615 10. Surface water withdrawals from a privately owned agriculture pond, emergency water  
 1616 storage facility, or other water retention facility, provided that such pond or facility is not  
 1617 placed in the bed of a perennial or intermittent stream or wetland. Surface water  
 1618 withdrawals from such facilities constructed in beds of ephemeral streams are excluded  
 1619 from permit requirements.  
 1620 11. Surface water withdrawals for all other purposes not otherwise excluded by  
 1621 subdivisions 4 through 10 of this subsection that total less than:  
 1622 a. 10,000 gallons per day from nontidal waters.  
 1623 b. Two million gallons per day from tidal waters.  
 1624 B. DEQ may require any owner or operator of a surface water withdrawal system excluded  
 1625 from permit requirements by subdivisions A 3 through A 11 of this section to cease withdrawals  
 1626 and file an application and receive a permit prior to resuming any withdrawal when the ~~board's~~  
 1627 department's assessment indicates that a withdrawal, whether individually or in combination with  
 1628 other existing or proposed projects:  
 1629 1. Causes or contributes to, or may reasonably be expected to cause or contribute to, a  
 1630 significant impairment of the state waters or fish and wildlife resources;  
 1631 2. Adversely impacts other existing beneficial uses; or  
 1632 3. Will cause or contribute to a violation of water quality standards.  
 1633 **9VAC25-210-340. Application requirements for surface water withdrawals.**  
 1634 A. Persons proposing to initiate a new or expanded surface water withdrawal not excluded  
 1635 from requirements of this chapter by 9VAC25-210-310, proposing to reapply for a current  
 1636 permitted withdrawal, or a Federal Energy Regulatory Commission (FERC) license or relicense  
 1637 associated with a surface water withdrawal, shall apply for a VWP permit.  
 1638 B. In addition to informational requirements of 9VAC25-210-80 B and if applicable, 9VAC25-  
 1639 210-80 C, applications for surface water withdrawals or a FERC license or relicense associated  
 1640 with a surface water withdrawal shall include:

- 1641 1. As part of identifying the project purpose, a narrative describing the water supply issues  
1642 that form the basis of the proposed project purpose.
- 1643 2. The drainage area, the average annual flow and the median monthly flows at the  
1644 withdrawal point, and historical low flows, if available.
- 1645 3. The average daily withdrawal; the maximum daily, monthly, annual, and instantaneous  
1646 withdrawals; and information on the variability of the demand by season. If the project has  
1647 multiple intake structures, provide for each individual intake structure and the cumulative  
1648 volumes for the entire surface water withdrawal system.
- 1649 4. The monthly consumptive use volume in million gallons and the average daily return  
1650 flow in million gallons per day of the proposed project and the location of the return flow,  
1651 including the latitude and longitude and the drainage area in square miles at the discharge  
1652 point.
- 1653 5. Information on flow dependent beneficial uses along the affected stream reach. For  
1654 projects that propose a transfer of water resources from a major river basin to another  
1655 major river basin, this analysis should include both the source and receiving basins.
- 1656 a. Evaluation of the flow dependent instream and offstream beneficial uses. Instream  
1657 beneficial uses include, but are not limited to, the protection of fish and wildlife habitat,  
1658 maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic  
1659 values. Offstream beneficial uses include, but are not limited to, domestic (including  
1660 public water supply), agricultural, electric power generation, and commercial and  
1661 industrial uses.
- 1662 b. The aquatic life, including species and habitat requirements.
- 1663 c. How the proposed withdrawal will alter flows.
- 1664 6. Information on the proposed use of and need for the surface water and information on  
1665 how demand for surface water was determined (e.g., per capita use, population growth  
1666 rates, new uses, changes to service areas, and if applicable, acreage irrigated and  
1667 evapotranspiration effects). If during the water supply planning process, the need for the  
1668 withdrawal was established, the applicant may submit the planning process information,  
1669 provided that the submittal addresses all requirements of 9VAC25-210-360. The ~~board~~  
1670 department shall deem such a submittal as meeting the requirements of this subsection.  
1671 For surface water withdrawals for public water supply, see also 9VAC25-780-100 and  
1672 9VAC25-780-130.
- 1673 7. Information describing the intake structure, to include intake screen mesh size and  
1674 intake velocity.
- 1675 8. For withdrawals proposed from an impoundment, the following:
- 1676 a. Description of the flow or release control structures, including the minimum rate of  
1677 flow, in cubic feet per second, size and capacity of the structure, and the mechanism  
1678 to control the release.
- 1679 b. Surface area in acres, maximum depth in feet, normal pool elevation, total storage  
1680 capacity, and unusable storage volume in acre-feet.
- 1681 c. The stage-storage relationship. For example, the volume of water in the  
1682 impoundment at varying stages of water depth.
- 1683 9. Whether the proposed surface water withdrawal is addressed in the water supply plan  
1684 that covers the area in which the withdrawal is proposed to be located. If the proposed  
1685 withdrawal is included, provide a discussion as to how the proposed withdrawal is  
1686 addressed in the water supply plan, specifically in terms of projected demand, analysis of  
1687 alternatives, and water conservation measures. If all or a portion of the withdrawn water



1688 will be transferred to an area not covered by the plan, the discussion shall also include the  
1689 water supply plan for the area of the receiving watershed.

1690 10. An alternatives analysis for the proposed surface water withdrawal, including at a  
1691 minimum, the criteria in 9VAC25-210-360.

1692 11. For new or expanded surface water withdrawals proposing to withdraw 90 million  
1693 gallons a month or greater, a summary of the steps taken to seek public input as required  
1694 by 9VAC25-210-320 and an identification of the issues raised during the course of the  
1695 public information meeting process.

1696 12. For new or expanded surface water withdrawals that involve a transfer of water  
1697 between major river basins that may impact a river basin in another state, a plan describing  
1698 procedures to notify potentially affected persons, both in and outside of Virginia, of the  
1699 proposed project.

1700 13. For surface water withdrawals, other than for public water supply, information to  
1701 demonstrate that alternate sources of water supply are available to support the operation  
1702 of the facility during times of reduced instream flow.

1703 C. Applications for an Emergency Virginia Water Protection Permit.

1704 1. Applications for an Emergency Virginia Water Protection Permit to address a public  
1705 water supply emergency shall include the information noted in subdivisions 1 a through 1  
1706 o of this subsection. The JPA may be used for emergency application purposes, provided  
1707 that all of the information in subdivisions 1 a through 1 o of this subsection is included:

1708 a. The applicant's legal name, mailing address, telephone number, and if applicable,  
1709 fax number and electronic mail address;

1710 b. If different from applicant, name, mailing address, telephone number, and if  
1711 applicable, fax number and electronic mail address of property owner;

1712 c. If applicable, authorized agent's name, mailing address, telephone number, and if  
1713 applicable, fax number and electronic mail address;

1714 d. Name of water body or water bodies, or receiving waters, as applicable;

1715 e. Name of the city or county where the project occurs;

1716 f. Signed and dated signature page (electronic submittals containing the original  
1717 signature page, such as that contained in a scanned document file are acceptable);

1718 g. Permit application fee in accordance with 9VAC25-20;

1719 h. The drainage area, the average annual flow and the median monthly flows at the  
1720 withdrawal point, and historical low flows, if available;

1721 i. Information on the aquatic life along the affected stream reach, including species  
1722 and habitat requirements;

1723 j. Recent and current water use including monthly water use in the previous calendar  
1724 year and weekly water use in the previous six months prior to the application. The  
1725 application shall identify the sources of such water and also identify any water  
1726 purchased from other water suppliers;

1727 k. A description of the severity of the public water supply emergency, including (i) for  
1728 reservoirs, an estimate of days of remaining supply at current rates of use and  
1729 replenishment; (ii) for wells, current production; and (iii) for intakes, current streamflow;

1730 l. A description of mandatory water conservation measures taken or imposed by the  
1731 applicant and the dates when the measures were implemented; for the purposes of  
1732 obtaining an Emergency Virginia Water Protection Permit, mandatory water  
1733 conservation measures shall include, but not be limited to, the prohibition of lawn and

1734 landscape watering, vehicle washing, watering of recreation fields, refilling of  
1735 swimming pools, and washing of paved surfaces;

1736 m. An estimate of water savings realized by implementing mandatory water  
1737 conservation measures;

1738 n. Documentation that the applicant has exhausted all management actions that would  
1739 minimize the threat to public welfare, safety, and health and will avoid the need to  
1740 obtain an emergency permit, and that are consistent with existing permit limitations;  
1741 and

1742 o. Any other information that demonstrates that the condition is a substantial threat to  
1743 public health or safety.

1744 2. Within 14 days after the issuance of an Emergency Virginia Water Protection Permit,  
1745 the permit holder shall apply for a VWP permit under the other provisions of this chapter.

1746 **9VAC25-210-350. Duty to reapply for a permit for a continuation of a surface water**  
1747 **withdrawal.**

1748 A. Any permittee with an effective permit for a surface water withdrawal shall submit a new  
1749 permit application at least 270 days before the expiration date of an effective permit, unless  
1750 permission for a later date has been granted by the ~~board~~ department. The Department of  
1751 Environmental Quality may administratively continue an expiring permit in accordance with  
1752 9VAC25-210-65.

1753 B. The applicant shall provide all information described in 9VAC25-210-340 and applicable  
1754 portions of 9VAC25-210-80 for any reapplication. The information may be provided by referencing  
1755 information previously submitted to the department that remains accurate and relevant to the  
1756 permit application. The ~~board~~ department may waive any requirement of 9VAC25-210-340 and  
1757 the applicable portions of 9VAC25-210-80 B, if it has access to substantially identical information.

1758 **9VAC25-210-360. Evaluation of project alternatives for surface water withdrawals.**

1759 The applicant shall demonstrate to the satisfaction of the ~~board~~ department that the project  
1760 meets an established need for water to meet the project purpose. In establishing need, the  
1761 applicant shall provide the following information:

1762 1. Existing supply sources, yields, and demands, including:

1763 a. Peak day and average daily withdrawal;

1764 b. The public water supply safe yield and lowest daily flow of record;

1765 c. Types of water uses; and

1766 d. Existing water conservation measures and drought response plan, including what  
1767 conditions trigger their implementation.

1768 2. Projected demands over a minimum 30-year planning period, including the following:

1769 a. Projected demand contained in the local or regional water supply plan developed in  
1770 accordance with 9VAC25-780 or for the project service area, if such area is smaller  
1771 than the planning area; if applicable or

1772 b. Statistical population (growth) trends; if applicable, projected demands by use type;  
1773 projected demand without water conservation measures; and projected demands with  
1774 long-term water conservation measures.

1775 3. Any alternatives analysis conducted specifically for withdrawals for public water supply  
1776 shall include:

1777 a. The range of alternatives to be analyzed by the applicant as follows:

1778 (1) All applicable alternatives contained in the local or regional water supply plan  
1779 developed in accordance with 9VAC25-780;

- 1780 (2) Alternatives that are practicable or feasible from both a technical and economic  
1781 standpoint that had not been identified in the local or regional water supply plan  
1782 developed in accordance with 9VAC25-780;
- 1783 (3) Alternatives that are available to the applicant but not necessarily under the current  
1784 jurisdiction of the applicant; and
- 1785 (4) Water conservation measures that could be considered as a means to reduce  
1786 demand for each alternative considered by the applicant.
- 1787 b. The applicant shall provide a narrative description that outlines the opportunities  
1788 and status of regionalization efforts undertaken by the applicant.
- 1789 c. The criteria used to evaluate each alternative for the purpose of establishing the  
1790 least environmentally damaging practicable alternative, which includes but is not  
1791 limited to:
- 1792 (1) Demonstration that the proposed alternative meets the project purpose and project  
1793 demonstrated need as documented pursuant to this section;
- 1794 (2) Availability of the alternative to the applicant;
- 1795 (3) Evaluation of interconnectivity of water supply systems, both existing and  
1796 proposed;
- 1797 (4) Evaluation of the cost of the alternative on an equivalent basis;
- 1798 (5) Evaluation of alternative public water supply safe yields;
- 1799 (6) Presence and potential impact of alternative on state and federally listed threatened  
1800 and endangered species;
- 1801 (7) Presence and potential impact of alternative on wetlands and streams (based on  
1802 maps and aerial photos for all alternatives, field delineation required for preferred  
1803 alternative);
- 1804 (8) Evaluation of effects on instream flow; and
- 1805 (9) Water quality considerations, including:
- 1806 (a) Land use within a watershed where the type of land use may impact the water  
1807 quality of the source;
- 1808 (b) The presence of impaired streams and the type of impairment;
- 1809 (c) The location of point source discharges; and
- 1810 (d) Potential threats to water quality other than those listed in this subdivision 3 c (9).
- 1811 4. Any alternatives analysis conducted for surface water withdrawals other than for public  
1812 water supply shall include the following items of subdivision 3 of this section: subdivisions  
1813 3 a (3), 3 a (4), and 3 c. The analysis shall also include applicable items of subdivisions 3  
1814 a (1), 3 a (2), and 3 b.

**9VAC25-210-370. VWP permit conditions applicable to surface water withdrawal permits.**

1816 A. In addition to the conditions established in 9VAC25-210-90 and 9VAC25-210-100, each  
1817 VWP permit shall include conditions meeting the requirements established in this section, where  
1818 applicable.

1819 B. Instream flow conditions. Subject to the provisions of Chapter 24 (§ 62.1-242 et seq.) of  
1820 Title 62.1 of the Code of Virginia, and subject to the authority of the State Corporation Commission  
1821 over hydroelectric facilities contained in Chapter 7 (§ 62.1-80 et seq.) of Title 62.1 of the Code of  
1822 Virginia, instream flow conditions may include, but are not limited to, conditions that limit the  
1823 volume and rate at which surface water may be withdrawn at certain times, the public water supply  
1824 safe yield, and conditions that require water conservation and reductions in water use.

- 1825 1. In the development of conditions that limit the volume and rate at which surface water  
1826 may be withdrawn, consideration shall be given to the seasonal needs of water users and  
1827 the seasonal availability of surface water flow.
- 1828 2. Consideration shall also be given to the affected stream reach and the amount of water  
1829 that is put to a consumptive use in the process.
- 1830 3. In the development of instream flow conditions for new withdrawals, the ~~board~~  
1831 department shall take into consideration the combined effect on the hydrologic regime of  
1832 the surface water within an affected stream reach due to consumptive water uses  
1833 associated with:
- 1834 a. All existing permitted withdrawals;
- 1835 b. The total amount of withdrawals excluded from VWP permit requirements; and
- 1836 c. Any other existing lawful withdrawals.
- 1837 4. VWP permits for surface water withdrawals, other than for public water supply, shall  
1838 identify how alternate sources of water supply will be made available to support the  
1839 operation of the permitted facility during times when surface water withdrawals will be  
1840 curtailed due to instream flow requirements or shall provide for modification of the  
1841 operation of the facility to ensure compliance with permit conditions. Such modifications  
1842 may include, but are not limited to, termination or reduction of activities at the facility that  
1843 are dependent on the permitted withdrawal, increase capacity to capture and store higher  
1844 flows, or implementation of other potential management options.
- 1845 C. VWP permits issued for surface water withdrawals from the Potomac River between the  
1846 Shenandoah River confluence and Little Falls shall contain a condition that requires the permittee  
1847 to reduce withdrawals when the restriction or emergency stage is declared in the Washington  
1848 Metropolitan Area under the provisions of the Potomac River Low Flow Allocation Agreement or  
1849 when the operating rules outlined by the Drought-Related Operations Manual for the Washington  
1850 Metropolitan Area Water Suppliers, an attachment to the Water Supply Coordination Agreement,  
1851 are in effect. The department, after consultation with the Section for Cooperative Water Supply  
1852 Operations on the Potomac (CO-OP), shall direct the permittee as to when, by what quantity, and  
1853 for what duration withdrawals shall be reduced.
- 1854 D. The ~~board~~ department may issue permits for new or expanded surface water withdrawals  
1855 that are not excluded from the requirements of this chapter by 9VAC25-210-310 based on the  
1856 following criteria:
- 1857 1. The amount of the surface water withdrawal is limited to the amount of water that can  
1858 be put to beneficial use.
- 1859 2. Based on the size and location of the surface water withdrawal, the withdrawal is not  
1860 likely to have a detrimental impact on existing instream or offstream uses.
- 1861 3. Based on an assessment by the ~~board~~ department, this withdrawal, whether individually  
1862 or in combination with other existing or proposed projects, does not cause or contribute  
1863 to, or may not reasonably be expected to cause or contribute to:
- 1864 a. A significant impairment of the state waters or fish and wildlife resources;
- 1865 b. Adverse impacts on other existing beneficial uses; or
- 1866 c. A violation of water quality standards.
- 1867 4. In cases where the ~~board's~~ department's assessment indicates that criteria contained  
1868 in subdivisions 2 and 3 of this subsection are not met, the ~~board~~ department may issue a  
1869 permit with special conditions necessary to assure these criteria are met.

1870 **9VAC25-210-380. Modifications to surface water withdrawal permits.**

1871 A. In addition to the requirements of 9VAC25-210-180 B, VWP permits for surface water  
1872 withdrawals may be modified when any of the following developments occur:

1873 1. When the ~~board~~ department determines that minimum instream flow levels resulting  
1874 directly from the permittee's withdrawal of surface water are detrimental to the instream  
1875 beneficial use, existing at the time of permit issuance, and the withdrawal of surface water  
1876 should be subject to further net limitations or when an area is declared a surface water  
1877 management area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia,  
1878 during the term of the VWP permit.

1879 2. Significant changes to the location of the surface water withdrawal system are proposed  
1880 such that the Department of Environmental Quality determines a new review is warranted  
1881 due to the potential effect of the surface water withdrawal to existing beneficial uses of the  
1882 new location.

1883 3. Changes to the permitted project or the surface water withdrawal, including increasing  
1884 the storage capacity for the surface water withdrawal, that propose an increase in the  
1885 maximum permitted withdrawal volumes or rate of withdrawal or that cause more than a  
1886 minimal change to the instream flow requirements with potential to result in a detrimental  
1887 effect to existing beneficial uses.

1888 4. A revision to the purpose of the surface water withdrawal that proposes to include a  
1889 new use or uses that were not identified in the permit application or a modification of the  
1890 existing authorized use or uses such that the use description in the permit application and  
1891 permit is no longer applicable. Examples of uses include, but are not limited to agricultural  
1892 irrigation, golf course irrigation, public water supply, manufacturing, and electricity  
1893 generation.

1894 B. Minor modifications may be made in the VWP permit for surface water withdrawals without  
1895 following the public involvement requirements of 9VAC 25-210-140, 9VAC 25-210-160, or 9VAC  
1896 25-210-170. Any request for a minor modification shall be in writing and shall contain the facts or  
1897 reasons supporting the request. The ~~board~~ department may request additional information as  
1898 necessary to review a request for a minor modification. Minor modifications may only occur in  
1899 accordance with 9VAC25-210-180 E and the following items specific to surface water  
1900 withdrawals:

1901 1. Minor changes to the location of the surface water withdrawal system, as determined  
1902 by DEQ, and thus not warranting a new review of the effect of the surface water withdrawal  
1903 to existing beneficial uses.

1904 2. Allow for temporary changes to instream flow requirements or operational permit  
1905 requirements to address situations such as surface water withdrawal system  
1906 improvements, environmental studies, or as otherwise determined appropriate by DEQ.

1907 3. Changes to the permitted project, including increasing the storage capacity for the  
1908 surface water withdrawal, that do not cause more than a minimal change to the instream  
1909 flow requirements and do not have the potential to result in a detrimental effect to existing  
1910 beneficial uses.

1911 4. Changes to the monitoring methods or locations of monitoring sites for instream flow  
1912 requirements or surface water withdrawal requirements.

1913 **9VAC25-210-390. Variance from surface water withdrawal permit conditions.**

1914 A. For public water supplies. The ~~board~~ department may grant a temporary variance to any  
1915 condition of a VWP permit for a surface water withdrawal for a public water supply to address a  
1916 public water supply emergency during a drought. A permittee requesting such variance must

1917 provide all information required in the application for an Emergency Virginia Water Protection  
1918 Permit identified in 9VAC25-210-340 C.

1919 B. For all other water supplies. The ~~board~~ department may grant a temporary variance to any  
1920 condition of a VWP permit for a surface water withdrawal during a drought. A permittee requesting  
1921 such variance must affirmatively demonstrate:

- 1922 1. Public health and safety interests are served by the issuance of such variance; and  
1923 2. All management actions consistent with existing permits have been exhausted.

1924 C. As a condition of any variance granted, the permittee shall:

- 1925 1. Modify operations or facilities to comply with existing VWP permit conditions as soon  
1926 as practicable; or  
1927 2. Provide new information to the ~~board~~ department that alternate permit conditions are  
1928 appropriate and either apply for a new VWP permit or a modification to its existing VWP  
1929 permit. The ~~board~~ department shall review any such application consistent with other  
1930 sections of this chapter.

1931 D. In addition, the ~~board~~ department may require the permittee to take any other appropriate  
1932 action to minimize adverse impacts to other beneficial uses.

1933 E. Any variances issued by the ~~board~~ department shall be of the shortest duration necessary  
1934 for the permittee to gain compliance with existing permit conditions, apply for a new VWP permit,  
1935 or request modification of existing permit conditions.

1936 F. Public notice of any variance issued by the ~~board~~ department shall be given as required for  
1937 draft permits in 9VAC25-210-140 A, B, and C. Such notice shall be given concurrently with the  
1938 issuance of any variance and the ~~board~~ department may modify such variances based on public  
1939 comment. Publication costs of all public notices shall be the responsibility of the permittee.

1940 **9VAC25-210-500. Enforcement.**

1941 The ~~board~~ department may enforce the provisions of this chapter utilizing all applicable  
1942 procedures under the law and § 10.1-1186 of the Code of Virginia.

1943 **9VAC25-210-600. Delegation of authority. (Repealed.)**

1944 ~~The director, or a designee acting for him, may perform any act of the board provided under~~  
1945 ~~this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-660
<b>VAC Chapter title(s)</b>	Virginia Water Protection General Permits for Impacts Less Than One-Half Acre
<b>Action title</b>	Final Exempt CH 660 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 14, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-660) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”; the repeal of the delegation of authority provisions, and the correction of Code references where necessary to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these statutory changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-660 on August 25, 2022 as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.



1 **Project 7176 - Exempt Final**2 **State Water Control Board**3 **Final exempt CH 660 changes in response to 2022 Board Bill**4 **9VAC25-660-10. Definitions.**

5 The words and terms used in this chapter shall have the meanings defined in the State Water  
6 Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection Permit  
7 Program Regulation (9VAC25-210) unless a different meaning is required by the context or is  
8 indicated below.

9 "Bank protection" means measures employed to stabilize channel banks and combat existing  
10 erosion problems. Such measures may include the construction of riprap revetments, sills, rock  
11 vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe  
12 stabilization, anti-scouring devices, and submerged sills.

13 "Bioengineering method" means a biological measure incorporated into a facility design to  
14 benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent  
15 practicable, for long-term aquatic resource protection and improvement.

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

19 "Coverage" means authorization to conduct a project in accordance with a VWP general  
20 permit.

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

22 "Histosols" means organic soils that are often called mucks, peats, or mucky peats. The list  
23 of histosols in the Commonwealth includes, but is not limited to, the following soil series: Back  
24 Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and  
25 Rappahannock. Histosols are identified in the Hydric Soils of the United States lists generated by  
26 the U.S. Department of Agriculture's Natural Resources Conservation Service.

27 "Independent utility" means a test to determine what constitutes a single and complete project.  
28 A project is considered to have independent utility if it would be constructed absent the  
29 construction of other projects in the project area. Portions of a phased project that depend upon  
30 other phases of the project do not have independent utility. Portions of a phased project that would  
31 be constructed even if the other phases are not built can be considered as separate single and  
32 complete projects with independent public and economic utility.

33 "Less than one-half acre" means less than 0.50 acre (21,780 square feet).

34 "Notice of project completion" means a statement submitted by the permittee or authorized  
35 agent that the authorized activities and any required compensatory mitigation have been  
36 completed.

37 "Single and complete project" means the total project proposed or accomplished by a person,  
38 which also has independent utility, as defined in this section. For linear projects, the "single and  
39 complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate  
40 surface water (e.g., a single water body) and to multiple crossings of the same water body at  
41 separate and distinct locations. Phases of a project that have independent public and economic  
42 utility may each be considered single and complete.

43 "State program general permit (SPGP)" means a general permit that is issued by the  
44 Department of the Army in accordance with 33 USC § 1344 and 33 CFR 325.5(c)(3) and that is

45 founded on a state program. The SPGP is designed to avoid duplication between the federal and  
46 state programs.

47 "Up to 300 linear feet" means 300.00 linear feet or less, as measured along the center of the  
48 main channel of the stream segment.

49 "Up to one-tenth acre" means 0.10 acre (4,356 square feet) or less.

50 "Utility line" means a pipe or pipeline for the transportation of a gaseous, liquid, liquefiable or  
51 slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose  
52 of electrical energy, telephone, and telegraph messages and radio and television communication.  
53 The term "utility line" does not include activities that drain a surface water to convert it to an  
54 upland, such as drainage tiles or french drains; however, it does apply to pipes conveying  
55 drainage from another area.

56 **9VAC25-660-15. Statewide information requirements.**

57 The ~~board~~ department may request (i) such plans, specifications, and other pertinent  
58 information as may be necessary to determine the effect of an applicant's discharge on the quality  
59 of state waters or (ii) such other information as may be necessary to accomplish the purposes of  
60 this chapter. Any owner, permittee, or person applying for a VWP permit or general permit  
61 coverage shall provide the information requested by the ~~board~~ department.

62 **9VAC25-660-20. Purpose; ~~delegation of authority.~~**

63 ~~A.~~ The purpose of this chapter is to establish VWP General Permit Number WP1 under  
64 9VAC25-210 to govern permanent and temporary impacts to less than one-half acre of nontidal  
65 wetlands or open water and up to 300 linear feet of nontidal stream bed. Applications for coverage  
66 by this VWP general permit shall be processed for approval, approval with conditions, or denial  
67 by the ~~board~~ department. Coverage, coverage with conditions, or application denial by the ~~board~~  
68 department shall constitute the VWP general permit action and shall follow all provisions in the  
69 State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), except for the public  
70 comment and participation provisions, from which each VWP general permit action is exempt.

71 ~~B. The director or his designee may perform any act of the board provided under this chapter,~~  
72 ~~except as limited by § 62.1-44.14 of the Code of Virginia.~~

73 **9VAC25-660-25. Authorization for coverage under VWP general permit effective August 1,**  
74 **2006.**

75 A. All complete applications or notifications received by the ~~board~~ department through 11:59  
76 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation  
77 in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or  
78 if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a  
79 completeness determination, the applicant shall reapply for coverage under the VWP general  
80 permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any  
81 required permit application fee. No refund of permit application fees shall be made.

82 B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall  
83 remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP  
84 authorization cover page, unless otherwise revoked or terminated or unless a notice of project  
85 completion is received by the ~~board~~ department on or before that date. Any permittee that desires  
86 to continue an authorized activity beyond the stated expiration date must reapply for coverage  
87 under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and  
88 conditions, or apply for a VWP individual permit, including payment of any required permit  
89 application fee. This section shall only apply to permittees holding valid authorizations for  
90 coverage granted under the VWP general permit effective August 1, 2006, through August 1,  
91 2016.

92 **9VAC25-660-27. VWP general permit coverage; transition; continuation.**

93 A. All applications or notifications received on or after August 2, 2016, will be processed in  
94 accordance with the VWP general permit regulation effective August 2, 2016.

95 B. The general permit in 9VAC25-660-100 is effective August 2, 2016, and expires August 1,  
96 2026. Any coverage that is granted pursuant to 9VAC25-660-30 shall remain in full force and  
97 effect until 11:59 p.m. on August 1, 2026, unless the general permit coverage is terminated or  
98 revoked on or before this date. Where a permittee that has received general permit coverage  
99 desires to continue or complete the authorized activities beyond August 1, 2026, the permittee  
100 shall reapply for new general permit coverage or for a VWP individual permit, including payment  
101 of any required permit application fee. Activities in surface waters requiring a permit shall not  
102 commence or continue until VWP general permit coverage is granted or a VWP individual permit  
103 is issued by the ~~board~~ department.

104 C. Application may be made at any time for a VWP individual permit in accordance with  
105 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until  
106 VWP general permit coverage is granted or a VWP individual permit is issued by the ~~board~~  
107 department.

108 **9VAC25-660-30. Authorization to impact surface waters.**

109 A. Any person granted coverage under the VWP general permit effective August 2, 2016, may  
110 permanently or temporarily impact less than one-half acre of nontidal wetlands or open water and  
111 up to 300 linear feet of nontidal stream bed, provided that:

- 112 1. The applicant submits notification as required in 9VAC25-660-50 and 9VAC25-660-60.
- 113 2. The applicant remits any required permit application fee.
- 114 3. The applicant receives general permit coverage from the Department of Environmental  
115 Quality and complies with the limitations and other requirements of the VWP general  
116 permit; the general permit coverage letter; the Clean Water Act, as amended; and the  
117 State Water Control Law and attendant regulations.
- 118 4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-  
119 210 for the proposed project impacts. The applicant, at his discretion, may seek a VWP  
120 individual permit or coverage under another applicable VWP general permit in lieu of  
121 coverage under this VWP general permit.
- 122 5. Impacts, both temporary and permanent, result from a single and complete project,  
123 including all attendant features.
  - 124 a. Where a road segment (e.g., the shortest segment of a road with independent utility  
125 that is part of a larger project) has multiple crossings of surface waters (several single  
126 and complete projects), the ~~board~~ department may, at its discretion, require a VWP  
127 individual permit.
  - 128 b. For the purposes of this chapter, when an interchange has multiple crossings of  
129 surface waters, the entire interchange shall be considered the single and complete  
130 project.
- 131 6. The stream impact criterion applies to all components of the project, including structures  
132 and stream channel manipulations.
- 133 7. When required, compensation for unavoidable impacts is provided in accordance with  
134 § 62.1-44.15:23 of the Code of Virginia, 9VAC25-660-70, and the associated provisions  
135 of 9VAC25-210-116.

136 B. The board waives the requirement for coverage under a VWP general permit for activities  
137 that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon

138 request by the ~~board~~ department, any person claiming this waiver shall demonstrate to the  
139 satisfaction of the ~~board~~ department that he qualifies for the waiver.

140 C. Coverage under this VWP general permit does not relieve the permittee of the responsibility  
141 to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

142 D. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of  
143 Engineers (USACE), and for which the ~~board~~ department has issued § 401 certification in  
144 accordance with 9VAC25-210-130 H as of August 2, 2016, shall constitute coverage under this  
145 VWP general permit, unless a state program general permit (SPGP) is required and granted for  
146 the activity or impact.

147 E. When the ~~board~~ department determines on a case-by-case basis that concerns for water  
148 quality and the aquatic environment so indicate, the ~~board~~ department may require a VWP  
149 individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this  
150 VWP general permit.

151 **9VAC25-660-40. Exceptions to coverage.**

152 A. Coverage under this VWP general permit is not required if the activity is excluded from  
153 permitting in accordance with 9VAC25-210-60.

154 B. Coverage under this VWP general permit cannot be used in combination with coverage  
155 under other VWP general permits in order to impact greater than one-half acre of nontidal  
156 wetlands or open water or greater than 300 linear feet of nontidal stream bed. Granting coverage  
157 under this VWP general permit more than once for a single and complete project is prohibited,  
158 except when the cumulative impact to surface waters does not exceed the limits specified here.

159 C. The activity to impact surface waters shall not have been prohibited by state law or  
160 regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260).

161 D. The ~~board~~ department shall deny application for coverage under this VWP general permit  
162 to any applicant conducting activities that cause, may reasonably be expected to cause, or may  
163 be contributing to a violation of water quality standards, including discharges or discharge-related  
164 activities that are likely to significantly affect aquatic life, or for activities that together with other  
165 existing or proposed impacts to wetlands will cause or contribute to a significant impairment of  
166 state waters or fish and wildlife resources.

167 E. This VWP general permit does not authorize activities that cause more than minimal  
168 changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that  
169 cause more than minimal degradation of the water quality of a stream.

170 F. Coverage under this VWP general permit shall not be granted for:

- 171 1. Construction of a stormwater management facility in perennial streams or in waters  
172 designated as oxygen-impaired or temperature-impaired (does not include wetlands).
- 173 2. The construction of an irrigation impoundment on a perennial stream.
- 174 3. Any water withdrawal activities.
- 175 4. The location of animal feeding operations or waste storage facilities in state waters.
- 176 5. The pouring of wet or uncured concrete in state waters, unless the area is contained  
177 within a cofferdam or the work is performed in the dry or unless approved by the  
178 Department of Environmental Quality.
- 179 6. Dredging or maintenance dredging.
- 180 7. Return flow discharges from dredge disposal sites.
- 181 8. The construction of new ski areas or oil and gas wells.

182 9. Any activity in surface waters that will impact federal or state listed threatened or  
 183 endangered species or designated critical habitat, or result in a taking of threatened or  
 184 endangered species in accordance with the following:

185 a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation,  
 186 processing, sale, or offer for sale within the Commonwealth of any fish or wildlife  
 187 appearing on any list of threatened or endangered species published by the United  
 188 States Secretary of the Interior pursuant to the provisions of the federal Endangered  
 189 Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is  
 190 prohibited except as provided in § 29.1-568 of the Code of Virginia.

191 b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the  
 192 taking, transportation, processing, sale, or offer for sale within the Commonwealth of  
 193 any state listed endangered or threatened species is prohibited except as provided in  
 194 § 29.1-568 of the Code of Virginia.

195 10. Any activity in 100-year floodplains, as identified by the Federal Emergency  
 196 Management Agency's (FEMA) flood insurance rate maps or FEMA-approved local  
 197 floodplain maps.

198 11. Any activity in wetlands composed of 10% or more, singularly or in combination, based  
 199 upon either basal area or percent areal cover in the area of impact, in a vegetative stratum:  
 200 Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water  
 201 tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*).

202 12. Any activity in wetlands underlain by histosols.

203 13. Any activity in tidal waters or in nontidal wetlands adjacent to tidal waters.

204 **9VAC25-660-50. Notification.**

205 A. Notification to the ~~board~~ department will be required prior to commencing construction, as  
 206 follows:

207 1. An application for coverage for proposed, permanent nontidal wetland or open water  
 208 impacts greater than one-tenth acre or for proposed, permanent nontidal stream bed  
 209 impacts greater than 300 linear feet shall include all information pursuant to 9VAC25-660-  
 210 60 B. Compensatory mitigation may be required for all permanent impacts.

211 2. An application for coverage for proposed, permanent nontidal wetland or open water  
 212 impacts up to one-tenth acre or for proposed, permanent nontidal stream bed impacts up  
 213 to 300 linear feet shall be submitted in accordance with either subdivision 2 a or 2 b of this  
 214 subsection:

215 a. For any proposed project in wetlands, open water, streams, or compensatory  
 216 mitigation sites that are under a deed restriction, conservation easement, declaration  
 217 of restrictive covenant, or other land use protective instrument (hereafter "protected  
 218 areas"), when such restriction, easement, covenant, or instrument is the result of a  
 219 federal or state permit action and is specific to activities in wetlands and compensatory  
 220 mitigation sites, the application shall include all of the information required by 9VAC25-  
 221 660-60 B. Compensatory mitigation may be required for all permanent impacts.

222 b. For all other projects, the application shall include the information required by  
 223 subdivisions 1 through 7, 10, 11, 15, and 16 of 9VAC25-660-60 B and documentation  
 224 that verifies the quantity and type of impacts. Compensatory mitigation may be  
 225 required for all permanent impacts once the notification limits of one-tenth acre  
 226 wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required,  
 227 the application shall include the information in 9VAC25-660-60 B 12.

228 B. The Department of Environmental Quality-approved application forms shall serve as an  
 229 application for a VWP permit or VWP general permit coverage.

230 C. The ~~board~~ department will determine whether the proposed activity requires coordination  
231 with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation,  
232 the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of  
233 Wildlife Resources regarding the presence of federal or state listed threatened and endangered  
234 species or designated critical habitat. Based upon consultation with these agencies, the ~~board~~  
235 department may deny application for coverage under this general permit. The applicant may also  
236 consult with these agencies prior to submitting an application. Species or habitat information that  
237 the applicant provides will assist the Department of Environmental Quality in reviewing and  
238 processing the application.

239 **9VAC25-660-60. Application.**

240 A. The applicant shall file a complete application in accordance with 9VAC25-660-50 and this  
241 section for coverage under this VWP general permit for impacts to nontidal wetlands or open  
242 water of less than one-half acre and up to 300 linear feet of nontidal stream bed.

243 B. A complete application for VWP general permit coverage, at a minimum, consists of the  
244 following information, if applicable to the project:

- 245 1. The applicant's legal name, mailing address, telephone number, and if applicable,  
246 electronic mail address and fax number.
- 247 2. If different from the applicant, legal name, mailing address, telephone number, and if  
248 applicable, electronic mail address and fax number of property owner.
- 249 3. If applicable, the authorized agent's name, mailing address, telephone number, and if  
250 applicable, fax number and electronic mail address.
- 251 4. The existing VWP general permit tracking number, if applicable.
- 252 5. Project name and proposed project schedule.
- 253 6. The following information for the project site location:
  - 254 a. The physical street address, nearest street, or nearest route number; city or county;  
255 zip code; and if applicable, parcel number of the site or sites.
  - 256 b. Name of the impacted water body or water bodies, or receiving waters, as  
257 applicable, at the site or sites.
  - 258 c. The latitude and longitude to the nearest second at the center of the site or sites.
  - 259 d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the  
260 National Watershed Boundary Dataset, for the site or sites.
  - 261 e. A detailed map depicting the location of the site or sites, including the project  
262 boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S.  
263 Geologic Survey topographic quadrangle map) should be of sufficient detail to easily  
264 locate the site or sites for inspection.
- 265 7. A narrative description of the project, including project purpose and need.
- 266 8. Plan-view drawing or drawings of the project site sufficient to assess the project,  
267 including at a minimum the following:
  - 268 a. North arrow, graphic scale, and existing and proposed topographic or bathymetric  
269 contours.
  - 270 b. Limits of proposed impacts to surface waters.
  - 271 c. Location of all existing and proposed structures.
  - 272 d. All delineated wetlands and all jurisdictional surface waters on the site, including the  
273 Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface  
274 waters and waterway name, if designated; ebb and flood or direction of flow; and  
275 ordinary high water mark in nontidal areas.

276 e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified  
277 by the applicant, and if available, the limits as approved by the locality in which the  
278 project site is located, unless the proposed use is exempt from the Chesapeake Bay  
279 Preservation Area Designation and Management Regulations (9VAC25-830).

280 f. The limits of areas that are under a deed restriction, conservation easement,  
281 restrictive covenant, or other land use protective instrument (i.e., protected areas).

282 9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings  
283 of each proposed impact area shall include at a minimum a graphic scale, existing  
284 structures, existing and proposed elevations, limits of surface water areas, ebb and flood  
285 or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits,  
286 and location of all existing and proposed structures. Profile drawing or drawings with this  
287 information may be required on a case-by-case basis to demonstrate minimization of  
288 impacts. Any application that proposes piping or culverting stream flows shall provide a  
289 longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide  
290 spot elevations of the stream thalweg at the beginning and end of the pipe or culvert,  
291 extending to a minimum of 10 feet beyond the limits of proposed impact.

292 10. A narrative description of all impacts proposed to surface waters, including the type of  
293 activity to be conducted in surface waters and any physical alteration to surface waters.  
294 Surface water impacts shall be identified as follows:

295 a. Wetland impacts identified according to their Cowardin classification (i.e., emergent,  
296 scrub-shrub, or forested); and for each classification, the individual impacts quantified  
297 in square feet to the nearest whole number, cumulatively summed in square feet, and  
298 then the sum converted to acres and rounded to two decimal places using commonly  
299 accepted arithmetic principles of rounding.

300 b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole  
301 number and by average width in feet to the nearest whole number; (ii) quantified in  
302 square feet to the nearest whole number; and (iii) when compensatory mitigation is  
303 required, the impacts identified according to the assessed type using the Unified  
304 Stream Methodology.

305 c. Open water impacts identified according to their Cowardin classification, and for  
306 each type, the individual impacts quantified in square feet to the nearest whole  
307 number, cumulatively summed in square feet, and then the sum converted to acres  
308 and rounded to two decimal places using commonly accepted arithmetic principles of  
309 rounding.

310 d. A copy of the approved jurisdictional determination when available, or when  
311 unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps  
312 of Engineers (USACE), U.S. Department of Agriculture Natural Resources  
313 Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE,  
314 NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface  
315 waters, including wetlands data sheets if applicable.

316 e. A delineation map that (i) depicts the geographic area or areas of all surface water  
317 boundaries delineated in accordance with 9VAC25-210-45 and confirmed in  
318 accordance with the jurisdictional determination process; (ii) identifies such areas in  
319 accordance with subdivisions 10 a, 10 b, and 10 c of this subsection; and (iii) quantifies  
320 and identifies any other surface waters according to their Cowardin classification (i.e.,  
321 emergent, scrub-shrub, or forested) or similar terminology.

322 11. An alternatives analysis for the proposed project detailing the specific on-site  
323 measures taken during project design and development to first avoid and then minimize  
324 impacts to surface waters to the maximum extent practicable in accordance with the

325 Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part  
326 230. Avoidance and minimization includes, but is not limited to, the specific on-site  
327 measures taken to reduce the size, scope, configuration, or density of the proposed  
328 project, including review of alternative sites where required for the project, which would  
329 avoid or result in less adverse impact to surface waters, and documentation demonstrating  
330 the reason the applicant determined less damaging alternatives are not practicable. The  
331 analysis shall demonstrate to the satisfaction of the ~~board~~ department that avoidance and  
332 minimization opportunities have been identified and measures have been applied to the  
333 proposed activity such that the proposed activity in terms of impacts to state waters and  
334 fish and wildlife resources is the least environmentally damaging practicable alternative.

335 12. A compensatory mitigation plan to achieve no net loss of wetland acreage and  
336 functions or stream functions and water quality benefits. Any compensatory mitigation plan  
337 proposing the purchase of mitigation bank or in-lieu fee program credits shall include the  
338 number and type of credits proposed to be purchased, documentation from the approved  
339 bank or in-lieu fee program sponsor of the availability of credits at the time of application,  
340 and all information required by § 62.1-44.15:23 of the Code of Virginia.

341 13. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map  
342 depicting any 100-year floodplains.

343 14. Permit application fee. The applicant will be notified by the ~~board~~ department as to the  
344 appropriate fee for the project in accordance with 9VAC25-20.

345 15. A written description and a graphical depiction identifying all upland areas including  
346 buffers, wetlands, open water, other surface waters, and compensatory mitigation areas  
347 located within the proposed project boundary that are under a deed restriction,  
348 conservation easement, restrictive covenant, or other land use protective instrument (i.e.,  
349 protected areas). Such description and a graphical depiction shall include the nature of  
350 the prohibited activities within the protected areas and the limits of Chesapeake Bay  
351 Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the  
352 limits as approved by the locality in which the project site is located, unless the proposed  
353 use is exempt from the Chesapeake Bay Preservation Area Designation and Management  
354 Regulations (9VAC25-830), as additional state or local requirements may apply if the  
355 project is located within an RPA.

356 16. Signature page that has been signed, dated, and certified by the applicant in  
357 accordance with 9VAC25-210-100. If the applicant is a business or other organization, the  
358 signature must be made by an individual with the authority to bind the business or  
359 organization, and the title of the signatory must be provided. The application signature  
360 page, either on the copy submitted to the Virginia Marine Resources Commission or to  
361 DEQ, must have an original signature. Electronic submittals containing the original  
362 signature page, such as that contained in a scanned document file, are acceptable.

363 C. Upon receipt of an application from the Department of Transportation for a road or highway  
364 construction project by the appropriate DEQ office, the ~~board~~ department has 10 business days,  
365 pursuant to § 33.2-258 of the Code of Virginia, to review the application and either determine the  
366 information requested in subsection B of this section is complete or inform the Department of  
367 Transportation that additional information is required to make the application complete. Upon  
368 receipt of an application from other applicants for any type of project, the ~~board~~ department has  
369 15 days to review the application and either determine that the information requested in  
370 subsection B of this section is complete or inform the applicant that additional information is  
371 required to make the application complete. Pursuant to § 33.2-258 of the Code of Virginia,  
372 coverage under this VWP general permit for Department of Transportation road or highway  
373 construction projects shall be approved or approved with conditions, or the application shall be



374 denied, within 30 business days of receipt of a complete application. For all other projects,  
 375 coverage under this VWP general permit shall be approved or approved with conditions, or the  
 376 application shall be denied, within 45 days of receipt of a complete application. If the ~~board~~  
 377 department fails to act within the applicable 30 or 45 days on a complete application, coverage  
 378 under this VWP general permit shall be deemed granted.

379 1. In evaluating the application, the ~~board~~ department shall make an assessment of the  
 380 impacts associated with the project in combination with other existing or proposed  
 381 impacts. Application for coverage under this VWP general permit shall be denied if the  
 382 cumulative impacts will cause or contribute to a significant impairment of state waters or  
 383 fish and wildlife resources.

384 2. The ~~board~~ department may place additional requirements on a project in order to grant  
 385 coverage under this VWP general permit. However, the requirements must be consistent  
 386 with this chapter.

387 D. Incomplete application.

388 1. Where an application for general permit coverage is not accepted as complete by the  
 389 ~~board~~ department within the applicable 10 or 15 days of receipt, the ~~board~~ department  
 390 shall require the submission of additional information from the applicant and may suspend  
 391 processing of any application until such time as the applicant has supplied the requested  
 392 information and the application is complete. Where the applicant becomes aware that he  
 393 omitted one or more relevant facts from an application, or submitted incorrect information  
 394 in an application or in any report to the ~~board~~ department, the applicant shall immediately  
 395 submit such facts or the correct information. A revised application with new information  
 396 shall be deemed a new application for the purposes of review but shall not require an  
 397 additional permit application fee.

398 2. An incomplete application for general permit coverage may be administratively  
 399 withdrawn from processing by the ~~board~~ department for failure to provide the required  
 400 information after 60 days from the date of the latest written information request made by  
 401 the ~~board~~ department. The ~~board~~ department shall provide (i) notice to the applicant and  
 402 (ii) an opportunity for an informal fact-finding proceeding when administratively  
 403 withdrawing an incomplete application. Resubmittal of an application for the same or  
 404 similar project, after such time that the original permit application was administratively  
 405 withdrawn, shall require submittal of an additional permit application fee.

406 3. An applicant may request a suspension of application review by the ~~board~~ department,  
 407 but requesting a suspension shall not preclude the ~~board~~ department from administratively  
 408 withdrawing an incomplete application.

409 **9VAC25-660-70. Compensation.**

410 A. Compensatory mitigation may be required for permanent, nontidal surface water impacts  
 411 as specified in 9VAC25-660-50 A. All temporary, nontidal surface water impacts shall be restored  
 412 to preexisting conditions in accordance with the VWP general permit in 9VAC25-660-100.

413 B. For the purposes of this VWP general permit chapter, the ~~board~~ department shall assume  
 414 that the purchase of mitigation bank credits or the purchase of in-lieu fee program credits with a  
 415 primary service area that covers the impact site is ecologically preferable to practicable on-site or  
 416 other off-site surface water compensation options. Compensatory mitigation and any  
 417 compensatory mitigation proposals shall be in accordance with this section, § 62.1-44.15:23 of  
 418 the Code of Virginia, and the associated provisions of 9VAC25-210-116.

419 C. When required, compensatory mitigation for unavoidable, permanent wetland impacts shall  
 420 be provided at a 2:1 mitigation ratio, as calculated on an area basis.

421 D. When required, compensatory mitigation for stream bed impacts shall be appropriate to  
422 replace lost functions and water quality benefits. One factor determining the required stream  
423 compensation shall be an analysis of stream impacts utilizing a stream impact assessment  
424 methodology acceptable to the Department of Environmental Quality.

425 E. Compensation for permanent open water impacts, other than to streams, may be required  
426 at an in-kind or out-of-kind mitigation ratio of 1:1 or less, as calculated on an area basis, to offset  
427 impacts to state waters and fish and wildlife resources. Compensation shall not be required for  
428 permanent or temporary impacts to open waters identified as palustrine by the Cowardin  
429 classification method, but compensation may be required when such open waters are located in  
430 areas of karst topography in Virginia and are formed by the natural solution of limestone.

431 F. When conversion results in a permanent alteration of the functions of a wetland,  
432 compensatory mitigation for conversion impacts to wetlands shall be required at a 1:1 mitigation  
433 ratio, as calculated on an area basis. For example, the permanent conversion of a forested  
434 wetland to an emergent wetland is considered to be a permanent impact for the purposes of this  
435 chapter. Compensation for conversion of other types of surface waters may be required, as  
436 appropriate, to offset impacts to state waters and fish and wildlife resources.

437 **9VAC25-660-80. Notice of planned changes; modifications to coverage.**

438 A. The permittee shall notify the ~~board~~ department in advance of a planned change, and an  
439 application or request for modification to coverage shall be reviewed according to all provisions  
440 of this chapter. Coverage shall not be modified if (i) the cumulative total of permanent and  
441 temporary impacts for a single and complete project equals or exceeds one-half acre of nontidal  
442 wetlands or open water or exceeds 300 linear feet of nontidal stream bed or (ii) the criteria in  
443 subsection B of this section are not met. The applicant may submit a new permit application for  
444 consideration under a VWP individual permit.

445 B. VWP general permit coverage may be modified subsequent to issuance under the following  
446 circumstances:

447 1. Additional impacts to surface waters are necessary, provided that:

- 448 a. The additional impacts are proposed prior to impacting those additional areas.
- 449 b. The proposed additional impacts are located within the project boundary as depicted  
450 in the application for coverage or are located in areas of directly-related off-site work,  
451 unless otherwise prohibited by this chapter.
- 452 c. The permittee has provided sufficient documentation that the ~~board~~ department may  
453 reasonably determine that the additional impacts will not impact federal or state listed  
454 threatened or endangered species or designated critical habitat, or result in a taking  
455 of threatened or endangered species. The ~~board~~ department recommends that the  
456 permittee verify that the project will not impact any proposed threatened or endangered  
457 species or proposed critical habitat.
- 458 d. The cumulative, additional permanent wetland or open water impacts for one or  
459 more notices of planned change do not exceed 0.25 acre.
- 460 e. The cumulative, additional permanent stream impacts for one or more notices of  
461 planned change do not exceed 100 linear feet.
- 462 f. Documentation is provided demonstrating that the proposed surface water impacts  
463 have been avoided to the maximum extent practicable in accordance with the  
464 informational requirements of 9VAC25-660-60 B 11.
- 465 g. Compensatory mitigation for the proposed impacts, if required, meets the  
466 requirements of § 62.1-44.15:23 of the Code of Virginia, 9VAC25-660-70, and the  
467 associated provisions of 9VAC25-210-116. Prior to a planned change approval, the

468 Department of Environmental Quality may require submission of a compensatory  
469 mitigation plan for the additional impacts.

470 h. Where such additional impacts are temporary, and prior to initiating the impacts, the  
471 permittee provides a written statement to the ~~board~~ department that the area to be  
472 temporarily impacted will be restored to its preconstruction elevations and contours  
473 with topsoil from the impact area where practicable, such that the previous acreage  
474 and functions are restored in accordance with Part I A 3 and B 11 of 9VAC25-660-  
475 100. The additional temporary impacts shall not cause the cumulative total impacts to  
476 exceed the general permit threshold for use. The proposed temporary impacts shall  
477 be deemed approved if DEQ does not respond within 10 days of receipt of the request  
478 for authorization to temporarily impact additional surface waters.

479 i. The additional proposed impacts do not change the category of the project, based  
480 on the original impact amounts as specified in 9VAC25-660-50 A 2. However, the  
481 applicant may submit a new permit application for the total impacts to be considered  
482 under this VWP general permit, another VWP general permit, or a VWP individual  
483 permit.

484 2. A reduction in wetland or stream impacts. Compensatory mitigation requirements may  
485 be modified in relation to the adjusted impacts, provided that the adjusted compensatory  
486 mitigation meets the initial compensatory mitigation goals. DEQ shall not be responsible  
487 for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit  
488 purchases.

489 3. A change in project plans or use that does not result in a change to authorized project  
490 impacts other than those allowed by subdivisions 1 and 2 of this subsection.

491 4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another  
492 DEQ-approved mitigation bank or in-lieu fee program in accordance with § 62.1-44.15:23  
493 of the Code of Virginia and 9VAC25-210-116 C. The amount of credits proposed to be  
494 purchased shall be sufficient to meet the compensatory mitigation requirement for which  
495 the compensatory mitigation is proposed to replace.

496 5. Correct typographical errors.

497 **9VAC25-660-90. Termination of coverage.**

498 A. The permittee shall submit a request for termination by consent within 30 days of  
499 completing or canceling all authorized activities requiring notification under 9VAC25-660-50 A  
500 and all compensatory mitigation requirements. When submitted for project completion, the  
501 request for termination by consent shall constitute a notice of project completion in accordance  
502 with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the  
503 ~~board~~ department. The permittee shall submit the following information:

504 1. Name, mailing address, and telephone number of the permittee;

505 2. Name and location of the activity;

506 3. The VWP general permit tracking number; and

507 4. One of the following certifications:

508 a. For project completion:

509 "I certify under penalty of law that all activities and any required compensatory  
510 mitigation authorized by the VWP general permit and general permit coverage have  
511 been completed. I understand that by submitting this notice of termination I am no  
512 longer authorized to perform activities in surface waters in accordance with the VWP  
513 general permit and general permit coverage, and that performing activities in surface  
514 waters is unlawful where the activity is not authorized by the VWP permit or coverage,

515 unless otherwise excluded from obtaining coverage. I also understand that the  
516 submittal of this notice does not release me from liability for any violations of the VWP  
517 general permit or coverage."

518 b. For project cancellation:

519 "I certify under penalty of law that the activities and any required compensatory  
520 mitigation authorized by the VWP general permit and general permit coverage will not  
521 occur. I understand that by submitting this notice of termination I am no longer  
522 authorized to perform activities in surface waters in accordance with the VWP general  
523 permit and general permit coverage, and that performing activities in surface waters is  
524 unlawful where the activity is not authorized by the VWP permit or coverage, unless  
525 otherwise excluded from obtaining coverage. I also understand that the submittal of  
526 this notice does not release me from liability for any violations of the VWP general  
527 permit or coverage, nor does it allow me to resume the authorized activities without  
528 reapplication and coverage."

529 c. For events beyond permittee control, the permittee shall provide a detailed  
530 explanation of the events, to be approved by the Department of Environmental Quality,  
531 and the following certification statement:

532 "I certify under penalty of law that the activities or the required compensatory mitigation  
533 authorized by the VWP general permit and general permit coverage have changed as  
534 the result of events beyond my control (see attached). I understand that by submitting  
535 this notice of termination I am no longer authorized to perform activities in surface  
536 waters in accordance with the VWP general permit and general permit coverage, and  
537 that performing activities in surface waters is unlawful where the activity is not  
538 authorized by the VWP permit or coverage, unless otherwise excluded from obtaining  
539 coverage. I also understand that the submittal of this notice does not release me from  
540 liability for any violations of the VWP general permit or coverage, nor does it allow me  
541 to resume the authorized activities without reapplication and coverage."

542 B. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-  
543 210-180 F and ~~§ 62.1-44.15:02 of the Code of Virginia~~ or without cause in accordance with  
544 9VAC25-210-180 G and ~~§ 62.1-44.15:02~~.

545 **9VAC25-660-100. VWP general permit.**

546 VWP GENERAL PERMIT NO. WP1 FOR IMPACTS LESS THAN ONE-HALF ACRE  
547 UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE  
548 WATER CONTROL LAW

549 Effective date: August 2, 2016

550 Expiration date: August 1, 2026

551 In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State  
552 Water Control Law and regulations adopted pursuant thereto, the board has determined that there  
553 is a reasonable assurance that this VWP general permit, if complied with, will protect instream  
554 beneficial uses, will not violate applicable water quality standards, and will not cause or contribute  
555 to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP  
556 general permit, the board has not taken into consideration the structural stability of any proposed  
557 activities.

558 The permanent or temporary impact of less than one-half acre of nontidal wetlands or open  
559 water and up to 300 linear feet of nontidal stream bed shall be subject to the provisions of the

560 VWP general permit set forth herein; any requirements in coverage granted under this VWP  
561 general permit; the Clean Water Act, as amended; and the State Water Control Law and  
562 regulations adopted pursuant to it.

563 Part I. Special Conditions.

564 A. Authorized activities.

565 1. The activities authorized by this chapter shall not cause more than the permanent or  
566 temporary impacts to less than one-half acre of nontidal wetlands or open water and up  
567 to 300 linear feet of nontidal stream bed. Additional permit requirements as stipulated by  
568 the ~~board~~ department in the coverage letter, if any, shall be enforceable conditions of this  
569 permit.

570 2. Any changes to the authorized permanent impacts to surface waters shall require a  
571 notice of planned change in accordance with 9VAC25-660-80. An application or request  
572 for modification to coverage or another VWP permit application may be required.

573 3. Any changes to the authorized temporary impacts to surface waters shall require written  
574 notification to and approval from the Department of Environmental Quality in accordance  
575 with 9VAC25-660-80 prior to initiating the impacts and restoration to preexisting conditions  
576 in accordance with the conditions of this permit.

577 4. Modification to compensation requirements may be approved at the request of the  
578 permittee when a decrease in the amount of authorized surface waters impacts occurs,  
579 provided that the adjusted compensation meets the initial compensation goals.

580 B. Overall conditions.

581 1. The activities authorized by this VWP general permit shall be executed in a manner so  
582 as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of  
583 the Code of Virginia.

584 2. No activity may substantially disrupt the movement of aquatic life indigenous to the  
585 water body, including those species that normally migrate through the area, unless the  
586 primary purpose of the activity is to impound water. Pipes and culverts placed in streams  
587 must be installed to maintain low flow conditions and shall be countersunk at both inlet  
588 and outlet ends of the pipe or culvert, unless otherwise specifically approved by the  
589 Department of Environmental Quality on a case-by-case basis, and as follows: The  
590 requirement to countersink does not apply to extensions or maintenance of existing pipes  
591 and culverts that are not countersunk, floodplain pipes and culverts being placed above  
592 ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts  
593 required to be placed on slopes 5.0% or greater. Bedrock encountered during construction  
594 must be identified and approved in advance of a design change where the countersunk  
595 condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be  
596 countersunk three inches below the natural stream bed elevations, and pipes and culverts  
597 greater than 24 inches shall be countersunk at least six inches below the natural stream  
598 bed elevations. Hydraulic capacity shall be determined based on the reduced capacity  
599 due to the countersunk position. In all stream crossings appropriate measures shall be  
600 implemented to minimize any disruption of aquatic life movement.

601 3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters,  
602 unless the area is contained within a cofferdam and the work is performed in the dry or  
603 unless otherwise approved by the Department of Environmental Quality. Excess or waste  
604 concrete shall not be disposed of in flowing surface waters or washed into flowing surface  
605 waters.

- 606 4. All fill material shall be clean and free of contaminants in toxic concentrations or  
607 amounts in accordance with all applicable laws and regulations.
- 608 5. Erosion and sedimentation controls shall be designed in accordance with the Virginia  
609 Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be  
610 placed prior to clearing and grading and maintained in good working order to minimize  
611 impacts to state waters. These controls shall remain in place until the area is stabilized  
612 and shall then be removed.
- 613 6. Exposed slopes and streambanks shall be stabilized immediately upon completion of  
614 work in each permitted impact area. All denuded areas shall be properly stabilized in  
615 accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition,  
616 1992.
- 617 7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways)  
618 and demolition activities associated with the project shall be accomplished in a manner  
619 that minimizes construction or waste materials from entering surface waters to the  
620 maximum extent practicable, unless authorized by this VWP general permit.
- 621 8. No machinery may enter flowing waters, unless authorized by this VWP general permit  
622 or approved prior to entry by the Department of Environmental Quality.
- 623 9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats,  
624 geotextile fabric, or other suitable material to minimize soil disturbance to the maximum  
625 extent practicable. Equipment and materials shall be removed immediately upon  
626 completion of work.
- 627 10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of  
628 authorized activities and within the project or right-of-way limits shall be clearly flagged or  
629 marked for the life of the construction activity at that location to preclude unauthorized  
630 disturbances to these surface waters and compensatory mitigation areas during  
631 construction. The permittee shall notify contractors that no activities are to occur in these  
632 marked surface waters.
- 633 11. Temporary disturbances to surface waters during construction shall be avoided and  
634 minimized to the maximum extent practicable. All temporarily disturbed wetland areas  
635 shall be restored to preexisting conditions within 30 days of completing work at each  
636 respective temporary impact area, which shall include reestablishing preconstruction  
637 elevations and contours with topsoil from the impact area where practicable and planting  
638 or seeding with appropriate wetland vegetation according to cover type (i.e., emergent,  
639 scrub-shrub, or forested). The permittee shall take all appropriate measures to promote  
640 and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation  
641 through the second year post-disturbance. All temporarily impacted streams and  
642 streambanks shall be restored to their preconstruction elevations and contours with topsoil  
643 from the impact area where practicable within 30 days following the construction at that  
644 stream segment. Streambanks shall be seeded or planted with the same vegetation cover  
645 type originally present, including any necessary, supplemental erosion control grasses.  
646 Invasive species identified on the Department of Conservation and Recreation's Virginia  
647 Invasive Plant Species List shall not be used to the maximum extent practicable or without  
648 prior approval from the Department of Environmental Quality.
- 649 12. Materials (including fill, construction debris, and excavated and woody materials)  
650 temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately  
651 stabilized to prevent entry into state waters, managed such that leachate does not enter  
652 state waters, and completely removed within 30 days following completion of that  
653 construction activity. Disturbed areas shall be returned to preconstruction elevations and  
654 contours with topsoil from the impact area where practicable; restored within 30 days

655 following removal of the stockpile; and restored with the same vegetation cover type  
656 originally present, including any necessary, supplemental erosion control grasses.  
657 Invasive species identified on the Department of Conservation and Recreation's Virginia  
658 Invasive Plant Species List shall not be used to the maximum extent practicable or without  
659 prior approval from the Department of Environmental Quality.

660 13. Continuous flow of perennial springs shall be maintained by the installation of spring  
661 boxes, french drains, or other similar structures.

662 14. The permittee shall employ measures to prevent spills of fuels or lubricants into state  
663 waters.

664 15. The permittee shall conduct his activities in accordance with the time-of-year  
665 restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia  
666 Marine Resources Commission, or other interested and affected agencies, as contained,  
667 when applicable, in a Department of Environmental Quality VWP general permit coverage  
668 letter, and shall ensure that all contractors are aware of the time-of-year restrictions  
669 imposed.

670 16. Water quality standards shall not be violated as a result of the construction activities.

671 17. If stream channelization or relocation is required, all work in surface waters shall be  
672 done in the dry, unless otherwise authorized by the Department of Environmental Quality,  
673 and all flows shall be diverted around the channelization or relocation area until the new  
674 channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and  
675 outlet ends of the new channel during excavation. Once the new channel has been  
676 stabilized, flow shall be routed into the new channel by first removing the downstream plug  
677 and then the upstream plug. The rerouted stream flow must be fully established before  
678 construction activities in the old stream channel can begin.

#### 679 C. Road crossings.

680 1. Access roads and associated bridges, pipes, and culverts shall be constructed to  
681 minimize the adverse effects on surface waters to the maximum extent practicable.  
682 Access roads constructed above preconstruction elevations and contours in surface  
683 waters must be bridged, piped, or culverted to maintain surface flows.

684 2. Installation of road crossings shall occur in the dry via the implementation of cofferdams,  
685 sheetpiling, stream diversions, or other similar structures.

#### 686 D. Utility lines.

687 1. All utility line work in surface waters shall be performed in a manner that minimizes  
688 disturbance, and the area must be returned to its preconstruction elevations and contours  
689 with topsoil from the impact area where practicable and restored within 30 days of  
690 completing work in the area, unless otherwise authorized by the Department of  
691 Environmental Quality. Restoration shall be the seeding or planting of the same vegetation  
692 cover type originally present, including any necessary, supplemental erosion control  
693 grasses. Invasive species identified on the Department of Conservation and Recreation's  
694 Virginia Invasive Plant Species List shall not be used to the maximum extent practicable  
695 or without prior approval from the Department of Environmental Quality.

696 2. Material resulting from trench excavation may be temporarily sidecast into wetlands not  
697 to exceed a total of 90 days, provided the material is not placed in a manner such that it  
698 is dispersed by currents or other forces.

699 3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g.,  
700 backfilling with extensive gravel layers creating a french drain effect). For example, utility  
701 lines may be backfilled with clay blocks to ensure that the trench does not drain surface  
702 waters through which the utility line is installed.

- 703 E. Stream modification and stream bank protection.
- 704 1. Riprap bank stabilization shall be of an appropriate size and design in accordance with
- 705 the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
- 706 2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion
- 707 and Sediment Control Handbook, Third Edition, 1992.
- 708 3. For stream bank protection activities, the structure and backfill shall be placed as close
- 709 to the stream bank as practicable. No material shall be placed in excess of the minimum
- 710 necessary for erosion protection.
- 711 4. All stream bank protection control structures shall be located to eliminate or minimize
- 712 impacts to vegetated wetlands to the maximum extent practicable.
- 713 5. Asphalt and materials containing asphalt or other toxic substances shall not be used in
- 714 the construction of submerged sills or breakwaters.
- 715 6. Redistribution of existing stream substrate for the purpose of erosion control is
- 716 prohibited.
- 717 7. No material removed from the stream bottom shall be disposed of in surface waters,
- 718 unless otherwise authorized by this VWP general permit.
- 719 F. Stormwater management facilities.
- 720 1. Stormwater management facilities shall be installed in accordance with best
- 721 management practices and watershed protection techniques (e.g., vegetated buffers,
- 722 siting considerations to minimize adverse effects to aquatic resources, bioengineering
- 723 methods incorporated into the facility design to benefit water quality and minimize adverse
- 724 effects to aquatic resources) that provide for long-term aquatic resources protection and
- 725 enhancement, to the maximum extent practicable.
- 726 2. Compensation for unavoidable impacts shall not be allowed within maintenance areas
- 727 of stormwater management facilities.
- 728 3. Maintenance activities within stormwater management facilities shall not require
- 729 additional permit coverage or compensation, provided that the maintenance activities do
- 730 not exceed the original contours of the facility, as approved and constructed, and are
- 731 accomplished in designated maintenance areas as indicated in the facility maintenance
- 732 or design plan or when unavailable, an alternative plan approved by the Department of
- 733 Environmental Quality.

734 Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

- 735 A. Minimum compensation requirements.
- 736 1. The permittee shall provide any required compensation for impacts in accordance with
- 737 the conditions in this VWP general permit, the coverage letter, and the chapter
- 738 promulgating the general permit.
- 739 2. Compensation options that may be considered under this VWP general permit include
- 740 the purchase of mitigation bank credits or the purchase of in-lieu fee program credits with
- 741 a primary service area that covers the impact site in accordance with § 62.1-44.15:23 of
- 742 the Code of Virginia, 9VAC25-660-70, and the associated provisions of 9VAC25-210-116.
- 743 3. The final compensation plan shall be submitted to and approved by the ~~board~~
- 744 department prior to a construction activity in permitted impacts areas. The ~~board~~
- 745 department shall review and provide written comments on the final plan within 30 days of
- 746 receipt or it shall be deemed approved. The final plan as approved by the ~~board~~
- 747 department shall be an enforceable requirement of any coverage under this VWP general



748 permit. Deviations from the approved final plan shall be submitted and approved in  
749 advance by the ~~board~~ department.

750 B. Impact site construction monitoring.

751 1. Construction activities authorized by this permit that are within impact areas shall be  
752 monitored and documented. The monitoring shall consist of:

753 a. Preconstruction photographs taken at each impact area prior to initiation of activities  
754 within impact areas. Photographs remain on the project site and shall depict the impact  
755 area and the nonimpacted surface waters immediately adjacent to and downgradient  
756 of each impact area. Each photograph shall be labeled to include the following  
757 information: permit number, impact area number, date and time of the photograph,  
758 name of the person taking the photograph, photograph orientation, and photograph  
759 subject description.

760 b. Site inspections shall be conducted by the permittee or the permittee's qualified  
761 designee once every calendar month during activities within impact areas. Monthly  
762 inspections shall be conducted in the following areas: all authorized permanent and  
763 temporary impact areas; all avoided surface waters, including wetlands, stream  
764 channels, and open water; surface water areas within 50 feet of any land disturbing  
765 activity and within the project or right-of-way limits; and all on-site permanent  
766 preservation areas required under this permit. Observations shall be recorded on the  
767 inspection form provided by the Department of Environmental Quality. The form shall  
768 be completed in its entirety for each monthly inspection and shall be kept on site and  
769 made available for review by the Department of Environmental Quality staff upon  
770 request during normal business hours. Inspections are not required during periods of  
771 no activity within impact areas.

772 2. Monitoring of water quality parameters shall be conducted during permanent relocation  
773 of perennial streams through new channels in the manner noted below. The permittee  
774 shall report violations of water quality standards to the Department of Environmental  
775 Quality in accordance with the procedures in 9VAC25-660-100 Part II C. Corrective  
776 measures and additional monitoring may be required if water quality standards are not  
777 met. Reporting shall not be required if water quality standards are not violated.

778 a. A sampling station shall be located upstream and immediately downstream of the  
779 relocated channel.

780 b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every  
781 30 minutes for at least two hours at each station prior to opening the new channels  
782 and immediately before opening new channels.

783 c. Temperature, pH, and D.O. readings shall be taken after opening the channels and  
784 every 30 minutes for at least three hours at each station.

785 C. Reporting.

786 1. Written communications required by this VWP general permit shall be submitted to the  
787 appropriate Department of Environmental Quality office. The VWP general permit tracking  
788 number shall be included on all correspondence.

789 2. The Department of Environmental Quality shall be notified in writing prior to the start of  
790 construction activities at the first authorized impact area.

791 3. A construction status update form provided by the Department of Environmental Quality  
792 shall be completed and submitted to the Department of Environmental Quality twice per  
793 year for the duration of coverage under a VWP general permit. Forms completed in June  
794 shall be submitted by or on July 10, and forms completed in December shall be submitted

- 795 by or on January 10. The form shall include reference to the VWP permit tracking number  
796 and one of the following statements for each authorized surface water impact location:
- 797 a. Construction activities have not yet started;
  - 798 b. Construction activities have started;
  - 799 c. Construction activities have started but are currently inactive; or
  - 800 d. Construction activities are complete.
- 801 4. The Department of Environmental Quality shall be notified in writing within 30 days  
802 following the completion of all activities in all authorized impact areas.
- 803 5. The permittee shall notify the Department of Environmental Quality in writing when  
804 unusual or potentially complex conditions are encountered that require debris removal or  
805 involve a potentially toxic substance. Measures to remove the obstruction, material, or  
806 toxic substance or to change the location of a structure are prohibited until approved by  
807 the Department of Environmental Quality.
- 808 6. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If  
809 spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday,  
810 the appropriate Department of Environmental Quality regional office shall be notified;  
811 otherwise, the Department of Emergency Management shall be notified at 1-800-468-  
812 8892.
- 813 7. Violations of state water quality standards shall be reported to the appropriate  
814 Department of Environmental Quality office no later than the end of the business day  
815 following discovery.
- 816 8. The permittee shall notify the Department of Environmental Quality no later than the  
817 end of the third business day following the discovery of additional impacts to surface  
818 waters including wetlands, stream channels, and open water that are not authorized by  
819 the Department of Environmental Quality or to any required preservation areas. The  
820 notification shall include photographs, estimated acreage or linear footage of impacts, and  
821 a description of the impacts.
- 822 9. Submittals required by this VWP general permit shall contain the following signed  
823 certification statement:
- 824 "I certify under penalty of law that this document and all attachments were prepared under  
825 my direction or supervision in accordance with a system designed to assure that qualified  
826 personnel properly gather and evaluate the information submitted. Based on my inquiry of  
827 the person or persons who manage the system, or those persons directly responsible for  
828 gathering the information, the information submitted is, to the best of my knowledge and  
829 belief, true, accurate, and complete. I am aware that there are significant penalties for  
830 submitting false information, including the possibility of fine and imprisonment for knowing  
831 violation."

832 **Part III. Conditions Applicable to All VWP General Permits.**

- 833 A. Duty to comply. The permittee shall comply with all conditions, limitations, and other  
834 requirements of the VWP general permit; any requirements in coverage granted under this VWP  
835 general permit; the Clean Water Act, as amended; and the State Water Control Law and  
836 regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a  
837 violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement  
838 action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage  
839 revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification  
840 to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve

841 the permittee of the duty to comply with all applicable federal and state statutes, regulations, and  
842 toxic standards and prohibitions.

843 B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent  
844 impacts in violation of the VWP general permit which may have a reasonable likelihood of  
845 adversely affecting human health or the environment.

846 C. Reopener. This VWP general permit may be reopened to modify its conditions when the  
847 circumstances on which the previous VWP general permit was based have materially and  
848 substantially changed, or special studies conducted by the ~~board~~ department or the permittee  
849 show material and substantial change since the time the VWP general permit was issued and  
850 thereby constitute cause for revoking and reissuing the VWP general permit.

851 D. Compliance with state and federal law. Compliance with this VWP general permit  
852 constitutes compliance with the VWP permit requirements of the State Water Control Law.  
853 Nothing in this VWP general permit shall be construed to preclude the institution of any legal  
854 action under or relieve the permittee from any responsibilities, liabilities, or other penalties  
855 established pursuant to any other state law or regulation or under the authority preserved by §  
856 510 of the Clean Water Act.

857 E. Property rights. Coverage under this VWP general permit does not convey property rights  
858 in either real or personal property or any exclusive privileges, nor does it authorize injury to private  
859 property, any invasion of personal property rights, or any infringement of federal, state, or local  
860 laws or regulations.

861 F. Severability. The provisions of this VWP general permit are severable.

862 G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the ~~board~~  
863 department or any duly authorized agent of the ~~board~~ department, at reasonable times and under  
864 reasonable circumstances, to enter upon the permittee's property, public or private, and have  
865 access to inspect and copy any records that must be kept as part of the VWP general permit  
866 conditions; to inspect any facilities, operations, or practices (including monitoring and control  
867 equipment) regulated or required under the VWP general permit; and to sample or monitor any  
868 substance, parameter, or activity for the purpose of assuring compliance with the conditions of  
869 the VWP general permit or as otherwise authorized by law. For the purpose of this section, the  
870 time for inspection shall be deemed reasonable during regular business hours. Nothing contained  
871 herein shall make an inspection time unreasonable during an emergency.

872 H. Transferability of VWP general permit coverage. VWP general permit coverage may be  
873 transferred to another permittee when all of the criteria listed in this subsection are met. On the  
874 date of the VWP general permit coverage transfer, the transferred VWP general permit coverage  
875 shall be as fully effective as if it had been granted directly to the new permittee.

876 1. The current permittee notifies the ~~board~~ department of the proposed transfer of the  
877 general permit coverage and provides a written agreement between the current and new  
878 permittees containing a specific date of transfer of VWP general permit responsibility,  
879 coverage, and liability to the new permittee, or that the current permittee will retain such  
880 responsibility, coverage, or liability, including liability for compliance with the requirements  
881 of enforcement activities related to the authorized activity.

882 2. The ~~board~~ department does not within 15 days notify the current and new permittees of  
883 ~~its~~ the board's intent to modify or revoke and reissue the VWP general permit.

884 I. Notice of planned change. VWP general permit coverage may be modified subsequent to  
885 issuance in accordance with 9VAC25-660-80.

886 J. VWP general permit coverage termination for cause. VWP general permit coverage is  
887 subject to termination for cause by the ~~board~~ department after public notice and opportunity for a

888 hearing pursuant to ~~§ 62.1-44.15:02 of the Code of Virginia~~ in accordance with 9VAC25-210-180.  
 889 Reasons for termination for cause are as follows:

- 890 1. Noncompliance by the permittee with any provision of this chapter, any condition of the  
 891 VWP general permit, or any requirement in general permit coverage;
- 892 2. The permittee's failure in the application or during the process of granting VWP general  
 893 permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of  
 894 any relevant facts at any time;
- 895 3. The permittee's violation of a special or judicial order;
- 896 4. A determination by the ~~board~~ department that the authorized activity endangers human  
 897 health or the environment and can be regulated to acceptable levels by a modification to  
 898 the VWP general permit coverage or a termination;
- 899 5. A change in any condition that requires either a temporary or permanent reduction or  
 900 elimination of any activity controlled by the VWP general permit; or
- 901 6. A determination that the authorized activity has ceased and that the compensation for  
 902 unavoidable adverse impacts has been successfully completed.

903 K. The ~~board~~ department may terminate VWP general permit coverage without cause when  
 904 the permittee is no longer a legal entity due to death or dissolution or when a company is no  
 905 longer authorized to conduct business in the Commonwealth. The termination shall be effective  
 906 30 days after notice of the proposed termination is sent to the last known address of the permittee  
 907 or registered agent, unless the permittee objects within that time. If the permittee does object  
 908 during that period, the ~~board~~ department shall follow the applicable procedures for termination  
 909 under 9VAC25-210-180 and §§ 62.1-44.15:02 and 62.1-44.15:25 of the Code of Virginia.

910 L. VWP general permit coverage termination by consent. The permittee shall submit a request  
 911 for termination by consent within 30 days of completing or canceling all authorized activities  
 912 requiring notification under 9VAC25-660-50 A and all compensatory mitigation requirements.  
 913 When submitted for project completion, the request for termination by consent shall constitute a  
 914 notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this  
 915 termination of coverage on behalf of the ~~board~~ department. The permittee shall submit the  
 916 following information:

- 917 1. Name, mailing address, and telephone number;
- 918 2. Name and location of the activity;
- 919 3. The VWP general permit tracking number; and
- 920 4. One of the following certifications:
  - 921 a. For project completion:  
 922 "I certify under penalty of law that all activities and any required compensatory  
 923 mitigation authorized by the VWP general permit and general permit coverage have  
 924 been completed. I understand that by submitting this notice of termination I am no  
 925 longer authorized to perform activities in surface waters in accordance with the VWP  
 926 general permit and general permit coverage, and that performing activities in surface  
 927 waters is unlawful where the activity is not authorized by the VWP permit or coverage,  
 928 unless otherwise excluded from obtaining coverage. I also understand that the  
 929 submittal of this notice does not release me from liability for any violations of the VWP  
 930 general permit or coverage."
  - 931 b. For project cancellation:  
 932 "I certify under penalty of law that the activities and any required compensatory  
 933 mitigation authorized by the VWP general permit and general permit coverage will not  
 934 occur. I understand that by submitting this notice of termination I am no longer

935 authorized to perform activities in surface waters in accordance with the VWP general  
936 permit and general permit coverage, and that performing activities in surface waters is  
937 unlawful where the activity is not authorized by the VWP permit or coverage, unless  
938 otherwise excluded from obtaining coverage. I also understand that the submittal of  
939 this notice does not release me from liability for any violations of the VWP general  
940 permit or coverage, nor does it allow me to resume the authorized activities without  
941 reapplication and coverage."

942 c. For events beyond permittee control, the permittee shall provide a detailed  
943 explanation of the events, to be approved by the Department of Environmental Quality,  
944 and the following certification statement:

945 "I certify under penalty of law that the activities or the required compensatory mitigation  
946 authorized by the VWP general permit and general permit coverage have changed as  
947 the result of events beyond my control (see attached). I understand that by submitting  
948 this notice of termination I am no longer authorized to perform activities in surface  
949 waters in accordance with the VWP general permit and general permit coverage, and  
950 that performing activities in surface waters is unlawful where the activity is not  
951 authorized by the VWP permit or coverage, unless otherwise excluded from obtaining  
952 coverage. I also understand that the submittal of this notice does not release me from  
953 liability for any violations of the VWP general permit or coverage, nor does it allow me  
954 to resume the authorized activities without reapplication and coverage."

955 M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve  
956 the permittee from civil and criminal penalties for noncompliance.

957 N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be  
958 construed to preclude the institution of legal action or relieve the permittee from any  
959 responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of  
960 the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

961 O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement  
962 action that it would have been necessary to halt or reduce the activity for which VWP general  
963 permit coverage has been granted in order to maintain compliance with the conditions of the VWP  
964 general permit or coverage.

965 P. Duty to provide information.

966 1. The permittee shall furnish to the ~~board~~ department information that the ~~board~~  
967 department may request to determine whether cause exists for modifying, revoking, or  
968 terminating VWP permit coverage or to determine compliance with the VWP general  
969 permit or general permit coverage. The permittee shall also furnish to the ~~board~~  
970 department, upon request, copies of records required to be kept by the permittee.

971 2. Plans, maps, conceptual reports, and other relevant information shall be submitted as  
972 required by the ~~board~~ department prior to commencing construction.

973 Q. Monitoring and records requirements.

974 1. Monitoring of parameters, other than pollutants, shall be conducted according to  
975 approved analytical methods as specified in the VWP general permit. Analysis of  
976 pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing  
977 Test Procedures for the Analysis of Pollutants.

978 2. Samples and measurements taken for the purpose of monitoring shall be representative  
979 of the monitored activity.

980 3. The permittee shall retain records of all monitoring information, including all calibration  
981 and maintenance records and all original strip chart or electronic recordings for continuous  
982 monitoring instrumentation, copies of all reports required by the VWP general permit, and

983 records of all data used to complete the application for coverage under the VWP general  
984 permit, for a period of at least three years from the date of general permit expiration. This  
985 period may be extended by request of the ~~board~~ department at any time.

- 986 4. Records of monitoring information shall include, as appropriate:
- 987 a. The date, exact place, and time of sampling or measurements;
  - 988 b. The name of the individuals who performed the sampling or measurements;
  - 989 c. The date and time the analyses were performed;
  - 990 d. The name of the individuals who performed the analyses;
  - 991 e. The analytical techniques or methods supporting the information such as  
992 observations, readings, calculations, and bench data used;
  - 993 f. The results of such analyses; and
  - 994 g. Chain of custody documentation.

995 R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit,  
996 it shall be unlawful for the permittee to:

- 997 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or  
998 deleterious substances;
- 999 2. Excavate in a wetland;
- 1000 3. Otherwise alter the physical, chemical, or biological properties of state waters and make  
1001 them detrimental to the public health, to animal or aquatic life, or to the uses of such waters  
1002 for domestic or industrial consumption, for recreation, or for other uses; or
- 1003 4. On and after October 1, 2001, conduct the following activities in a wetland:
  - 1004 a. New activities to cause draining that significantly alter or degrade existing wetland  
1005 acreage or functions;
  - 1006 b. Filling or dumping;
  - 1007 c. Permanent flooding or impounding; or
  - 1008 d. New activities that cause significant alteration or degradation of existing wetland  
1009 acreage or functions.

1010 S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the  
1011 expiration date of the VWP general permit shall comply with the provisions in 9VAC25-660-27.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-670
<b>VAC Chapter title(s)</b>	Virginia Water Protection General Permits for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities
<b>Action title</b>	Final Exempt CH 670 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 14 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-670) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”; the repeal of the delegation of authority provisions, and the correction of Code references where necessary to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

### Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these statutory changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

### Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-670 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.



1 **Project 7177 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 670 changes in response to 2022 Board Bill**

4 **9VAC25-670-10. Definitions.**

5 The words and terms used in this chapter shall have the meanings defined in the State Water  
6 Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection Permit  
7 Program Regulation (9VAC25-210) unless a different meaning is required by the context or is  
8 indicated below.

9 "Bank protection" means measures employed to stabilize channel banks and combat existing  
10 erosion problems. Such measures may include the construction of riprap revetments, sills, rock  
11 vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe  
12 stabilization, anti-scouring devices, and submerged sills.

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

16 "Coverage" means authorization to conduct a project in accordance with a VWP general  
17 permit.

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

19 "Independent utility" means a test to determine what constitutes a single and complete project.  
20 A project is considered to have independent utility if it would be constructed absent the  
21 construction of other projects in the project area. Portions of a phased project that depend upon  
22 other phases of the project do not have independent utility. Portions of a phased project that would  
23 be constructed even if the other phases are not built can be considered as separate single and  
24 complete projects with independent public and economic utility.

25 "Notice of project completion" means a statement submitted by the permittee or authorized  
26 agent that the authorized activities and any required compensatory mitigation have been  
27 completed.

28 "Single and complete project" means the total project proposed or accomplished by a person,  
29 which also has independent utility, as defined in this section. For linear projects, the "single and  
30 complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate  
31 surface water (e.g., a single water body) and to multiple crossings of the same water body at  
32 separate and distinct locations. Phases of a project that have independent public and economic  
33 utility may each be considered single and complete.

34 "State program general permit (SPGP)" means a general permit issued by the Department of  
35 the Army in accordance with 33 USC § 1344 and 33 CFR 325.5(c)(3) that is founded on a state  
36 program. The SPGP is designed to avoid duplication between the federal and state programs.

37 "Up to 300 linear feet" means 300.00 linear feet or less, as measured along the center of the  
38 main channel of the stream segment.

39 "Up to 1,500 linear feet" means 1,500.00 linear feet or less, as measured along the center of  
40 the main channel of the stream segment.

41 "Up to one-tenth acre" means 0.10 acre (4,356 square feet) or less.

42 "Up to one acre" means 1.00 acre (43,560 square feet) or less.

43 "Utility line" means a pipe or pipeline for the transportation of a gaseous, liquid, liquefiable or  
44 slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose  
45 of electrical energy, telephone, and telegraph messages and radio and television communication.

46 The term utility line does not include activities which drain a surface water to convert it to an  
 47 upland, such as drainage tiles or french drains; however, it does apply to pipes conveying  
 48 drainage from another area.

49 **9VAC25-670-15. Statewide information requirements.**

50 The ~~board~~ department may request (i) such plans, specifications, and other pertinent  
 51 information as may be necessary to determine the effect of an applicant's discharge on the quality  
 52 of state waters or (ii) such other information as may be necessary to accomplish the purposes of  
 53 this chapter. Any owner, permittee, or person applying for a VWP permit or general permit  
 54 coverage shall provide the information requested by the ~~board~~ department.

55 **9VAC25-670-20. Purpose; ~~delegation of authority.~~**

56 ~~A.~~ The purpose of this chapter is to establish VWP General Permit Number WP2 under  
 57 9VAC25-210 to govern permanent and temporary impacts related to the construction and  
 58 maintenance of utility lines. Applications for coverage under this VWP general permit shall be  
 59 processed for approval, approval with conditions, or denial by the ~~board~~ department. Coverage,  
 60 coverage with conditions, or application denial by the ~~board~~ department shall constitute the VWP  
 61 general permit action and shall follow all provisions in the State Water Control Law (§ 62.1-44.2  
 62 et seq. of the Code of Virginia), except for the public comment and participation provisions, from  
 63 which each VWP general permit action is exempt.

64 ~~B. The director or his designee may perform any act of the board provided under this chapter,~~  
 65 ~~except as limited by § 62.1-44.14 of the Code of Virginia.~~

66 **9VAC25-670-25. Authorization for coverage under VWP general permit effective August 1,**  
 67 **2006.**

68 A. All complete applications or notifications received by the ~~board~~ department through 11:59  
 69 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation  
 70 in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or  
 71 if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a  
 72 completeness determination, the applicant shall reapply for coverage under the VWP general  
 73 permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any  
 74 required permit application fee. No refund of permit application fees shall be made.

75 B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall  
 76 remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP  
 77 authorization cover page, unless otherwise revoked or terminated or unless a notice of project  
 78 completion is received by the ~~board~~ department on or before that date. Any permittee that desires  
 79 to continue an authorized activity beyond the stated expiration date must reapply for coverage  
 80 under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and  
 81 conditions, or apply for a VWP individual permit, including payment of any required permit  
 82 application fee. This section shall only apply to permittees holding valid authorizations for  
 83 coverage granted under the VWP general permit effective August 1, 2006, through August 1,  
 84 2016.

85 **9VAC25-670-27. VWP general permit coverage; transition; continuation.**

86 A. All applications or notifications received on or after August 2, 2016, will be processed in  
 87 accordance with the VWP general permit regulation effective August 2, 2016.

88 B. The general permit in 9VAC25-670-100 is effective August 2, 2016, and expires August 1,  
 89 2026. Any coverage that is granted pursuant to 9VAC25-670-30 shall remain in full force and  
 90 effect until 11:59 p.m. on August 1, 2026, unless the general permit coverage is terminated or  
 91 revoked on or before this date. Where a permittee that has received general permit coverage  
 92 desires to continue or complete the authorized activities beyond August 1, 2026, the permittee  
 93 shall reapply for new general permit coverage or for a VWP individual permit, including payment

94 of any required permit application fee. Activities in surface waters requiring a permit shall not  
95 commence or continue until VWP general permit coverage is granted or a VWP individual permit  
96 is issued by the ~~board~~ department.

97 C. Application may be made at any time for a VWP individual permit in accordance with  
98 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until  
99 VWP general permit coverage is granted or a VWP individual permit is issued by the ~~board~~  
100 department.

101 **9VAC25-670-30. Authorization to impact surface waters.**

102 A. Any person granted coverage under the VWP general permit effective August 2, 2016, may  
103 permanently or temporarily impact up to one acre of nontidal wetlands or open water and up to  
104 1,500 linear feet of nontidal stream bed for facilities and activities of utilities and public service  
105 companies regulated by the Federal Energy Regulatory Commission or the State Corporation  
106 Commission and other utility line activities, provided that:

- 107 1. The applicant submits notification as required in 9VAC25-670-50 and 9VAC25-670-60.
- 108 2. The applicant remits any required permit application fee.
- 109 3. The applicant receives general permit coverage from the Department of Environmental  
110 Quality and complies with the limitations and other requirements of the VWP general  
111 permit; the general permit coverage letter; the Clean Water Act, as amended; and the  
112 State Water Control Law and attendant regulations.
- 113 4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-  
114 210 for the proposed project impacts. The applicant, at his discretion, may seek a VWP  
115 individual permit or coverage under another applicable VWP general permit in lieu of this  
116 VWP general permit.
- 117 5. Impacts, both temporary and permanent, result from a single and complete project,  
118 including all attendant features.
  - 119 a. Where a utility line has multiple crossings of surface waters (several single and  
120 complete projects) with more than minimal impacts, the ~~board~~ department may at its  
121 discretion require a VWP individual permit for the project.
  - 122 b. Where an access road segment (e.g., the shortest segment of a road with  
123 independent utility that is part of a larger project) has multiple crossings of surface  
124 waters (several single and complete projects), the ~~board~~ department may, at its  
125 discretion, require a VWP individual permit.
- 126 6. The stream impact criterion applies to all components of the project, including any  
127 structures and stream channel manipulations.
- 128 7. When functions of surface waters are permanently adversely affected, such as for  
129 conversion of forested to emergent wetlands in a permanently maintained utility right-of-  
130 way, compensation shall be required for impacts outside of a 20-foot wide permanently  
131 maintained corridor. Compensation shall not be required for impacts within the 20-foot  
132 wide portion of permanently maintained corridor. For example, with a 50-foot wide,  
133 permanently maintained corridor, compensation on each side of the 20-foot portion would  
134 be required for impacts that occur between the 20-foot and the 50-foot marks.
- 135 8. When required, compensation for unavoidable impacts is provided in accordance with  
136 § 62.1-44.15:23 of the Code of Virginia, 9VAC25-670-70, and 9VAC25-210-116.

137 B. Activities that may be granted coverage under this VWP general permit include the  
138 following:

139 1. The construction, maintenance, or repair of utility lines, including outfall structures and  
140 the excavation, backfill, or bedding for utility lines provided there is no change in  
141 preconstruction contours.

142 2. The construction, maintenance, or expansion of a substation facility or pumping station  
143 associated with a power line or utility line.

144 3. The construction or maintenance of foundations for overhead utility line towers, poles,  
145 or anchors, provided the foundations are the minimum size necessary and separate  
146 footings for each tower leg (rather than a single pad) are used where feasible.

147 4. The construction of access roads for the construction or maintenance of utility lines  
148 including overhead power lines and utility line substations, provided the activity in  
149 combination with any substation does not exceed the threshold limit of this VWP general  
150 permit.

151 C. The board waives the requirement for coverage under a VWP general permit for activities  
152 that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon  
153 request by the ~~board~~ department, any person claiming this waiver shall demonstrate to the  
154 satisfaction of the ~~board~~ department that he qualifies for the waiver.

155 D. Coverage under this VWP general permit does not relieve the permittee of the responsibility  
156 to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

157 E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of  
158 Engineers (USACE), and for which the ~~board~~ department has issued § 401 certification in  
159 accordance with 9VAC25-210-130 H as of August 2, 2016, shall constitute coverage under this  
160 VWP general permit unless (i) a state program general permit (SPGP) is required and granted for  
161 the activity or impact; or (ii) coverage under a VWP general permit is not allowed pursuant to  
162 subdivision D 2 of § 62.1-44.15:21 of the State Water Control Law.

163 F. When the ~~board~~ department determines on a case-by-case basis that concerns for water  
164 quality and the aquatic environment so indicate, the ~~board~~ department may require a VWP  
165 individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this  
166 VWP general permit.

167 **9VAC25-670-40. Exceptions to coverage.**

168 A. Coverage under this VWP general permit is not required if the activity is excluded from  
169 permitting in accordance with 9VAC25-210-60.

170 B. Coverage under this VWP general permit cannot be used in combination with coverage  
171 under other VWP general permits in order to impact greater than one acre of nontidal wetlands  
172 or open water or greater than 1,500 linear feet of nontidal stream bed. Granting coverage under  
173 this VWP general permit more than once for a single and complete project is prohibited, except  
174 when the cumulative impact to surface waters does not exceed the limits specified here.

175 C. The activity to impact surface waters shall not have been prohibited by state law or  
176 regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260).

177 D. The ~~board~~ department shall deny application for coverage under this VWP general permit  
178 to any applicant conducting activities that cause, may reasonably be expected to cause, or may  
179 be contributing to a violation of water quality standards, including discharges or discharge-related  
180 activities that are likely to significantly affect aquatic life, or for activities that together with other  
181 existing or proposed impacts to wetlands will cause or contribute to a significant impairment of  
182 state waters or fish and wildlife resources.

183 E. This VWP general permit does not authorize activities that cause more than minimal  
184 changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that  
185 cause more than minimal degradation of the water quality of a stream.

- 186 F. Coverage under this VWP general permit shall not be granted for:
- 187 1. Construction of a stormwater management facility in perennial streams or in waters
- 188 designated as oxygen-impaired or temperature-impaired (does not include wetlands).
- 189 2. Any water withdrawal activities.
- 190 3. The pouring of wet or uncured concrete in state waters, unless the area is contained
- 191 within a cofferdam or the work is performed in the dry or unless approved by the
- 192 Department of Environmental Quality.
- 193 4. Dredging or maintenance dredging.
- 194 5. Any activity in surface waters that will impact federal or state listed threatened or
- 195 endangered species or designated critical habitat, or result in a taking of threatened or
- 196 endangered species in accordance with the following:
- 197 a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation,
- 198 processing, sale, or offer for sale within the Commonwealth of any fish or wildlife
- 199 appearing on any list of threatened or endangered species published by the United
- 200 States Secretary of the Interior pursuant to the provisions of the federal Endangered
- 201 Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is
- 202 prohibited except as provided in § 29.1-568 of the Code of Virginia.
- 203 b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the
- 204 taking, transportation, processing, sale, or offer for sale within the Commonwealth of
- 205 any state listed endangered or threatened species is prohibited except as provided in
- 206 § 29.1-568 of the Code of Virginia.
- 207 6. Any activity in wetlands composed of 10% or more, singularly or in combination, based
- 208 upon either basal area or percent areal cover in the area of impact, in a vegetative stratum:
- 209 Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water
- 210 tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*).
- 211 7. Any activity in tidal waters.
- 212 8. Impacts to state waters for the construction of any natural gas transmission pipeline
- 213 that is greater than 36 inches inside diameter pursuant to a certificate of public
- 214 convenience and necessity under § 7c of the federal Natural Gas Act (15 USC § 717f(c)).

215 **9VAC25-670-50. Notification.**

216 A. Notification to the ~~board~~ department will be required prior to commencing construction, as

217 follows:

- 218 1. An application for coverage for proposed, permanent nontidal wetland or open water
- 219 impacts greater than one-tenth acre or for proposed permanent nontidal stream bed
- 220 impacts greater than 300 linear feet shall include all information pursuant to 9VAC25-670-
- 221 60 B. Compensatory mitigation may be required for all permanent impacts.
- 222 2. An application for the coverage for proposed, permanent nontidal wetland or open water
- 223 impacts up to one-tenth acre or for proposed, permanent nontidal stream bed impacts up
- 224 to 300 linear feet shall be submitted in accordance with either subdivision 2 a or 2 b of this
- 225 subsection:
- 226 a. For any proposed project in wetlands, open water, streams, or compensatory
- 227 mitigation sites that are under a deed restriction, conservation easement, declaration
- 228 of restrictive covenant, or other land use protective instrument (hereafter "protected
- 229 areas"), when such restriction, easement, covenant, or instrument is the result of a
- 230 federal or state permit action and is specific to activities in wetlands and compensatory
- 231 mitigation sites, the application shall include all of the information required by 9VAC25-
- 232 670-60 B. Compensatory mitigation may be required for all permanent impacts.

233 b. For all other projects, the application shall include the information required by  
234 subdivisions 1 through 7, 10, 11, 14, and 15 of 9VAC25-670-60 B and documentation  
235 that verifies the quantity and type of impacts. Compensatory mitigation may be  
236 required for all permanent impacts once the notification limits of one-tenth acre  
237 wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required,  
238 the application shall include the information in 9VAC25-670-60 B 12.

239 B. The Department of Environmental Quality-approved application forms shall serve as an  
240 application for a VWP permit or VWP general permit coverage.

241 C. The ~~board~~ department will determine whether the proposed activity requires coordination  
242 with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation,  
243 the Virginia Department of Agriculture and Consumer Services and the Virginia Department of  
244 Wildlife Resources regarding the presence of federal or state listed threatened and endangered  
245 species or designated critical habitat. Based upon consultation with these agencies, the ~~board~~  
246 department may deny application for coverage under this general permit. The applicant may also  
247 consult with these agencies prior to submitting an application. Species or habitat information that  
248 the applicant provides will assist the Department of Environmental Quality in reviewing and  
249 processing the application.

#### 250 **9VAC25-670-60. Application.**

251 A. The applicant shall file a complete application in accordance with 9VAC25-670-50 and this  
252 section for coverage under this VWP general permit for impacts to surface waters from utility  
253 activities.

254 B. A complete application for VWP general permit coverage, at a minimum, consists of the  
255 following information, if applicable to the project:

- 256 1. The applicant's legal name, mailing address, telephone number, and if applicable,  
257 electronic mail address and fax number.
- 258 2. If different from the applicant, legal name, mailing address, telephone number, and if  
259 applicable, electronic mail address and fax number of property owner.
- 260 3. If applicable, the authorized agent's name, mailing address, telephone number, and if  
261 applicable, fax number and electronic mail address.
- 262 4. The existing VWP general permit tracking number, if applicable.
- 263 5. Project name and proposed project schedule.
- 264 6. The following information for the project site location and any related permittee-  
265 responsible compensatory mitigation site:
  - 266 a. The physical street address, nearest street, or nearest route number; city or county;  
267 zip code; and if applicable, parcel number of the site or sites.
  - 268 b. Name of the impacted water body or water bodies, or receiving waters, as  
269 applicable, at the site or sites.
  - 270 c. The latitude and longitude to the nearest second at the center of the site or sites.
  - 271 d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the  
272 National Watershed Boundary Dataset, for the site or sites.
  - 273 e. A detailed map depicting the location of the site or sites, including the project  
274 boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S.  
275 Geologic Survey topographic quadrangle map) should be of sufficient detail to easily  
276 locate the site or sites for inspection.
- 277 7. A narrative description of the project, including project purpose and need.

- 278 8. Plan-view drawing or drawings of the project site sufficient to assess the project,  
279 including at a minimum the following:
- 280 a. North arrow, graphic scale, and existing and proposed topographic or bathymetric  
281 contours.
  - 282 b. Limits of proposed impacts to surface waters.
  - 283 c. Location of all existing and proposed structures.
  - 284 d. All delineated wetlands and all jurisdictional surface waters on the site, including the  
285 Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface  
286 waters and waterway name, if designated; ebb and flood or direction of flow; and  
287 ordinary high water mark in nontidal areas.
  - 288 e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified  
289 by the applicant, and if available, the limits as approved by the locality in which the  
290 project site is located, unless the proposed use is exempt from the Chesapeake Bay  
291 reservation Area Designation and Management Regulations (9VAC25-830).
  - 292 f. The limits of any areas that are under a deed restriction, conservation easement,  
293 restrictive covenant, or other land use protective instrument (i.e., protected areas).
- 294 9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings  
295 of each proposed impact area shall include at a minimum a graphic scale, existing  
296 structures, existing and proposed elevations, limits of surface water areas, ebb and flood  
297 or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits,  
298 and location of all existing and proposed structures. Profile drawing or drawings with this  
299 information may be required on a case-by-case basis to demonstrate minimization of  
300 impacts. Any application that proposes piping or culverting stream flows shall provide a  
301 longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide  
302 spot elevations of the stream thalweg at the beginning and end of the pipe or culvert,  
303 extending to a minimum of 10 feet beyond the limits of proposed impact.
- 304 10. A narrative description of all impacts proposed to surface waters, including the type of  
305 activity to be conducted in surface waters and any physical alteration to surface waters.  
306 Surface water impacts shall be identified as follows:
- 307 a. Wetland impacts identified according to their Cowardin classification (i.e., emergent,  
308 scrub-shrub, or forested); and for each classification, the individual impacts quantified  
309 in square feet to the nearest whole number, cumulatively summed in square feet, and  
310 then the sum converted to acres and rounded to two decimal places using commonly  
311 accepted arithmetic principles of rounding.
  - 312 b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole  
313 number and by average width in feet to the nearest whole number; (ii) quantified in  
314 square feet to the nearest whole number; and (iii) when compensatory mitigation is  
315 required, the impacts identified according to the assessed type using the Unified  
316 Stream Methodology.
  - 317 c. Open water impacts identified according to their Cowardin classification, and for  
318 each type, the individual impacts quantified in square feet to the nearest whole  
319 number, cumulatively summed in square feet, and then the sum converted to acres  
320 and rounded to two decimal places using commonly accepted arithmetic principles of  
321 rounding.
  - 322 d. A copy of the approved jurisdictional determination, when available, or when  
323 unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps  
324 of Engineers (USACE), U.S. Department of Agriculture Natural Resources  
325 Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE,

326 NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface  
327 waters, including wetlands data sheets if applicable.

328 e. A delineation map that (i) depicts the geographic area or areas of all surface water  
329 boundaries delineated in accordance with 9VAC25-210-45 and confirmed in  
330 accordance with the jurisdictional determination process; (ii) identifies such areas in  
331 accordance with subdivisions 10 a, 10 b, and 10 c of this subsection; and (iii) quantifies  
332 and identifies any other surface waters according to their Cowardin classification (i.e.,  
333 emergent, scrub-shrub, or forested) or similar terminology.

334 11. An alternatives analysis for the proposed project detailing the specific on-site  
335 measures taken during project design and development to first avoid and then minimize  
336 impacts to surface waters to the maximum extent practicable in accordance with the  
337 Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part  
338 230. Avoidance and minimization includes, but is not limited to, the specific on-site  
339 measures taken to reduce the size, scope, configuration, or density of the proposed  
340 project, including review of alternative sites where required for the project, which would  
341 avoid or result in less adverse impact to surface waters, and documentation demonstrating  
342 the reason the applicant determined less damaging alternatives are not practicable. The  
343 analysis shall demonstrate to the satisfaction of the ~~board~~ department that avoidance and  
344 minimization opportunities have been identified and measures have been applied to the  
345 proposed activity such that the proposed activity in terms of impacts to state waters and  
346 fish and wildlife resources is the least environmentally damaging practicable alternative.

347 12. A compensatory mitigation plan to achieve no net loss of wetland acreage and  
348 functions or stream functions and water quality benefits.

349 a. If permittee-responsible compensation is proposed for wetland impacts, a  
350 conceptual wetland compensatory mitigation plan must be submitted in order for an  
351 application to be deemed complete and shall include at a minimum (i) the goals and  
352 objectives in terms of replacement of wetland acreage and functions; (ii) a detailed  
353 location map including latitude and longitude to the nearest second and the fourth  
354 order subbasin, as defined by the hydrologic unit boundaries of the National  
355 Watershed Boundary Dataset, at the center of the site; (iii) a description of the  
356 surrounding land use; (iv) a hydrologic analysis including a draft water budget for  
357 nontidal areas based on expected monthly inputs and outputs that will project water  
358 level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation  
359 data, if available, or the proposed location of groundwater monitoring wells to collect  
360 these data; (vi) wetland delineation confirmation, data sheets, and maps for existing  
361 surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii)  
362 a conceptual planting scheme including suggested plant species and zonation of each  
363 vegetation type proposed; (ix) a description of existing soils including general  
364 information on both topsoil and subsoil conditions, permeability, and the need for soil  
365 amendments; (x) a draft design of any water control structures; (xi) inclusion of buffer  
366 areas; (xii) a description of any structures and features necessary for the success of  
367 the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv)  
368 measures for the control of undesirable species.

369 b. If permittee-responsible compensation is proposed for stream impacts, a conceptual  
370 stream compensatory mitigation plan must be submitted in order for an application to  
371 be deemed complete and shall include at a minimum (i) the goals and objectives in  
372 terms of water quality benefits and replacement of stream functions; (ii) a detailed  
373 location map including the latitude and longitude to the nearest second and the fourth  
374 order subbasin, as defined by the hydrologic unit boundaries of the National  
375 Watershed Boundary Dataset, at the center of the site; (iii) a description of the



376 surrounding land use; (iv) the proposed stream segment restoration locations including  
377 plan view and cross-sectional drawings; (v) the stream deficiencies that need to be  
378 addressed; (vi) data obtained from a DEQ-approved, stream impact assessment  
379 methodology such as the Unified Stream Methodology; (vii) the proposed restoration  
380 measures to be employed including channel measurements, proposed design flows,  
381 types of instream structures, and conceptual planting scheme; (viii) reference stream  
382 data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities;  
383 and (xi) measures for the control of undesirable species.

384 c. For any permittee-responsible compensatory mitigation, the conceptual  
385 compensatory mitigation plan shall also include a draft of the intended protective  
386 mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but  
387 not limited to, a conservation easement held by a third party in accordance with the  
388 Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or  
389 the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly  
390 recorded declaration of restrictive covenants, or other protective instrument. The draft  
391 intended protective mechanism shall contain the information in subdivisions c (1), c  
392 (2), and c (3) of this subdivision 12 or in lieu thereof shall describe the intended  
393 protective mechanism or mechanisms that contains the information required below:

394 (1) A provision for access to the site;

395 (2) The following minimum restrictions: no ditching, land clearing, or discharge of  
396 dredge or fill material, and no activity in the area designated as compensatory  
397 mitigation area with the exception of maintenance; corrective action measures; or  
398 DEQ-approved activities described in the approved final compensatory mitigation plan  
399 or long-term management plan; and

400 (3) A long-term management plan that identifies a long-term steward and adequate  
401 financial assurances for long-term management in accordance with the current  
402 standard for mitigation banks and in-lieu fee program sites, except that financial  
403 assurances will not be necessary for permittee-responsible compensation provided by  
404 government agencies on government property. If approved by DEQ, permittee-  
405 responsible compensation on government property and long-term protection may be  
406 provided through federal facility management plans, integrated natural resources  
407 management plans, or other alternate management plans submitted by a government  
408 agency or public authority.

409 d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-  
410 lieu fee program credits shall include the number and type of credits proposed to be  
411 purchased, documentation from the approved mitigation bank or in-lieu fee program  
412 sponsor of the availability of credits at the time of application, and all information  
413 required by § 62.1-44.15:23 of the Code of Virginia.

414 13. Permit application fee. The applicant will be notified by the ~~board~~ department as to the  
415 appropriate fee for the project in accordance with 9VAC25-20.

416 14. A written description and a graphical depiction identifying all upland areas including  
417 buffers, wetlands, open water, other surface waters, and compensatory mitigation areas  
418 located within the proposed project boundary or permittee-responsible compensatory  
419 mitigation areas that are under a deed restriction, conservation easement, restrictive  
420 covenant, or other land use protective instrument (i.e., protected areas). Such description  
421 and a graphical depiction shall include the nature of the prohibited activities within the  
422 protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as  
423 field-verified by the applicant, and if available, the limits as approved by the locality in  
424 which the project site is located, unless the proposed use is exempt from the Chesapeake

425 Bay Preservation Area Designation and Management Regulations (9VAC25-830), as  
426 additional state or local requirements may apply if the project is located within an RPA.

427 15. Signature page that has been signed, dated, and certified by the applicant in  
428 accordance with 9VAC25-210-100. If the applicant is a business or other organization, the  
429 signature must be made by an individual with the authority to bind the business or  
430 organization, and the title of the signatory must be provided. The application signature  
431 page, either on the copy submitted to the Virginia Marine Resources Commission or to  
432 DEQ, must have an original signature. Electronic submittals containing the original  
433 signature page, such as that contained in a scanned document file, are acceptable.

434 C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ.  
435 When required, the method selected for the analysis shall assess water quality or habitat metrics  
436 and shall be coordinated with DEQ in advance of conducting the analysis.

437 1. No analysis shall be required when:

438 a. Wetland impacts per each single and complete project total 1.00 acre or less; or

439 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
440 in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-  
441 shrub, and 1:1 for emergent, or higher.

442 2. Analysis shall be required when wetland impacts per each single and complete project  
443 total 1.01 acres or more and when any of the following applies:

444 a. The proposed compensatory mitigation consists of permittee-responsible  
445 compensation, including water quality enhancements as replacement for wetlands; or

446 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
447 in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest,  
448 1.5:1 for scrub-shrub, and 1:1 for emergent.

449 D. Upon receipt of an application by the appropriate DEQ office, the ~~board~~ department has 15  
450 days to review the application and either determine the information requested in subsection B of  
451 this section is complete or inform the applicant that additional information is required to make the  
452 application complete. Coverage under the VWP general permit shall be approved or approved  
453 with conditions, or the application shall be denied, within 45 days of receipt of a complete  
454 application. If the ~~board~~ department fails to act within 45 days on a complete application, coverage  
455 under the VWP general permit shall be deemed granted.

456 1. In evaluating the application, the ~~board~~ department shall make an assessment of the  
457 impacts associated with the project in combination with other existing or proposed  
458 impacts. Application for coverage under the VWP general permit shall be denied if the  
459 cumulative impacts will cause or contribute to a significant impairment of surface waters  
460 or fish and wildlife resources.

461 2. The ~~board~~ department may place additional requirements on a project in order to grant  
462 coverage under this VWP general permit. However, the requirements must be consistent  
463 with this chapter.

464 E. Incomplete application.

465 1. Where an application for general permit coverage is not accepted as complete by the  
466 ~~board~~ department within 15 days of receipt, the ~~board~~ department shall require the  
467 submission of additional information from the applicant and may suspend processing of  
468 any application until such time as the applicant has supplied the requested information  
469 and the application is complete. Where the applicant becomes aware that he omitted one  
470 or more relevant facts from an application, or submitted incorrect information in an  
471 application or any report to the ~~board~~ department, the applicant shall immediately submit  
472 such facts or the correct information. A revised application with new information shall be

473 deemed a new application for the purposes of review but shall not require an additional  
474 permit application fee.

475 2. An incomplete application for general permit coverage may be administratively  
476 withdrawn from processing by the ~~board~~ department for failure to provide the required  
477 information after 60 days from the date of the latest written information request made by  
478 the ~~board~~ department. The ~~board~~ department shall provide (i) notice to the applicant and  
479 (ii) an opportunity for an informal fact-finding proceeding when administratively  
480 withdrawing an incomplete application. Resubmittal of an application for the same or  
481 similar project, after such time that the original permit application was administratively  
482 withdrawn, shall require submittal of an additional permit application fee.

483 3. An applicant may request a suspension of application review by the ~~board~~ department,  
484 but requesting a suspension shall not preclude the ~~board~~ department from administratively  
485 withdrawing an incomplete application.

486 **9VAC25-670-80. Notice of planned changes; modifications to coverage.**

487 A. The permittee shall notify the ~~board~~ department in advance of a planned change, and an  
488 application or request for modification of an authorization for coverage shall be reviewed  
489 according to all provisions of this chapter. Coverage shall not be modified if (i) the cumulative total  
490 of permanent and temporary impacts for a single and complete project exceeds one acre of  
491 nontidal wetlands or open water or exceeds 1,500 linear feet of nontidal stream bed or (ii) the  
492 criteria in subsection B of this section are not met. The applicant may submit a new permit  
493 application for consideration under a VWP individual permit.

494 B. VWP general permit coverage may be modified under the following circumstances:

495 1. Additional impacts to surface waters are necessary, provided that:

496 a. The additional impacts are proposed prior to impacting those additional areas.

497 b. The proposed additional impacts are located within the project boundary as depicted  
498 in the application for coverage or are located in areas of directly-related off-site work,  
499 unless otherwise prohibited by this chapter.

500 c. The permittee has provided sufficient documentation that the ~~board~~ department may  
501 reasonably determine that the additional impacts will not impact federal or state listed  
502 threatened or endangered species or designated critical habitat, or result in a taking  
503 of threatened or endangered species. The ~~board~~ department recommends that the  
504 permittee verify that the project will not impact any proposed threatened or endangered  
505 species or proposed critical habitat.

506 d. The cumulative, additional permanent wetland or open water impacts for one or  
507 more notices of planned change do not exceed 0.25 acre.

508 e. The cumulative, additional permanent stream impacts for one or more notices of  
509 planned change do not exceed 100 linear feet.

510 f. Documentation is provided demonstrating that the proposed surface water impacts  
511 have been avoided to the maximum extent practicable in accordance with the  
512 informational requirements of 9VAC25-670-60 B 11.

513 g. Compensatory mitigation for the proposed impacts, if required, meets the  
514 requirements of § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and  
515 9VAC25-670-70. Prior to a planned change approval, the Department of  
516 Environmental Quality may require submission of a compensatory mitigation plan for  
517 the additional impacts.

518 h. Where such additional impacts are temporary, and prior to initiating the impacts, the  
519 permittee provides a written statement to the ~~board~~ department that the area to be

520 temporarily impacted will be restored to its preconstruction elevations and contours  
 521 with topsoil from the impact area where practicable, such that the previous acreage  
 522 and functions are restored in accordance with Part I A 3 and B 11 of 9VAC25-670-  
 523 100. The additional temporary impacts shall not cause the cumulative total impacts to  
 524 exceed the general permit threshold for use. The proposed temporary impacts shall  
 525 be deemed approved if DEQ does not respond within 10 days of receipt of the request  
 526 for authorization to temporarily impact additional surface waters.

527 i. The additional proposed impacts do not change the category of the project, based  
 528 on the original impact amounts as specified in 9VAC25-670-50 A 2. However, the  
 529 applicant may submit a new permit application for the total impacts to be considered  
 530 under this VWP general permit, another VWP general permit, or a VWP individual  
 531 permit.

532 2. A reduction in wetland or stream impacts. Compensatory mitigation requirements may  
 533 be modified in relation to the adjusted impacts, provided that the adjusted compensatory  
 534 mitigation meets the initial compensatory mitigation goals. DEQ shall not be responsible  
 535 for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit  
 536 purchases.

537 3. A change in project plans or use that does not result in a change to authorized project  
 538 impacts other than those allowed in subdivisions 1 and 2 of this subsection.

539 4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another  
 540 DEQ-approved mitigation bank or in-lieu fee program or substitute all or a portion of the  
 541 prior authorized permittee-responsible compensation with a purchase of mitigation credits  
 542 in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 C from  
 543 a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed  
 544 to be purchased shall be sufficient to meet the compensatory mitigation requirement for  
 545 which the compensatory mitigation is proposed to replace.

546 5. Correct typographical errors.

547 **9VAC25-670-90. Termination of coverage.**

548 A. The permittee shall submit a request for termination by consent within 30 days of  
 549 completing or canceling all authorized activities requiring notification under 9VAC25-670-50 A  
 550 and all compensatory mitigation requirements. When submitted for project completion, the  
 551 request for termination by consent shall constitute a notice of project completion in accordance  
 552 with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the  
 553 ~~board~~ department. The permittee shall submit the following information:

554 1. Name, mailing address, and telephone number of the permittee;

555 2. Name and location of the activity;

556 3. The VWP general permit tracking number; and

557 4. One of the following certifications:

558 a. For project completion:

559 "I certify under penalty of law that all activities and any required compensatory  
 560 mitigation authorized by the VWP general permit and general permit coverage have  
 561 been completed. I understand that by submitting this notice of termination I am no  
 562 longer authorized to perform activities in surface waters in accordance with the VWP  
 563 general permit and general permit coverage, and that performing activities in surface  
 564 waters is unlawful where the activity is not authorized by the VWP permit or coverage,  
 565 unless otherwise excluded from obtaining coverage. I also understand that the  
 566 submittal of this notice does not release me from liability for any violations of the VWP  
 567 general permit or coverage."

568 b. For project cancellation:

569 "I certify under penalty of law that the activities and any required compensatory  
570 mitigation authorized by the VWP general permit and general permit coverage will not  
571 occur. I understand that by submitting this notice of termination I am no longer  
572 authorized to perform activities in surface waters in accordance with the VWP general  
573 permit and general permit coverage, and that performing activities in surface waters is  
574 unlawful where the activity is not authorized by the VWP permit or coverage, unless  
575 otherwise excluded from obtaining coverage. I also understand that the submittal of  
576 this notice does not release me from liability for any violations of the VWP general  
577 permit or coverage, nor does it allow me to resume the authorized activities without  
578 reapplication and coverage."

579 c. For events beyond permittee control, the permittee shall provide a detailed  
580 explanation of the events, to be approved by the Department of Environmental Quality,  
581 and the following certification statement:

582 "I certify under penalty of law that the activities or the required compensatory mitigation  
583 authorized by the VWP general permit and general permit coverage have changed as  
584 the result of events beyond my control (see attached). I understand that by submitting  
585 this notice of termination I am no longer authorized to perform activities in surface  
586 waters in accordance with the VWP general permit and general permit coverage, and  
587 that performing activities in surface waters is unlawful where the activity is not  
588 authorized by the VWP permit or coverage, unless otherwise excluded from obtaining  
589 coverage. I also understand that the submittal of this notice does not release me from  
590 liability for any violations of the VWP general permit or coverage, nor does it allow me  
591 to resume the authorized activities without reapplication and coverage."

592 B. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-  
593 210-180 F and ~~§ 62.1-44.15:02 of the Code of Virginia~~, or without cause in accordance with  
594 9VAC25-210-180 G and ~~§ 62.1-44.15:02~~.

595 **9VAC25-670-100. VWP general permit.**

596 VWP GENERAL PERMIT NO. WP2 FOR FACILITIES AND ACTIVITIES OF UTILITIES  
597 AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY  
598 REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND  
599 OTHER UTILITY LINE ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION  
600 PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

601 Effective date: August 2, 2016

602 Expiration date: August 1, 2026

603 In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State  
604 Water Control Law and regulations adopted pursuant thereto, the board has determined that there  
605 is a reasonable assurance that this VWP general permit, if complied with, will protect instream  
606 beneficial uses, will not violate applicable water quality standards, and will not cause or contribute  
607 to a significant impairment of surface waters or fish and wildlife resources. In issuing this VWP  
608 general permit, the board has not taken into consideration the structural stability of any proposed  
609 activities.

610 The permanent or temporary impact of up to one acre of nontidal wetlands or open water and  
611 up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general  
612 permit set forth herein; any requirements in coverage granted under this VWP general permit; the

613 Clean Water Act, as amended; and the State Water Control Law and regulations adopted  
614 pursuant to it.

615 Part I. Special Conditions.

616 A. Authorized activities.

617 1. The activities authorized by this chapter shall not cause more than the permanent or  
618 temporary impacts of up to one acre of nontidal wetlands or open water and up to 1,500  
619 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the  
620 ~~board~~ department in the coverage letter, if any, shall be enforceable conditions of this  
621 permit.

622 2. Any changes to the authorized permanent impacts to surface waters shall require a  
623 notice of planned change in accordance with 9VAC25-670-80. An application or request  
624 for modification to coverage or another VWP permit application may be required.

625 3. Any changes to the authorized temporary impacts to surface waters shall require written  
626 notification to and approval from the Department of Environmental Quality in accordance  
627 with 9VAC25-670-80 prior to initiating the impacts and restoration to preexisting conditions  
628 in accordance with the conditions of this permit.

629 4. Modification to compensation requirements may be approved at the request of the  
630 permittee when a decrease in the amount of authorized surface waters impacts occurs,  
631 provided that the adjusted compensation meets the initial compensation goals.

632 B. Overall conditions.

633 1. The activities authorized by this VWP general permit shall be executed in a manner so  
634 as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of  
635 the Code of Virginia.

636 2. No activity may substantially disrupt the movement of aquatic life indigenous to the  
637 water body, including those species which normally migrate through the area, unless the  
638 primary purpose of the activity is to impound water. Pipes and culverts placed in streams  
639 must be installed to maintain low flow conditions and shall be countersunk at both inlet  
640 and outlet ends of the pipe or culvert, unless otherwise specifically approved by the  
641 Department of Environmental Quality on a case-by-case basis, and as follows: The  
642 requirement to countersink does not apply to extensions or maintenance of existing pipes  
643 and culverts that are not countersunk, floodplain pipes and culverts being placed above  
644 ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts  
645 required to be placed on slopes 5.0% or greater. Bedrock encountered during construction  
646 must be identified and approved in advance of a design change where the countersunk  
647 condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be  
648 countersunk three inches below the natural stream bed elevations, and pipes and culverts  
649 greater than 24 inches shall be countersunk at least six inches below the natural stream  
650 bed elevations. Hydraulic capacity shall be determined based on the reduced capacity  
651 due to the countersunk position. In all stream crossings appropriate measures shall be  
652 implemented to minimize any disruption of aquatic life movement.

653 3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters,  
654 unless the area is contained within a cofferdam and the work is performed in the dry or  
655 unless otherwise approved by the Department of Environmental Quality. Excess or waste  
656 concrete shall not be disposed of in flowing surface waters or washed into flowing surface  
657 waters.

- 658 4. All fill material shall be clean and free of contaminants in toxic concentrations or  
659 amounts in accordance with all applicable laws and regulations.
- 660 5. Erosion and sedimentation controls shall be designed in accordance with the Virginia  
661 Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be  
662 placed prior to clearing and grading and maintained in good working order to minimize  
663 impacts to state waters. These controls shall remain in place until the area is stabilized  
664 and shall then be removed.
- 665 6. Exposed slopes and streambanks shall be stabilized immediately upon completion of  
666 work in each permitted area. All denuded areas shall be properly stabilized in accordance  
667 with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
- 668 7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways)  
669 and demolition activities associated with the project shall be accomplished in such a  
670 manner that minimizes construction or waste materials from entering surface waters to the  
671 maximum extent practicable, unless authorized by this VWP general permit.
- 672 8. No machinery may enter flowing waters, unless authorized by this VWP general permit  
673 or approved prior to entry by the Department of Environmental Quality.
- 674 9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats,  
675 geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum  
676 extent practicable. Equipment and materials shall be removed immediately upon  
677 completion of work.
- 678 10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of  
679 authorized activities and within the project or right-of-way limits shall be clearly flagged or  
680 marked for the life of the construction activity at that location to preclude any unauthorized  
681 disturbances to these surface waters and compensatory mitigation areas during  
682 construction. The permittee shall notify contractors that no activities are to occur in these  
683 marked surface waters.
- 684 11. Temporary disturbances to surface waters during construction shall be avoided and  
685 minimized to the maximum extent practicable. All temporarily disturbed wetland areas  
686 shall be restored to preexisting conditions within 30 days of completing work at each  
687 respective temporary impact area, which shall include reestablishing preconstruction  
688 elevations and contours with topsoil from the impact area where practicable and planting  
689 or seeding with appropriate wetland vegetation according to cover type (i.e., emergent,  
690 scrub-shrub, or forested). The permittee shall take all appropriate measures to promote  
691 and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation  
692 through the second year post-disturbance. All temporarily impacted streams and  
693 streambanks shall be restored to their preconstruction elevations and contours with topsoil  
694 from the impact area where practicable within 30 days following the construction at that  
695 stream segment. Streambanks shall be seeded or planted with the same vegetation cover  
696 type originally present, including any necessary, supplemental erosion control grasses.  
697 Invasive species identified on the Department of Conservation and Recreation's Virginia  
698 Invasive Plant Species List shall not be used to the maximum extent practicable or without  
699 prior approval from the Department of Environmental Quality.
- 700 12. Materials (including fill, construction debris, and excavated and woody materials)  
701 temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately  
702 stabilized to prevent entry into state waters, managed such that leachate does not enter  
703 state waters, and completely removed within 30 days following completion of that  
704 construction activity. Disturbed areas shall be returned to preconstruction elevations and  
705 contours with topsoil from the impact areas where practicable; restored within 30 days  
706 following removal of the stockpile; and restored with the same vegetation cover type

707 originally present, including any necessary, supplemental erosion control grasses.  
708 Invasive species identified on the Department of Conservation and Recreation's Virginia  
709 Invasive Plant Species List shall not be used to the maximum extent practicable or without  
710 prior approval from the Department of Environmental Quality.

711 13. Continuous flow of perennial springs shall be maintained by the installation of spring  
712 boxes, french drains, or other similar structures.

713 14. The permittee shall employ measures to prevent spills of fuels or lubricants into state  
714 waters.

715 15. The permittee shall conduct his activities in accordance with the time-of-year  
716 restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia  
717 Marine Resources Commission, or other interested and affected agencies, as contained,  
718 when applicable, in a Department of Environmental Quality VWP general permit coverage  
719 letter, and shall ensure that all contractors are aware of the time-of-year restrictions  
720 imposed.

721 16. Water quality standards shall not be violated as a result of the construction activities.

722 17. If stream channelization or relocation is required, all work in surface waters shall be  
723 done in the dry, unless otherwise authorized by the Department of Environmental Quality,  
724 and all flows shall be diverted around the channelization or relocation area until the new  
725 channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and  
726 outlet ends of the new channel during excavation. Once the new channel has been  
727 stabilized, flow shall be routed into the new channel by first removing the downstream plug  
728 and then the upstream plug. The rerouted stream flow must be fully established before  
729 construction activities in the old stream channel can begin.

#### 730 C. Road crossings.

731 1. Access roads and associated bridges, pipes, and culverts shall be constructed to  
732 minimize the adverse effects on surface waters to the maximum extent practicable.  
733 Access roads constructed above preconstruction elevations and contours in surface  
734 waters must be bridged, piped, or culverted to maintain surface flows.

735 2. Installation of road crossings shall occur in the dry via the implementation of cofferdams,  
736 sheetpiling, stream diversions, or similar structures.

#### 737 D. Utility lines.

738 1. All utility line work in surface waters shall be performed in a manner that minimizes  
739 disturbance, and the area must be returned to its preconstruction elevations and contours  
740 with topsoil from the impact area where practicable and restored within 30 days of  
741 completing work in the area, unless otherwise authorized by the Department of  
742 Environmental Quality. Restoration shall be the seeding or planting of the same vegetation  
743 cover type originally present, including any necessary, supplemental erosion control  
744 grasses. Invasive species identified on the Department of Conservation and Recreation's  
745 Virginia Invasive Plant Species List shall not be used to the maximum extent practicable  
746 or without prior approval from the Department of Environmental Quality.

747 2. Material resulting from trench excavation may be temporarily sidecast into wetlands,  
748 not to exceed 90 days, provided the material is not placed in a manner such that it is  
749 dispersed by currents or other forces.

750 3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g.,  
751 backfilling with extensive gravel layers creating a trench drain effect.). For example, utility  
752 lines may be backfilled with clay blocks to ensure that the trench does not drain surface  
753 waters through which the utility line is installed.

#### 754 E. Stream modification and stream bank protection.



- 755 1. Riprap bank stabilization shall be of an appropriate size and design in accordance with  
756 the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
- 757 2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion  
758 and Sediment Control Handbook, Third Edition, 1992.
- 759 3. For stream bank protection activities, the structure and backfill shall be placed as close  
760 to the stream bank as practicable. No material shall be placed in excess of the minimum  
761 necessary for erosion protection.
- 762 4. All stream bank protection structures shall be located to eliminate or minimize impacts  
763 to vegetated wetlands to the maximum extent practicable.
- 764 5. Asphalt and materials containing asphalt or other toxic substances shall not be used in  
765 the construction of submerged sills or breakwaters.
- 766 6. Redistribution of existing stream substrate for the purpose of erosion control is  
767 prohibited.
- 768 7. No material removed from the stream bottom shall be disposed of in surface waters,  
769 unless otherwise authorized by this VWP general permit.

770 Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

771 A. Minimum compensation requirements.

- 772 1. The permittee shall provide any required compensation for impacts in accordance with  
773 the conditions in this VWP general permit, the coverage letter, and the chapter  
774 promulgating the general permit. For all compensation that requires a protective  
775 mechanism, including preservation of surface waters or buffers, the permittee shall record  
776 the approved protective mechanism in the chain of title to the property, or an equivalent  
777 instrument for government-owned lands, and proof of recordation shall be submitted to  
778 the Department of Environmental Quality prior to commencing impacts in surface waters.
- 779 2. Compensation options that may be considered under this VWP general permit shall  
780 meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and  
781 9VAC25-670-70.
- 782 3. The permittee-responsible compensation site or sites depicted in the conceptual  
783 compensation plan submitted with the application shall constitute the compensation site.  
784 A site change may require a modification to coverage.
- 785 4. For compensation involving the purchase of mitigation bank credits or the purchase of  
786 in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas  
787 until documentation of the mitigation bank credit purchase or of the in-lieu fee program  
788 credit purchase has been submitted to and received by the Department of Environmental  
789 Quality.
- 790 5. The final compensation plan shall be submitted to and approved by the ~~board~~  
791 department prior to a construction activity in permitted impact areas. The ~~board~~  
792 department shall review and provide written comments on the final plan within 30 days of  
793 receipt or it shall be deemed approved. The final plan as approved by the ~~board~~  
794 department shall be an enforceable requirement of any coverage under this VWP general  
795 permit. Deviations from the approved final plan shall be submitted and approved in  
796 advance by the ~~board~~ department.
- 797 a. The final permittee-responsible wetlands compensation plan shall include:
- 798 (1) The complete information on all components of the conceptual compensation plan.

799 (2) A summary of the type and acreage of existing wetland impacts anticipated during  
800 the construction of the compensation site and the proposed compensation for these  
801 impacts; a site access plan; a monitoring plan, including proposed success criteria,  
802 monitoring goals, and the location of photo-monitoring stations, monitoring wells,  
803 vegetation sampling points, and reference wetlands or streams, if available; an  
804 abatement and control plan for undesirable plant species; an erosion and  
805 sedimentation control plan; a construction schedule; and the final protective  
806 mechanism for the protection of the compensation site or sites, including all surface  
807 waters and buffer areas within its boundaries.

808 (3) The approved protective mechanism. The protective mechanism shall be recorded  
809 in the chain of title to the property, or an equivalent instrument for government-owned  
810 lands, and proof of recordation shall be submitted to the Department of Environmental  
811 Quality prior to commencing impacts in surface waters.

812 b. The final permittee-responsible stream compensation plan shall include:

813 (1) The complete information on all components of the conceptual compensation plan.

814 (2) An evaluation, discussion, and plan drawing or drawings of existing conditions on  
815 the proposed compensation stream, including the identification of functional and  
816 physical deficiencies for which the measures are proposed, and summary of  
817 geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth  
818 ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including  
819 a monitoring and reporting schedule, monitoring design and methodologies for  
820 success, proposed success criteria, location of photo-monitoring stations, vegetation  
821 sampling points, survey points, bank pins, scour chains, and reference streams; an  
822 abatement and control plan for undesirable plant species; an erosion and  
823 sedimentation control plan, if appropriate; a construction schedule; a plan-view  
824 drawing depicting the pattern and all compensation measures being employed; a  
825 profile drawing; cross-sectional drawing or drawings of the proposed compensation  
826 stream; and the final protective mechanism for the protection of the compensation site  
827 or sites, including all surface waters and buffer areas within its boundaries.

828 (3) The approved protective mechanism. The protective mechanism shall be recorded  
829 in the chain of title to the property, or an equivalent instrument for government-owned  
830 lands, and proof of recordation shall be submitted to the Department of Environmental  
831 Quality prior to commencing impacts in surface waters.

832 6. The following criteria shall apply to permittee-responsible wetland or stream  
833 compensation:

834 a. The vegetation used shall be native species common to the area, shall be suitable  
835 for growth in local wetland or riparian conditions, and shall be from areas within the  
836 same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural  
837 Resources Conservation Service Land Resource Region as that of the project site.  
838 Planting of woody plants shall occur when vegetation is normally dormant, unless  
839 otherwise approved in the final wetlands or stream compensation plan or plans.

840 b. All work in permitted impact areas shall cease if compensation site construction has  
841 not commenced within 180 days of commencement of project construction, unless  
842 otherwise authorized by the board department.

843 c. The Department of Environmental Quality shall be notified in writing prior to the  
844 initiation of construction activities at the compensation site.

845 d. Point sources of stormwater runoff shall be prohibited from entering a wetland  
846 compensation site prior to treatment by appropriate best management practices.

847 Appropriate best management practices may include sediment traps, grassed  
848 waterways, vegetated filter strips, debris screens, oil and grease separators, or  
849 forebays.

850 e. The success of the compensation shall be based on meeting the success criteria  
851 established in the approved final compensation plan.

852 f. If the wetland or stream compensation area fails to meet the specified success  
853 criteria in a particular monitoring year, other than the final monitoring year, the reasons  
854 for this failure shall be determined and a corrective action plan shall be submitted to  
855 the Department of Environmental Quality for approval with or before that year's  
856 monitoring report. The corrective action plan shall contain at a minimum the proposed  
857 actions, a schedule for those actions, and a monitoring plan, and shall be implemented  
858 by the permittee in accordance with the approved schedule. Should significant  
859 changes be necessary to ensure success, the required monitoring cycle shall begin  
860 again, with monitoring year one being the year that the changes are complete, as  
861 confirmed by the Department of Environmental Quality. If the wetland or stream  
862 compensation area fails to meet the specified success criteria by the final monitoring  
863 year or if the wetland or stream compensation area has not met the stated restoration  
864 goals, reasons for this failure shall be determined and a corrective action plan,  
865 including proposed actions, a schedule, and a monitoring plan, shall be submitted with  
866 the final year monitoring report for Department of Environmental Quality approval.  
867 Corrective action shall be implemented by the permittee in accordance with the  
868 approved schedule. Annual monitoring shall be required to continue until two  
869 sequential, annual reports indicate that all criteria have been successfully satisfied and  
870 the site has met the overall restoration goals (e.g., that corrective actions were  
871 successful).

872 g. The surveyed wetland boundary for the compensation site shall be based on the  
873 results of the hydrology, soils, and vegetation monitoring data and shall be shown on  
874 the site plan. Calculation of total wetland acreage shall be based on that boundary at  
875 the end of the monitoring cycle. Data shall be submitted by December 31 of the final  
876 monitoring year.

877 h. Herbicides or algicides shall not be used in or immediately adjacent to the  
878 compensation site or sites without prior authorization by the ~~board~~ department. All  
879 vegetation removal shall be done by manual means, unless authorized by the  
880 Department of Environmental Quality in advance.

#### 881 B. Impact site construction monitoring.

882 1. Construction activities authorized by this permit that are within impact areas shall be  
883 monitored and documented. The monitoring shall consist of:

884 a. Preconstruction photographs taken at each impact area prior to initiation of activities  
885 within impact areas. Photographs shall remain on the project site and depict the impact  
886 area and the nonimpacted surface waters immediately adjacent to and downgradient  
887 of each impact area. Each photograph shall be labeled to include the following  
888 information: permit number, impact area number, date and time of the photograph,  
889 name of the person taking the photograph, photograph orientation, and photograph  
890 subject description.

891 b. Site inspections shall be conducted by the permittee or the permittee's qualified  
892 designee once every calendar month during activities within impact areas. Monthly  
893 inspections shall be conducted in the following areas: all authorized permanent and  
894 temporary impact areas; all avoided surface waters, including wetlands, stream  
895 channels, and open water; surface water areas within 50 feet of any land disturbing

896 activity and within the project or right-of-way limits; and all on-site permanent  
897 preservation areas required under this permit. Observations shall be recorded on the  
898 inspection form provided by the Department of Environmental Quality. The form shall  
899 be completed in its entirety for each monthly inspection and shall be kept on site and  
900 made available for review by the Department of Environmental Quality staff upon  
901 request during normal business hours. Inspections are not required during periods of  
902 no activity within impact areas.

903 2. Monitoring of water quality parameters shall be conducted during permanent relocation  
904 of perennial streams through new channels in the manner noted below. The permittee  
905 shall report violations of water quality standards to the Department of Environmental  
906 Quality in accordance with the procedures in 9VAC25-670-100 Part II E. Corrective  
907 measures and additional monitoring may be required if water quality standards are not  
908 met. Reporting shall not be required if water quality standards are not violated.

909 a. A sampling station shall be located upstream and immediately downstream of the  
910 relocated channel.

911 b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every  
912 30 minutes for at least two hours at each station prior to opening the new channels  
913 and immediately before opening new channels.

914 c. Temperature, pH, and D.O. readings shall be taken after opening the channels and  
915 every 30 minutes for at least three hours at each station.

916 C. Permittee-responsible wetland compensation site monitoring.

917 1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial  
918 surveys, shall be conducted for the entire compensation site or sites including invert  
919 elevations for all water elevation control structures and spot elevations throughout the site  
920 or sites. Aerial surveys shall include the variation from actual ground conditions, such as  
921 +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered  
922 professional engineer to conform to the design plans. The survey shall be submitted within  
923 60 days of completing compensation site construction. Changes or deviations in the as-  
924 built survey or aerial survey shall be shown on the survey and explained in writing.

925 2. Photographs shall be taken at the compensation site or sites from the permanent  
926 markers identified in the final compensation plan, and established to ensure that the same  
927 locations and view directions at the site or sites are monitored in each monitoring period.  
928 These photographs shall be taken after the initial planting and at a time specified in the  
929 final compensation plan during every monitoring year.

930 3. Compensation site monitoring shall begin on the first day of the first complete growing  
931 season (monitoring year 1) after wetland compensation site construction activities,  
932 including planting, have been completed. Monitoring shall be required for monitoring years  
933 1, 2, 3, and 5, unless otherwise approved by the Department of Environmental Quality. In  
934 all cases, if all success criteria have not been met in the fifth monitoring year, then  
935 monitoring shall be required for each consecutive year until two annual sequential reports  
936 indicate that all criteria have been successfully satisfied.

937 4. The establishment of wetland hydrology shall be measured during the growing season,  
938 with the location and number of monitoring wells, and frequency of monitoring for each  
939 site, set forth in the final monitoring plan. Hydrology monitoring well data shall be  
940 accompanied by precipitation data, including rainfall amounts, either from on site, or from  
941 the closest weather station. Once the wetland hydrology success criteria have been  
942 satisfied for a particular monitoring year, weekly monitoring may be discontinued for the  
943 remainder of that monitoring year following Department of Environmental Quality approval.  
944 After a period of three monitoring years, the permittee may request that hydrology

945 monitoring be discontinued, providing that adequate hydrology has been established and  
946 maintained. Hydrology monitoring shall not be discontinued without written approval from  
947 the Department of Environmental Quality.

948 5. The presence of hydric soils or soils under hydric conditions shall be evaluated in  
949 accordance with the final compensation plan.

950 6. The establishment of wetland vegetation shall be in accordance with the final  
951 compensation plan. Monitoring shall take place in August, September, or October during  
952 the growing season of each monitoring year, unless authorized in the monitoring plan.

953 7. The presence of undesirable plant species shall be documented.

954 8. All wetland compensation monitoring reports shall be submitted in accordance with  
955 9VAC25-670-100 Part II E 6.

956 D. Permittee-responsible stream compensation and monitoring.

957 1. Riparian buffer restoration activities shall be detailed in the final compensation plan and  
958 shall include, as appropriate, the planting of a variety of native species currently growing  
959 in the site area, including appropriate seed mixtures and woody species that are bare root,  
960 balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the  
961 stream bank at bankfull elevation landward on both sides of the stream, shall be required  
962 where practical.

963 2. The installation of root wads, vanes, and other instream structures, shaping of the  
964 stream banks, and channel relocation shall be completed in the dry whenever practicable.

965 3. Livestock access to the stream and designated riparian buffer shall be limited to the  
966 greatest extent practicable.

967 4. Stream channel restoration activities shall be conducted in the dry or during low flow  
968 conditions. When site conditions prohibit access from the streambank or upon prior  
969 authorization from the Department of Environmental Quality, heavy equipment may be  
970 authorized for use within the stream channel.

971 5. Photographs shall be taken at the compensation site from the vicinity of the permanent  
972 photo-monitoring stations identified in the final compensation plan. The photograph  
973 orientation shall remain constant during all monitoring events. At a minimum, photographs  
974 shall be taken from the center of the stream, facing downstream, with a sufficient number  
975 of photographs to view the entire length of the restoration site. Photographs shall  
976 document the completed restoration conditions. Photographs shall be taken prior to site  
977 activities, during instream and riparian compensation construction activities, within one  
978 week of completion of activities, and during at least one day of each monitoring year to  
979 depict restored conditions.

980 6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial  
981 surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall  
982 include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall  
983 be certified by the licensed surveyor or by a registered, professional engineer to conform  
984 to the design plans. The survey shall be submitted within 60 days of completing  
985 compensation site construction. Changes or deviations from the final compensation plans  
986 in the as-built survey or aerial survey shall be shown on the survey and explained in  
987 writing.

988 7. Compensation site monitoring shall begin on day one of the first complete growing  
989 season (monitoring year 1) after stream compensation site construction activities,  
990 including planting, have been completed. Monitoring shall be required for monitoring years  
991 1 and 2, unless otherwise approved by the Department of Environmental Quality. In all  
992 cases, if all success criteria have not been met in the final monitoring year, then monitoring

993 shall be required for each consecutive year until two annual sequential reports indicate  
994 that all criteria have been successfully satisfied.

995 8. All stream compensation site monitoring reports shall be submitted in accordance with  
996 9VAC25-670-100 Part II E 6.

997 E. Reporting.

998 1. Written communications required by this VWP general permit shall be submitted to the  
999 appropriate Department of Environmental Quality office. The VWP general permit tracking  
1000 number shall be included on all correspondence.

1001 2. The Department of Environmental Quality shall be notified in writing prior to the start of  
1002 construction activities at the first permitted impact area.

1003 3. A construction status update form provided by the Department of Environmental Quality  
1004 shall be completed and submitted to the Department of Environmental Quality twice per  
1005 year for the duration of coverage under a VWP general permit. Forms completed in June  
1006 shall be submitted by or on July 10, and forms completed in December shall be submitted  
1007 by or on January 10. The form shall include reference to the VWP permit tracking number  
1008 and one of the following statements for each authorized surface water impact location:

1009 a. Construction activities have not yet started;

1010 b. Construction activities have started;

1011 c. Construction activities have started but are currently inactive; or

1012 d. Construction activities are complete.

1013 4. The Department of Environmental Quality shall be notified in writing within 30 days  
1014 following the completion of all activities in all authorized impact areas.

1015 5. The Department of Environmental Quality shall be notified in writing prior to the initiation  
1016 of activities at the permittee-responsible compensation site. The notification shall include  
1017 a projected schedule of activities and construction completion.

1018 6. All permittee-responsible compensation site monitoring reports shall be submitted  
1019 annually by December 31, with the exception of the last year, in which case the report  
1020 shall be submitted at least 60 days prior to the expiration of the general permit, unless  
1021 otherwise approved by the Department of Environmental Quality.

1022 a. All wetland compensation site monitoring reports shall include, as applicable, the  
1023 following:

1024 (1) General description of the site including a site location map identifying photo-  
1025 monitoring stations, vegetative and soil monitoring stations, monitoring wells, and  
1026 wetland zones.

1027 (2) Summary of activities completed during the monitoring year, including alterations  
1028 or maintenance conducted at the site.

1029 (3) Description of monitoring methods.

1030 (4) Analysis of all hydrology information, including monitoring well data, precipitation  
1031 data, and gauging data from streams or other open water areas, as set forth in the  
1032 final compensation plan.

1033 (5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

1034 (6) Analysis of all vegetative community information, including woody and herbaceous  
1035 species, both planted and volunteers, as set forth in the final compensation plan.

1036 (7) Photographs labeled with the permit number, the name of the compensation site,  
1037 the photo-monitoring station number, the photograph orientation, the date and time of  
1038 the photograph, the name of the person taking the photograph, and a brief description

- 1039 of the photograph subject. This information shall be provided as a separate attachment  
1040 to each photograph, if necessary. Photographs taken after the initial planting shall be  
1041 included in the first monitoring report after planting is complete.
- 1042 (8) Discussion of wildlife or signs of wildlife observed at the compensation site.
- 1043 (9) Comparison of site conditions from the previous monitoring year and reference site.
- 1044 (10) Discussion of corrective measures or maintenance activities to control  
1045 undesirable species, to repair damaged water control devices, or to replace damaged  
1046 planted vegetation.
- 1047 (11) Corrective action plan that includes proposed actions, a schedule, and monitoring  
1048 plan.
- 1049 b. All stream compensation site monitoring reports shall include, as applicable, the  
1050 following:
- 1051 (1) General description of the site including a site location map identifying photo-  
1052 monitoring stations and monitoring stations.
- 1053 (2) Summary of activities completed during the monitoring year, including alterations  
1054 or maintenance conducted at the site.
- 1055 (3) Description of monitoring methods.
- 1056 (4) Evaluation and discussion of the monitoring results in relation to the success  
1057 criteria and overall goals of compensation.
- 1058 (5) Photographs shall be labeled with the permit number, the name of the  
1059 compensation site, the photo-monitoring station number, the photograph orientation,  
1060 the date and time of the photograph, the name of the person taking the photograph,  
1061 and a brief description of the photograph subject. Photographs taken prior to  
1062 compensation site construction activities, during instream and riparian restoration  
1063 activities, and within one week of completion of activities shall be included in the first  
1064 monitoring report.
- 1065 (6) Discussion of alterations, maintenance, or major storm events resulting in  
1066 significant change in stream profile or cross section, and corrective actions conducted  
1067 at the stream compensation site.
- 1068 (7) Documentation of undesirable plant species and summary of abatement and  
1069 control measures.
- 1070 (8) Summary of wildlife or signs of wildlife observed at the compensation site.
- 1071 (9) Comparison of site conditions from the previous monitoring year and reference site,  
1072 and as-built survey, if applicable.
- 1073 (10) Corrective action plan that includes proposed actions, a schedule and monitoring  
1074 plan.
- 1075 (11) Additional submittals that were approved by the Department of Environmental  
1076 Quality in the final compensation plan.
- 1077 7. The permittee shall notify the Department of Environmental Quality in writing when  
1078 unusual or potentially complex conditions are encountered which require debris removal  
1079 or involve potentially toxic substance. Measures to remove the obstruction, material, or  
1080 toxic substance or to change the location of a structure are prohibited until approved by  
1081 the Department of Environmental Quality.
- 1082 8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If  
1083 spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday,  
1084 the appropriate Department of Environmental Quality regional office shall be notified;

1085 otherwise, the Department of Emergency Management shall be notified at 1-800-468-  
1086 8892.

1087 9. Violations of state water quality standards shall be reported to the appropriate  
1088 Department of Environmental Quality office no later than the end of the business day  
1089 following discovery.

1090 10. The permittee shall notify the Department of Environmental Quality no later than the  
1091 end of the third business day following the discovery of additional impacts to surface  
1092 waters including wetlands, stream channels, and open water that are not authorized by  
1093 the Department of Environmental Quality or to any required preservation areas. The  
1094 notification shall include photographs, estimated acreage or linear footage of impacts, and  
1095 a description of the impacts.

1096 11. Submittals required by this VWP general permit shall contain the following signed  
1097 certification statement:

1098 "I certify under penalty of law that this document and all attachments were prepared under  
1099 my direction or supervision in accordance with a system designed to assure that qualified  
1100 personnel properly gather and evaluate the information submitted. Based on my inquiry of  
1101 the person or persons who manage the system, or those persons directly responsible for  
1102 gathering the information, the information submitted is, to the best of my knowledge and  
1103 belief, true, accurate, and complete. I am aware that there are significant penalties for  
1104 submitting false information, including the possibility of fine and imprisonment for knowing  
1105 violation."

### 1106 Part III. Conditions Applicable to All VWP General Permits.

1107 A. Duty to comply. The permittee shall comply with all conditions, limitations, and other  
1108 requirements of the VWP general permit; any requirements in coverage granted under this VWP  
1109 general permit; the Clean Water Act, as amended; and the State Water Control Law and  
1110 regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a  
1111 violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement  
1112 action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage  
1113 revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification  
1114 to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve  
1115 the permittee of the duty to comply with all applicable federal and state statutes, regulations, and  
1116 toxic standards and prohibitions.

1117 B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent  
1118 impacts in violation of the VWP general permit which may have a reasonable likelihood of  
1119 adversely affecting human health or the environment.

1120 C. Reopener. This VWP general permit may be reopened to modify its conditions when the  
1121 circumstances on which the previous VWP general permit was based have materially and  
1122 substantially changed, or special studies conducted by the ~~board~~ department or the permittee  
1123 show material and substantial change since the time the VWP general permit was issued and  
1124 thereby constitute cause for revoking and reissuing the VWP general permit.

1125 D. Compliance with state and federal law. Compliance with this VWP general permit  
1126 constitutes compliance with the VWP permit requirements of the State Water Control Law.  
1127 Nothing in this VWP general permit shall be construed to preclude the institution of any legal  
1128 action under or relieve the permittee from any responsibilities, liabilities, or other penalties  
1129 established pursuant to any other state law or regulation or under the authority preserved by §  
1130 510 of the Clean Water Act.



1131 E. Property rights. The issuance of this VWP general permit does not convey property rights  
1132 in either real or personal property or any exclusive privileges, nor does it authorize injury to private  
1133 property, any invasion of personal property rights, or any infringement of federal, state, or local  
1134 laws or regulations.

1135 F. Severability. The provisions of this VWP general permit are severable.

1136 G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the ~~board~~  
1137 department or any duly authorized agent of the ~~board~~ department, at reasonable times and under  
1138 reasonable circumstances, to enter upon the permittee's property, public or private, and have  
1139 access to inspect and copy any records that must be kept as part of the VWP general permit  
1140 conditions; to inspect any facilities, operations, or practices (including monitoring and control  
1141 equipment) regulated or required under the VWP general permit; and to sample or monitor any  
1142 substance, parameter, or activity for the purpose of assuring compliance with the conditions of  
1143 the VWP general permit or as otherwise authorized by law. For the purpose of this section, the  
1144 time for inspection shall be deemed reasonable during regular business hours. Nothing contained  
1145 herein shall make an inspection time unreasonable during an emergency.

1146 H. Transferability of VWP general permit coverage. VWP general permit coverage may be  
1147 transferred to another permittee when all of the criteria listed in this subsection are met. On the  
1148 date of the VWP general permit coverage transfer, the transferred VWP general permit coverage  
1149 shall be as fully effective as if it had been granted directly to the new permittee.

1150 1. The current permittee notifies the ~~board~~ department of the proposed transfer of the  
1151 general permit coverage and provides a written agreement between the current and new  
1152 permittees containing a specific date of transfer of VWP general permit responsibility,  
1153 coverage, and liability to the new permittee, or that the current permittee will retain such  
1154 responsibility, coverage, or liability, including liability for compliance with the requirements  
1155 of enforcement activities related to the authorized activity.

1156 2. The ~~board~~ department does not within the 15 days notify the current and new permittees  
1157 of ~~its~~ the board's intent to modify or revoke and reissue the VWP general permit.

1158 I. Notice of planned change. VWP general permit coverage may be modified subsequent to  
1159 issuance in accordance with 9VAC25-670-80.

1160 J. VWP general permit coverage termination for cause. VWP general permit coverage is  
1161 subject to termination for cause by the ~~board~~ department after public notice and opportunity for a  
1162 hearing pursuant to ~~§ 62.1-44.15:02 of the Code of Virginia~~ in accordance with 9VAC25-210-180.  
1163 Reasons for termination for cause are as follows:

1164 1. Noncompliance by the permittee with any provision of this chapter, any condition of the  
1165 VWP general permit, or any requirement in general permit coverage;

1166 2. The permittee's failure in the application or during the process of granting VWP general  
1167 permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of  
1168 any relevant facts at any time;

1169 3. The permittee's violation of a special or judicial order;

1170 4. A determination by the ~~board~~ department that the authorized activity endangers human  
1171 health or the environment and can be regulated to acceptable levels by a modification to  
1172 the VWP general permit coverage or a termination;

1173 5. A change in any condition that requires either a temporary or permanent reduction or  
1174 elimination of any activity controlled by the VWP general permit; or

1175 6. A determination that the authorized activity has ceased and that the compensation for  
1176 unavoidable adverse impacts has been successfully completed.

1177 K. The ~~board~~ department may terminate VWP general permit coverage without cause when  
1178 the permittee is no longer a legal entity due to death or dissolution or when a company is no  
1179 longer authorized to conduct business in the Commonwealth. The termination shall be effective  
1180 30 days after notice of the proposed termination is sent to the last known address of the permittee  
1181 or registered agent, unless the permittee objects within that time. If the permittee does object  
1182 during that period, the ~~board~~ department shall follow the applicable procedures for termination  
1183 under 9VAC25-210-180 and ~~§§ 62.1-44.15:02 and 62.1-44.15:25~~ of the Code of Virginia.

1184 L. VWP general permit coverage termination by consent. The permittee shall submit a request  
1185 for termination by consent within 30 days of completing or canceling all authorized activities  
1186 requiring notification under 9VAC25-670-50 A and all compensatory mitigation requirements.  
1187 When submitted for project completion, the request for termination by consent shall constitute a  
1188 notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this  
1189 termination of coverage on behalf of the ~~board~~ department. The permittee shall submit the  
1190 following information:

- 1191 1. Name, mailing address, and telephone number;
- 1192 2. Name and location of the activity;
- 1193 3. The VWP general permit tracking number; and
- 1194 4. One of the following certifications:

1195 a. For project completion:

1196 "I certify under penalty of law that all activities and any required compensatory  
1197 mitigation authorized by the VWP general permit and general permit coverage have  
1198 been completed. I understand that by submitting this notice of termination I am no  
1199 longer authorized to perform activities in surface waters in accordance with the VWP  
1200 general permit and general permit coverage, and that performing activities in surface  
1201 waters is unlawful where the activity is not authorized by the VWP permit or coverage,  
1202 unless otherwise excluded from obtaining coverage. I also understand that the  
1203 submittal of this notice does not release me from liability for any violations of the VWP  
1204 general permit or coverage."

1205 b. For project cancellation:

1206 "I certify under penalty of law that the activities and any required compensatory  
1207 mitigation authorized by the VWP general permit and general permit coverage will not  
1208 occur. I understand that by submitting this notice of termination I am no longer  
1209 authorized to perform activities in surface waters in accordance with the VWP general  
1210 permit and general permit coverage, and that performing activities in surface waters is  
1211 unlawful where the activity is not authorized by the VWP permit or coverage, unless  
1212 otherwise excluded from obtaining coverage. I also understand that the submittal of  
1213 this notice does not release me from liability for any violations of the VWP general  
1214 permit or coverage, nor does it allow me to resume the authorized activities without  
1215 reapplication and coverage."

1216 c. For events beyond permittee control, the permittee shall provide a detailed  
1217 explanation of the events, to be approved by the Department of Environmental Quality,  
1218 and the following certification statement:

1219 "I certify under penalty of law that the activities or the required compensatory mitigation  
1220 authorized by the VWP general permit and general permit coverage have changed as  
1221 the result of events beyond my control (see attached). I understand that by submitting  
1222 this notice of termination I am no longer authorized to perform activities in surface  
1223 waters in accordance with the VWP general permit and general permit coverage, and  
1224 that performing activities in surface waters is unlawful where the activity is not

1225 authorized by the VWP permit or coverage, unless otherwise excluded from obtaining  
1226 coverage. I also understand that the submittal of this notice does not release me from  
1227 liability for any violations of the VWP general permit or coverage, nor does it allow me  
1228 to resume the authorized activities without reapplication and coverage."

1229 M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve  
1230 the permittee from civil and criminal penalties for noncompliance.

1231 N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be  
1232 construed to preclude the institution of legal action or relieve the permittee from any  
1233 responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of  
1234 the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

1235 O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement  
1236 action that it would have been necessary to halt or reduce the activity for which VWP general  
1237 permit coverage has been granted in order to maintain compliance with the conditions of the VWP  
1238 general permit or coverage.

1239 P. Duty to provide information.

1240 1. The permittee shall furnish to the ~~board~~ department any information that the ~~board~~  
1241 department may request to determine whether cause exists for modifying, revoking, or  
1242 terminating VWP permit coverage or to determine compliance with the VWP general  
1243 permit or general permit coverage. The permittee shall also furnish to the ~~board~~  
1244 department, upon request, copies of records required to be kept by the permittee.

1245 2. Plans, maps, conceptual reports, and other relevant information shall be submitted as  
1246 required by the ~~board~~ department prior to commencing construction.

1247 Q. Monitoring and records requirements.

1248 1. Monitoring of parameters, other than pollutants, shall be conducted according to  
1249 approved analytical methods as specified in the VWP general permit. Analysis of  
1250 pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing  
1251 Test Procedures for the Analysis of Pollutants.

1252 2. Samples and measurements taken for the purpose of monitoring shall be representative  
1253 of the monitored activity.

1254 3. The permittee shall retain records of all monitoring information, including all calibration  
1255 and maintenance records and all original strip chart or electronic recordings for continuous  
1256 monitoring instrumentation, copies of all reports required by the VWP general permit, and  
1257 records of all data used to complete the application for coverage under the VWP general  
1258 permit, for a period of at least three years from the date of general permit expiration. This  
1259 period may be extended by request of the ~~board~~ department at any time.

1260 4. Records of monitoring information shall include, as appropriate:

1261 a. The date, exact place, and time of sampling or measurements;

1262 b. The name of the individuals who performed the sampling or measurements;

1263 c. The date and time the analyses were performed;

1264 d. The name of the individuals who performed the analyses;

1265 e. The analytical techniques or methods supporting the information such as  
1266 observations, readings, calculations, and bench data used;

1267 f. The results of such analyses; and

1268 g. Chain of custody documentation.

1269 R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit,  
1270 it shall be unlawful for the permittee to:

- 1271 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or  
1272 deleterious substances;
- 1273 2. Excavate in a wetland;
- 1274 3. Otherwise alter the physical, chemical, or biological properties of state waters and make  
1275 them detrimental to the public health, to animal or aquatic life, or to the uses of such waters  
1276 for domestic or industrial consumption, for recreation, or for other uses; or
- 1277 4. On and after October 1, 2001, conduct the following activities in a wetland:
- 1278 a. New activities to cause draining that significantly alters or degrades existing wetland  
1279 acreage or functions;
- 1280 b. Filling or dumping;
- 1281 c. Permanent flooding or impounding; or
- 1282 d. New activities that cause significant alteration or degradation of existing wetland  
1283 acreage or functions.
- 1284 S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the  
1285 expiration date of the VWP general permit shall comply with the provisions in 9VAC25-670-27.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-680
<b>VAC Chapter title(s)</b>	Virginia Water Protection General Permit for Linear Transportation Projects
<b>Action title</b>	Final Exempt CH 680 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 14, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-680) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”; the repeal of the delegation of authority provisions, and the correction of Code references where necessary to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

**Mandate and Impetus**

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these statutory changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

**Statement of Final Agency Action**

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-680 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7178 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 680 changes in response to 2022 Board Bill**

4 **9VAC25-680-10. Definitions.**

5 The words and terms used in this chapter shall have the meanings defined in the State Water  
6 Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection Permit  
7 Program Regulation (9VAC25-210) unless a different meaning is required by the context or is  
8 indicated below.

9 "Bank protection" means measures employed to stabilize channel banks and combat existing  
10 erosion problems. Such measures may include the construction of riprap revetments, sills, rock  
11 vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe  
12 stabilization, anti-scouring devices, and submerged sills.

13 "Bioengineering method" means a biological measure incorporated into a facility design to  
14 benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent  
15 practicable, for long-term aquatic resource protection and improvement.

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

19 "Coverage" means authorization to conduct a project in accordance with a VWP general  
20 permit.

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

22 "Independent utility" means a test to determine what constitutes a single and complete project.  
23 A project is considered to have independent utility if it would be constructed absent the  
24 construction of other projects in the project area. Portions of a multi-phase project that depend  
25 upon other phases of the project do not have independent utility. Phases of a project that would  
26 be constructed even if the other phases are not built can be considered as separate single and  
27 complete projects with independent public and economic utility.

28 "Linear transportation project" means a project for the construction, expansion, modification  
29 or improvement of features such as, but not limited to, roadways, railways, trails, bicycle and  
30 pedestrians paths, and airport runways and taxiways, including all attendant features both  
31 temporary and permanent. Nonlinear features commonly associated with transportation projects,  
32 such as, but not limited to, vehicle maintenance or storage buildings, parking lots, train stations,  
33 or aircraft hangars are not included in this definition.

34 "Notice of project completion" means a statement submitted by the permittee or authorized  
35 agent that the authorized activities and any required compensatory mitigation have been  
36 completed.

37 "Single and complete project" means the total project proposed or accomplished by a person,  
38 which also has independent utility, as defined in this section. For linear projects, the "single and  
39 complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate  
40 surface water (e.g., a single water body) and to multiple crossings of the same water body at  
41 separate and distinct locations. Phases of a project that have independent public and economic  
42 utility may each be considered single and complete.

43 "State program general permit (SPGP)" means a general permit issued by the Department of  
44 the Army in accordance with 33 USC § 1344 and 33 CFR 325.5(c)(3) and that is founded on a

45 state program. The SPGP is designed to avoid duplication between the federal and state  
46 programs.

47 "Up to 300 linear feet" means 300.00 linear feet or less, as measured along the center of the  
48 main channel of the stream segment.

49 "Up to 1,500 linear feet" means 1,500.00 linear feet or less, as measured along the center of  
50 the main channel of the stream segment.

51 "Up to one-tenth acre" means 0.10 acre (4,356 square feet) or less.

52 "Up to two acres" means 2.00 acres (87,120 square feet) or less.

53 "Utility line" means a pipe or pipeline for the transportation of any gaseous, liquid, liquefiable  
54 or slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose  
55 of electrical energy, telephone, and telegraph messages and radio and television communication.  
56 The term utility line does not include activities which drain a surface water to convert it to an  
57 upland, such as drainage tiles or french drains; however, it does apply to pipes conveying  
58 drainage from another area.

59 **9VAC25-680-15. Statewide information requirements.**

60 The ~~board~~ department may request (i) such plans, specifications, and other pertinent  
61 information as may be necessary to determine the effect of an applicant's discharge on the quality  
62 of state waters or (ii) such other information as may be necessary to accomplish the purposes of  
63 this chapter. Any owner, permittee, or person applying for a VWP permit or general permit  
64 coverage shall provide the information requested by the ~~board~~ department.

65 **9VAC25-680-20. Purpose; ~~delegation of authority.~~**

66 ~~A.~~ The purpose of this chapter is to establish VWP General Permit Number WP3 under  
67 9VAC25-210 to govern permanent and temporary impacts related to the construction and  
68 maintenance of Virginia Department of Transportation (VDOT) or other linear transportation  
69 projects. Applications for coverage under this VWP general permit shall be processed for  
70 approval, approval with conditions, or denial by the ~~board~~ department. Coverage, coverage with  
71 conditions, or application denial by the ~~board~~ department shall constitute the VWP general permit  
72 action and shall follow all provisions in the State Water Control Law (§ 62.1-44.2 et seq. of the  
73 Code of Virginia), except for the public comment and participation provisions, from which each  
74 VWP general permit action is exempt.

75 ~~B. The director or his designee may perform any act of the board provided under this chapter,~~  
76 ~~except as limited by § 62.1-44.14 of the Code of Virginia.~~

77 **9VAC25-680-25. Authorization for coverage under VWP general permit effective August 1,**  
78 **2006.**

79 A. All complete applications or notifications received by the ~~board~~ department through 11:59  
80 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation  
81 in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or  
82 if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a  
83 completeness determination, the applicant shall reapply for coverage under the VWP general  
84 permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any  
85 required permit application fee. No refund of permit application fees shall be made.

86 B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall  
87 remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP  
88 authorization cover page, unless otherwise revoked or terminated or unless a notice of project  
89 completion is received by the ~~board~~ department on or before that date. Any permittee that desires  
90 to continue an authorized activity beyond the stated expiration date must reapply for coverage  
91 under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and  
92 conditions, or apply for a VWP individual permit, including payment of any required permit



93 application fee. This section shall only apply to permittees holding valid authorizations for  
94 coverage granted under the VWP general permit effective August 1, 2006, through August 1,  
95 2016.

96 **9VAC25-680-27. VWP general permit coverage; transition; continuation.**

97 A. All applications or notifications received on or after August 2, 2016, will be processed in  
98 accordance with the VWP general permit regulation effective August 2, 2016.

99 B. The general permit in 9VAC25-680-100 is effective August 2, 2016, and expires August 1,  
100 2026. Any coverage that is granted pursuant to 9VAC25-680-30 shall remain in full force and  
101 effect until 11:59 p.m. on August 1, 2026, unless the general permit coverage is terminated or  
102 revoked on or before this date. Where a permittee that has received general permit coverage  
103 desires to continue or complete the authorized activities beyond August 1, 2026, the permittee  
104 shall reapply for new general permit coverage or for a VWP individual permit, including payment  
105 of any required permit application fee. Activities in surface waters requiring a permit shall not  
106 commence or continue until VWP general permit coverage is granted or a VWP individual permit  
107 is issued by the ~~board~~ department.

108 C. Application may be made at any time for a VWP individual permit in accordance with  
109 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until  
110 VWP general permit coverage is granted or a VWP individual permit is issued by the ~~board~~  
111 department.

112 **9VAC25-680-30. Authorization to impact surface waters.**

113 A. Any person granted coverage under the VWP general permit effective August 2, 2016, may  
114 permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to  
115 1,500 linear feet of nontidal stream bed for linear transportation projects, provided that:

- 116 1. The applicant submits notification as required in 9VAC25-680-50 and 9VAC25-680-60.
- 117 2. The applicant remits any required permit application fee.
- 118 3. The applicant receives general permit coverage from the Department of Environmental  
119 Quality and complies with the limitations and other requirements of the VWP general  
120 permit; the general permit coverage letter; the Clean Water Act, as amended; and the  
121 State Water Control Law and attendant regulations.
- 122 4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-  
123 210 for the proposed project impacts. The applicant, at his discretion, may seek a VWP  
124 individual permit or coverage under another applicable VWP general permit in lieu of  
125 coverage under this VWP general permit.
- 126 5. Impacts, both temporary and permanent, result from a single and complete project,  
127 including all attendant features.
  - 128 a. Where a road segment (e.g., the shortest segment of a road with independent utility  
129 that is part of a larger project) has multiple crossings of state waters (several single  
130 and complete projects), the ~~board~~ department may at its discretion require a VWP  
131 individual permit.
  - 132 b. For the purposes of this chapter, when an interchange has multiple crossings of  
133 state waters, the entire interchange shall be considered the single and complete  
134 project.
- 135 6. The stream impact criterion applies to all components of the project, including structures  
136 and stream channel manipulations.
- 137 7. Dredging does not exceed 5,000 cubic yards.
- 138 8. When required, compensation for unavoidable impacts is provided in accordance with  
139 § 62.1-44.15:23 of the Code of Virginia, 9VAC25-680-70, and 9VAC25-210-116.

140 B. Activities that may be granted coverage under this VWP general permit include the  
141 construction, expansion, modification, or improvement of linear transportation crossings (e.g.,  
142 highways, railways, trails, bicycle and pedestrian paths, and airport runways and taxiways,  
143 including all attendant features both temporary and permanent).

144 C. The board waives the requirement for coverage under a VWP general permit for activities  
145 that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon  
146 request by the ~~board~~ department, any person claiming this waiver shall demonstrate to the  
147 satisfaction of the ~~board~~ department that he qualifies for the waiver.

148 D. Coverage under this VWP general permit does not relieve the permittee of the responsibility  
149 to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

150 E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of  
151 Engineers (USACE), and for which the ~~board~~ department has issued § 401 certification in  
152 accordance with 9VAC25-210-130 H as of August 2, 2016, shall constitute coverage under this  
153 VWP general permit, unless a state program general permit (SPGP) is required and granted for  
154 the activity or impact.

155 F. When the ~~board~~ department determines on a case-by-case basis that concerns for water  
156 quality and the aquatic environment so indicate, the ~~board~~ department may require a VWP  
157 individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this  
158 VWP general permit.

159 **9VAC25-680-40. Exceptions to coverage.**

160 A. Coverage under this VWP general permit is not required if the activity is excluded from  
161 permitting in accordance with 9VAC25-210-60.

162 B. Coverage under this VWP general permit cannot be used in combination with coverage  
163 under other VWP general permits in order to impact greater than two acres of nontidal wetlands  
164 or open water or greater than 1,500 linear feet of nontidal stream bed. Granting coverage under  
165 this VWP general permit more than once for a single and complete project is prohibited, except  
166 when the cumulative impact to surface waters does not exceed the limits specified here.

167 C. This VWP general permit cannot be used for nonlinear features commonly associated with  
168 transportation projects, such as, but not limited to, vehicle maintenance or storage buildings,  
169 parking lots, train stations, or aircraft hangars.

170 D. The activity to impact surface waters shall not have been prohibited by state law or  
171 regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260).

172 E. The ~~board~~ department shall deny application for coverage under this VWP general permit  
173 to any applicant conducting activities that cause, may reasonably be expected to cause, or may  
174 be contributing to a violation of water quality standards, including discharges or discharge-related  
175 activities that are likely to significantly affect aquatic life, or for activities that together with other  
176 existing or proposed impacts to wetlands will cause or contribute to a significant impairment of  
177 state waters or fish and wildlife resources.

178 F. This VWP general permit does not authorize activities that cause more than minimal  
179 changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that  
180 cause more than minimal degradation of the water quality of a stream.

181 G. Coverage under this VWP general permit shall not be granted for:

182 1. Construction of a stormwater management facility in perennial streams or in waters  
183 designated as oxygen-impaired or temperature-impaired (does not include wetlands).

184 2. The construction of an irrigation impoundment on a perennial stream.

185 3. Any water withdrawal activities.

186 4. The location of animal feeding operations or waste storage facilities in state waters.

- 187 5. The pouring of wet or uncured concrete in state waters, unless the area is contained  
188 within a cofferdam or the work is performed in the dry or unless approved by the  
189 Department of Environmental Quality.
- 190 6. Return flow discharges from dredge disposal sites.
- 191 7. Overboard disposal of dredge materials.
- 192 8. Dredging in marinas.
- 193 9. Dredging of shellfish areas, submerged aquatic vegetation beds or other highly  
194 productive areas.
- 195 10. Federal navigation projects.
- 196 11. Any activity in surface waters that will impact federal or state listed threatened or  
197 endangered species or designated critical habitat, or result in a taking of threatened or  
198 endangered species in accordance with the following:
- 199 a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation,  
200 processing, sale, or offer for sale within the Commonwealth of any fish or wildlife  
201 appearing on any list of threatened or endangered species published by the United  
202 States Secretary of the Interior pursuant to the provisions of the federal Endangered  
203 Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is  
204 prohibited except as provided in § 29.1-568 of the Code of Virginia.
- 205 b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the  
206 taking, transportation, processing, sale, or offer for sale within the Commonwealth of  
207 any state listed endangered or threatened species is prohibited except as provided in  
208 § 29.1-568 of the Code of Virginia.
- 209 12. Any activity in wetlands composed of 10% or more, singularly or in combination, based  
210 upon either basal area or percent areal cover in the area of impact, in a vegetative stratum:  
211 Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water  
212 tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*).
- 213 13. Any activity in tidal waters.

214 **9VAC25-680-50. Notification.**

215 A. Notification to the ~~board~~ department will be required prior to commencing construction, as  
216 follows:

- 217 1. When the Virginia Department of Transportation is the applicant for coverage under this  
218 VWP general permit, the notification requirements shall be in accordance with this section  
219 and 9VAC25-680-60, unless otherwise authorized by the Department of Environmental  
220 Quality.
- 221 2. An application for coverage for proposed, permanent nontidal wetland or open water  
222 impacts greater than one-tenth acre or for proposed permanent nontidal stream bed  
223 impacts greater than 300 linear feet shall include all information pursuant to 9VAC25-680-  
224 60 B. Compensatory mitigation may be required for all permanent impacts.
- 225 3. An application for coverage for proposed, permanent nontidal wetland or open water  
226 impacts up to one-tenth acre or for proposed, permanent nontidal stream bed impacts up  
227 to 300 linear feet shall be submitted in accordance with either subdivision 3 a or 3 b of this  
228 subsection:
- 229 a. For any proposed project in wetlands, open water, streams, or compensatory  
230 mitigation sites that are under a deed restriction, conservation easement, declaration  
231 of restrictive covenant, or other land use protective instrument (hereafter "protected  
232 areas"), when such restriction, easement, covenant, or instrument is the result of a  
233 federal or state permit action and is specific to activities in wetlands and compensatory

234 mitigation sites, the application shall include all of the information required by 9VAC25-  
235 680-60 B. Compensatory mitigation may be required for all permanent impacts.

236 b. For all other projects, the application shall include the information required by  
237 subdivisions 1 through 7, 11, 12, 15, and 16 of 9VAC25-680-60 B and documentation  
238 that verifies the quantity and type of impacts. Compensatory mitigation may be  
239 required for all permanent impacts once the notification limits of one-tenth acre  
240 wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required,  
241 the application shall include the information in 9VAC25-680-60 B 13.

242 B. The Department of Environmental Quality-approved application forms shall serve as an  
243 application for a VWP permit or VWP general permit coverage.

244 C. The ~~board~~ department will determine whether the proposed activity requires coordination  
245 with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation,  
246 the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of  
247 Wildlife Resources regarding the presence of federal or state listed threatened and endangered  
248 species or designated critical habitat. Based upon consultation with these agencies, the ~~board~~  
249 department may deny application for coverage under this general permit. The applicant may also  
250 consult with these agencies prior to submitting an application. Species or habitat information that  
251 the applicant provides will assist the Department of Environmental Quality in reviewing and  
252 processing the application.

#### 253 **9VAC25-680-60. Application.**

254 A. Applications shall be filed with the ~~board~~ department as follows:

- 255 1. The applicant shall file a complete application in accordance with 9VAC25-680-50 and  
256 this section for coverage under this VWP general permit for impacts to surface waters  
257 from linear transportation projects.
- 258 2. The VDOT may use its monthly IACM process for submitting applications.

259 B. A complete application for VWP general permit coverage, at a minimum, consists of the  
260 following information, if applicable to the project:

- 261 1. The applicant's legal name, mailing address, telephone number, and if applicable,  
262 electronic mail address and fax number.
- 263 2. If different from the applicant, legal name, mailing address, telephone number, and if  
264 applicable, electronic mail address and fax number of property owner.
- 265 3. If applicable, authorized agent's name, mailing address, telephone number, and if  
266 applicable, fax number and electronic mail address.
- 267 4. The existing VWP general permit tracking number, if applicable.
- 268 5. Project name and proposed project schedule.
- 269 6. The following information for the project site location, and any related permittee-  
270 responsible compensatory mitigation site:
  - 271 a. The physical street address, nearest street, or nearest route number; city or county;  
272 zip code; and if applicable, parcel number of the site or sites.
  - 273 b. Name of the impacted water body or water bodies, or receiving waters, as  
274 applicable, at the site or sites.
  - 275 c. The latitude and longitude to the nearest second at the center of the site or sites.
  - 276 d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the  
277 National Watershed Boundary Dataset, for the site or sites.
  - 278 e. A detailed map depicting the location of the site or sites, including the project  
279 boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S.

280 Geologic Survey topographic quadrangle map) should be of sufficient detail to easily  
281 locate the site or sites for inspection.

282 7. A narrative description of the project, including project purpose and need.

283 8. Plan-view drawing or drawings of the project site sufficient to assess the project,  
284 including at a minimum the following:

285 a. North arrow, graphic scale, and existing and proposed topographic or bathymetric  
286 contours.

287 b. Limits of proposed impacts to surface waters.

288 c. Location of all existing and proposed structures.

289 d. All delineated wetlands and all jurisdictional surface waters on the site, including the  
290 Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface  
291 waters and waterway name, if designated; ebb and flood or direction of flow; and  
292 ordinary high water mark in nontidal areas.

293 e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified  
294 by the applicant, and if available, the limits as approved by the locality in which the  
295 project site is located, unless the proposed use is exempt from the Chesapeake Bay  
296 Preservation Area Designation and Management Regulations (9VAC25-830).

297 f. The limits of any areas that are under a deed restriction, conservation easement,  
298 restrictive covenant, or other land use protective instrument (i.e., protected areas).

299 9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings  
300 of each proposed impact area shall include at a minimum a graphic scale, existing  
301 structures, existing and proposed elevations, limits of surface water areas, ebb and flood  
302 or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits,  
303 and location of all existing and proposed structures. Profile drawing or drawings with this  
304 information may be required on a case-by-case basis to demonstrate minimization of  
305 impacts. Any application that proposes piping or culverting stream flows shall provide a  
306 longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide  
307 spot elevations of the stream thalweg at the beginning and end of the pipe or culvert,  
308 extending to a minimum of 10 feet beyond the limits of proposed impact.

309 10. Materials assessment. Upon request by the ~~board~~ department, the applicant shall  
310 provide evidence or certification that the material is free from toxic contaminants prior to  
311 disposal or that the dredging activity will not cause or contribute to a violation of water  
312 quality standards during dredging. The applicant may be required to conduct grain size  
313 and composition analyses, tests for specific parameters or chemical constituents, or  
314 elutriate tests on the dredge material.

315 11. A narrative description of all impacts proposed to surface waters, including the type of  
316 activity to be conducted in surface waters and any physical alteration to surface waters.  
317 Surface water impacts shall be identified as follows:

318 a. Wetland impacts identified according to their Cowardin classification (i.e., emergent,  
319 scrub-shrub, or forested); and for each classification, the individual impacts quantified  
320 in square feet to the nearest whole number, cumulatively summed in square feet, and  
321 then the sum converted to acres and rounded to two decimal places using commonly  
322 accepted arithmetic principles of rounding.

323 b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole  
324 number and by average width in feet to the nearest whole number; (ii) quantified in  
325 square feet to the nearest whole number; and (iii) when compensatory mitigation is  
326 required, the impacts identified according to the assessed type using the Unified  
327 Stream Methodology.

- 328 c. Open water impacts identified according to their Cowardin classification; and for  
329 each type, the individual impacts quantified in square feet to the nearest whole  
330 number, cumulatively summed in square feet, and then the sum converted to acres  
331 and rounded to two decimal places using commonly accepted arithmetic principles of  
332 rounding.
- 333 d. A copy of the approved jurisdictional determination when available, or when  
334 unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps  
335 of Engineers (USACE), U.S. Department of Agriculture Natural Resources  
336 Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE,  
337 NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface  
338 waters, including wetlands data sheets if applicable.
- 339 e. A delineation map that (i) depicts the geographic area or areas of all surface water  
340 boundaries delineated in accordance with 9VAC25-210-45 and confirmed in  
341 accordance with the jurisdictional determination process; (ii) identifies such areas in  
342 accordance with subdivisions 11 a, 11 b, and 11 c of this subsection; and (iii) quantifies  
343 and identifies any other surface waters according to their Cowardin classification (i.e.,  
344 emergent, scrub-shrub, or forested) or similar terminology.
- 345 12. An alternatives analysis for the proposed project detailing the specific on-site  
346 measures taken during project design and development to first avoid and then minimize  
347 impacts to surface waters to the maximum extent practicable in accordance with the  
348 Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part  
349 230. Avoidance and minimization includes, but is not limited to, the specific on-site  
350 measures taken to reduce the size, scope, configuration, or density of the proposed  
351 project, including review of alternative sites where required for the project, which would  
352 avoid or result in less adverse impact to surface waters, and documentation demonstrating  
353 the reason the applicant determined less damaging alternatives are not practicable. The  
354 analysis shall demonstrate to the satisfaction of the ~~board~~ department that avoidance and  
355 minimization opportunities have been identified and measures have been applied to the  
356 proposed activity such that the proposed activity in terms of impacts to state waters and  
357 fish and wildlife resources is the least environmentally damaging practicable alternative.
- 358 13. A compensatory mitigation plan to achieve no net loss of wetland acreage and  
359 functions or stream functions and water quality benefits.
- 360 a. If permittee-responsible compensation is proposed for wetland impacts, a  
361 conceptual wetland compensatory mitigation plan must be submitted in order for an  
362 application to be deemed complete and shall include at a minimum (i) the goals and  
363 objectives in terms of replacement of wetland acreage and functions; (ii) a detailed  
364 location map including latitude and longitude to the nearest second and the fourth  
365 order subbasin, as defined by the hydrologic unit boundaries of the National  
366 Watershed Boundary Dataset, at the center of the site; (iii) a description of the  
367 surrounding land use; (iv) a hydrologic analysis including a draft water budget for  
368 nontidal areas based on expected monthly inputs and outputs that will project water  
369 level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation  
370 data, if available, or the proposed location of groundwater monitoring wells to collect  
371 these data; (vi) wetland delineation confirmation, data sheets, and maps for existing  
372 surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii)  
373 a conceptual planting scheme including suggested plant species and zonation of each  
374 vegetation type proposed; (ix) a description of existing soils including general  
375 information on both topsoil and subsoil conditions, permeability, and the need for soil  
376 amendments; (x) a draft design of any water control structures; (xi) inclusion of buffer  
377 areas; (xii) a description of any structures and features necessary for the success of

378 the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv)  
379 measures for the control of undesirable species.

380 b. If permittee-responsible compensation is proposed for stream impacts, a conceptual  
381 stream compensatory mitigation plan must be submitted in order for an application to  
382 be deemed complete and shall include at a minimum (i) the goals and objectives in  
383 terms of water quality benefits and replacement of stream functions; (ii) a detailed  
384 location map including the latitude and longitude to the nearest second and the fourth  
385 order subbasin, as defined by the hydrologic unit boundaries of the National  
386 Watershed Boundary Dataset, at the center of the site; (iii) a description of the  
387 surrounding land use; (iv) the proposed stream segment restoration locations including  
388 plan view and cross-sectional drawings; (v) the stream deficiencies that need to be  
389 addressed; (vi) data obtained from a DEQ-approved, stream impact assessment  
390 methodology such as the Unified Stream Methodology; (vii) the proposed restoration  
391 measures to be employed including channel measurements, proposed design flows,  
392 types of instream structures, and conceptual planting scheme; (viii) reference stream  
393 data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities;  
394 and (xi) measures for the control of undesirable species.

395 c. For any permittee-responsible compensatory mitigation, the conceptual  
396 compensatory mitigation plan shall also include a draft of the intended protective  
397 mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but  
398 not limited to, a conservation easement held by a third party in accordance with the  
399 Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or  
400 the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly  
401 recorded declaration of restrictive covenants, or other protective instrument. The draft  
402 intended protective mechanism shall contain the information in subdivisions c (1), c  
403 (2), and c (3) of this subdivision 13 or in lieu thereof shall describe the intended  
404 protective mechanism or mechanisms that contains the information required below:

405 (1) A provision for access to the site;

406 (2) The following minimum restrictions: no ditching, land clearing, or discharge of  
407 dredge or fill material, and no activity in the area designated as compensatory  
408 mitigation area with the exception of maintenance; corrective action measures; or  
409 DEQ-approved activities described in the approved final compensatory mitigation plan  
410 or long-term management plan; and

411 (3) A long-term management plan that identifies a long-term steward and adequate  
412 financial assurances for long-term management in accordance with the current  
413 standard for mitigation banks and in-lieu fee program sites, except that financial  
414 assurances will not be necessary for permittee-responsible compensation provided by  
415 government agencies on government property. If approved by DEQ, permittee-  
416 responsible compensation on government property and long-term protection may be  
417 provided through federal facility management plans, integrated natural resources  
418 management plans, or other alternate management plans submitted by a government  
419 agency or public authority.

420 d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-  
421 lieu fee program credits shall include the number and type of credits proposed to be  
422 purchased, documentation from the approved mitigation bank or in-lieu fee program  
423 sponsor of the availability of credits at the time of application, and all information  
424 required by § 62.1-44.15:23 of the Code of Virginia.

425 14. Permit application fee. The applicant will be notified by the ~~board~~ department as to the  
426 appropriate fee for the project in accordance with 9VAC25-20.

427 15. A written description and a graphical depiction identifying all upland areas including  
428 buffers, wetlands, open water, other surface waters, and compensatory mitigation areas  
429 located within the proposed project boundary or permittee-responsible compensatory  
430 mitigation areas that are under a deed restriction, conservation easement, restrictive  
431 covenant, or other land use protective instrument (i.e., protected areas). Such description  
432 and a graphical depiction shall include the nature of the prohibited activities within the  
433 protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as  
434 field-verified by the applicant, and if available, the limits as approved by the locality in  
435 which the project site is located, unless the proposed use is exempt from the Chesapeake  
436 Bay Preservation Area Designation and Management Regulations (9VAC25-830), as  
437 additional state or local requirements may apply if the project is located within an RPA.

438 16. Signature page that has been signed, dated, and certified by the applicant in  
439 accordance with 9VAC25-210-100. If the applicant is a business or other organization, the  
440 signature must be made by an individual with the authority to bind the business or  
441 organization, and the title of the signatory must be provided. The application signature  
442 page, either on the copy submitted to the Virginia Marine Resources Commission or to  
443 DEQ, must have an original signature. Electronic submittals containing the original  
444 signature page, such as that contained in a scanned document file, are acceptable.

445 C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ.  
446 When required, the method selected for the analysis shall assess water quality or habitat metrics  
447 and shall be coordinated with DEQ in advance of conducting the analysis.

448 1. No analysis shall be required when:

- 449 a. Wetland impacts per each single and complete project total 1.00 acre or less; or  
450 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
451 in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-  
452 shrub, and 1:1 for emergent, or higher.

453 2. Analysis shall be required when wetland impacts per each single and complete project  
454 total 1.01 acres or more and when any of the following applies:

- 455 a. The proposed compensatory mitigation consists of permittee-responsible  
456 compensation, including water quality enhancements as replacement for wetlands; or  
457 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
458 in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest,  
459 1.5:1 for scrub-shrub, and 1:1 for emergent.

460 D. Upon receipt of an application from the Department of Transportation for a road or highway  
461 construction project by the appropriate DEQ office, the ~~board~~ department has 10 business days,  
462 pursuant to § 33.2-258 of the Code of Virginia, to review the application and either determine the  
463 information requested in subsection B of this section is complete or inform the Department of  
464 Transportation that additional information is required to make the application complete. Upon  
465 receipt of an application from other applicants for any type of project, the ~~board~~ department has  
466 15 days to review the application and either determine the information requested in subsection B  
467 of this section is complete or inform the applicant that additional information is required to make  
468 the application complete. Pursuant to § 33.2-258 of the Code of Virginia, coverage under this  
469 VWP general permit for Department of Transportation road or highway construction projects shall  
470 be approved or approved with conditions, or the application shall be denied, within 30 business  
471 days of receipt of a complete application. For all other projects, coverage under this VWP general  
472 permit shall be approved or approved with conditions, or the application shall be denied, within  
473 45 days of receipt of a complete application. If the ~~board~~ department fails to act within the  
474 applicable 30 or 45 days on a complete application, coverage under this VWP general permit shall  
475 be deemed granted.



476 1. In evaluating the application, the board department shall make an assessment of the  
 477 impacts associated with the project in combination with other existing or proposed  
 478 impacts. Application for coverage under this VWP general permit shall be denied if the  
 479 cumulative impacts will cause or contribute to a significant impairment of state waters or  
 480 fish and wildlife resources.

481 2. The board department may place additional requirements on a project in order to grant  
 482 coverage under this VWP general permit. However, the requirements must be consistent  
 483 with this chapter.

484 E. Incomplete application.

485 1. Where an application for general permit coverage is not accepted as complete by the  
 486 board department within the applicable 10 or 15 days of receipt, the board department  
 487 shall require the submission of additional information from the applicant and may suspend  
 488 processing of any application until such time as the applicant has supplied the requested  
 489 information and the application is complete. Where the applicant becomes aware that he  
 490 omitted one or more relevant facts from an application, or submitted incorrect information  
 491 in an application or in any report to the board department, the applicant shall immediately  
 492 submit such facts or the correct information. A revised application with new information  
 493 shall be deemed a new application for the purposes of review but shall not require an  
 494 additional permit application fee.

495 2. An incomplete application for general permit coverage may be administratively  
 496 withdrawn from processing by the board department for failure to provide the required  
 497 information after 60 days from the date of the latest written information request made by  
 498 the board department. The board department shall provide (i) notice to the applicant and  
 499 (ii) an opportunity for an informal fact-finding proceeding when administratively  
 500 withdrawing an incomplete application. Resubmittal of an application for the same or  
 501 similar project, after such time that the original permit application was administratively  
 502 withdrawn, shall require submittal of an additional permit application fee.

503 3. An applicant may request a suspension of application review by the board department,  
 504 but requesting a suspension shall not preclude the board department from administratively  
 505 withdrawing an incomplete application.

506 **9VAC25-680-80. Notice of planned changes; modifications to coverage.**

507 A. The permittee shall notify the board department in advance of a planned change, and an  
 508 application or request for modification to coverage shall be reviewed according to all provisions  
 509 of this chapter. Coverage shall not be modified if (i) the cumulative total of permanent and  
 510 temporary impacts for a single and complete project exceeds two acres of nontidal wetlands or  
 511 open water or exceeds 1,500 linear feet of nontidal stream bed or (ii) the criteria in subsection B  
 512 of this section are not met. The applicant may submit a new permit application for consideration  
 513 under a VWP individual permit.

514 B. VWP general permit coverage may be modified under the following circumstances:

515 1. Additional impacts to surface waters are necessary, provided that:

516 a. The additional impacts are proposed prior to impacting the additional areas.

517 b. The proposed additional impacts are located within the project boundary as depicted  
 518 in the application for coverage or are located in areas of directly-related off-site work,  
 519 unless otherwise prohibited in this chapter.

520 c. The permittee has provided sufficient documentation that the board department may  
 521 reasonably determine that the additional impacts will not impact federal or state listed  
 522 threatened or endangered species or designated critical habitat, or result in a taking  
 523 of threatened or endangered species. The board department recommends that the

524 permittee verify that the project will not impact any proposed threatened or endangered  
525 species or proposed critical habitat.

526 d. The cumulative, additional permanent wetland or open water impacts for one or  
527 more notices of planned change do not exceed 0.25 acre.

528 e. The cumulative, additional permanent stream impacts for one or more notices of  
529 planned change do not exceed 100 linear feet.

530 f. Documentation is provided demonstrating that the proposed surface water impacts  
531 have been avoided to the maximum extent practicable in accordance with the  
532 informational requirements of 9VAC25-680-60 B 12.

533 g. Compensatory mitigation for the proposed impacts, if required, meets the  
534 requirements of § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and  
535 9VAC25-680-70. Prior to a planned change approval, the Department of  
536 Environmental Quality may require submission of a compensatory mitigation plan for  
537 the additional impacts.

538 h. Where such additional impacts are temporary, and prior to initiating the impacts, the  
539 permittee provides a written statement to the ~~board~~ department that the area to be  
540 temporarily impacted will be restored to its preconstruction elevations and contours  
541 with topsoil from the impact area where practicable, such that the previous acreage  
542 and functions are restored in accordance with Parts I A 3 and B 11 of 9VAC25-680-  
543 100. The additional temporary impacts shall not cause the cumulative total impacts to  
544 exceed the general permit threshold for use. The proposed temporary impacts shall  
545 be deemed approved if DEQ does not respond within 10 days of receipt of the request  
546 for authorization to temporarily impact additional surface waters.

547 i. The additional proposed impacts do not change the category of the project, based  
548 on the original impact amounts as specified in 9VAC25-680-50 A 2. However, the  
549 applicant may submit a new permit application for the total impacts to be considered  
550 under this VWP general permit, another VWP general permit, or a VWP individual  
551 permit.

552 2. A reduction in wetland or stream impacts. Compensatory mitigation requirements may  
553 be modified in relation to the adjusted impacts, provided that the adjusted compensatory  
554 mitigation meets the initial compensatory mitigation goals. DEQ shall not be responsible  
555 for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit  
556 purchases.

557 3. A change in project plans or use that does not result in a change to authorized project  
558 impacts other than those allowed in subdivisions 1 and 2 of this subsection.

559 4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another  
560 DEQ-approved mitigation bank or in-lieu fee program or substitute all or a portion of the  
561 prior authorized permittee-responsible compensation with a purchase of mitigation credits  
562 in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 C from  
563 a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed  
564 to be purchased shall be sufficient to meet the compensatory mitigation requirement for  
565 which the compensatory mitigation is proposed to replace.

566 5. Correct typographical errors.

567 **9VAC25-680-90. Termination of coverage.**

568 A. The permittee shall submit a request for termination by consent within 30 days of  
569 completing or canceling all authorized activities requiring notification under 9VAC25-680-50 A  
570 and all compensatory mitigation requirements. When submitted for project completion, the  
571 request for termination by consent shall constitute a notice of project completion in accordance

572 with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the  
573 ~~board~~ department. The permittee shall submit the following information:

- 574 1. Name, mailing address, and telephone number of the permittee;  
575 2. Name and location of the activity;  
576 3. The VWP general permit tracking number; and  
577 4. One of the following certifications:

578 a. For project completion:

579 "I certify under penalty of law that all activities and any required compensatory  
580 mitigation authorized by the VWP general permit and general permit coverage have  
581 been completed. I understand that by submitting this notice of termination I am no  
582 longer authorized to perform activities in surface waters in accordance with the VWP  
583 general permit and general permit coverage, and that performing activities in surface  
584 waters is unlawful where the activity is not authorized by the VWP permit or coverage,  
585 unless otherwise excluded from obtaining coverage. I also understand that the  
586 submittal of this notice does not release me from liability for any violations of the VWP  
587 general permit or coverage."

588 b. For project cancellation:

589 "I certify under penalty of law that the activities and any required compensatory  
590 mitigation authorized by the VWP general permit and general permit coverage will not  
591 occur. I understand that by submitting this notice of termination I am no longer  
592 authorized to perform activities in surface waters in accordance with the VWP general  
593 permit and general permit coverage, and that performing activities in surface waters is  
594 unlawful where the activity is not authorized by the VWP permit or for coverage, unless  
595 otherwise excluded from obtaining coverage. I also understand that the submittal of  
596 this notice does not release me from liability for any violations of the VWP general  
597 permit or coverage, nor does it allow me to resume the authorized activities without  
598 reapplication and coverage."

599 c. For events beyond permittee control, the permittee shall provide a detailed  
600 explanation of the events, to be approved by the Department of Environmental Quality,  
601 and the following certification statement:

602 "I certify under penalty of law that the activities or the required compensatory mitigation  
603 authorized by the VWP general permit and general permit coverage have changed as  
604 the result of events beyond my control (see attached). I understand that by submitting  
605 this notice of termination I am no longer authorized to perform activities in surface  
606 waters in accordance with the VWP general permit and general permit coverage, and  
607 that performing activities in surface waters is unlawful where the activity is not  
608 authorized by the VWP permit or coverage, unless otherwise excluded from obtaining  
609 coverage. I also understand that the submittal of this notice does not release me from  
610 liability for any violations of the VWP general permit or coverage, nor does it allow me  
611 to resume the authorized activities without reapplication and coverage."

612 B. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-  
613 210-180 F and ~~§ 62.1-44.15:02 of the Code of Virginia~~, or without cause in accordance with  
614 9VAC25-210-180 G and ~~§ 62.1-44.15:02~~.

615 **9VAC25-680-100. VWP general permit.**

616 VWP GENERAL PERMIT NO. WP3 FOR LINEAR TRANSPORTATION PROJECTS  
617 UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE  
618 WATER CONTROL LAW

619 Effective date: August 2, 2016  
620 Expiration date: August 1, 2026

621 In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State  
622 Water Control Law and regulations adopted pursuant thereto, the board has determined that there  
623 is a reasonable assurance that this VWP general permit, if complied with, will protect instream  
624 beneficial uses, will not violate applicable water quality standards, and will not cause or contribute  
625 to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP  
626 general permit, the board has not taken into consideration the structural stability of any proposed  
627 activities.

628 The permanent or temporary impact of up to two acres of nontidal wetlands or open water and  
629 up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general  
630 permit set forth herein; any requirements in coverage granted under this VWP general permit; the  
631 Clean Water Act, as amended; and the State Water Control Law and regulations adopted  
632 pursuant to it.

633 Part I. Special Conditions.

634 A. Authorized activities.

635 1. The activities authorized by this chapter shall not cause more than the permanent or  
636 temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500  
637 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the  
638 ~~board~~ department in the coverage letter, if any, shall be enforceable conditions of this  
639 permit.

640 2. Any changes to the authorized permanent impacts to surface waters shall require a  
641 notice of planned change in accordance with 9VAC25-680-80. An application or request  
642 for modification to coverage or another VWP permit application may be required.

643 3. Any changes to the authorized temporary impacts to surface waters shall require written  
644 notification to and approval from the Department of Environmental Quality in accordance  
645 with 9VAC25-680-80 prior to initiating the impacts and restoration to preexisting conditions  
646 in accordance with the conditions of this permit.

647 4. Modification to compensation requirements may be approved at the request of the  
648 permittee when a decrease in the amount of authorized surface waters impacts occurs,  
649 provided that the adjusted compensation meets the initial compensation goals.

650 B. Overall conditions.

651 1. The activities authorized by this VWP general permit shall be executed in a manner so  
652 as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of  
653 the Code of Virginia.

654 2. No activity may substantially disrupt the movement of aquatic life indigenous to the  
655 water body, including those species which normally migrate through the area, unless the  
656 primary purpose of the activity is to impound water. Pipes and culverts placed in streams  
657 must be installed to maintain low flow conditions and shall be countersunk at both inlet  
658 and outlet ends of the pipe or culvert, unless specifically approved by the Department of  
659 Environmental Quality on a case-by-case basis and as follows: The requirement to  
660 countersink does not apply to extensions or maintenance of existing pipes and culverts  
661 that are not countersunk, floodplain pipe and culverts being placed above ordinary high  
662 water, pipes and culverts being placed on bedrock, or pipes or culverts required to be  
663 placed on slopes 5.0% or greater. Bedrock encountered during construction must be

664 identified and approved in advance of a design change where the countersunk condition  
665 cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three  
666 inches below the natural stream bed elevations, and pipes and culverts greater than 24  
667 inches shall be countersunk at least six inches below the natural stream bed elevations.  
668 Hydraulic capacity shall be determined based on the reduced capacity due to the  
669 countersunk position. In all stream crossings appropriate measures shall be implemented  
670 to minimize any disruption of aquatic life movement.

671 3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters,  
672 unless the area is contained within a cofferdam and the work is performed in the dry or  
673 unless otherwise approved by the Department of Environmental Quality. Excess or waste  
674 concrete shall not be disposed of in flowing surface waters or washed into flowing surface  
675 waters.

676 4. All fill material shall be clean and free of contaminants in toxic concentrations or  
677 amounts in accordance with all applicable laws and regulations.

678 5. Erosion and sedimentation controls shall be designed in accordance with the Virginia  
679 Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be  
680 placed prior to clearing and grading and maintained in good working order to minimize  
681 impacts to state waters. These controls shall remain in place until the area is stabilized  
682 and shall then be removed.

683 6. Exposed slopes and streambanks shall be stabilized immediately upon completion of  
684 work in each permitted impact area. All denuded areas shall be properly stabilized in  
685 accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition,  
686 1992.

687 7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways)  
688 and demolition activities associated with the project shall be accomplished in a manner  
689 that minimizes construction or waste materials from entering surface waters to the  
690 maximum extent practicable, unless authorized by this VWP general permit.

691 8. No machinery may enter flowing waters, unless authorized by this VWP general permit  
692 or approved prior to entry by the Department of Environmental Quality.

693 9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats,  
694 geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum  
695 extent practicable. Equipment and materials shall be removed immediately upon  
696 completion of work.

697 10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of  
698 authorized activities and within the project or right-of-way limits shall be clearly flagged or  
699 marked for the life of the construction activity at that location to preclude unauthorized  
700 disturbances to these surface waters and compensatory mitigation areas during  
701 construction. The permittee shall notify contractors that no activities are to occur in these  
702 marked surface waters.

703 11. Temporary disturbances to surface waters during construction shall be avoided and  
704 minimized to the maximum extent practicable. All temporarily disturbed wetland areas  
705 shall be restored to preexisting conditions within 30 days of completing work at each  
706 respective temporary impact area, which shall include reestablishing preconstruction  
707 elevations and contours with topsoil from the impact area where practicable and planting  
708 or seeding with appropriate wetland vegetation according to cover type (i.e., emergent,  
709 scrub-shrub, or forested). The permittee shall take all appropriate measures to promote  
710 and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation  
711 through the second year post-disturbance. All temporarily impacted streams and  
712 streambanks shall be restored to their preconstruction elevations and contours with topsoil

713 from the impact area where practicable within 30 days following the construction at that  
 714 stream segment. Streambanks shall be seeded or planted with the same vegetation cover  
 715 type originally present, including any necessary, supplemental erosion control grasses.  
 716 Invasive species identified on the Department of Conservation and Recreation's Virginia  
 717 Invasive Plant Species List shall not be used to the maximum extent practicable or without  
 718 prior approval from the Department of Environmental Quality.

719 12. Materials (including fill, construction debris, and excavated and woody materials)  
 720 temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately  
 721 stabilized to prevent entry into state waters, managed such that leachate does not enter  
 722 state waters, and completely removed within 30 days following completion of that  
 723 construction activity. Disturbed areas shall be returned to preconstruction elevations and  
 724 contours with topsoil from the impact area where practicable; restored within 30 days  
 725 following removal of the stockpile; and restored with the same vegetation cover type  
 726 originally present, including any necessary supplemental erosion control grasses. Invasive  
 727 species identified on the Department of Conservation and Recreation's Virginia Invasive  
 728 Plant Species List shall not be used to the maximum extent practicable or without prior  
 729 approval from the Department of Environmental Quality.

730 13. Continuous flow of perennial springs shall be maintained by the installation of spring  
 731 boxes, french drains, or other similar structures.

732 14. The permittee shall employ measures to prevent spills of fuels or lubricants into state  
 733 waters.

734 15. The permittee shall conduct his activities in accordance with the time-of-year  
 735 restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia  
 736 Marine Resources Commission, or other interested and affected agencies, as contained,  
 737 when applicable, in Department of Environmental Quality VWP general permit coverage,  
 738 and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

739 16. Water quality standards shall not be violated as a result of the construction activities.

740 17. If stream channelization or relocation is required, all work in surface waters shall be  
 741 done in the dry, unless otherwise authorized by the Department of Environmental Quality,  
 742 and all flows shall be diverted around the channelization or relocation area until the new  
 743 channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and  
 744 outlet ends of the new channel during excavation. Once the new channel has been  
 745 stabilized, flow shall be routed into the new channel by first removing the downstream plug  
 746 and then the upstream plug. The rerouted stream flow must be fully established before  
 747 construction activities in the old stream channel can begin.

#### 748 C. Road crossings.

749 1. Access roads and associated bridges, pipes, and culverts shall be constructed to  
 750 minimize the adverse effects on surface waters to the maximum extent practicable.  
 751 Access roads constructed above preconstruction elevations and contours in surface  
 752 waters must be bridged, piped, or culverted to maintain surface flows.

753 2. Installation of road crossings shall occur in the dry via the implementation of cofferdams,  
 754 sheetpiling, stream diversions, or similar structures.

#### 755 D. Utility lines.

756 1. All utility line work in surface waters shall be performed in a manner that minimizes  
 757 disturbance, and the area must be returned to its preconstruction elevations and contours  
 758 with topsoil from the impact area where practicable and restored within 30 days of  
 759 completing work in the area, unless otherwise authorized by the Department of  
 760 Environmental Quality. Restoration shall be the seeding or planting of the same vegetation

761 cover type originally present, including any necessary supplemental erosion control  
762 grasses. Invasive species identified on the Department of Conservation and Recreation's  
763 Virginia Invasive Plant Species List shall not be used to the maximum extent practicable  
764 or without prior approval from the Department of Environmental Quality.

765 2. Material resulting from trench excavation may be temporarily sidecast into wetlands not  
766 to exceed a total of 90 days, provided the material is not placed in a manner such that it  
767 is dispersed by currents or other forces.

768 3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g.,  
769 backfilling with extensive gravel layers creating a french drain effect). For example, utility  
770 lines may be backfilled with clay blocks to ensure that the trench does not drain surface  
771 waters through which the utility line is installed.

772 E. Stream modification and stream bank protection.

773 1. Riprap bank stabilization shall be of an appropriate size and design in accordance with  
774 the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

775 2. Riprap aprons for all outfalls shall be designed in accordance with the Virginia Erosion  
776 and Sediment Control Handbook, Third Edition, 1992.

777 3. For bank protection activities, the structure and backfill shall be placed as close to the  
778 stream bank as practicable. No material shall be placed in excess of the minimum  
779 necessary for erosion protection.

780 4. All stream bank protection structures shall be located to eliminate or minimize impacts  
781 to vegetated wetlands to the maximum extent practicable.

782 5. Asphalt and materials containing asphalt or other toxic substances shall not be used in  
783 the construction of submerged sills or breakwaters.

784 6. Redistribution of existing stream substrate for the purpose of erosion control is  
785 prohibited.

786 7. No material removed from the stream bottom shall be disposed of in surface waters,  
787 unless otherwise authorized by this VWP general permit.

788 F. Dredging.

789 1. Dredging depths shall be determined and authorized according to the proposed use  
790 and controlling depths outside the area to be dredged.

791 2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom  
792 and minimizes turbidity levels in the water column.

793 3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging,  
794 dredging operations shall cease, and the Department of Environmental Quality shall be  
795 notified immediately.

796 4. Barges used for the transportation of dredge material shall be filled in such a manner  
797 to prevent the overflow of dredged materials.

798 5. Double handling of dredged material in state waters shall not be permitted.

799 6. For navigation channels the following shall apply:

800 a. A buffer of four times the depth of the dredge cut shall be maintained between the  
801 bottom edge of the design channel and the channelward limit of wetlands, or a buffer  
802 of 15 feet shall be maintained from the dredged cut and the channelward edge of  
803 wetlands, whichever is greater. This landward limit of buffer shall be flagged and  
804 inspected prior to construction.

805 b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-  
806 vertical slope to prevent slumping of material into the dredged area.

807 7. A dredged material management plan for the designated upland disposal site shall be  
808 submitted and approved 30 days prior to initial dredging activity.

809 8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area  
810 to allow for maximum retention and settling time. Filter fabric shall be used to line the  
811 dewatering area and to cover the outfall pipe to further reduce sedimentation to state  
812 waters.

813 9. The dredge material dewatering area shall be of adequate size to contain the dredge  
814 material and to allow for adequate dewatering and settling out of sediment prior to  
815 discharge back into state waters.

816 10. The dredge material dewatering area shall utilize an earthen berm or straw bales  
817 covered with filter fabric along the edge of the area to contain the dredged material, filter  
818 bags, or other similar filtering practices, any of which shall be properly stabilized prior to  
819 placing the dredged material within the containment area.

820 11. Overtopping of the dredge material containment berms with dredge materials shall be  
821 strictly prohibited.

#### 822 G. Stormwater management facilities.

823 1. Stormwater management facilities shall be installed in accordance with best  
824 management practices and watershed protection techniques (e.g., vegetated buffers,  
825 siting considerations to minimize adverse effects to aquatic resources, bioengineering  
826 methods incorporated into the facility design to benefit water quality and minimize adverse  
827 effects to aquatic resources) that provide for long-term aquatic resources protection and  
828 enhancement, to the maximum extent practicable.

829 2. Compensation for unavoidable impacts shall not be allowed within maintenance areas  
830 of stormwater management facilities.

831 3. Maintenance activities within stormwater management facilities shall not require  
832 additional permit coverage or compensation, provided that the maintenance activities do  
833 not exceed the original contours of the facility, as approved and constructed, and is  
834 accomplished in designated maintenance areas as indicated in the facility maintenance  
835 or design plan or when unavailable, an alternative plan approved by the Department of  
836 Environmental Quality.

### 837 Part II. Construction and Compensation Requirements, Monitoring and Reporting.

#### 838 A. Minimum compensation requirements.

839 1. The permittee shall provide any required compensation for impacts in accordance with  
840 the conditions in this VWP general permit, the coverage letter, and the chapter  
841 promulgating the general permit. For all compensation that requires a protective  
842 mechanism, including preservation of surface waters or buffers, the permittee shall record  
843 the approved protective mechanism in the chain of title to the property, or an equivalent  
844 instrument for government-owned lands, and proof of recordation shall be submitted to  
845 the Department of Environmental Quality prior to commencing impacts in surface waters.

846 2. Compensation options that may be considered under this VWP general permit shall  
847 meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and  
848 9VAC25-680-70.

849 3. The permittee-responsible compensation site or sites depicted in the conceptual  
850 compensation plan submitted with the application shall constitute the compensation site.  
851 A site change may require a modification to coverage.



852 4. For compensation involving the purchase of mitigation bank credits or the purchase of  
853 in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas  
854 until documentation of the mitigation bank credit purchase or of the in-lieu fee program  
855 credit purchase has been submitted to and received by the Department of Environmental  
856 Quality.

857 5. The final compensatory mitigation plan shall be submitted to and approved by the ~~board~~  
858 department prior to a construction activity in permitted impact areas. The ~~board~~  
859 department shall review and provide written comments on the final plan within 30 days of  
860 receipt or it shall be deemed approved. The final plan as approved by the ~~board~~  
861 department shall be an enforceable requirement of any coverage under this VWP general  
862 permit. Deviations from the approved final plan shall be submitted and approved in  
863 advance by the ~~board~~ department.

864 a. The final permittee-responsible wetlands compensation plan shall include:

865 (1) The complete information on all components of the conceptual compensation plan.

866 (2) A summary of the type and acreage of existing wetland impacts anticipated during  
867 the construction of the compensation site and the proposed compensation for these  
868 impacts; a site access plan; a monitoring plan, including proposed success criteria,  
869 monitoring goals, and the location of photo-monitoring stations, monitoring wells,  
870 vegetation sampling points, and reference wetlands or streams, if available; an  
871 abatement and control plan for undesirable plant species; an erosion and  
872 sedimentation control plan; a construction schedule; and the final protective  
873 mechanism for the protection of the compensation site or sites, including all surface  
874 waters and buffer areas within its boundaries.

875 (3) The approved protective mechanism. The protective mechanism shall be recorded  
876 in the chain of title to the property, or an equivalent instrument for government-owned  
877 lands, and proof of recordation shall be submitted to the Department of Environmental  
878 Quality prior to commencing impacts in surface waters.

879 b. The final permittee-responsible stream compensation plan shall include:

880 (1) The complete information on all components of the conceptual compensation plan.

881 (2) An evaluation, discussion, and plan drawing or drawings of existing conditions on  
882 the proposed compensation stream, including the identification of functional and  
883 physical deficiencies for which the measures are proposed, and summary of  
884 geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth  
885 ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including  
886 a monitoring and reporting schedule, monitoring design and methodologies for  
887 success, proposed success criteria, location of photo-monitoring stations, vegetation  
888 sampling points, survey points, bank pins, scour chains, and reference streams; an  
889 abatement and control plan for undesirable plant species; an erosion and  
890 sedimentation control plan, if appropriate; a construction schedule; a plan-view  
891 drawing depicting the pattern and all compensation measures being employed; a  
892 profile drawing; cross-sectional drawing or drawings of the proposed compensation  
893 stream; and the final protective mechanism for the protection of the compensation site  
894 or sites, including all surface waters and buffer areas within its boundaries.

895 (3) The approved protective mechanism. The protective mechanism shall be recorded  
896 in the chain of title to the property, or an equivalent instrument for government-owned  
897 lands, and proof of recordation shall be submitted to the Department of Environmental  
898 Quality prior to commencing impacts in surface waters.

- 899 6. The following criteria shall apply to permittee-responsible wetland or stream  
900 compensation:
- 901 a. The vegetation used shall be native species common to the area, shall be suitable  
902 for growth in local wetland or riparian conditions, and shall be from areas within the  
903 same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural  
904 Resources Conservation Service Land Resource Region as that of the project site.  
905 Planting of woody plants shall occur when vegetation is normally dormant, unless  
906 otherwise approved in the final wetlands or stream compensation plan or plans.
- 907 b. All work in permitted impact areas shall cease if compensation site construction has  
908 not commenced within 180 days of commencement of project construction, unless  
909 otherwise authorized by the ~~board~~ department.
- 910 c. The Department of Environmental Quality shall be notified in writing prior to the  
911 initiation of construction activities at the compensation site.
- 912 d. Point sources of stormwater runoff shall be prohibited from entering a wetland  
913 compensation site prior to treatment by appropriate best management practices.  
914 Appropriate best management practices may include sediment traps, grassed  
915 waterways, vegetated filter strips, debris screens, oil and grease separators, or  
916 forebays.
- 917 e. The success of the compensation shall be based on meeting the success criteria  
918 established in the approved final compensation plan.
- 919 f. If the wetland or stream compensation area fails to meet the specified success  
920 criteria in a particular monitoring year, other than the final monitoring year, the reasons  
921 for this failure shall be determined and a corrective action plan shall be submitted to  
922 the Department of Environmental Quality for approval with or before that year's  
923 monitoring report. The corrective action plan shall contain at minimum the proposed  
924 actions, a schedule for those actions, and a monitoring plan, and shall be implemented  
925 by the permittee in accordance with the approved schedule. Should significant  
926 changes be necessary to ensure success, the required monitoring cycle shall begin  
927 again, with monitoring year one being the year that the changes are complete as  
928 confirmed by the Department of Environmental Quality. If the wetland or stream  
929 compensation area fails to meet the specified success criteria by the final monitoring  
930 year or if the wetland or stream compensation area has not met the stated restoration  
931 goals, reasons for this failure shall be determined and a corrective action plan,  
932 including proposed actions, a schedule, and a monitoring plan, shall be submitted with  
933 the final year monitoring report for the Department of Environmental Quality approval.  
934 Corrective action shall be implemented by the permittee in accordance with the  
935 approved schedule. Annual monitoring shall be required to continue until two  
936 sequential, annual reports indicate that all criteria have been successfully satisfied and  
937 the site has met the overall restoration goals (e.g., that corrective actions were  
938 successful).
- 939 g. The surveyed wetland boundary for the compensation site shall be based on the  
940 results of the hydrology, soils, and vegetation monitoring data and shall be shown on  
941 the site plan. Calculation of total wetland acreage shall be based on that boundary at  
942 the end of the monitoring cycle. Data shall be submitted by December 31 of the final  
943 monitoring year.
- 944 h. Herbicides or algicides shall not be used in or immediately adjacent to the  
945 compensation site or sites without prior authorization by the ~~board~~ department. All  
946 vegetation removal shall be done by manual means only, unless authorized by the  
947 Department of Environmental Quality in advance.

- 948 B. Impact site construction monitoring.
- 949 1. Construction activities authorized by this permit that are within impact areas shall be
- 950 monitored and documented. The monitoring shall consist of:
- 951 a. Preconstruction photographs taken at each impact area prior to initiation of activities
- 952 within impact areas. Photographs shall remain on the project site and depict the impact
- 953 area and the nonimpacted surface waters immediately adjacent to and downgradient
- 954 of each impact area. Each photograph shall be labeled to include the following
- 955 information: permit number, impact area number, date and time of the photograph,
- 956 name of the person taking the photograph, photograph orientation, and photograph
- 957 subject description.
- 958 b. Site inspections shall be conducted by the permittee or the permittee's qualified
- 959 designee once every calendar month during activities within impact areas. Monthly
- 960 inspections shall be conducted in the following areas: all authorized permanent and
- 961 temporary impact areas; all avoided surface waters, including wetlands, stream
- 962 channels, and open water; surface water areas within 50 feet of any land disturbing
- 963 activity and within the project or right-of-way limits; and all on-site permanent
- 964 preservation areas required under this permit. Observations shall be recorded on the
- 965 inspection form provided by the Department of Environmental Quality. The form shall
- 966 be completed in its entirety for each monthly inspection and shall be kept on site and
- 967 made available for review by the Department of Environmental Quality staff upon
- 968 request during normal business hours. Inspections are not required during periods of
- 969 no activity within impact areas.
- 970 2. Monitoring of water quality parameters shall be conducted during permanent relocation
- 971 of perennial streams through new channels in the manner noted below. The permittee
- 972 shall report violations of water quality standards to the Department of Environmental
- 973 Quality in accordance with the procedures in 9VAC25-680-100 Part II E. Corrective
- 974 measures and additional monitoring may be required if water quality standards are not
- 975 met. Reporting shall not be required if water quality standards are not violated.
- 976 a. A sampling station shall be located upstream and immediately downstream of the
- 977 relocated channel.
- 978 b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every
- 979 30 minutes for at least two hours at each station prior to opening the new channels
- 980 and immediately before opening new channels.
- 981 c. Temperature, pH, and D.O. readings shall be taken after opening the channels and
- 982 every 30 minutes for at least three hours at each station.
- 983 C. Permittee-responsible wetland compensation site monitoring.
- 984 1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial
- 985 surveys, shall be conducted for the entire compensation site or sites, including invert
- 986 elevations for all water elevation control structures and spot elevations throughout the site
- 987 or sites. Aerial surveys shall include the variation from actual ground conditions, such as
- 988 +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered
- 989 professional engineer to conform to the design plans. The survey shall be submitted within
- 990 60 days of completing compensation site construction. Changes or deviations in the as-
- 991 built survey or aerial survey shall be shown on the survey and explained in writing.
- 992 2. Photographs shall be taken at the compensation site or sites from the permanent
- 993 markers identified in the final compensation plan, and established to ensure that the same
- 994 locations and view directions at the site or sites are monitored in each monitoring period.

995 These photographs shall be taken after the initial planting and at a time specified in the  
996 final compensation plan during every monitoring year.

997 3. Compensation site monitoring shall begin on the first day of the first complete growing  
998 season (monitoring year 1) after wetland compensation site construction activities,  
999 including planting, have been completed. Monitoring shall be required for monitoring years  
1000 1, 2, 3, and 5, unless otherwise approved by the Department of Environmental Quality. In  
1001 all cases, if all success criteria have not been met in the final monitoring year, then  
1002 monitoring shall be required for each consecutive year until two annual sequential reports  
1003 indicate that all criteria have been successfully satisfied.

1004 4. The establishment of wetland hydrology shall be measured weekly during the growing  
1005 season, with the location and number of monitoring wells, and frequency of monitoring for  
1006 each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be  
1007 accompanied by precipitation data, including rainfall amounts, either from on site or from  
1008 the closest weather station. Once the wetland hydrology success criteria have been  
1009 satisfied for a particular monitoring year, monitoring may be discontinued for the remainder  
1010 of that monitoring year following Department of Environmental Quality approval. After a  
1011 period of three monitoring years, the permittee may request that hydrology monitoring be  
1012 discontinued, providing that adequate hydrology has been established and maintained.  
1013 Hydrology monitoring shall not be discontinued without written approval from the  
1014 Department of Environmental Quality.

1015 5. The presence of hydric soils or soils under hydric conditions shall be evaluated in  
1016 accordance with the final compensation plan.

1017 6. The establishment of wetland vegetation shall be in accordance with the final  
1018 compensation plan. Monitoring shall take place in August, September, or October during  
1019 the growing season of each monitoring year, unless otherwise authorized in the monitoring  
1020 plan.

1021 7. The presence of undesirable plant species shall be documented.

1022 8. All wetland compensation monitoring reports shall be submitted in accordance with  
1023 9VAC25-680-100 Part II E 6.

1024 D. Permittee-responsible stream compensation and monitoring.

1025 1. Riparian buffer restoration activities shall be detailed in the final compensation plan and  
1026 shall include, as appropriate, the planting of a variety of native species currently growing  
1027 in the site area, including appropriate seed mixtures and woody species that are bare root,  
1028 balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the  
1029 stream bank at bankfull elevation landward on both sides of the stream, shall be required  
1030 where practical.

1031 2. The installation of root wads, vanes, and other instream structures, shaping of the  
1032 stream banks and channel relocation shall be completed in the dry whenever practicable.

1033 3. Livestock access to the stream and designated riparian buffer shall be limited to the  
1034 greatest extent practicable.

1035 4. Stream channel restoration activities shall be conducted in the dry or during low flow  
1036 conditions. When site conditions prohibit access from the streambank or upon prior  
1037 authorization from the Department of Environmental Quality, heavy equipment may be  
1038 authorized for use within the stream channel.

1039 5. Photographs shall be taken at the compensation site from the vicinity of the permanent  
1040 photo-monitoring stations identified in the final compensation plan. The photograph  
1041 orientation shall remain constant during all monitoring events. At a minimum, photographs  
1042 shall be taken from the center of the stream, facing downstream, with a sufficient number

1043 of photographs to view the entire length of the restoration site. Photographs shall  
1044 document the completed restoration conditions. Photographs shall be taken prior to site  
1045 activities, during instream and riparian compensation construction activities, within one  
1046 week of completion of activities, and during at least one day of each monitoring year to  
1047 depict restored conditions.

1048 6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial  
1049 surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall  
1050 include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall  
1051 be certified by the licensed surveyor or by a registered, professional engineer to conform  
1052 to the design plans. The survey shall be submitted within 60 days of completing  
1053 compensation site construction. Changes or deviations from the final compensation plans  
1054 in the as-built survey or aerial survey shall be shown on the survey and explained in  
1055 writing.

1056 7. Compensation site monitoring shall begin on day one of the first complete growing  
1057 season (monitoring year 1) after stream compensation site construction activities,  
1058 including planting, have been completed. Monitoring shall be required for monitoring years  
1059 1 and 2, unless otherwise approved by the Department of Environmental Quality. In all  
1060 cases, if all success criteria have not been met in the final monitoring year, then monitoring  
1061 shall be required for each consecutive year until two annual sequential reports indicate  
1062 that all criteria have been successfully satisfied.

1063 8. All stream compensation site monitoring reports shall be submitted in accordance with  
1064 9VAC25-680-100 Part II E 6.

#### 1065 E. Reporting.

1066 1. Written communications required by this VWP general permit shall be submitted to the  
1067 appropriate Department of Environmental Quality office. The VWP general permit tracking  
1068 number shall be included on all correspondence.

1069 2. The Department of Environmental Quality shall be notified in writing prior to the start of  
1070 construction activities at the first permitted impact area.

1071 3. A construction status update form provided by the Department of Environmental Quality  
1072 shall be completed and submitted to the Department of Environmental Quality twice per  
1073 year for the duration of coverage under a VWP general permit. Forms completed in June  
1074 shall be submitted by or on July 10, and forms completed in December shall be submitted  
1075 by or on January 10. The form shall include reference to the VWP permit tracking number  
1076 and one of the following statements for each authorized surface water impact location:

1077 a. Construction activities have not yet started;

1078 b. Construction activities have started;

1079 c. Construction activities have started but are currently inactive; or

1080 d. Construction activities are complete.

1081 4. The Department of Environmental Quality shall be notified in writing within 30 days  
1082 following the completion of all activities in all authorized impact areas.

1083 5. The Department of Environmental Quality shall be notified in writing prior to the initiation  
1084 of activities at the permittee-responsible compensation site. The notification shall include  
1085 a projected schedule of activities and construction completion.

1086 6. All permittee-responsible compensation site monitoring reports shall be submitted  
1087 annually by December 31, with the exception of the last year, in which case the report  
1088 shall be submitted at least 60 days prior to the expiration of the general permit, unless  
1089 otherwise approved by the Department of Environmental Quality.

- 1090 a. All wetland compensation site monitoring reports shall include, as applicable, the  
1091 following:
- 1092 (1) General description of the site including a site location map identifying photo-  
1093 monitoring stations, vegetative and soil monitoring stations, monitoring wells, and  
1094 wetland zones.
- 1095 (2) Summary of activities completed during the monitoring year, including alterations  
1096 or maintenance conducted at the site.
- 1097 (3) Description of monitoring methods.
- 1098 (4) Analysis of all hydrology information, including monitoring well data, precipitation  
1099 data, and gauging data from streams or other open water areas, as set forth in the  
1100 final compensation plan.
- 1101 (5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.
- 1102 (6) Analysis of all vegetative community information, including woody and herbaceous  
1103 species, both planted and volunteers, as set forth in the final compensation plan.
- 1104 (7) Photographs labeled with the permit number, the name of the compensation site,  
1105 the photo-monitoring station number, the photograph orientation, the date and time of  
1106 the photograph, the name of the person taking the photograph, and a brief description  
1107 of the photograph subject. This information shall be provided as a separate attachment  
1108 to each photograph, if necessary. Photographs taken after the initial planting shall be  
1109 included in the first monitoring report after planting is complete.
- 1110 (8) Discussion of wildlife or signs of wildlife observed at the compensation site.
- 1111 (9) Comparison of site conditions from the previous monitoring year and reference site.
- 1112 (10) Discussion of corrective measures or maintenance activities to control  
1113 undesirable species, to repair damaged water control devices, or to replace damaged  
1114 planted vegetation.
- 1115 (11) Corrective action plan that includes proposed actions, a schedule, and monitoring  
1116 plan.
- 1117 b. All stream compensation site monitoring reports shall include, as applicable, the  
1118 following:
- 1119 (1) General description of the site including a site location map identifying photo-  
1120 monitoring stations and monitoring stations.
- 1121 (2) Summary of activities completed during the monitoring year, including alterations  
1122 or maintenance conducted at the site.
- 1123 (3) Description of monitoring methods.
- 1124 (4) Evaluation and discussion of the monitoring results in relation to the success  
1125 criteria and overall goals of compensation.
- 1126 (5) Photographs shall be labeled with the permit number, the name of the  
1127 compensation site, the photo-monitoring station number, the photograph orientation,  
1128 the date and time of the photograph, the name of the person taking the photograph,  
1129 and a brief description of the photograph subject. Photographs taken prior to  
1130 compensation site construction activities, during instream and riparian restoration  
1131 activities, and within one week of completion of activities shall be included in the first  
1132 monitoring report.
- 1133 (6) Discussion of alterations, maintenance, or major storm events resulting in  
1134 significant change in stream profile or cross section, and corrective actions conducted  
1135 at the stream compensation site.

- 1136 (7) Documentation of undesirable plant species and summary of abatement and  
1137 control measures.
- 1138 (8) Summary of wildlife or signs of wildlife observed at the compensation site.
- 1139 (9) Comparison of site conditions from the previous monitoring year and reference site,  
1140 and as-built survey, if applicable.
- 1141 (10) Corrective action plan that includes proposed actions, a schedule and monitoring  
1142 plan.
- 1143 (11) Additional submittals that were approved by the Department of Environmental  
1144 Quality in the final compensation plan.
- 1145 7. The permittee shall notify the Department of Environmental Quality in writing when  
1146 unusual or potentially complex conditions are encountered which require debris removal  
1147 or involve potentially toxic substance. Measures to remove the obstruction, material, or  
1148 toxic substance or to change the location of a structure are prohibited until approved by  
1149 the Department of Environmental Quality.
- 1150 8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If  
1151 spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday,  
1152 the appropriate Department of Environmental Quality regional office shall be notified;  
1153 otherwise, the Department of Emergency Management shall be notified at 1-800-468-  
1154 8892.
- 1155 9. Violations of state water quality standards shall be reported to the appropriate  
1156 Department of Environmental Quality office no later than the end of the business day  
1157 following discovery.
- 1158 10. The permittee shall notify the Department of Environmental Quality no later than the  
1159 end of the third business day following the discovery of additional impacts to surface  
1160 waters including wetlands, stream channels, and open water that are not authorized by  
1161 the Department of Environmental Quality or to any required preservation areas. The  
1162 notification shall include photographs, estimated acreage or linear footage of impacts, and  
1163 a description of the impacts.
- 1164 11. Submittals required by this VWP general permit shall contain the following signed  
1165 certification statement:
- 1166 "I certify under penalty of law that this document and all attachments were prepared under  
1167 my direction or supervision in accordance with a system designed to assure that qualified  
1168 personnel properly gather and evaluate the information submitted. Based on my inquiry of  
1169 the person or persons who manage the system, or those persons directly responsible for  
1170 gathering the information, the information submitted is, to the best of my knowledge and  
1171 belief, true, accurate, and complete. I am aware that there are significant penalties for  
1172 submitting false information, including the possibility of fine and imprisonment for knowing  
1173 violation."

1174 **Part III. Conditions Applicable to All VWP General Permits.**

- 1175 A. Duty to comply. The permittee shall comply with all conditions, limitations, and other  
1176 requirements of the VWP general permit; any requirements in coverage granted under this VWP  
1177 general permit; the Clean Water Act, as amended; and the State Water Control Law and  
1178 regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a  
1179 violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement  
1180 action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage  
1181 revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification

1182 to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve  
1183 the permittee of the duty to comply with all applicable federal and state statutes, regulations, and  
1184 toxic standards and prohibitions.

1185 B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent  
1186 impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely  
1187 affecting human health or the environment.

1188 C. Reopener. This VWP general permit may be reopened to modify its conditions when the  
1189 circumstances on which the previous VWP general permit was based have materially and  
1190 substantially changed, or special studies conducted by the ~~board~~ department or the permittee  
1191 show material and substantial change since the time the VWP general permit was issued and  
1192 thereby constitute cause for revoking and reissuing the VWP general permit.

1193 D. Compliance with state and federal law. Compliance with this VWP general permit  
1194 constitutes compliance with the VWP permit requirements of the State Water Control Law.  
1195 Nothing in this VWP general permit shall be construed to preclude the institution of any legal  
1196 action under or relieve the permittee from any responsibilities, liabilities, or other penalties  
1197 established pursuant to any other state law or regulation or under the authority preserved by §  
1198 510 of the Clean Water Act.

1199 E. Property rights. The issuance of this VWP general permit does not convey property rights  
1200 in either real or personal property or any exclusive privileges, nor does it authorize injury to private  
1201 property, any invasion of personal property rights, or any infringement of federal, state, or local  
1202 laws or regulations.

1203 F. Severability. The provisions of this VWP general permit are severable.

1204 G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the ~~board~~  
1205 department or any duly authorized agent of the ~~board~~ department, at reasonable times and under  
1206 reasonable circumstances, to enter upon the permittee's property, public or private, and have  
1207 access to inspect and copy any records that must be kept as part of the VWP general permit  
1208 conditions; to inspect any facilities, operations, or practices (including monitoring and control  
1209 equipment) regulated or required under the VWP general permit; and to sample or monitor any  
1210 substance, parameter, or activity for the purpose of assuring compliance with the conditions of  
1211 the VWP general permit or as otherwise authorized by law. For the purpose of this section, the  
1212 time for inspection shall be deemed reasonable during regular business hours. Nothing contained  
1213 herein shall make an inspection time unreasonable during an emergency.

1214 H. Transferability of VWP general permit coverage. VWP general permit coverage may be  
1215 transferred to another permittee when all of the criteria listed in this subsection are met. On the  
1216 date of the VWP general permit coverage transfer, the transferred VWP general permit coverage  
1217 shall be as fully effective as if it had been granted directly to the new permittee.

1218 1. The current permittee notifies the ~~board~~ department of the proposed transfer of the  
1219 general permit coverage and provides a written agreement between the current and new  
1220 permittees containing a specific date of transfer of VWP general permit responsibility,  
1221 coverage, and liability to the new permittee, or that the current permittee will retain such  
1222 responsibility, coverage, or liability, including liability for compliance with the requirements  
1223 of enforcement activities related to the authorized activity.

1224 2. The ~~board~~ department does not within 15 days notify the current and new permittees of  
1225 ~~its~~ the board's intent to modify or revoke and reissue the VWP general permit.

1226 I. Notice of planned change. VWP general permit coverage may be modified subsequent to  
1227 issuance in accordance with 9VAC25-680-80.

1228 J. VWP general permit coverage termination for cause. VWP general permit coverage is  
1229 subject to termination for cause by the ~~board~~ department after public notice and opportunity for a



1230 hearing pursuant to ~~§ 62.1-44.15:02 of the Code of Virginia~~ in accordance with 9VAC25-210-180.  
 1231 Reasons for termination for cause are as follows:

- 1232 1. Noncompliance by the permittee with any provision of this chapter, any condition of the  
 1233 VWP general permit, or any requirement in general permit coverage;
- 1234 2. The permittee's failure in the application or during the process of granting VWP general  
 1235 permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of  
 1236 any relevant facts at any time;
- 1237 3. The permittee's violation of a special or judicial order;
- 1238 4. A determination by the ~~board~~ department that the authorized activity endangers human  
 1239 health or the environment and can be regulated to acceptable levels by a modification to  
 1240 VWP general permit coverage or a termination;
- 1241 5. A change in any condition that requires either a temporary or permanent reduction or  
 1242 elimination of any activity controlled by the VWP general permit; or
- 1243 6. A determination that the authorized activity has ceased and that the compensation for  
 1244 unavoidable adverse impacts has been successfully completed.

1245 K. The ~~board~~ department may terminate VWP general permit coverage without cause when  
 1246 the permittee is no longer a legal entity due to death or dissolution or when a company is no  
 1247 longer authorized to conduct business in the Commonwealth. The termination shall be effective  
 1248 30 days after notice of the proposed termination is sent to the last known address of the permittee  
 1249 or registered agent, unless the permittee objects within that time. If the permittee does object  
 1250 during that period, the ~~board~~ department shall follow the applicable procedures for termination  
 1251 under 9VAC25-210-180 and §§ 62.1-44.15:02 and 62.1-44.15:25 of the Code of Virginia.

1252 L. VWP general permit coverage termination by consent. The permittee shall submit a request  
 1253 for termination by consent within 30 days of completing or canceling all authorized activities  
 1254 requiring notification under 9VAC25-680-50 A and all compensatory mitigation requirements.  
 1255 When submitted for project completion, the request for termination by consent shall constitute a  
 1256 notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this  
 1257 termination of coverage on behalf of the ~~board~~ department. The permittee shall submit the  
 1258 following information:

- 1259 1. Name, mailing address, and telephone number;
- 1260 2. Name and location of the activity;
- 1261 3. The VWP general permit tracking number; and
- 1262 4. One of the following certifications:
  - 1263 a. For project completion:  
 1264 "I certify under penalty of law that all activities and any required compensatory  
 1265 mitigation authorized by the VWP general permit and general permit coverage have  
 1266 been completed. I understand that by submitting this notice of termination I am no  
 1267 longer authorized to perform activities in surface waters in accordance with the VWP  
 1268 general permit and general permit coverage, and that performing activities in surface  
 1269 waters is unlawful where the activity is not authorized by the VWP permit or coverage,  
 1270 unless otherwise excluded from obtaining coverage. I also understand that the  
 1271 submittal of this notice does not release me from liability for any violations of the VWP  
 1272 general permit coverage."
  - 1273 b. For project cancellation:  
 1274 "I certify under penalty of law that the activities and any required compensatory  
 1275 mitigation authorized by the VWP general permit and general permit coverage will not  
 1276 occur. I understand that by submitting this notice of termination I am no longer

1277 authorized to perform activities in surface waters in accordance with the VWP general  
 1278 permit and general permit coverage, and that performing activities in surface waters is  
 1279 unlawful where the activity is not authorized by the VWP permit or coverage, unless  
 1280 otherwise excluded from obtaining coverage. I also understand that the submittal of  
 1281 this notice does not release me from liability for any violations of the VWP general  
 1282 permit or coverage, nor does it allow me to resume the authorized activities without  
 1283 reapplication and coverage."

1284 c. For events beyond permittee control, the permittee shall provide a detailed  
 1285 explanation of the events, to be approved by the Department of Environmental Quality,  
 1286 and the following certification statement:

1287 "I certify under penalty of law that the activities or the required compensatory mitigation  
 1288 authorized by the VWP general permit and general permit coverage have changed as  
 1289 the result of events beyond my control (see attached). I understand that by submitting  
 1290 this notice of termination I am no longer authorized to perform activities in surface  
 1291 waters in accordance with the VWP general permit and general permit coverage, and  
 1292 that performing activities in surface waters is unlawful where the activity is not  
 1293 authorized by the VWP permit or coverage, unless otherwise excluded from obtaining  
 1294 coverage. I also understand that the submittal of this notice does not release me from  
 1295 liability for any violations of the VWP general permit authorization or coverage, nor  
 1296 does it allow me to resume the authorized activities without reapplication and  
 1297 coverage."

1298 M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve  
 1299 the permittee from civil and criminal penalties for noncompliance.

1300 N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be  
 1301 construed to preclude the institution of legal action or relieve the permittee from any  
 1302 responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of  
 1303 the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

1304 O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement  
 1305 action that it would have been necessary to halt or reduce the activity for which VWP general  
 1306 permit coverage has been granted in order to maintain compliance with the conditions of the VWP  
 1307 general permit or coverage.

1308 P. Duty to provide information.

1309 1. The permittee shall furnish to the ~~board~~ department any information that the ~~board~~  
 1310 department may request to determine whether cause exists for modifying, revoking, or  
 1311 terminating VWP permit coverage or to determine compliance with the VWP general  
 1312 permit or general permit coverage. The permittee shall also furnish to the ~~board~~  
 1313 department, upon request, copies of records required to be kept by the permittee.

1314 2. Plans, maps, conceptual reports, and other relevant information shall be submitted as  
 1315 required by the ~~board~~ department prior to commencing construction.

1316 Q. Monitoring and records requirements.

1317 1. Monitoring of parameters, other than pollutants, shall be conducted according to  
 1318 approved analytical methods as specified in the VWP general permit. Analysis of  
 1319 pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing  
 1320 Test Procedures for the Analysis of Pollutants.

1321 2. Samples and measurements taken for the purpose of monitoring shall be representative  
 1322 of the monitored activity.

1323 3. The permittee shall retain records of all monitoring information, including all calibration  
 1324 and maintenance records and all original strip chart or electronic recordings for continuous

1325 monitoring instrumentation, copies of all reports required by the VWP general permit, and  
1326 records of all data used to complete the application for coverage under the VWP general  
1327 permit, for a period of at least three years from the date of general permit expiration. This  
1328 period may be extended by request of the ~~board~~ department at any time.

- 1329 4. Records of monitoring information shall include, as appropriate:
- 1330 a. The date, exact place, and time of sampling or measurements;
  - 1331 b. The name of the individuals who performed the sampling or measurements;
  - 1332 c. The date and time the analyses were performed;
  - 1333 d. The name of the individuals who performed the analyses;
  - 1334 e. The analytical techniques or methods supporting the information such as  
1335 observations, readings, calculations, and bench data used;
  - 1336 f. The results of such analyses; and
  - 1337 g. Chain of custody documentation.

1338 R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit,  
1339 it shall be unlawful for the permittee to:

- 1340 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or  
1341 deleterious substances;
- 1342 2. Excavate in a wetland;
- 1343 3. Otherwise alter the physical, chemical, or biological properties of state waters and make  
1344 them detrimental to the public health, to animal or aquatic life, or to the uses of such waters  
1345 for domestic or industrial consumption, for recreation, or for other uses; or
- 1346 4. On and after August 1, 2001, for linear transportation projects of the Virginia Department  
1347 of Transportation, or on and after October 1, 2001, for all other projects, conduct the  
1348 following activities in a wetland:
  - 1349 a. New activities to cause draining that significantly alters or degrades existing wetland  
1350 acreage or functions;
  - 1351 b. Filling or dumping;
  - 1352 c. Permanent flooding or impounding; or
  - 1353 d. New activities that cause significant alteration or degradation of existing wetland  
1354 acreage or functions.

1355 S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the  
1356 expiration date of the VWP general permit shall comply with the provisions in 9VAC25-680-27.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-690
<b>VAC Chapter title(s)</b>	Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities
<b>Action title</b>	Final Exempt CH 690 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 14, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-690) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”; the repeal of the delegation of authority provisions, and the correction of Code references where necessary to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

### **Mandate and Impetus**

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these statutory changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

### **Statement of Final Agency Action**

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-690 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7179 - Exempt Final**2 **State Water Control Board**3 **Final exempt CH 690 changes in response to 2022 Board Bill**4 **9VAC25-690-10. Definitions.**

5 The words and terms used in this chapter shall have the meanings defined in the State Water  
6 Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection Permit  
7 Program Regulation (9VAC25-210) unless a different meaning is required by the context or is  
8 indicated below.

9 "Bank protection" means measures employed to stabilize channel banks and combat existing  
10 erosion problems. Such measures may include the construction of riprap revetments, sills, rock  
11 vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe  
12 stabilization, anti-scouring devices, and submerged sills.

13 "Bioengineering method" means a biological measure incorporated into a facility design to  
14 benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent  
15 practicable, for long-term aquatic resource protection and improvement.

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

19 "Coverage" means authorization to conduct a project in accordance with a VWP general  
20 permit.

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

22 "Histosols" means organic soils that are often called mucks, peats, or mucky peats. The list  
23 of histosols in the Commonwealth includes, but is not limited to, the following soil series: Back  
24 Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and  
25 Rappahannock. Histosols are identified in the Hydric Soils of the United States lists generated by  
26 the U.S. Department of Agriculture Natural Resources Conservation Service.

27 "Independent utility" means a test to determine what constitutes a single and complete project.  
28 A project is considered to have independent utility if it would be constructed absent the  
29 construction of other projects in the project area. Portions of a phased development project that  
30 depend upon other phases of the project do not have independent utility. Portions of a phased  
31 development project that would be constructed even if the other phases are not built can be  
32 considered as separate single complete projects with independent public and economic utility.

33 "In-stream mining" means activities or operations that remove accumulated sand, gravel, and  
34 mineral deposits directly from stream channels using equipment such as, but not limited to,  
35 hydraulic dredges, clamshell dredges, or draglines for the sole purpose of processing and selling  
36 the material. In-stream mining does not include dredging activities, whose main purpose is to  
37 maintain channels and harbors for navigation, nor does it include the recovery of spilled material,  
38 such as sand, gravel, and aggregate, that was inadvertently spilled into a waterway during loading  
39 activities.

40 "Notice of project completion" means a statement submitted by the permittee or authorized  
41 agent that the authorized activities and any required compensatory mitigation have been  
42 completed.

43 "Phased development" means more than one project proposed for a single piece of property  
44 or an assemblage of contiguous properties under consideration for development by the same  
45 person, or by related persons, that will begin and be completed at different times. Depending on

46 the relationship between the projects, (i) a phased development may be considered a single and  
 47 complete project, or (ii) each project may be considered a single and complete project if each  
 48 project has independent utility, as defined in this subsection.

49 "Recreational facility" means a facility that is integrated into the natural landscape and does  
 50 not substantially change preconstruction grades or deviate from natural landscape contours.

51 "Single and complete project" means the total project proposed or accomplished by a person,  
 52 which also has independent utility, as defined in this section. For linear projects, the "single and  
 53 complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate  
 54 surface water (e.g., a single water body) and to multiple crossings of the same water body at  
 55 separate and distinct locations. Phases of a project that have independent public and economic  
 56 utility may each be considered single and complete.

57 "State program general permit (SPGP)" means a general permit issued by the Department of  
 58 the Army in accordance with 33 USC § 1344 and 33 CFR 325.5(c)(3) and that is founded on a  
 59 state program. The SPGP is designed to avoid duplication between the federal and state  
 60 programs.

61 "Up to 300 linear feet" means 300.00 linear feet or less as measured along the center of the  
 62 main channel of the stream segment.

63 "Up to 1,500 linear feet" means 1,500.00 linear feet or less, as measured along the center of  
 64 the main channel of the stream segment.

65 "Up to one-tenth acre" means 0.10 acre (4,356 square feet) or less.

66 "Up to two acres" means 2.00 acres (87,120 square feet) or less.

67 "Utility line" means a pipe or pipeline for the transportation of a gaseous, liquid, liquefiable or  
 68 slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose  
 69 of electrical energy, telephone, and telegraph messages and radio and television communication.  
 70 The term utility line does not include activities which drain a surface water to convert it to an  
 71 upland, such as drainage tiles or french drains; however, it does apply to pipes conveying  
 72 drainage from another area.

### 73 **9VAC25-690-15. Statewide information requirements.**

74 The ~~board~~ department may request (i) such plans, specifications, and other pertinent  
 75 information as may be necessary to determine the effect of an applicant's discharge on the quality  
 76 of state waters or (ii) such other information as may be necessary to accomplish the purposes of  
 77 this chapter. Any owner, permittee, or person applying for a VWP permit or general permit  
 78 coverage shall provide the information requested by the ~~board~~ department.

### 79 **~~9VAC25-690-20. Purpose; delegation of authority.~~**

80 A. The purpose of this chapter is to establish VWP General Permit Number WP4 under  
 81 9VAC25-210 to govern permanent and temporary impacts related to the construction and  
 82 maintenance of development activities and to activities directly associated with aggregate mining  
 83 (e.g., sand, gravel, and crushed or broken stone); hard rock/mineral mining (e.g., metalliferous  
 84 ores); and surface coal, natural gas, and coalbed methane gas mining, as authorized by the  
 85 Virginia Department of Energy. Applications for coverage under this VWP general permit shall be  
 86 processed for approval, approval with conditions, or denial by the ~~board~~ department. Coverage,  
 87 coverage with conditions, or application denial by the ~~board~~ department shall constitute the VWP  
 88 general permit action and shall follow all provisions in the State Water Control Law (§ 62.1-44.2  
 89 et seq. of the Code of Virginia), except for the public comment and participation provisions, from  
 90 which each VWP general permit action is exempt.

91 B. ~~The director or his designee may perform any act of the board provided under this chapter,~~  
 92 ~~except as limited by § 62.1-44.14 of the Code of Virginia.~~

93 **9VAC25-690-25. Authorization for coverage under VWP general permit effective August 1,**  
94 **2006.**

95 A. All complete applications or notifications received by the ~~board~~ department through 11:59  
96 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation  
97 in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or  
98 if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a  
99 completeness determination, the applicant shall reapply for coverage under the VWP general  
100 permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any  
101 required permit application fee. No refund of permit application fees shall be made.

102 B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall  
103 remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP  
104 authorization cover page, unless otherwise revoked or terminated or unless a notice of project  
105 completion is received by the ~~board~~ department on or before that date. Any permittee that desires  
106 to continue an authorized activity beyond the stated expiration date must reapply for coverage  
107 under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and  
108 conditions, or apply for a VWP individual permit, including payment of any required permit  
109 application fee. This section shall only apply to permittees holding valid authorizations for  
110 coverage granted under the VWP general permit effective August 1, 2006, through August 1,  
111 2016.

112 **9VAC25-690-27. VWP general permit coverage; transition; continuation.**

113 A. All applications or notifications received on or after August 2, 2016, will be processed in  
114 accordance with the VWP general permit regulation effective August 2, 2016.

115 B. The general permit in 9VAC25-690-100 is effective August 2, 2016, and expires August 1,  
116 2026. Any coverage that is granted pursuant to 9VAC25-690-30 shall remain in full force and  
117 effect until 11:59 p.m. on August 1, 2026, unless the general permit coverage is terminated or  
118 revoked on or before this date. Where a permittee that has received general permit coverage  
119 desires to continue or complete the authorized activities beyond August 1, 2026, the permittee  
120 shall reapply for new general permit coverage or for a VWP individual permit, including payment  
121 of any required permit application fee. Activities in surface waters requiring a permit shall not  
122 commence or continue until VWP general permit coverage is granted or a VWP individual permit  
123 is issued by the ~~board~~ department.

124 C. Application may be made at any time for a VWP individual permit in accordance with  
125 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until  
126 VWP general permit coverage is granted or a VWP individual permit is issued by the ~~board~~  
127 department.

128 **9VAC25-690-30. Authorization to impact surface waters.**

129 A. Any person granted coverage under the VWP general permit effective August 2, 2016, may  
130 permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to  
131 1,500 linear feet of nontidal stream bed for general development and certain mining activities,  
132 provided that:

- 133 1. The applicant submits notification as required in 9VAC25-690-50 and 9VAC25-690-60.
- 134 2. The applicant remits any required permit application fee.
- 135 3. The applicant receives general permit coverage from the Department of Environmental  
136 Quality and complies with the limitations and other requirements of the VWP general  
137 permit; the general permit coverage letter; the Clean Water Act, as amended; and the  
138 State Water Control Law and attendant regulations.
- 139 4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-  
140 210 for the proposed project impacts. The applicant, at his discretion, may seek a VWP



141 individual permit, or coverage under another applicable VWP general permit, in lieu of  
142 coverage under this VWP general permit.

143 5. Impacts, both temporary and permanent, result from a single and complete project  
144 including all attendant features.

145 a. Where a road segment (e.g., the shortest segment of a road with independent utility  
146 that is part of a larger project) has multiple crossings of surface waters (several single  
147 and complete projects), the board department may, at its discretion, require a VWP  
148 individual permit.

149 b. For the purposes of this chapter, when an interchange has multiple crossings of  
150 surface waters, the entire interchange shall be considered the single and complete  
151 project.

152 6. The stream impact criterion applies to all components of the project, including structures  
153 and stream channel manipulations.

154 7. Dredging does not exceed 5,000 cubic yards.

155 8. When required, compensation for unavoidable impacts is provided in accordance with  
156 § 62.1-44.15:23 of the Code of Virginia, 9VAC25-690-70, and 9VAC25-210-116.

157 B. Activities that may be granted coverage under this VWP general permit include the  
158 following:

159 1. Residential, commercial, institutional. The construction or expansion of building  
160 foundations, building pads, and attendant features for residential, commercial, and  
161 institutional development activities.

162 a. Residential developments include both single and multiple units.

163 b. Commercial developments include retail stores, industrial facilities, restaurants,  
164 business parks, office buildings, and shopping centers.

165 c. Institutional developments include schools, fire stations, government office  
166 buildings, judicial buildings, public works buildings, libraries, hospitals, and places of  
167 worship.

168 d. Attendant features include roads, parking lots, garages, yards, utility lines,  
169 stormwater management facilities, and recreation facilities (such as playgrounds,  
170 playing fields, and golf courses). Attendant features must be necessary for the use  
171 and maintenance of the structures.

172 2. Recreational facilities. The construction or expansion of recreational facilities and small  
173 support facilities.

174 a. Recreational facilities include hiking trails, bike paths, horse paths, nature centers,  
175 and campgrounds (but not trailer parks). Boat ramps (concrete or open-pile timber),  
176 boathouses, covered boat lifts, mooring piles and dolphins, fender piles, camels  
177 (wooden floats serving as fenders alongside piers), and open-pile piers (including  
178 floating piers, travel-lift piers, etc.) associated with recreational facilities are also  
179 included.

180 b. Recreational facilities do not include as a primary function the use of motor vehicles,  
181 buildings, or impervious surfaces.

182 c. Golf courses and ski area expansions may qualify as recreational facilities provided  
183 the construction of the proposed facility does not result in a substantial deviation from  
184 the natural contours and the facility is designed to minimize adverse effects on state  
185 waters and riparian areas. Measures that may be used to minimize adverse effects on  
186 waters and riparian areas include the implementation of integrated pest management

187 plans, adequate stormwater management, vegetated buffers, and fertilizer  
188 management plans.

189 d. Small support facilities are authorized provided they are directly related to the  
190 recreational activity. Small support facilities include maintenance storage buildings  
191 and stables.

192 e. The following do not qualify as recreational facilities: hotels, restaurants, playing  
193 fields (e.g., baseball, soccer, or football fields), basketball and tennis courts,  
194 racetracks, stadiums, arenas, or new ski areas.

195 f. The recreational facility must have an adequate water quality management plan,  
196 such as a stormwater management plan, to ensure that the recreational facility results  
197 in no substantial adverse effects to water quality.

198 3. Stormwater management facilities. The construction, maintenance, and excavation of  
199 stormwater management facilities; the installation and maintenance of water control  
200 structures, outfall structures, and emergency spillways; and the maintenance dredging of  
201 existing stormwater management facilities.

202 a. Stormwater management facilities include stormwater ponds and facilities,  
203 detention basins, retention basins, traps, and other facilities designed to reduce  
204 pollutants in stormwater runoff.

205 b. The stormwater management facility must:

206 (1) To the maximum extent practicable, be designed to maintain preconstruction  
207 downstream flow conditions (e.g., location, capacity, and flow rates).

208 (2) Not permanently restrict or impede the passage of normal or expected high flows,  
209 unless the primary purpose of the facility is to impound waters.

210 (3) Withstand expected high flows.

211 (4) To the maximum extent practicable, provide for retaining excess flows from the  
212 site, provide for maintaining surface flow rates from the site similar to preconstruction  
213 conditions, and not increase water flows from the project site, relocate water, or  
214 redirect flow beyond preconstruction conditions.

215 (5) To the maximum extent practicable, reduce adverse effects such as flooding or  
216 erosion downstream and upstream of the project site, unless the facility is part of a  
217 larger system designed to manage water flows.

218 (6) Be designed using best management practices (BMPs) and watershed protection  
219 techniques. Examples of such BMPs are described in the Virginia Stormwater  
220 Management Handbook and include forebays, vegetated buffers, bioengineering  
221 methods, and siting considerations to minimize adverse effects to aquatic resources.

222 c. Maintenance excavation shall be in accordance with the original facility maintenance  
223 plan, or when unavailable, an alternative plan approved by the Department of  
224 Environmental Quality, and shall not exceed to the maximum extent practicable, the  
225 character, scope, or size detailed in the original design of the facility.

226 4. Mining facilities. The construction or expansion of mining facilities and attendant  
227 features for a single and complete project. This general permit may not be used to  
228 authorize impacts from in-stream mining activities or operations as defined in 9VAC25-  
229 690-10.

230 a. Mining facilities include activities directly associated with aggregate mining (e.g.,  
231 sand, gravel, and crushed or broken stone); hard rock/mineral mining (e.g.,  
232 metalliferous ores); and surface coal, natural gas, and coalbed methane gas mining,  
233 as authorized by the Virginia Department of Energy.

234 b. Attendant features are authorized provided they are directly related to the mining  
235 facility, and include access road construction, parking lots, offices, maintenance  
236 shops, garages, and stormwater management facilities.

237 c. Both direct impacts (e.g., footprints of all fill areas, road crossings, sediment ponds,  
238 and stormwater management facilities; mining through state waters; stockpile of  
239 overburden, and excavation) and indirect impacts (e.g., diversion of surface water and  
240 reach of state waters affected by sediment pond pool and sediment transport) shall be  
241 considered when granting coverage under this general permit.

242 C. The board waives the requirement for coverage under a VWP general permit for activities  
243 that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon  
244 request by the ~~board~~ department, any person claiming this waiver shall demonstrate to the  
245 satisfaction of the ~~board~~ department that he qualifies for the waiver.

246 D. Coverage under VWP general permit does not relieve the permittee of the responsibility to  
247 comply with any other applicable federal, state, or local statute, ordinance, or regulation.

248 E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of  
249 Engineers (USACE), and for which the ~~board~~ department has issued § 401 certification in  
250 accordance with 9VAC25-210-130 H as of August 2, 2016, shall constitute coverage under this  
251 VWP general permit unless (i) a state program general permit (SPGP) is required and granted for  
252 the activity or impact; or (ii) coverage under a VWP general permit is not allowed pursuant to  
253 subdivision D 2 of § 62.1-44.15:21 of the State Water Control Law.

254 F. Coverage under a permit issued by the Department of Energy under the Virginia Coal  
255 Surface Mining Control and Reclamation Act, Chapter 10 (§ 45.2-1000 et seq.) of Title 45.2 of the  
256 Code of Virginia, where such permit authorizes activities that may be permitted by this chapter  
257 and contains a mitigation plan for the impacts from the mining activities, shall also constitute  
258 coverage under this VWP general permit.

259 G. When the ~~board~~ department determines on a case-by-case basis that concerns for water  
260 quality and the aquatic environment so indicate, the ~~board~~ department may require a VWP  
261 individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this  
262 VWP general permit.

263 **9VAC25-690-40. Exceptions to coverage.**

264 A. Coverage under this VWP general permit is not required if the activity is excluded from  
265 permitting in accordance with 9VAC25-210-60.

266 B. Coverage under this VWP general permit cannot be used in combination with coverage  
267 under other VWP general permits in order to impact greater than two acres of nontidal wetlands  
268 or open water or greater than 1,500 linear feet of nontidal stream bed. Granting coverage under  
269 this VWP general permit more than once for a single and complete project is prohibited, except  
270 when the cumulative impact to surface waters does not exceed the limits specified here.

271 C. This VWP general permit cannot be used for an activity in a phased development that  
272 would cause the aggregate total loss of nontidal wetlands or open water in the subdivision to  
273 exceed two acres or to exceed 1,500 linear feet of nontidal stream bed.

274 D. The activity to impact surface waters shall not have been prohibited by state law or  
275 regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260).

276 E. The ~~board~~ department shall deny application for coverage under this VWP general permit  
277 to any applicant conducting activities that cause, may reasonably be expected to cause, or may  
278 be contributing to a violation of water quality standards, including discharges or discharge-related  
279 activities that are likely to significantly affect aquatic life, or for activities that together with other  
280 existing or proposed impacts to wetlands will cause or contribute to a significant impairment of  
281 state waters or fish and wildlife resources.

282 F. This VWP general permit does not authorize activities that cause more than minimal  
 283 changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that  
 284 cause more than minimal degradation of the water quality of a stream.

285 G. Coverage under this VWP general permit shall not be granted for:

- 286 1. Construction of a stormwater management facility in perennial streams or in waters  
 287 designated as oxygen-impaired or temperature-impaired (does not include wetlands).
- 288 2. The construction of an irrigation impoundment on a perennial stream.
- 289 3. Any water withdrawal activities.
- 290 4. The location of animal feeding operations or waste storage facilities in state waters.
- 291 5. The pouring of wet or uncured concrete in state waters, unless the area is contained  
 292 within a cofferdam and the work is performed in the dry or unless approved by the  
 293 Department of Environmental Quality.
- 294 6. Return flow discharges from dredge disposal sites.
- 295 7. Overboard disposal of dredge materials.
- 296 8. Dredging in marinas.
- 297 9. Dredging of shellfish areas, submerged aquatic vegetation beds, or other highly  
 298 productive areas.
- 299 10. Federal navigation projects.
- 300 11. The construction of new ski areas.
- 301 12. Any activity in surface water that will impact federal or state listed threatened or  
 302 endangered species or designated critical habitat, or result in a taking of threatened or  
 303 endangered species in accordance with the following:
  - 304 a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation,  
 305 processing, sale, or offer for sale within the Commonwealth of any fish or wildlife  
 306 appearing on any list of threatened or endangered species published by the United  
 307 States Secretary of the Interior pursuant to the provisions of the federal Endangered  
 308 Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is  
 309 prohibited except as provided in § 29.1-568 of the Code of Virginia.
  - 310 b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the  
 311 taking, transportation, processing, sale, or offer for sale within the Commonwealth of  
 312 any state listed endangered or threatened species is prohibited except as provided in  
 313 § 29.1-568 of the Code of Virginia.
- 314 13. Any activity in wetlands composed of 10% or more, singularly or in combination, based  
 315 upon either basal area or percent areal cover in the area of impact, in a vegetative stratum:  
 316 Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water  
 317 tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*).
- 318 14. Any activity in wetlands underlain by histosols.
- 319 15. Any activity in tidal waters.
- 320 16. Impacts to state waters for the construction of any natural gas transmission pipeline  
 321 that is greater than 36 inches inside diameter pursuant to a certificate of public  
 322 convenience and necessity under § 7c of the federal Natural Gas Act (15 USC § 717f(c)).

323 **9VAC25-690-50. Notification.**

324 A. Notification to the ~~board~~ department will be required prior to commencing construction as  
 325 follows:

- 326 1. An application for coverage for proposed, permanent nontidal wetland or open water  
 327 impacts greater than one-tenth acre or for proposed permanent nontidal stream bed

328 impacts greater than 300 linear feet shall include all information pursuant to 9VAC25-690-  
329 60 B. Compensatory mitigation may be required for all permanent impacts.

330 2. An application for coverage for proposed, permanent nontidal wetland or open water  
331 impacts up to one-tenth acre or for proposed, permanent nontidal stream bed impacts up  
332 to 300 linear feet shall be submitted in accordance with either subdivision 2 a or 2 b of this  
333 subsection:

334 a. For any proposed project in wetlands, open water, streams, or compensatory  
335 mitigation sites that are under a deed restriction, conservation easement, declaration  
336 of restrictive covenant, or other land use protective instrument (hereafter "protected  
337 areas"), when such restriction, easement, covenant, or instrument is the result of a  
338 federal or state permit action and is specific to activities in wetlands and compensatory  
339 mitigation sites, the application shall include all of the information required by 9VAC25-  
340 690-60 B. Compensatory mitigation may be required for all permanent impacts.

341 b. For all other projects, the application shall include the information required by  
342 subdivisions 1 through 7, 11, 12, 15, and 16 of 9VAC25-690-60 B, and documentation  
343 that verifies the quantity and type of impacts. Compensatory mitigation may be  
344 required for all permanent impacts once the notification limits of one-tenth acre  
345 wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required,  
346 the application shall include the information in 9VAC25-690-60 B 13.

347 B. The Department of Environmental Quality-approved application forms shall serve as an  
348 application for a VWP permit or VWP general permit coverage.

349 C. The ~~board~~ department will determine whether the proposed activity requires coordination  
350 with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation,  
351 the Virginia Department of Agriculture and Consumer Services and the Virginia Department of  
352 Wildlife Resources regarding the presence of federal or state listed threatened and endangered  
353 species or designated critical habitat. Based upon consultation with these agencies, the ~~board~~  
354 department may deny application for coverage under this general permit. The applicant may also  
355 consult with these agencies prior to submitting an application. Species or habitat information that  
356 the applicant provides will assist the Department of Environmental Quality in reviewing and  
357 processing the application.

358 **9VAC25-690-60. Application.**

359 A. The applicant shall file a complete application in accordance with 9VAC25-690-50 and this  
360 section for coverage under this VWP general permit for impacts to surface waters from  
361 development and certain mining activities.

362 B. A complete application for VWP general permit coverage, at a minimum, consists of the  
363 following information, if applicable to the project:

364 1. The applicant's legal name, mailing address, telephone number, and if applicable,  
365 electronic mail address and fax number.

366 2. If different from the applicant, legal name, mailing address, telephone number, and if  
367 applicable, electronic mail address and fax number of property owner.

368 3. If applicable, the authorized agent's name, mailing address, telephone number, and if  
369 applicable, fax number and electronic mail address.

370 4. The existing VWP general permit tracking number, if applicable.

371 5. Project name and proposed project schedule.

372 6. The following information for the project site location, and any related permittee-  
373 responsible compensatory mitigation site:

- 374 a. The physical street address, nearest street, or nearest route number; city or county;  
375 zip code; and if applicable, parcel number of the site or sites.
- 376 b. Name of the impacted water body or water bodies, or receiving waters, as  
377 applicable, at the site or sites.
- 378 c. The latitude and longitude to the nearest second at the center of the site or sites.
- 379 d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the  
380 National Watershed Boundary Dataset, for the site or sites.
- 381 e. A detailed map depicting the location of the site or sites, including the project  
382 boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S.  
383 Geologic Survey topographic quadrangle map) should be of sufficient detail to easily  
384 locate the site or sites for inspection.
- 385 7. A narrative description of the project, including project purpose and need.
- 386 8. Plan-view drawing or drawings of the project site sufficient to assess the project,  
387 including at a minimum the following:
- 388 a. North arrow, graphic scale, and existing and proposed topographic or bathymetric  
389 contours.
- 390 b. Limits of proposed impacts to surface waters.
- 391 c. Location of all existing and proposed structures.
- 392 d. All delineated wetlands and all jurisdictional surface waters on the site, including the  
393 Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface  
394 waters and waterway name, if designated; ebb and flood or direction of flow; and  
395 ordinary high water mark in nontidal areas.
- 396 e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified  
397 by the applicant, and if available, the limits as approved by the locality in which the  
398 project site is located, unless the proposed use is exempt from the Chesapeake Bay  
399 Preservation Area Designation and Management Regulations (9VAC25-830).
- 400 f. The limits of any areas that are under a deed restriction, conservation easement,  
401 restrictive covenant, or other land use protective instrument (i.e., protected areas).
- 402 9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings  
403 of each proposed impact area shall include at a minimum a graphic scale, existing  
404 structures, existing and proposed elevations, limits of surface water areas, ebb and flood  
405 or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits,  
406 and location of all existing and proposed structures. Profile drawing or drawings with this  
407 information may be required on a case-by-case basis to demonstrate minimization of  
408 impacts. Any application that proposes piping or culverting stream flows shall provide a  
409 longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide  
410 spot elevations of the stream thalweg at the beginning and end of the pipe or culvert,  
411 extending to a minimum of 10 feet beyond the limits of proposed impact.
- 412 10. Materials assessment. Upon request by the ~~board~~ department, the applicant shall  
413 provide evidence or certification that the material is free from toxic contaminants prior to  
414 disposal or that the dredging activity will not cause or contribute to a violation of water  
415 quality standards during dredging. The applicant may be required to conduct grain size  
416 and composition analyses, tests for specific parameters or chemical constituents, or  
417 elutriate tests on the dredge material.
- 418 11. A narrative description of all impacts proposed to surface waters, including the type of  
419 activity to be conducted in surface waters and any physical alteration to surface waters.  
420 Surface water impacts shall be identified as follows:

- 421 a. Wetland impacts identified according to their Cowardin classification (i.e., emergent,  
422 scrub-shrub, or forested); and for each classification, the individual impacts quantified  
423 in square feet to the nearest whole number, cumulatively summed in square feet, and  
424 then the sum converted to acres and rounded to two decimal places using commonly  
425 accepted arithmetic principles of rounding.
- 426 b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole  
427 number and by average width in feet to the nearest whole number; (ii) quantified in  
428 square feet to the nearest whole number; and (iii) when compensatory mitigation is  
429 required, the impacts identified according to the assessed type using the Unified  
430 Stream Methodology.
- 431 c. Open water impacts identified according to their Cowardin classification, and for  
432 each type, the individual impacts quantified in square feet to the nearest whole  
433 number, cumulatively summed in square feet, and then the sum converted to acres  
434 and rounded to two decimal places using commonly accepted arithmetic principles of  
435 rounding.
- 436 d. A copy of the approved jurisdictional determination when available, or when  
437 unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps  
438 of Engineers (USACE), U.S. Department of Agriculture Natural Resources  
439 Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE,  
440 NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface  
441 waters, including wetlands data sheets if applicable.
- 442 e. A delineation map that (i) depicts the geographic area or areas of all surface water  
443 boundaries delineated in accordance with 9VAC25-210-45 and confirmed in  
444 accordance with the jurisdictional determination process; (ii) identifies such areas in  
445 accordance with subdivisions 11 a, 11 b, and 11 c of this subsection; and (iii) quantifies  
446 and identifies any other surface waters according to their Cowardin classification (i.e.,  
447 emergent, scrub-shrub, or forested) or similar terminology.
- 448 12. An alternatives analysis for the proposed project detailing the specific on-site  
449 measures taken during project design and development to first avoid and then minimize  
450 impacts to surface waters to the maximum extent practicable in accordance with the  
451 Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part  
452 230. Avoidance and minimization includes, but is not limited to, the specific on-site  
453 measures taken to reduce the size, scope, configuration, or density of the proposed  
454 project, including review of alternative sites where required for the project, which would  
455 avoid or result in less adverse impact to surface waters, and documentation demonstrating  
456 the reason the applicant determined less damaging alternatives are not practicable. The  
457 analysis shall demonstrate to the satisfaction of the ~~board~~ department that avoidance and  
458 minimization opportunities have been identified and measures have been applied to the  
459 proposed activity such that the proposed activity in terms of impacts to state waters and  
460 fish and wildlife resources is the least environmentally damaging practicable alternative.
- 461 13. A compensatory mitigation plan to achieve no net loss of wetland acreage and  
462 functions or stream functions and water quality benefits.
- 463 a. If permittee-responsible compensation is proposed for wetland impacts, a  
464 conceptual wetland compensatory mitigation plan must be submitted in order for an  
465 application to be deemed complete and shall include at a minimum (i) the goals and  
466 objectives in terms of replacement of wetland acreage and functions; (ii) a detailed  
467 location map including latitude and longitude to the nearest second and the fourth  
468 order subbasin, as defined by the hydrologic unit boundaries of the National  
469 Watershed Boundary Dataset, at the center of the site; (iii) a description of the

470 surrounding land use; (iv) a hydrologic analysis including a draft water budget for  
471 nontidal areas based on expected monthly inputs and outputs that will project water  
472 level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation  
473 data, if available, or the proposed location of groundwater monitoring wells to collect  
474 these data; (vi) wetland delineation confirmation, data sheets, and maps for existing  
475 surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii)  
476 a conceptual planting scheme including suggested plant species and zonation of each  
477 vegetation type proposed; (ix) a description of existing soils including general  
478 information on both topsoil and subsoil conditions, permeability, and the need for soil  
479 amendments; (x) a draft design of any water control structures; (xi) inclusion of buffer  
480 areas; (xii) a description of any structures and features necessary for the success of  
481 the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv)  
482 measures for the control of undesirable species.

483 b. If permittee-responsible compensation is proposed for stream impacts, a conceptual  
484 stream compensatory mitigation plan must be submitted in order for an application to  
485 be deemed complete and shall include at a minimum (i) the goals and objectives in  
486 terms of water quality benefits and replacement of stream functions; (ii) a detailed  
487 location map including the latitude and longitude to the nearest second and the fourth  
488 order subbasin, as defined by the hydrologic unit boundaries of the National  
489 Watershed Boundary Dataset, at the center of the site; (iii) a description of the  
490 surrounding land use; (iv) the proposed stream segment restoration locations including  
491 plan view and cross-sectional drawings; (v) the stream deficiencies that need to be  
492 addressed; (vi) data obtained from a DEQ-approved, stream impact assessment  
493 methodology such as the Unified Stream Methodology; (vii) the proposed restoration  
494 measures to be employed including channel measurements, proposed design flows,  
495 types of instream structures, and conceptual planting scheme; (viii) reference stream  
496 data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities;  
497 and (xi) measures for the control of undesirable species.

498 c. For any permittee-responsible compensatory mitigation, the conceptual  
499 compensatory mitigation plan shall also include a draft of the intended protective  
500 mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but  
501 not limited to, a conservation easement held by a third party in accordance with the  
502 Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or  
503 the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly  
504 recorded declaration of restrictive covenants, or other protective instrument. The draft  
505 intended protective mechanism shall contain the information in subdivisions c (1), c  
506 (2), and c (3) of this subdivision 13 or in lieu thereof shall describe the intended  
507 protective mechanism or mechanisms that contains the information required below:

- 508 (1) A provision for access to the site;
- 509 (2) The following minimum restrictions: no ditching, land clearing, or discharge of  
510 dredge or fill material, and no activity in the area designated as compensatory  
511 mitigation area with the exception of maintenance; corrective action measures; or  
512 DEQ-approved activities described in the approved final compensatory mitigation plan  
513 or long-term management plan; and
- 514 (3) A long-term management plan that identifies a long-term steward and adequate  
515 financial assurances for long-term management in accordance with the current  
516 standard for mitigation banks and in-lieu fee program sites, except that financial  
517 assurances will not be necessary for permittee-responsible compensation provided by  
518 government agencies on government property. If approved by DEQ, permittee-  
519 responsible compensation on government property and long-term protection may be



520 provided through federal facility management plans, integrated natural resources  
521 management plans, or other alternate management plans submitted by a government  
522 agency or public authority.

523 d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-  
524 lieu fee program credits shall include the number and type of credits proposed to be  
525 purchased, documentation from the approved bank or in-lieu fee program sponsor of  
526 the availability of credits at the time of application, and all information required by §  
527 62.1-44.15:23 of the Code of Virginia.

528 14. Permit application fee. The applicant will be notified by the ~~board~~ department as to the  
529 appropriate fee for the project in accordance with 9VAC25-20.

530 15. A written description and a graphical depiction identifying all upland areas including  
531 buffers, wetlands, open water, other surface waters, and compensatory mitigation areas  
532 located within the proposed project boundary or permittee-responsible compensatory  
533 mitigation areas that are under a deed restriction, conservation easement, restrictive  
534 covenant, or other land use protective instrument (i.e., protected areas). Such description  
535 and a graphical depiction shall include the nature of the prohibited activities within the  
536 protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as  
537 field-verified by the applicant, and if available, the limits as approved by the locality in  
538 which the project site is located, unless the proposed use is exempt from the Chesapeake  
539 Bay Preservation Area Designation and Management Regulations (9VAC25-830), as  
540 additional state or local requirements may apply if the project is located within an RPA.

541 16. Signature page that has been signed, dated, and certified by the applicant in  
542 accordance with 9VAC25-210-100. If the applicant is a business or other organization, the  
543 signature must be made by an individual with the authority to bind the business or  
544 organization, and the title of the signatory must be provided. The application signature  
545 page, either on the copy submitted to the Virginia Marine Resources Commission or to  
546 DEQ, must have an original signature. Electronic submittals containing the original  
547 signature page, such as that contained in a scanned document file, are acceptable.

548 C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ.  
549 When required, the method selected for the analysis shall assess water quality or habitat metrics  
550 and shall be coordinated with DEQ in advance of conducting the analysis.

551 1. No analysis shall be required when:

- 552 a. Wetland impacts per each single and complete project total 1.00 acre or less; or  
553 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
554 in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-  
555 shrub, and 1:1 for emergent, or higher.

556 2. Analysis shall be required when wetland impacts per each single and complete project  
557 total 1.01 acres or more and when any of the following applies:

- 558 a. The proposed compensatory mitigation consists of permittee-responsible  
559 compensation, including water quality enhancements as replacement for wetlands; or  
560 b. The proposed compensatory mitigation consists of purchasing mitigation bank or  
561 in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest,  
562 1.5:1 for scrub-shrub, and 1:1 for emergent.

563 D. Upon receipt of an application by the appropriate DEQ office, the ~~board~~ department has 15  
564 days to review the application and either determine the information requested in subsection B of  
565 this section is complete or inform the applicant that additional information is required to make the  
566 application complete. Coverage under this VWP general permit shall be approved or approved  
567 with conditions, or the application shall be denied, within 45 days of receipt of a complete

568 application. If the ~~board~~ department fails to act within 45 days on a complete application, coverage  
569 under this VWP permit general permit shall be deemed granted.

570 1. In evaluating the application, the ~~board~~ department shall make an assessment of the  
571 impacts associated with the project in combination with other existing or proposed  
572 impacts. Application for coverage under this VWP general permit shall be denied if the  
573 cumulative impacts will cause or contribute to a significant impairment of state waters or  
574 fish and wildlife resources.

575 2. The ~~board~~ department may place additional requirements on a project in order to grant  
576 coverage under this VWP general permit. However, the requirements must be consistent  
577 with this chapter.

578 E. Incomplete application.

579 1. Where an application for general permit coverage is not accepted as complete by the  
580 ~~board~~ department within 15 days of receipt, the ~~board~~ department shall require the  
581 submission of additional information from the applicant and may suspend processing of  
582 any application until such time as the applicant has supplied the requested information  
583 and the application is complete. Where the applicant becomes aware that he omitted one  
584 or more relevant facts from an application, or submitted incorrect information in an  
585 application or in any report to the ~~board~~ department, the applicant shall immediately submit  
586 such facts or the correct information. A revised application with new information shall be  
587 deemed a new application for purposes of review but shall not require an additional permit  
588 application fee.

589 2. An incomplete application for general permit coverage may be administratively  
590 withdrawn from processing by the ~~board~~ department for failure to provide the required  
591 information after 60 days from the date of the latest written information request made by  
592 the ~~board~~ department. The ~~board~~ department shall provide (i) notice to the applicant and  
593 (ii) an opportunity for an informal fact-finding proceeding when administratively  
594 withdrawing an incomplete application. Resubmittal of an application for the same or  
595 similar project, after such time that the original permit application was administratively  
596 withdrawn, shall require submittal of an additional permit application fee.

597 3. An applicant may request a suspension of application review by the ~~board~~ department,  
598 but requesting a suspension shall not preclude the ~~board~~ department from administratively  
599 withdrawing an incomplete application.

600 **9VAC25-690-80. Notice of planned changes; modifications to coverage.**

601 A. The permittee shall notify the ~~board~~ department in advance of a planned change, and an  
602 application or request for modification to coverage shall be reviewed according to all provisions  
603 of this chapter. Coverage shall not be modified if (i) the cumulative total of permanent and  
604 temporary impacts for a single and complete project exceeds two acres of nontidal wetlands or  
605 open water exceeds 1,500 linear feet of nontidal stream bed or (ii) the criteria in subsection B of  
606 this section are not met. The applicant may submit a new permit application for consideration  
607 under a VWP individual permit.

608 B. VWP general permit coverage may be modified under the following circumstances:

609 1. Additional impacts to surface waters are necessary, provided that:

610 a. The additional impacts are proposed prior to impacting the additional areas.

611 b. The proposed additional impacts are located within the project boundary as depicted  
612 in the application for coverage or are located in areas of directly-related off-site work,  
613 unless otherwise prohibited in this chapter.

614 c. The permittee has provided sufficient documentation that the ~~board~~ department may  
615 reasonably determine that the additional impacts will not impact federal or state listed

616 threatened or endangered species or designated critical habitat, or result in a taking  
617 of threatened or endangered species. The ~~board~~ department recommends that the  
618 permittee verify that the project will not impact any proposed threatened or endangered  
619 species or proposed critical habitat.

620 d. The cumulative, additional permanent wetland or open water impacts for one or  
621 more notices of planned change do not exceed 0.25 acre.

622 e. The cumulative, additional permanent stream impacts for one or more notices of  
623 planned change do not exceed 100 linear feet.

624 f. Documentation is provided demonstrating that the proposed surface water impacts  
625 have been avoided to the maximum extent practicable in accordance with the  
626 informational requirements of 9VAC25-690-60 B 12.

627 g. Compensatory mitigation for the proposed impacts, if required, meets the  
628 requirements of § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and  
629 9VAC25-690-70. Prior to a planned change approval, the Department of  
630 Environmental Quality may require submission of a compensatory mitigation plan for  
631 the additional impacts.

632 h. Where such additional impacts are temporary, and prior to initiating the impacts, the  
633 permittee provides a written statement to the ~~board~~ department that the area to be  
634 temporarily impacted will be restored to its preconstruction elevations and contours  
635 with topsoil from the impact area where practicable, such that the previous acreage  
636 and functions are restored in accordance with Parts I A 3 and B 11 of 9VAC25-690-  
637 100. The additional temporary impacts shall not cause the cumulative total impacts to  
638 exceed the general permit threshold for use. The proposed temporary impacts shall  
639 be deemed approved if DEQ does not respond within 10 days of receipt of the request  
640 for authorization to temporarily impact additional surface waters.

641 i. The additional proposed impacts do not change the category of the project, based  
642 on the original impacts amounts as specified in 9VAC25-690-50 A 2. However, the  
643 applicant may submit a new permit application for the total impacts to be considered  
644 under this VWP general permit, another VWP general permit, or a VWP individual  
645 permit.

646 2. A reduction in wetland or stream impacts. Compensatory mitigation requirements may  
647 be modified in relation to the adjusted impacts, provided that the adjusted compensatory  
648 mitigation meets the initial compensatory mitigation goals. DEQ shall not be responsible  
649 for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit  
650 purchases.

651 3. A change in project plans or use that does not result in a change to authorized project  
652 impacts other than those allowed by subdivisions 1 and 2 of this subsection.

653 4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another  
654 DEQ-approved mitigation bank or in-lieu fee program or substitute all or a portion of the  
655 prior authorized permittee-responsible compensation with a purchase of mitigation credits  
656 in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 C from  
657 a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed  
658 to be purchased shall be sufficient to meet the compensatory mitigation requirement for  
659 which the compensatory mitigation is proposed to replace.

660 5. Correct typographical errors.

661 **9VAC25-690-90. Termination of coverage.**

662 A. The permittee shall submit a request for termination by consent within 30 days of  
663 completing or canceling all authorized activities requiring notification under 9VAC25-690-50 A

664 and all compensatory mitigation requirements. When submitted for project completion, the  
665 request for termination by consent shall constitute a notice of project completion in accordance  
666 with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the  
667 ~~board~~ department. The permittee shall submit the following information:

- 668 1. Name, mailing address, and telephone number of the permittee;  
669 2. Name and location of the activity;  
670 3. The VWP general permit tracking number; and  
671 4. One of the following certifications:

672 a. For project completion:

673 "I certify under penalty of law that all activities and any required compensatory  
674 mitigation authorized by the VWP general permit and general permit coverage have  
675 been completed. I understand that by submitting this notice of termination I am no  
676 longer authorized to perform activities in surface waters in accordance with the VWP  
677 general permit and general permit coverage, and that performing activities in surface  
678 waters is unlawful where the activity is not authorized by the VWP permit or coverage,  
679 unless otherwise excluded from obtaining coverage. I also understand that the  
680 submittal of this notice does not release me from liability for any violations of the VWP  
681 general permit or coverage."

682 b. For project cancellation:

683 "I certify under penalty of law that the activities and any required compensatory  
684 mitigation authorized by the VWP general permit and general permit coverage will not  
685 occur. I understand that by submitting this notice of termination I am no longer  
686 authorized to perform activities in surface waters in accordance with the VWP general  
687 permit and general permit coverage, and that performing activities in surface waters is  
688 unlawful where the activity is not authorized by the VWP permit or coverage, unless  
689 otherwise excluded from obtaining coverage. I also understand that the submittal of  
690 this notice does not release me from liability for any violations of the VWP general  
691 permit or coverage, nor does it allow me to resume the authorized activities without  
692 reapplication and coverage."

693 c. For events beyond permittee control, the permittee shall provide a detailed  
694 explanation of the events, to be approved by the Department of Environmental Quality,  
695 and the following certification statement:

696 "I certify under penalty of law that the activities or the required compensatory mitigation  
697 authorized by the VWP general permit and general permit coverage have changed as  
698 the result of events beyond my control (see attached). I understand that by submitting  
699 this notice of termination I am no longer authorized to perform activities in surface  
700 waters in accordance with the VWP general permit and general permit coverage, and  
701 that performing activities in surface waters is unlawful where the activity is not  
702 authorized by the VWP permit or coverage, unless otherwise excluded from obtaining  
703 coverage. I also understand that the submittal of this notice does not release me from  
704 liability for any violations of the VWP general permit or coverage, nor does it allow me  
705 to resume the authorized activities without reapplication and coverage."

706 B. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-  
707 210-180 F and ~~§ 62.1-44.15:02 of the Code of Virginia~~, or without cause in accordance with  
708 9VAC25-210-180 G and ~~§ 62.1-44.15:02~~.

709 **9VAC25-690-100. VWP general permit.**

710 VWP GENERAL PERMIT NO. WP4 FOR IMPACTS FROM DEVELOPMENT AND  
711 CERTAIN MINING ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT  
712 AND THE VIRGINIA STATE WATER CONTROL LAW

713 Effective date: August 2, 2016

714 Expiration date: August 1, 2026

715 In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State  
716 Water Control Law and regulations adopted pursuant thereto, the board has determined that there  
717 is a reasonable assurance that this VWP general permit, if complied with, will protect instream  
718 beneficial uses, will not violate applicable water quality standards, and will not cause or contribute  
719 to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP  
720 general permit, the board has not taken into consideration the structural stability of any proposed  
721 activities.

722 The permanent or temporary impact of up to two acres of nontidal wetlands or open water and  
723 up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general  
724 permit set forth herein; any requirements in coverage granted under this general permit; the Clean  
725 Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

726 **Part I. Special Conditions.**727 **A. Authorized activities.**

728 1. The activities authorized by this chapter shall not cause more than the permanent or  
729 temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500  
730 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the  
731 ~~board~~ department in the coverage letter, if any, shall be enforceable conditions of this  
732 permit.

733 2. Any changes to the authorized permanent impacts to surface waters shall require a  
734 notice of planned change in accordance with 9VAC25-690-80. An application or request  
735 for modification to coverage or another VWP permit application may be required.

736 3. Any changes to the authorized temporary impacts to surface waters shall require written  
737 notification to and approval from the Department of Environmental Quality in accordance  
738 with 9VAC25-690-80 prior to initiating the impacts and restoration to preexisting conditions  
739 in accordance with the conditions of this permit.

740 4. Modification to compensation requirements may be approved at the request of the  
741 permittee when a decrease in the amount of authorized surface waters impacts occurs,  
742 provided that the adjusted compensation meets the initial compensation goals.

743 **B. Overall conditions.**

744 1. The activities authorized by this VWP general permit shall be executed in a manner so  
745 as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of  
746 the Code of Virginia.

747 2. No activity may substantially disrupt the movement of aquatic life indigenous to the  
748 water body, including those species which normally migrate through the area, unless the  
749 primary purpose of the activity is to impound water. Pipes and culverts placed in streams  
750 must be installed to maintain low flow conditions and shall be countersunk at both inlet  
751 and outlet ends of the pipe or culvert, unless otherwise specifically approved by the

752 Department of Environmental Quality on a case-by-case basis, and as follows: The  
753 requirement to countersink does not apply to extensions or maintenance of existing pipes  
754 and culverts that are not countersunk, floodplain pipes and culverts being placed above  
755 ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts  
756 required to be placed on slopes 5.0% or greater. Bedrock encountered during construction  
757 must be identified and approved in advance of a design change where the countersunk  
758 condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be  
759 countersunk three inches below the natural stream bed elevations, and pipes and culverts  
760 greater than 24 inches shall be countersunk at least six inches below the natural stream  
761 bed elevations. Hydraulic capacity shall be determined based on the reduced capacity  
762 due to the countersunk position. In all stream crossings appropriate measures shall be  
763 implemented to minimize any disruption of aquatic life movement.

764 3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters,  
765 unless the area is contained within a cofferdam and the work is performed in the dry or  
766 unless otherwise approved by the Department of Environmental Quality. Excess or waste  
767 concrete shall not be disposed of in flowing surface waters or washed into flowing surface  
768 waters.

769 4. All fill material shall be clean and free of contaminants in toxic concentrations or  
770 amounts in accordance with all applicable laws and regulations.

771 5. Erosion and sedimentation controls shall be designed in accordance with the Virginia  
772 Erosion and Sediment Control Handbook, Third Edition, 1992, or for mining activities  
773 covered by this general permit, the standards issued by the Virginia Department of Energy  
774 that are effective as those in the Virginia Erosion and Sediment Control Handbook, Third  
775 Edition, 1992. These controls shall be placed prior to clearing and grading and maintained  
776 in good working order to minimize impacts to state waters. These controls shall remain in  
777 place until the area is stabilized and shall then be removed.

778 6. Exposed slopes and streambanks shall be stabilized immediately upon completion of  
779 work in each permitted impact area. All denuded areas shall be properly stabilized in  
780 accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition,  
781 1992.

782 7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways)  
783 and demolition activities associated with the project shall be accomplished in a manner  
784 that minimizes construction or waste materials from entering surface waters to the  
785 maximum extent practicable, unless authorized by this VWP general permit.

786 8. No machinery may enter flowing waters, unless authorized by this VWP general permit  
787 or approved prior to entry by the Department of Environmental Quality.

788 9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats,  
789 geotextile fabric, or other suitable material to minimize soil disturbance to the maximum  
790 extent practicable. Equipment and materials shall be removed immediately upon  
791 completion of work.

792 10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of  
793 authorized activities and within the project or right-of-way limits shall be clearly flagged or  
794 marked for the life of the construction activity at that location to preclude unauthorized  
795 disturbances to these surface waters and compensatory mitigation areas during  
796 construction. The permittee shall notify contractors that no activities are to occur in these  
797 marked surface waters.

798 11. Temporary disturbances to surface waters during construction shall be avoided and  
799 minimized to the maximum extent practicable. All temporarily disturbed wetland areas  
800 shall be restored to preexisting conditions within 30 days of completing work at each

801 respective temporary impact area, which shall include reestablishing preconstruction  
802 elevations and contours with topsoil from the impact area where practicable and planting  
803 or seeding with appropriate wetland vegetation according to cover type (i.e., emergent,  
804 scrub-shrub, or forested). The permittee shall take all appropriate measures to promote  
805 and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation  
806 through the second year post-disturbance. All temporarily impacted streams and  
807 streambanks shall be restored to their preconstruction elevations and contours with topsoil  
808 from the impact area where practicable within 30 days following the construction at that  
809 stream segment. Streambanks shall be seeded or planted with the same vegetation cover  
810 type originally present, including any necessary supplemental erosion control grasses.  
811 Invasive species identified on the Department of Conservation and Recreation's Virginia  
812 Invasive Plant Species List shall not be used to the maximum extent practicable or without  
813 prior approval from the Department of Environmental Quality.

814 12. Materials (including fill, construction debris, and excavated and woody materials)  
815 temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately  
816 stabilized to prevent entry into state waters, managed such that leachate does not enter  
817 state waters, and completely removed within 30 days following completion of that  
818 construction activity. Disturbed areas shall be returned to preconstruction elevations and  
819 contours with topsoil from the impact area where practicable; restored within 30 days  
820 following removal of the stockpile; and restored with the same vegetation cover type  
821 originally present, including any necessary supplemental erosion control grasses. Invasive  
822 species identified on the Department of Conservation and Recreation's Virginia Invasive  
823 Plant Species List shall not be used to the maximum extent practicable or without prior  
824 approval from the Department of Environmental Quality.

825 13. Continuous flow of perennial springs shall be maintained by the installation of spring  
826 boxes, french drains, or other similar structures.

827 14. The permittee shall employ measures to prevent spills of fuels or lubricants into state  
828 waters.

829 15. The permittee shall conduct activities in accordance with the time-of-year restrictions  
830 recommended by the Virginia Department of Wildlife Resources, the Virginia Marine  
831 Resources Commission, or other interested and affected agencies, as contained, when  
832 applicable, in Department of Environmental Quality VWP general permit coverage, and  
833 shall ensure that all contractors are aware of the time-of-year restrictions imposed.

834 16. Water quality standards shall not be violated as a result of the construction activities.

835 17. If stream channelization or relocation is required, all work in surface waters shall be  
836 done in the dry, unless otherwise authorized by the Department of Environmental Quality,  
837 and all flows shall be diverted around the channelization or relocation area until the new  
838 channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and  
839 outlet ends of the new channel during excavation. Once the new channel has been  
840 stabilized, flow shall be routed into the new channel by first removing the downstream plug  
841 and then the upstream plug. The rerouted stream flow must be fully established before  
842 construction activities in the old stream channel can begin.

#### 843 C. Road crossings.

844 1. Access roads and associated bridges, pipes, and culverts shall be constructed to  
845 minimize the adverse effects on surface waters to the maximum extent practicable.  
846 Access roads constructed above preconstruction elevations and contours in surface  
847 waters must be bridged, piped, or culverted to maintain surface flows.

848 2. Installation of road crossings shall occur in the dry via the implementation of cofferdams,  
849 sheetpiling, stream diversions, or similar structures.

## 850 D. Utility lines.

851 1. All utility line work in surface waters shall be performed in a manner that minimizes  
852 disturbance, and the area must be returned to its preconstruction elevations and contours  
853 with topsoil from the impact area where practicable and restored within 30 days of  
854 completing work in the area, unless otherwise authorized the Department of  
855 Environmental Quality. Restoration shall be the seeding or planting of the same vegetation  
856 cover type originally present, including any necessary supplemental erosion control  
857 grasses. Invasive species identified on the Department of Conservation and Recreation's  
858 Virginia Invasive Plant Species List shall not be used to the maximum extent practicable  
859 or without prior approval from the Department of Environmental Quality.

860 2. Material resulting from trench excavation may be temporarily sidecast into wetlands not  
861 to exceed a total of 90 days, provided the material is not placed in a manner such that it  
862 is dispersed by currents or other forces.

863 3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g.,  
864 backfilling with extensive gravel layers creating a french drain effect.). For example, utility  
865 lines may be backfilled with clay blocks to ensure that the trench does not drain surface  
866 waters through which the utility line is installed.

## 867 E. Stream modification and stream bank protection.

868 1. Riprap bank stabilization shall be of an appropriate size and design in accordance with  
869 the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

870 2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion  
871 and Sediment Control Handbook, Third Edition, 1992.

872 3. For stream bank protection activities, the structure and backfill shall be placed as close  
873 to the stream bank as practicable. No material shall be placed in excess of the minimum  
874 necessary for erosion protection.

875 4. All stream bank protection structures shall be located to eliminate or minimize impacts  
876 to vegetated wetlands to the maximum extent practicable.

877 5. Asphalt and materials containing asphalt or other toxic substances shall not be used in  
878 the construction of submerged sills or breakwaters.

879 6. Redistribution of existing stream substrate for the purpose of erosion control is  
880 prohibited.

881 7. No material removed from the stream bottom shall be disposed of in surface waters,  
882 unless otherwise authorized by this VWP general permit.

## 883 F. Dredging.

884 1. Dredging depths shall be determined and authorized according to the proposed use  
885 and controlling depths outside the area to be dredged.

886 2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom  
887 and minimizes turbidity levels in the water column.

888 3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging,  
889 dredging operations shall cease, and the Department of Environmental Quality shall be  
890 notified immediately.

891 4. Barges used for the transportation of dredge material shall be filled in such a manner  
892 to prevent the overflow of dredged materials.

893 5. Double handling of dredged material in state waters shall not be permitted.

894 6. For navigation channels the following shall apply:



895 a. A buffer of four times the depth of the dredge cut shall be maintained between the  
896 bottom edge of the design channel and the channelward limit of wetlands, or a buffer  
897 of 15 feet shall be maintained from the dredged cut and the channelward edge of  
898 wetlands, whichever is greater. This landward limit of buffer shall be flagged and  
899 inspected prior to construction.

900 b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-  
901 vertical slope to prevent slumping of material into the dredged area.

902 7. A dredged material management plan for the designated upland disposal site shall be  
903 submitted and approved 30 days prior to initial dredging activity.

904 8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area  
905 to allow for maximum retention and settling time. Filter fabric shall be used to line the  
906 dewatering area and to cover the outfall pipe to further reduce sedimentation to state  
907 waters.

908 9. The dredge material dewatering area shall be of adequate size to contain the dredge  
909 material and to allow for adequate dewatering and settling out of sediment prior to  
910 discharge back into state waters.

911 10. The dredge material dewatering area shall utilize an earthen berm or straw bales  
912 covered with filter fabric along the edge of the area to contain the dredged material, filter  
913 bags, or other similar filtering practices, any of which shall be properly stabilized prior to  
914 placing the dredged material within the containment area.

915 11. Overtopping of the dredge material containment berms with dredge materials shall be  
916 strictly prohibited.

917 G. Stormwater management facilities.

918 1. Stormwater management facilities shall be installed in accordance with best  
919 management practices and watershed protection techniques (e.g., vegetated buffers,  
920 siting considerations to minimize adverse effects to aquatic resources, bioengineering  
921 methods incorporated into the facility design to benefit water quality and minimize adverse  
922 effects to aquatic resources) that provide for long-term aquatic resources protection and  
923 enhancement, to the maximum extent practicable.

924 2. Compensation for unavoidable impacts shall not be allowed within maintenance areas  
925 of stormwater management facilities.

926 3. Maintenance activities within stormwater management facilities shall not require  
927 additional permit coverage or compensation provided that the maintenance activities do  
928 not exceed the original contours of the facility, as approved and constructed, and is  
929 accomplished in designated maintenance areas as indicated in the facility maintenance  
930 or design plan or when unavailable, an alternative plan approved by the Department of  
931 Environmental Quality.

932 Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

933 A. Minimum compensation requirements.

934 1. The permittee shall provide any required compensation for impacts in accordance with  
935 the conditions in this VWP general permit, the coverage letter, and the chapter  
936 promulgating the general permit. For all compensation that requires a protective  
937 mechanism, including preservation of surface waters or buffers, the permittee shall record  
938 the approved protective mechanism in the chain of title to the property, or an equivalent  
939 instrument for government-owned lands, and proof of recordation shall be submitted to  
940 the Department of Environmental Quality prior to commencing impacts in surface waters.

- 941 2. Compensation options that may be considered under this VWP general permit shall  
942 meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and  
943 9VAC25-690-70.
- 944 3. The permittee-responsible compensation site or sites depicted in the conceptual  
945 compensation plan submitted with the application shall constitute the compensation site.  
946 A site change may require a modification to coverage.
- 947 4. For compensation involving the purchase of mitigation bank credits or the purchase of  
948 in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas  
949 until documentation of the mitigation bank credit purchase or of the in-lieu fee program  
950 credit purchase has been submitted to and received by the Department of Environmental  
951 Quality.
- 952 5. The final compensation plan shall be submitted to and approved by the ~~board~~  
953 department prior to a construction activity in permitted impact areas. The ~~board~~  
954 department shall review and provide written comments on the final plan within 30 days of  
955 receipt or it shall be deemed approved. The final plan as approved by the ~~board~~  
956 department shall be an enforceable requirement of any coverage under this VWP general  
957 permit. Deviations from the approved final plan shall be submitted and approved in  
958 advance by the ~~board~~ department.
- 959 a. The final permittee-responsible wetlands compensation plan shall include:
- 960 (1) The complete information on all components of the conceptual compensation plan.
- 961 (2) A summary of the type and acreage of existing wetland impacts anticipated during  
962 the construction of the compensation site and the proposed compensation for these  
963 impacts; a site access plan; a monitoring plan, including proposed success criteria,  
964 monitoring goals, and the location of photo-monitoring stations, monitoring wells,  
965 vegetation sampling points, and reference wetlands or streams, if available; an  
966 abatement and control plan for undesirable plant species; an erosion and  
967 sedimentation control plan; a construction schedule; and the final protective  
968 mechanism for the compensation site or sites, including all surface waters and buffer  
969 areas within its boundaries.
- 970 (3) The approved protective mechanism. The protective mechanism shall be recorded  
971 in the chain of title to the property, or an equivalent instrument for government-owned  
972 lands, and proof of recordation shall be submitted to the Department of Environmental  
973 Quality prior to commencing impacts in surface waters.
- 974 b. The final permittee-responsible stream compensation plan shall include:
- 975 (1) The complete information on all components of the conceptual compensation plan.
- 976 (2) An evaluation, discussion, and plan drawing or drawings of existing conditions on  
977 the proposed compensation stream, including the identification of functional and  
978 physical deficiencies for which the measures are proposed, and summary of  
979 geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth  
980 ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including  
981 a monitoring and reporting schedule, monitoring design and methodologies for  
982 success, proposed success criteria, location of photo-monitoring stations, vegetation  
983 sampling points, survey points, bank pins, scour chains, and reference streams; an  
984 abatement and control plan for undesirable plant species; an erosion and  
985 sedimentation control plan, if appropriate; a construction schedule; a plan-view  
986 drawing depicting the pattern and all compensation measures being employed; a  
987 profile drawing; cross-sectional drawing or drawings of the proposed compensation

988 stream; and the final protective mechanism for the protection of the compensation site  
989 or sites, including all surface waters and buffer areas within its boundaries.

990 (3) The approved protective mechanism. The protective mechanism shall be recorded  
991 in the chain of title to the property, or an equivalent instrument for government-owned  
992 lands, and proof of recordation shall be submitted to the Department of Environmental  
993 Quality prior to commencing impacts in surface waters.

994 6. The following criteria shall apply to permittee-responsible wetland or stream  
995 compensation:

996 a. The vegetation used shall be native species common to the area, shall be suitable  
997 for growth in local wetland or riparian conditions, and shall be from areas within the  
998 same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural  
999 Resources Conservation Service Land Resource Region as that of the project site.  
1000 Planting of woody plants shall occur when vegetation is normally dormant, unless  
1001 otherwise approved in the final wetlands or stream compensation plan or plans.

1002 b. All work in permitted impact areas shall cease if compensation site construction has  
1003 not commenced within 180 days of commencement of project construction, unless  
1004 otherwise authorized by the ~~board~~ department.

1005 c. The Department of Environmental Quality shall be notified in writing prior to the  
1006 initiation of construction activities at the compensation site.

1007 d. Point sources of stormwater runoff shall be prohibited from entering a wetland  
1008 compensation site prior to treatment by appropriate best management practices.  
1009 Appropriate best management practices may include sediment traps, grassed  
1010 waterways, vegetated filter strips, debris screens, oil and grease separators, or  
1011 forebays.

1012 e. The success of the compensation shall be based on meeting the success criteria  
1013 established in the approved final compensation plan.

1014 f. If the wetland or stream compensation area fails to meet the specified success  
1015 criteria in a particular monitoring year, other than the final monitoring year, the reasons  
1016 for this failure shall be determined, and a corrective action plan shall be submitted to  
1017 the Department of Environmental Quality for approval with or before that year's  
1018 monitoring report. The corrective action plan shall contain at minimum the proposed  
1019 actions, a schedule for those actions, and a monitoring plan, and shall be implemented  
1020 by the permittee in accordance with the approved schedule. Should significant  
1021 changes be necessary to ensure success, the required monitoring cycle shall begin  
1022 again, with monitoring year one being the year that the changes are complete, as  
1023 confirmed by the Department of Environmental Quality. If the wetland or stream  
1024 compensation area fails to meet the specified success criteria by the final monitoring  
1025 year or if the wetland or stream compensation area has not met the stated restoration  
1026 goals, reasons for this failure shall be determined and a corrective action plan,  
1027 including proposed actions, a schedule, and a monitoring plan, shall be submitted with  
1028 the final year monitoring report for Department of Environmental Quality approval.  
1029 Corrective action shall be implemented by the permittee in accordance with the  
1030 approved schedule. Annual monitoring shall be required to continue until two  
1031 sequential, annual reports indicate that all criteria have been successfully satisfied and  
1032 the site has met the overall restoration goals (e.g., that corrective actions were  
1033 successful).

1034 g. The surveyed wetland boundary for the wetlands compensation site shall be based  
1035 on the results of the hydrology, soils, and vegetation monitoring data and shall be  
1036 shown on the site plan. Calculation of total wetland acreage shall be based on that

1037 boundary at the end of the monitoring cycle. Data shall be submitted by December 31  
1038 of the final monitoring year.

1039 h. Herbicides or algicides shall not be used in or immediately adjacent to the wetlands  
1040 or stream compensation site or sites without prior authorization by the ~~board~~  
1041 department. All vegetation removal shall be done by manual means, unless authorized  
1042 by the Department of Environmental Quality in advance.

1043 B. Impact site construction monitoring.

1044 1. Construction activities authorized by this permit that are within impact areas shall be  
1045 monitored and documented. The monitoring shall consist of:

1046 a. Preconstruction photographs taken at each impact area prior to initiation of activities  
1047 within impact areas. Photographs shall remain on the project site and depict the impact  
1048 area and the nonimpacted surface waters immediately adjacent to and downgradient  
1049 of each impact area. Each photograph shall be labeled to include the following  
1050 information: permit number, impact area number, date and time of the photograph,  
1051 name of the person taking the photograph, photograph orientation, and photograph  
1052 subject description.

1053 b. Site inspections shall be conducted by the permittee or the permittee's qualified  
1054 designee once every calendar month during activities within impact areas. Monthly  
1055 inspections shall be conducted in the following areas: all authorized permanent and  
1056 temporary impact areas; all avoided surface waters, including wetlands, stream  
1057 channels, and open water; surface water areas within 50 feet of any land disturbing  
1058 activity and within the project or right-of-way limits; and all on-site permanent  
1059 preservation areas required under this permit. Observations shall be recorded on the  
1060 inspection form provided by the Department of Environmental Quality. The form shall  
1061 be completed in its entirety for each monthly inspection and shall be kept on site and  
1062 made available for review by the Department of Environmental Quality staff upon  
1063 request during normal business hours. Inspections are not required during periods of  
1064 no activity within impact areas.

1065 2. Monitoring of water quality parameters shall be conducted during permanent relocation  
1066 of perennial streams through new channels in the manner noted below. The permittee  
1067 shall report violations of water quality standards to the Department of Environmental  
1068 Quality in accordance with the procedures in 9VAC25-690-100 Part II E. Corrective  
1069 measures and additional monitoring may be required if water quality standards are not  
1070 met. Reporting shall not be required if water quality standards are not violated.

1071 a. A sampling station shall be located upstream and immediately downstream of the  
1072 relocated channel.

1073 b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every  
1074 30 minutes for at least two hours at each station prior to opening the new channels  
1075 and immediately before opening new channels.

1076 c. Temperature, pH, and D.O. readings shall be taken after opening the channels and  
1077 every 30 minutes for at least three hours at each station.

1078 C. Permittee-responsible wetland compensation site monitoring.

1079 1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial  
1080 surveys, shall be conducted for the entire compensation site or sites including invert  
1081 elevations for all water elevation control structures and spot elevations throughout the site  
1082 or sites. Aerial surveys shall include the variation from actual ground conditions, such as  
1083 +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered  
1084 professional engineer to conform to the design plans. The survey shall be submitted within

- 1085 60 days of completing compensation site construction. Changes or deviations in the as-  
1086 built survey or aerial survey shall be shown on the survey and explained in writing.
- 1087 2. Photographs shall be taken at the compensation site or sites from the permanent  
1088 markers identified in the final compensation plan, and established to ensure that the same  
1089 locations and view directions at the site or sites are monitored in each monitoring period.  
1090 These photographs shall be taken after the initial planting and at a time specified in the  
1091 final compensation plan during every monitoring year.
- 1092 3. Compensation site monitoring shall begin on day one of the first complete growing  
1093 season (monitoring year 1) after wetland compensation site construction activities,  
1094 including planting, have been completed. Monitoring shall be required for monitoring years  
1095 1, 2, 3, and 5, unless otherwise approved by the Department of Environmental Quality. In  
1096 all cases, if all success criteria have not been met in the final monitoring year, then  
1097 monitoring shall be required for each consecutive year until two annual sequential reports  
1098 indicate that all criteria have been successfully satisfied.
- 1099 4. The establishment of wetland hydrology shall be measured during the growing season,  
1100 with the location and number of monitoring wells, and frequency of monitoring for each  
1101 site, set forth in the final monitoring plan. Hydrology monitoring well data shall be  
1102 accompanied by precipitation data, including rainfall amounts either from on site or from  
1103 the closest weather station. Once the wetland hydrology success criteria have been  
1104 satisfied for a particular monitoring year, monitoring may be discontinued for the remainder  
1105 of that monitoring year following Department of Environmental Quality approval. After a  
1106 period of three monitoring years, the permittee may request that hydrology monitoring be  
1107 discontinued, providing that adequate hydrology has been established and maintained.  
1108 Hydrology monitoring shall not be discontinued without written approval from the  
1109 Department of Environmental Quality.
- 1110 5. The presence of hydric soils or soils under hydric conditions shall be evaluated in  
1111 accordance with the final compensation plan.
- 1112 6. The establishment of wetland vegetation shall be in accordance with the final  
1113 compensation plan. Monitoring shall take place in August, September, or October during  
1114 the growing season of each monitoring year, unless otherwise authorized in the monitoring  
1115 plan.
- 1116 7. The presence of undesirable plant species shall be documented.
- 1117 8. All wetland compensation monitoring reports shall be submitted in accordance with  
1118 9VAC25-690-100 Part II E 6.
- 1119 D. Permittee-responsible stream compensation and monitoring.
- 1120 1. Riparian buffer restoration activities shall be detailed in the final compensation plan and  
1121 shall include, as appropriate, the planting of a variety of native species currently growing  
1122 in the site area, including appropriate seed mixtures and woody species that are bare root,  
1123 balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the  
1124 stream bank at bankfull elevation landward on both sides of the stream, shall be required  
1125 where practical.
- 1126 2. The installation of root wads, vanes, and other instream structures, shaping of the  
1127 stream banks, and channel relocation shall be completed in the dry whenever practicable.
- 1128 3. Livestock access to the stream and designated riparian buffer shall be limited to the  
1129 greatest extent practicable.
- 1130 4. Stream channel restoration activities shall be conducted in the dry or during low flow  
1131 conditions. When site conditions prohibit access from the streambank or upon prior

1132 authorization from the Department of Environmental Quality, heavy equipment may be  
1133 authorized for use within the stream channel.

1134 5. Photographs shall be taken at the compensation site from the vicinity of the permanent  
1135 photo-monitoring stations identified in the final compensation plan. The photograph  
1136 orientation shall remain constant during all monitoring events. At a minimum, photographs  
1137 shall be taken from the center of the stream, facing downstream, with a sufficient number  
1138 of photographs to view the entire length of the restoration site. Photographs shall  
1139 document the completed restoration conditions. Photographs shall be taken prior to site  
1140 activities, during instream and riparian compensation construction activities, within one  
1141 week of completion of activities, and during at least one day of each monitoring year to  
1142 depict restored conditions.

1143 6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial  
1144 surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall  
1145 include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall  
1146 be certified by the licensed surveyor or by a registered, professional engineer to conform  
1147 to the design plans. The survey shall be submitted within 60 days of completing  
1148 compensation site construction. Changes or deviations from the final compensation plans  
1149 in the as-built survey or aerial survey shall be shown on the survey and explained in  
1150 writing.

1151 7. Compensation site monitoring shall begin on day one of the first complete growing  
1152 season (monitoring year 1) after stream compensation site construction activities,  
1153 including planting, have been completed. Monitoring shall be required for monitoring years  
1154 1 and 2, unless otherwise approved by the Department of Environmental Quality. In all  
1155 cases, if all success criteria have not been met in the final monitoring year, then monitoring  
1156 shall be required for each consecutive year until two annual sequential reports indicate  
1157 that all criteria have been successfully satisfied.

1158 8. All stream compensation site monitoring reports shall be submitted by in accordance  
1159 with 9VAC25-690-100 Part II E 6.

#### 1160 E. Reporting.

1161 1. Written communications required by this VWP general permit shall be submitted to the  
1162 appropriate Department of Environmental Quality office. The VWP general permit tracking  
1163 number shall be included on all correspondence.

1164 2. The Department of Environmental Quality shall be notified in writing prior to the start of  
1165 construction activities at the first permitted impact area.

1166 3. A construction status update form provided by the Department of Environmental Quality  
1167 shall be completed and submitted to the Department of Environmental Quality twice per  
1168 year for the duration of coverage under a VWP general permit. Forms completed in June  
1169 shall be submitted by or on July 10, and forms completed in December shall be submitted  
1170 by or on January 10. The form shall include reference to the VWP permit tracking number  
1171 and one of the following statements for each authorized surface water impact location:

1172 a. Construction activities have not yet started;

1173 b. Construction activities have started;

1174 c. Construction activities have started but are currently inactive; or

1175 d. Construction activities are complete.

1176 4. The Department of Environmental Quality shall be notified in writing within 30 days  
1177 following the completion of all activities in all authorized impact areas.

- 1178 5. The Department of Environmental Quality shall be notified in writing prior to the initiation  
1179 of activities at the permittee-responsible compensation site. The notification shall include  
1180 a projected schedule of activities and construction completion.
- 1181 6. All permittee-responsible compensation site monitoring reports shall be submitted  
1182 annually by December 31, with the exception of the last year, in which case the report  
1183 shall be submitted at least 60 days prior to the expiration of the general permit, unless  
1184 otherwise approved by the Department of Environmental Quality.
- 1185 a. All wetland compensation site monitoring reports shall include, as applicable, the  
1186 following:
- 1187 (1) General description of the site including a site location map identifying photo-  
1188 monitoring stations, vegetative and soil monitoring stations, monitoring wells, and  
1189 wetland zones.
- 1190 (2) Summary of activities completed during the monitoring year, including alterations  
1191 or maintenance conducted at the site.
- 1192 (3) Description of monitoring methods.
- 1193 (4) Analysis of all hydrology information, including monitoring well data, precipitation  
1194 data, and gauging data from streams or other open water areas, as set forth in the  
1195 final compensation plan.
- 1196 (5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.
- 1197 (6) Analysis of all vegetative community information, including woody and herbaceous  
1198 species, both planted and volunteers, as set forth in the final compensation plan.
- 1199 (7) Photographs labeled with the permit number, the name of the compensation site,  
1200 the photo-monitoring station number, the photograph orientation, the date and time of  
1201 the photograph, the name of the person taking the photograph, and a brief description  
1202 of the photograph subject. This information shall be provided as a separate attachment  
1203 to each photograph, if necessary. Photographs taken after the initial planting shall be  
1204 included in the first monitoring report after planting is complete.
- 1205 (8) Discussion of wildlife or signs of wildlife observed at the compensation site.
- 1206 (9) Comparison of site conditions from the previous monitoring year and reference site.
- 1207 (10) Discussion of corrective measures or maintenance activities to control  
1208 undesirable species, to repair damaged water control devices, or to replace damaged  
1209 planted vegetation.
- 1210 (11) Corrective action plan that includes proposed actions, a schedule, and monitoring  
1211 plan.
- 1212 b. All stream compensation site monitoring reports shall include, as applicable, the  
1213 following:
- 1214 (1) General description of the site including a site location map identifying photo-  
1215 monitoring stations and monitoring stations.
- 1216 (2) Summary of activities completed during the monitoring year, including alterations  
1217 or maintenance conducted at the site.
- 1218 (3) Description of monitoring methods.
- 1219 (4) Evaluation and discussion of the monitoring results in relation to the success  
1220 criteria and overall goals of compensation.
- 1221 (5) Photographs shall be labeled with the permit number, the name of the  
1222 compensation site, the photo-monitoring station number, the photograph orientation,  
1223 the date and time of the photograph, the name of the person taking the photograph,

1224 and a brief description of the photograph subject. Photographs taken prior to  
 1225 compensation site construction activities, during instream and riparian restoration  
 1226 activities, and within one week of completion of activities shall be included in the first  
 1227 monitoring report.

1228 (6) Discussion of alterations, maintenance, or major storm events resulting in  
 1229 significant change in stream profile or cross section, and corrective actions conducted  
 1230 at the stream compensation site.

1231 (7) Documentation of undesirable plant species and summary of abatement and  
 1232 control measures.

1233 (8) Summary of wildlife or signs of wildlife observed at the compensation site.

1234 (9) Comparison of site conditions from the previous monitoring year and reference site,  
 1235 and as-built survey, if applicable.

1236 (10) Corrective action plan that includes proposed actions, a schedule and monitoring  
 1237 plan.

1238 (11) Additional submittals that were approved by the Department of Environmental  
 1239 Quality in the final compensation plan.

1240 7. The permittee shall notify the Department of Environmental Quality in writing when  
 1241 unusual or potentially complex conditions are encountered which require debris removal  
 1242 or involve potentially toxic substance. Measures to remove the obstruction, material, or  
 1243 toxic substance or to change the location of a structure are prohibited until approved by  
 1244 the Department of Environmental Quality.

1245 8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If  
 1246 spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday,  
 1247 the appropriate Department of Environmental Quality regional office shall be notified;  
 1248 otherwise, the Department of Emergency Management shall be notified at 1-800-468-  
 1249 8892.

1250 9. Violations of state water quality standards shall be reported to the appropriate  
 1251 Department of Environmental Quality office no later than the end of the business day  
 1252 following discovery.

1253 10. The permittee shall notify the Department of Environmental Quality no later than the  
 1254 end of the third business day following the discovery of additional impacts to surface  
 1255 waters including wetlands, stream channels, and open water that are not authorized by  
 1256 the Department of Environmental Quality or to any required preservation areas. The  
 1257 notification shall include photographs, estimated acreage or linear footage of impacts, and  
 1258 a description of the impacts.

1259 11. Submittals required by this VWP general permit shall contain the following signed  
 1260 certification statement:

1261 "I certify under penalty of law that this document and all attachments were prepared under  
 1262 my direction or supervision in accordance with a system designed to assure that qualified  
 1263 personnel properly gather and evaluate the information submitted. Based on my inquiry of  
 1264 the person or persons who manage the system, or those persons directly responsible for  
 1265 gathering the information, the information submitted is, to the best of my knowledge and  
 1266 belief, true, accurate, and complete. I am aware that there are significant penalties for  
 1267 submitting false information, including the possibility of fine and imprisonment for knowing  
 1268 violation."

1269 Part III. Conditions Applicable to All VWP General Permits.



1270 A. Duty to comply. The permittee shall comply with all conditions, limitations, and other  
1271 requirements of the VWP general permit; any requirements in coverage granted under this VWP  
1272 general permit; the Clean Water Act, as amended; and the State Water Control Law and  
1273 regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a  
1274 violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement  
1275 action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage  
1276 revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification  
1277 to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve  
1278 the permittee of the duty to comply with all applicable federal and state statutes, regulations, and  
1279 toxic standards and prohibitions.

1280 B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent  
1281 impacts in violation of the VWP general permit which may have a reasonable likelihood of  
1282 adversely affecting human health or the environment.

1283 C. Reopener. This VWP general permit may be reopened to modify its conditions when the  
1284 circumstances on which the previous VWP general permit was based have materially and  
1285 substantially changed, or special studies conducted by the ~~board~~ department or the permittee  
1286 show material and substantial change since the time the VWP general permit was issued and  
1287 thereby constitute cause for revoking and reissuing the VWP general permit.

1288 D. Compliance with state and federal law. Compliance with this VWP general permit  
1289 constitutes compliance with the VWP permit requirements of the State Water Control Law.  
1290 Nothing in this VWP general permit shall be construed to preclude the institution of any legal  
1291 action under or relieve the permittee from any responsibilities, liabilities, or other penalties  
1292 established pursuant to any other state law or regulation or under the authority preserved by §  
1293 510 of the Clean Water Act.

1294 E. Property rights. The issuance of this VWP general permit does not convey property rights  
1295 in either real or personal property or any exclusive privileges, nor does it authorize injury to private  
1296 property, any invasion of personal property rights, or any infringement of federal, state, or local  
1297 laws or regulations.

1298 F. Severability. The provisions of this VWP general permit are severable.

1299 G. Inspection and entry. Upon presentation of credential, the permittee shall allow the ~~board~~  
1300 department or any duly authorized agent of the ~~board~~ department, at reasonable times and under  
1301 reasonable circumstances, to enter upon the permittee's property, public or private, and have  
1302 access to inspect and copy any records that must be kept as part of the VWP general permit  
1303 conditions; to inspect any facilities, operations, or practices (including monitoring and control  
1304 equipment) regulated or required under the VWP general permit; and to sample or monitor any  
1305 substance, parameter, or activity for the purpose of assuring compliance with the conditions of  
1306 the VWP general permit or as otherwise authorized by law. For the purpose of this section, the  
1307 time for inspection shall be deemed reasonable during regular business hours. Nothing contained  
1308 herein shall make an inspection time unreasonable during an emergency.

1309 H. Transferability of VWP general permit coverage. VWP general permit coverage may be  
1310 transferred to another permittee when all of the criteria listed in this subsection are met. On the  
1311 date of the VWP general permit coverage transfer, the transferred VWP general permit coverage  
1312 shall be as fully effective as if it had been granted directly to the new permittee.

1313 1. The current permittee notifies the ~~board~~ department of the proposed transfer of the  
1314 general permit coverage and provides a written agreement between the current and new  
1315 permittees containing a specific date of transfer of VWP general permit responsibility,  
1316 coverage, and liability to the new permittee, or that the current permittee will retain such  
1317 responsibility, coverage, or liability, including liability for compliance with the requirements  
1318 of enforcement activities related to the authorized activity.

1319 2. The ~~board~~ department does not within 15 days notify the current and new permittees of  
 1320 ~~its the board's~~ intent to modify or revoke and reissue the VWP general permit.

1321 I. Notice of planned change. VWP general permit coverage may be modified subsequent to  
 1322 issuance in accordance with 9VAC25-690-80.

1323 J. VWP general permit coverage termination for cause. VWP general permit coverage is  
 1324 subject to termination for cause by the ~~board~~ department after public notice and opportunity for a  
 1325 hearing pursuant to ~~§ 62.1-44.15:02 of the Code of Virginia~~ in accordance with 9VAC25-210-180.  
 1326 Reasons for termination for cause are as follows:

1327 1. Noncompliance by the permittee with any provision of this chapter, any condition of the  
 1328 VWP general permit, or any requirement in general permit coverage;

1329 2. The permittee's failure in the application or during the process of granting VWP general  
 1330 permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of  
 1331 any relevant facts at any time;

1332 3. The permittee's violation of a special or judicial order;

1333 4. A determination by the ~~board~~ department that the authorized activity endangers human  
 1334 health or the environment and can be regulated to acceptable levels by a modification to  
 1335 VWP general permit coverage or a termination;

1336 5. A change in any condition that requires either a temporary or permanent reduction or  
 1337 elimination of any activity controlled by the VWP general permit; or

1338 6. A determination that the authorized activity has ceased and that the compensation for  
 1339 unavoidable adverse impacts has been successfully completed.

1340 K. The ~~board~~ department may terminate VWP general permit coverage without cause when  
 1341 the permittee is no longer a legal entity due to death or dissolution or when a company is no  
 1342 longer authorized to conduct business in the Commonwealth. The termination shall be effective  
 1343 30 days after notice of the proposed termination is sent to the last known address of the permittee  
 1344 or registered agent, unless the permittee objects within that time. If the permittee does object  
 1345 during that period, the ~~board~~ department shall follow the applicable procedures for termination  
 1346 under 9VAC25-210-180 and §§ 62.1-44.15:02 and 62.1-44.15:25 of the Code of Virginia.

1347 L. VWP general permit coverage termination by consent. The permittee shall submit a request  
 1348 for termination by consent within 30 days of completing or canceling all authorized activities  
 1349 requiring notification under 9VAC25-690-50 A and all compensatory mitigation requirements.  
 1350 When submitted for project completion, the request for termination by consent shall constitute a  
 1351 notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this  
 1352 termination of coverage on behalf of the ~~board~~ department. The permittee shall submit the  
 1353 following information:

1354 1. Name, mailing address, and telephone number;

1355 2. Name and location of the activity;

1356 3. The VWP general permit tracking number; and

1357 4. One of the following certifications:

1358 a. For project completion:

1359 "I certify under penalty of law that all activities and any required compensatory  
 1360 mitigation authorized by the VWP general permit and general permit coverage have  
 1361 been completed. I understand that by submitting this notice of termination I am no  
 1362 longer authorized to perform activities in surface waters in accordance with the VWP  
 1363 general permit and general permit coverage, and that performing activities in surface  
 1364 waters is unlawful where the activity is not authorized by the VWP permit or coverage,  
 1365 unless otherwise excluded from obtaining coverage. I also understand that the

1366 submittal of this notice does not release me from liability for any violations of the VWP  
1367 general permit or coverage."

1368 b. For project cancellation:

1369 "I certify under penalty of law that the activities and any required compensatory  
1370 mitigation authorized by the VWP general permit and general permit coverage will not  
1371 occur. I understand that by submitting this notice of termination I am no longer  
1372 authorized to perform activities in surface waters in accordance with the VWP general  
1373 permit and general permit coverage, and that performing activities in surface waters is  
1374 unlawful where the activity is not authorized by the VWP permit or coverage, unless  
1375 otherwise excluded from obtaining coverage. I also understand that the submittal of  
1376 this notice does not release me from liability for any violations of the VWP general  
1377 permit or coverage, nor does it allow me to resume the authorized activities without  
1378 reapplication and coverage."

1379 c. For events beyond permittee control, the permittee shall provide a detailed  
1380 explanation of the events, to be approved by the Department of Environmental Quality,  
1381 and the following certification statement:

1382 "I certify under penalty of law that the activities or the required compensatory mitigation  
1383 authorized by the VWP general permit and general permit coverage have changed as  
1384 the result of events beyond my control (see attached). I understand that by submitting  
1385 this notice of termination I am no longer authorized to perform activities in surface  
1386 waters in accordance with the VWP general permit and general permit coverage, and  
1387 that performing activities in surface waters is unlawful where the activity is not  
1388 authorized by the VWP permit or coverage, unless otherwise excluded from obtaining  
1389 coverage. I also understand that the submittal of this notice does not release me from  
1390 liability for any violations of the VWP general permit or coverage, nor does it allow me  
1391 to resume the authorized activities without reapplication and coverage."

1392 M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve  
1393 the permittee from civil and criminal penalties for noncompliance.

1394 N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be  
1395 construed to preclude the institution of legal action or relieve the permittee from any  
1396 responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of  
1397 the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

1398 O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement  
1399 action that it would have been necessary to halt or reduce the activity for which VWP general  
1400 permit coverage has been granted in order to maintain compliance with the conditions of the VWP  
1401 general permit or coverage.

1402 P. Duty to provide information.

1403 1. The permittee shall furnish to the ~~board~~ department any information that the ~~board~~  
1404 department may request to determine whether cause exists for modifying, revoking, or  
1405 terminating VWP permit coverage or to determine compliance with the VWP general  
1406 permit or general permit coverage. The permittee shall also furnish to the ~~board~~  
1407 department, upon request, copies of records required to be kept by the permittee.

1408 2. Plans, maps, conceptual reports, and other relevant information shall be submitted as  
1409 required by the ~~board~~ department prior to commencing construction.

1410 Q. Monitoring and records requirements.

1411 1. Monitoring of parameters, other than pollutants, shall be conducted according to  
1412 approved analytical methods as specified in the VWP general permit. Analysis of

1413 pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing  
1414 Test Procedures for the Analysis of Pollutants.

1415 2. Samples and measurements taken for the purpose of monitoring shall be representative  
1416 of the monitored activity.

1417 3. The permittee shall retain records of all monitoring information, including all calibration  
1418 and maintenance records and all original strip chart or electronic recordings for continuous  
1419 monitoring instrumentation, copies of all reports required by the VWP general permit, and  
1420 records of all data used to complete the application for coverage under the VWP general  
1421 permit, for a period of at least three years from the date of general permit expiration. This  
1422 period may be extended by request of the ~~board~~ department at any time.

1423 4. Records of monitoring information shall include, as appropriate:

1424 a. The date, exact place, and time of sampling or measurements;

1425 b. The name of the individuals who performed the sampling or measurements;

1426 c. The date and time the analyses were performed;

1427 d. The name of the individuals who performed the analyses;

1428 e. The analytical techniques or methods supporting the information such as  
1429 observations, readings, calculations, and bench data used;

1430 f. The results of such analyses; and

1431 g. Chain of custody documentation.

1432 R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit,  
1433 it shall be unlawful for the permittee to:

1434 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or  
1435 deleterious substances;

1436 2. Excavate in a wetland;

1437 3. Otherwise alter the physical, chemical, or biological properties of state waters and make  
1438 them detrimental to the public health, to animal or aquatic life, or to the uses of such waters  
1439 for domestic or industrial consumption, for recreation, or for other uses; or

1440 4. On and after October 1, 2001, conduct the following activities in a wetland:

1441 a. New activities to cause draining that significantly alters or degrades existing wetland  
1442 acreage or functions;

1443 b. Filling or dumping;

1444 c. Permanent flooding or impounding; or

1445 d. New activities that cause significant alteration or degradation of existing wetland  
1446 acreage or functions.

1447 S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the  
1448 expiration date of the VWP general permit shall comply with the provisions in 9VAC25-690-27.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25 - 840
<b>VAC Chapter title(s)</b>	Erosion and Sediment Control Regulation
<b>Action title</b>	<b>Final Exempt CH 840 Changes in Response to 2022 Legislative Changes</b>
<b>Final agency action date</b>	August 25, 2022
<b>Date this document prepared</b>	June 23, 2022

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

### Brief Summary

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

This regulatory action amends the Erosion and Sediment Control Regulation (9VAC25-840) to incorporate changes resulting from Chapter 356 (Senate Bill 657) of the 2022 Acts of Assembly.

SB657 limits the authority of the State Water Control Board to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. Changes to 9VAC25-840 included changing designations from "board" to "department" where appropriate and a change in the definition of "Board."

### Mandate and Impetus

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

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Section 2.2-4006 A.4.a of the Code of Virginia allows the Board to adopt this regulatory amendment to conform to changes in Virginia statutory law. This regulatory action will incorporate statutory changes in Chapter 356 of the 2022 Acts of Assembly into the Erosion and Sediment Control Regulation (9VAC25-840).

### **Statement of Final Agency Action**

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

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The State Water Control Board approved this amendment to 9VAC25-840 on August 25, 2022, as a final regulation, and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

1 **Project 7253 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 840 changes in response to 2022 Board Bill**

4 **9VAC25-840-10. Definitions.**

5 The following words and terms when used in this chapter, shall have the following meanings  
6 unless the context clearly indicates otherwise. In addition, some terms not defined herein are  
7 defined in § 62.1-44.15:51 of the Erosion and Sediment Control Law.

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

10 "Adequate channel" means a watercourse that will convey the designated frequency storm  
11 event without overtopping its banks or causing erosive damage to the bed, banks and overbank  
12 sections of the same.

13 "Agreement in lieu of a plan" means a contract between the VESCP authority and the owner  
14 that specifies conservation measures that must be implemented in the construction of a single-  
15 family residence; this contract may be executed by the VESCP authority in lieu of an erosion and  
16 sediment control plan.

17 "Applicant" means any person submitting an erosion and sediment control plan or an  
18 agreement in lieu of a plan for approval or requesting the issuance of a permit, when required,  
19 authorizing land-disturbing activities to commence.

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

23 "Causeway" means a temporary structural span constructed across a flowing watercourse or  
24 wetland to allow construction traffic to access the area without causing erosion damage.

25 "Channel" means a natural stream or manmade waterway.

26 "Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water  
27 from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be  
28 constructed.

29 "Dam" means a barrier to confine or raise water for storage or diversion, to create a hydraulic  
30 head, to prevent gully erosion, or to retain soil, rock or other debris.

31 "Denuded" means a term applied to land that has been physically disturbed and no longer  
32 supports vegetative cover.

33 "Department" means the Department of Environmental Quality.

34 "Development" means a tract or parcel of land developed or to be developed as a single unit  
35 under single ownership or unified control which is to be used for any business or industrial purpose  
36 or is to contain three or more residential dwelling units.

37 "Dike" means an earthen embankment constructed to confine or control water, especially one  
38 built along the banks of a river to prevent overflow of lowlands; levee.

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

40 "District" or "soil and water conservation district" means a political subdivision of the  
41 Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1- 506 et seq.) of  
42 Chapter 5 of Title 10.1 of the Code of Virginia.

43 "Diversion" means a channel with a supporting ridge on the lower side constructed across or  
44 at the bottom of a slope for the purpose of intercepting surface runoff.

45 "Dormant" means denuded land that is not actively being brought to a desired grade or  
46 condition.

47 "Energy dissipator" means a nonerodible structure which reduces the velocity of concentrated  
48 flow to reduce its erosive effects.

49 "Erosion and Sediment Control Plan" or "plan" means a document containing material for the  
50 conservation of soil and water resources of a unit or group of units of land. It may include  
51 appropriate maps, an appropriate soil and water plan inventory and management information with  
52 needed interpretations, and a record of decisions contributing to conservation treatment. The plan  
53 shall contain all major conservation decisions and all information deemed necessary by the plan-  
54 approving authority to assure that the entire unit or units of land will be so treated to achieve the  
55 conservation objectives.

56 "Flume" means a constructed device lined with erosion-resistant materials intended to convey  
57 water on steep grades.

58 "Live watercourse" means a definite channel with bed and banks within which concentrated  
59 water flows continuously.

60 "Locality" means a county, city or town.

61 "Natural stream" means nontidal waterways that are part of the natural topography. They  
62 usually maintain a continuous or seasonal flow during the year and are characterized as being  
63 irregular in cross-section with a meandering course. Constructed channels such as drainage  
64 ditches or swales shall not be considered natural streams.

65 "Nonerodible" means a material, e.g., riprap, concrete, plastic, etc., that will not experience  
66 surface wear due to natural forces.

67 "Person" means any individual, partnership, firm, association, joint venture, public or private  
68 corporation, trust, estate, commission, board, public or private institution, utility, cooperative,  
69 county, city, town or other political subdivision of the Commonwealth, governmental body,  
70 including a federal or state entity as applicable, any interstate body, or any other legal entity.

71 "Post-development" means conditions that may be reasonably expected or anticipated to exist  
72 after completion of the land development activity on a specific site or tract of land.

73 "Program administrator" means the person or persons responsible for administering and  
74 enforcing the erosion and sediment control program of a VESCP authority.

75 "Pre-development" means conditions at the time the erosion and sediment control plan is  
76 submitted to the VESCP authority. Where phased development or plan approval occurs  
77 (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and  
78 sediment control plan for the initial phase is submitted for approval shall establish pre-  
79 development conditions.

80 "Sediment basin" means a temporary impoundment built to retain sediment and debris with a  
81 controlled stormwater release structure.

82 "Sediment trap" means a temporary impoundment built to retain sediment and debris which  
83 is formed by constructing an earthen embankment with a stone outlet.

84 "Sheet flow" (also called overland flow) means shallow, unconcentrated and irregular flow  
85 down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural  
86 conditions.

87 "Shore erosion control project" means an erosion control project approved by local wetlands  
88 boards, the Virginia Marine Resources Commission, the department, or the United States Army  
89 Corps of Engineers and located on tidal waters and within nonvegetated or vegetated wetlands  
90 as defined in Title 28.2 of the Code of Virginia.



91 "Slope drain" means tubing or conduit made of nonerosive material extending from the top to  
92 the bottom of a cut or fill slope with an energy dissipator at the outlet end.

93 "Stabilized" means land that has been treated to withstand normal exposure to natural forces  
94 without incurring erosion damage.

95 "Storm sewer inlet" means a structure through which stormwater is introduced into an  
96 underground conveyance system.

97 "Stormwater detention" means the process of temporarily impounding runoff and discharging  
98 it through a hydraulic outlet structure to a downstream conveyance system.

99 "Temporary vehicular stream crossing" means a temporary nonerodible structural span  
100 installed across a flowing watercourse for use by construction traffic. Structures may include  
101 bridges, round pipes or pipe arches constructed on or through nonerodible material.

102 "Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled  
103 or exceeded on the average of once in 10 years. It may also be expressed as an exceedance  
104 probability with a 10% chance of being equaled or exceeded in any given year.

105 "Two-year storm" means a storm that is capable of producing rainfall expected to be equaled  
106 or exceeded on the average of once in two years. It may also be expressed as an exceedance  
107 probability with a 50% chance of being equaled or exceeded in any given year.

108 "Twenty-five-year storm" means a storm that is capable of producing rainfall expected to be  
109 equaled or exceeded on the average of once in 25 years. It may also be expressed as exceedance  
110 probability with a 4.0% chance of being equaled or exceeded in any given year.

111 "Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by  
112 the ~~board~~ department that has been established by a VESCP authority for the effective control of  
113 soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing  
114 activity to prevent the unreasonable degradation of properties, stream channels, waters, and other  
115 natural resources and shall include such items where applicable as local ordinances, rules, permit  
116 requirements, annual standards and specifications, policies and guidelines, technical materials,  
117 and requirements for plan review, inspection, enforcement where authorized in this article, and  
118 evaluation consistent with the requirements of the Act and this chapter.

119 "Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an  
120 authority approved by the ~~board~~ department to operate a Virginia Erosion and Sediment Control  
121 Program. An authority may include a state entity, including the department; a federal entity; a  
122 district, county, city, or town; or for linear projects subject to annual standards and specifications,  
123 electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline  
124 companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of  
125 Virginia.

#### 126 **9VAC25-840-60. Maintenance and inspections.**

127 A. All erosion and sediment control structures and systems shall be maintained, inspected  
128 and repaired as needed to insure continued performance of their intended function. A statement  
129 describing the maintenance responsibilities of the permittee shall be included in the approved  
130 erosion and sediment control plan.

131 B. Periodic inspections are required on all projects by the VESCP authority. The VESCP  
132 authority shall either:

- 133 1. Provide for an inspection during or immediately following initial installation of erosion  
134 and sediment controls, at least once in every two-week period, within 48 hours following  
135 any runoff producing storm event, and at the completion of the project prior to the release  
136 of any performance bonds; or

- 137 2. Establish an alternative inspection program which ensures compliance with the  
138 approved erosion and sediment control plan. Any alternative inspection program shall be:  
139 a. Approved by the ~~board~~ department prior to implementation;  
140 b. Established in writing;  
141 c. Based on a system of priorities that, at a minimum, address the amount of disturbed  
142 project area, site conditions and stage of construction; and  
143 d. Documented by inspection records.

144 **9VAC25-840-90. Review and evaluation of VESCPs: minimum program standards.**

145 A. This section sets forth the criteria that will be used by the department to determine whether  
146 a VESCP operating under authority of the Act, satisfies minimum standards of effectiveness, as  
147 follows.

148 Each VESCP must contain an ordinance or other appropriate document or documents  
149 adopted by the VESCP authority. Such document or documents must be consistent with the Act  
150 and this chapter, including the following criteria:

- 151 1. The document or documents shall include or reference the definition of land-disturbing  
152 activity including exemptions, as well as any other significant terms, as necessary to  
153 produce an effective VESCP.
- 154 2. The document or documents shall identify the VESCP authority and any soil and water  
155 conservation district, adjacent locality, or other public or private entities that the VESCP  
156 authority entered into agreements or contracts with to assist with carrying out the  
157 provisions of the Act and this chapter, and must include the requirements and design  
158 standards to be used in the program.
- 159 3. The document or documents shall include procedures for submission and approval of  
160 plans, issuance of permits, monitoring and inspections of land-disturbing activities. The  
161 position, agency, department, or other party responsible for conducting inspections shall  
162 be identified. The VESCP authority shall maintain, either on-site or in VESCP files, a copy  
163 of the approved plan and a record of inspections for each active land-disturbing activity.
- 164 4. Each VESCP operated by a county, city, or town shall include provisions for the  
165 integration of the VESCP with Virginia stormwater management, flood insurance, flood  
166 plain management, and other programs requiring compliance prior to authorizing a land-  
167 disturbing activity in order to make the submission and approval of plans, issuance of  
168 permits, payment of fees, and coordination of inspection and enforcement activities more  
169 convenient and efficient both for the local governments and those responsible for  
170 compliance with the programs.
- 171 5. The VESCP authority must take appropriate enforcement actions, where authorized to  
172 do so, to achieve compliance with the program and maintain a record of enforcement  
173 actions for all active land-disturbing activities.

174 B. The department shall periodically conduct a comprehensive review and evaluation of local  
175 programs. The department will coordinate the review with its other program reviews for the same  
176 entity to avoid redundancy. The review and evaluation of a local program shall consist of the  
177 following: (i) consultation with the local program administrator or designee or designees; (ii) review  
178 of the local ordinance and other applicable documents; (iii) review of plans approved by the  
179 program; (iv) inspection of regulated activities; and (v) review of enforcement actions where  
180 authorized to do so. The department is also authorized to conduct a partial program compliance  
181 review.

182 C. Local programs shall be reviewed and evaluated for effectiveness in carrying out the Act  
183 and this chapter using the criteria in this section.

184 D. If deficiencies noted in the review will cause the erosion and sediment control program to  
185 be inconsistent with the state program and this chapter, the ~~board~~ department shall provide the  
186 VESCP authority with a copy of its decision that specifies the deficiencies, action needed to be  
187 taken, and an approved corrective action plan and schedule required to attain the minimum  
188 standard of effectiveness. If the VESCP authority has not implemented the necessary compliance  
189 actions identified by the ~~board~~ department within the corrective action schedule, or such additional  
190 period as is granted to complete the implementation of the corrective action, then the ~~board~~  
191 department shall have the authority to (i) issue a special order to any VESCP imposing a civil  
192 penalty set out in § 62.1-44.15:54 F of the Act or (ii) revoke its approval of the VESCP. The  
193 Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the review  
194 activities and proceedings of the ~~board~~ department and the judicial review thereof. In lieu of  
195 issuing a special order or revoking the program, the ~~board~~ department is authorized to take legal  
196 action against a VESCP to ensure compliance.

197 E. Review and evaluation of VESCPs shall be conducted according to a schedule adopted by  
198 the department.

199 **9VAC25-840-100. State agency projects.**

200 A. All state agency land-disturbing activities that are not exempt and that have commenced  
201 without an approved erosion and sediment control plan shall immediately cease until the state  
202 agency has submitted annual standards and specifications for its conduct of land-disturbing  
203 activities which has been reviewed and approved by the department as being consistent with the  
204 Act and this chapter, or an erosion and sediment control plan has been submitted to and approved  
205 by the department. A formal "Notice of Plan Requirement" will be sent to the state agency under  
206 whose purview the project lies since that agency is responsible for compliance with the Act and  
207 this chapter.

208 B. Where inspections by department personnel reveal deficiencies in carrying out an approved  
209 plan, the person responsible for carrying out the plan, as well as the state agency responsible,  
210 will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure  
211 to meet the prescribed deadlines can result in the issuance of a stop work order for all land-  
212 disturbing activities on the project at the discretion of the department. The stop work order will be  
213 lifted once the required erosion and sediment control measures are in place and inspected by  
214 department staff.

215 C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided  
216 in an appropriate final order, the director of the department may petition for compliance as follows:  
217 For violations in the Natural and Historic Resources Secretariat, to the Secretary of Natural and  
218 Historic Resources; for violations in other secretariats, to the appropriate Secretary; for violations  
219 in other state agencies, to the head of such agency. Where the petition does not achieve timely  
220 compliance, the director shall bring the matter to the Governor for resolution. The ~~board or the~~  
221 department may also pursue enforcement as provided by § 62.1-44.15:63 of the Act.

222 D. Where compliance will require the appropriation of funds, the director shall cooperate with  
223 the appropriate agency head in seeking such an appropriation; where the director determines that  
224 an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or  
225 other appropriate source.

226 **9VAC25-840-110. Delegation of authority. (Repealed.)**

227 ~~The director, or his designee, may perform any act of the board provided under this chapter,~~  
228 ~~except as limited by § 62.1-44.14 of the Code of Virginia.~~



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25 - 850
<b>VAC Chapter title(s)</b>	Erosion and Sediment Control and Stormwater Management Certification Regulations
<b>Action title</b>	<b>Final Exempt CH 850 Changes in Response to 2022 Legislative Changes</b>
<b>Final agency action date</b>	August 25, 2022
<b>Date this document prepared</b>	June 23, 2022

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

### Brief Summary

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

This regulatory action amends the Erosion and Sediment Control and Stormwater Management Certification Regulations (9VAC25-850) to incorporate changes resulting from Chapter 356 (Senate Bill 657) of the 2022 Acts of Assembly.

SB657 limits the authority of the State Water Control Board to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. Changes to 9VAC25-850 included changing designations from "board" to "department" where appropriate and a change in the definition of "Board."

## Mandate and Impetus

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

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Section 2.2-4006 A.4.a of the Code of Virginia allows the Board to adopt this regulatory amendment to conform to changes in Virginia statutory law. This regulatory action will incorporate statutory changes in Chapter 356 of the 2022 Acts of Assembly into the Erosion and Sediment Control and Stormwater Management Certification Regulations (9VAC25-850).

## Statement of Final Agency Action

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

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The State Water Control Board approved this amendment to 9VAC25-850 on August 25, 2022, as a final regulation, and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

1 **Project 7254 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 850 changes in response to 2022 Board Bill**

4 **9VAC25-850-10. Definitions.**

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

7 "Applicant" means any person submitting a request to be considered for certification.

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

11 "Certification" means the process whereby the ~~board~~ department, on behalf of the  
12 Commonwealth, issues a certificate to persons who have completed ~~board-department~~-approved  
13 training programs and met any additional eligibility requirements of 9VAC25-850-50 related to the  
14 specified classifications (9VAC25-850-40) within the areas of ESC or SWM or in other ways  
15 demonstrated adequate knowledge and experience in accordance with the eligibility requirements  
16 of 9VAC25-850-50 in the specified classifications within the areas of ESC or SWM.

17 "Certified combined administrator for ESC" means an employee or agent of a VESCP  
18 authority who holds a certificate of competence from the ~~board~~ department in the combined ESC  
19 classifications of program administrator, plan reviewer, and project inspector in the area of ESC.

20 "Certified combined administrator for SWM" means an employee or agent of a VSMP authority  
21 who holds a certificate of competence from the ~~board~~ department in the combined classifications  
22 of program administrator, plan reviewer, and project inspector in the area of SWM.

23 "Certified plan reviewer for ESC" means an employee or agent of a VESCP authority who: (i)  
24 holds a certificate of competence from the ~~board~~ department in the classification of plan reviewer  
25 in the area of ESC; (ii) is licensed as a professional engineer, architect, certified landscape  
26 architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of  
27 the Code of Virginia; or (iii) is a professional soil scientist as defined in Chapter 22 (§ 54.1-2200  
28 et seq.) of Title 54.1 of the Code of Virginia.

29 "Certified plan reviewer for SWM" means an employee or agent of a VSMP authority who  
30 holds a certificate of competence from the ~~board~~ department in the classification of plan reviewer  
31 in the area of SWM.

32 "Certified program administrator for ESC" means an employee or agent of a VESCP authority  
33 who holds a certificate of competence from the ~~board~~ department in the classification of program  
34 administrator in the area of ESC.

35 "Certified program administrator for SWM" means an employee or agent of a VSMP authority  
36 who holds a certificate of competence from the ~~board~~ department in the classification of program  
37 administrator in the area of SWM.

38 "Certified project inspector for ESC" means an employee or agent of a VESCP authority who  
39 holds a certificate of competence from the ~~board~~ department in the classification of project  
40 inspector in the area of ESC.

41 "Certified project inspector for SWM" means an employee or agent of a VSMP authority who  
42 holds a certificate of competence from the ~~board~~ department in the classification of project  
43 inspector in the area of SWM.

44 "Classification" means the four specific certificate of competence classifications within the  
45 areas of ESC or SWM that make up activities being performed (program administrator, plan  
46 reviewer, project inspector, and combined administrator).

47 "Combined administrator for ESC" means anyone who is responsible for performing the  
48 combined duties of a program administrator, plan reviewer and project inspector of a VESCP  
49 authority.

50 "Combined administrator for SWM" means anyone who is responsible for performing the  
51 combined duties of a program administrator, plan reviewer and project inspector of a VSMP  
52 authority.

53 "Department" means the Department of Environmental Quality.

54 "Erosion and sediment control plan" or "ESC plan" means a document containing material for  
55 the conservation of soil and water resources of a unit or group of units of land. It may include  
56 appropriate maps, an appropriate soil and water plan inventory and management information with  
57 needed interpretations, and a record of all decisions contributing to conservation treatment. The  
58 plan shall contain all major conservation decisions to ensure that the entire unit or units of land  
59 will be so treated to achieve the conservation objective.

60 "ESC" means erosion and sediment control.

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

63 "Plan reviewer" means anyone who is responsible for determining the accuracy of ESC plans  
64 and supporting documents or SWM plans and supporting documents for approval by a VESCP  
65 authority or a VSMP authority as may be applicable in the areas of ESC or SWM.

66 "Program administrator" means the person or persons responsible for administering and  
67 enforcing the VESCP or VSMP of a VESCP authority or a VSMP authority as may be applicable  
68 in the areas of ESC or SWM.

69 "Project inspector" means anyone who, as a representative of a VESCP authority or a VSMP  
70 authority, is responsible for periodically examining the ESC or SWM activities and premises of a  
71 land-disturbing activity for compliance with the ESC Act and Regulations or the SWM Act and  
72 Regulations as may be applicable.

73 "Responsible land disturber" or "RLD" means an individual holding a certificate issued by the  
74 department who is responsible for carrying out the land-disturbing activity in accordance with the  
75 approved ESC plan. The RLD may be the owner, applicant, permittee, designer, superintendent,  
76 project manager, contractor, or any other project or development team member. The RLD must  
77 be designated on the ESC plan or permit as a prerequisite for engaging in land disturbance.

78 "Stormwater management plan" or "SWM plan" means a document containing material  
79 describing methods for complying with the requirements of a VSMP and the SWM Act and its  
80 attendant regulations.

81 "SWM" means stormwater management.

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

84 "Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by  
85 the ~~board~~ department that has been established by a VESCP authority for the effective control of  
86 soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing  
87 activity to prevent the unreasonable degradation of properties, stream channels, waters, and other  
88 natural resources and shall include such items where applicable as local ordinances, rules, permit  
89 requirements, annual standards and specifications, policies and guidelines, technical materials,

90 and requirements for plan review, inspection, enforcement where authorized in the ESC Act and  
 91 this chapter, and evaluation consistent with the requirements of the ESC Act and this chapter.

92 "Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an  
 93 authority approved by the ~~board~~ department to operate a Virginia erosion and sediment control  
 94 program. An authority may include a state entity, including the department; a federal entity; a  
 95 district, county, city, or town; or for linear projects subject to annual standards and specifications,  
 96 electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline  
 97 companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of  
 98 Virginia.

99 "Virginia Stormwater Management Program" or "VSMP" means a program approved by the  
 100 ~~board~~ department after September 13, 2011, that has been established by a VSMP authority to  
 101 manage the quality and quantity of runoff resulting from land-disturbing activities and shall include  
 102 such items as local ordinances, rules, permit requirements, annual standards and specifications,  
 103 policies and guidelines, technical materials, and requirements for plan review, inspection,  
 104 enforcement, where authorized in the SWM Act and associated regulations, and evaluation  
 105 consistent with the requirements of the SWM Act and associated regulations.

106 "Virginia Stormwater Management Program authority" or "VSMP authority" means an  
 107 authority approved by the ~~board~~ department after September 13, 2011, to operate a Virginia  
 108 Stormwater Management Program or, until such approval is given, the department. An authority  
 109 may include a locality; state entity, including the department; federal entity; or, for linear projects  
 110 subject to annual standards and specifications in accordance with subsection B of § 62.1-44.15:31  
 111 of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and  
 112 intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to  
 113 § 15.2-5102 of the Code of Virginia.

#### 114 **9VAC25-850-30. Applicability.**

115 This chapter is applicable to:

- 116 1. Every VESCP authority or VSMP authority that administers a VESCP or VSMP as may  
 117 be applicable. Staff of a VESCP authority must be certified in accordance with §§ 62.1-  
 118 44.15:51 E and 62.1-44.15:53 of the ESC Act. Staff of a VSMP authority must be certified  
 119 in accordance with § 62.1-44.15:30 of the SWM Act.
- 120 2. Anyone who is contracted by a VESCP authority or a VSMP authority to perform any or  
 121 all of the functions of that authority as may be applicable. This person will be subject to  
 122 the same certification requirements as the authority.
- 123 3. Anyone voluntarily seeking certificates of competence from the ~~board~~ department for  
 124 classifications described in 9VAC25-850-40.

#### 125 **9VAC25-850-40. Certificates.**

126 A. Certificates of competence shall be issued by the ~~board~~ department in accordance with the  
 127 requirements of 9VAC25-850-50 for the following classifications:

- 128 1. Program administrator for ESC. The person employed as the VESCP administrator.
- 129 2. Plan reviewer for ESC. The person who reviews ESC plans to be approved by the  
 130 VESCP authority.
- 131 3. Project inspector for ESC. The person responsible for inspecting erosion and sediment  
 132 control practices to ensure compliance with the Virginia Erosion and Sediment Control  
 133 Law and Regulations.
- 134 4. Combined administrator for ESC. The person responsible for performing the combined  
 135 duties of program administrator, plan reviewer and project inspector for a VESCP  
 136 authority.



- 137 5. Program administrator for SWM. The person employed as the VSMP administrator.  
 138 6. Plan reviewer for SWM. The person who reviews SWM plans to be approved by the  
 139 VSMP authority.  
 140 7. Project inspector for SWM. The person responsible for inspecting regulated activities to  
 141 ensure compliance with the SWM Act and Regulations.  
 142 8. Combined administrator for SWM. The person responsible for performing the combined  
 143 duties of program administrator, plan reviewer, and project inspector for a VSMP authority.

144 B. A certificate shall be issued by the ~~board~~ department for the responsible land disturber or  
 145 RLD for ESC. The RLD is the person responsible for carrying out the land-disturbing activity.

146 C. Any person employed as a plan reviewer who is licensed as a professional engineer,  
 147 architect, certified landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.)  
 148 of Chapter 4 of Title 54.1 of the Code of Virginia or as a professional soil scientist as defined in  
 149 Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall qualify as a certified  
 150 plan reviewer for ESC and will not require a certificate of competence from the ~~board~~ department.  
 151 In lieu of a person holding this ~~board~~ department certificate of competence, such person shall  
 152 produce a current professional license or certification upon request of the department.

153 D. Any person who holds a valid and unexpired certificate of competence issued by the ~~board~~  
 154 department in the classification of ESC or SWM, or who obtains such a certificate, and who later  
 155 successfully obtains an additional certificate of competence from the ~~board~~ department in the  
 156 parallel ESC or SWM classification may surrender both certificates of competence to the ~~board~~  
 157 department and request in writing issuance of a dual certificate showing certification in both  
 158 classifications. Such a request must be made while both of the ESC and SWM certificates of  
 159 competence obtained are valid and unexpired. The expiration date of the dual certificate shall be  
 160 three years from the date of expiration of the additional certificate acquired.

161 **9VAC25-850-50. Eligibility requirements.**

162 A. Certification may be obtained by satisfactorily completing and submitting an application to  
 163 the department in accordance with 9VAC25-850-80 and:

- 164 1. By obtaining a total of 800 hours of experience as an ESC or SWM plan reviewer,  
 165 project inspector, or combined administrator and obtaining a passing score on the  
 166 certification examination administered by the department in the applicable ESC or SWM  
 167 area; or  
 168 2. By enrolling in and completing, within 12 months, a ~~board~~department-approved training  
 169 program in the classifications of program administrator, plan reviewer, project inspector,  
 170 or combined administrator and obtaining within one year of completion of the training  
 171 program a passing score on the certification examination administered by the department  
 172 in the applicable ESC or SWM area.
- 173 a. The training program for project inspectors for ESC will consist of attending and  
 174 completing courses/seminars in "Basic Erosion and Sediment Control in Virginia" and  
 175 "Erosion and Sediment Control for Inspectors."  
 176 b. The training program for plan reviewers for ESC will consist of attending and  
 177 completing courses/seminars in "Basic Erosion and Sediment Control in Virginia" and  
 178 "Erosion and Sediment Control for Plan Reviewers."  
 179 c. The training program for program administrators for ESC will consist of attending  
 180 the course "Basic Erosion and Sediment Control in Virginia."  
 181 d. The training program for combined administrators for ESC will consist of attending  
 182 the courses/seminars "Basic Erosion and Sediment Control in Virginia," "Erosion and

183 Sediment Control for Inspectors," and "Erosion and Sediment Control for Plan  
184 Reviewers."

185 e. The training program for project inspectors for SWM will consist of attending and  
186 completing courses/seminars in "Basic Stormwater Management in Virginia" and  
187 "Stormwater Management for Inspectors."

188 f. The training program for plan reviewers for SWM will consist of attending and  
189 completing courses/seminars in "Basic Stormwater Management in Virginia" and  
190 "Stormwater Management for Plan Reviewers."

191 g. The training program for program administrators for SWM will consist of attending  
192 the seminar "Basic Stormwater Management in Virginia."

193 h. The training program for combined administrators for SWM will consist of attending  
194 the courses/seminars "Basic Stormwater Management in Virginia," "Stormwater  
195 Management for Inspectors," and "Stormwater Management for Plan Reviewers."

196 3. By enrolling in and completing the training program and obtaining a passing score on  
197 the certification examination administered by the department for responsible land  
198 disturbers for ESC.

199 B. Certification and recertification shall be valid for three years and will expire on the last day  
200 of the expiration month except as otherwise set out in 9VAC25-850-40 D or 9VAC25-850-90.

201 C. Recertification may be obtained for classifications outlined in 9VAC25-850-40 of this  
202 chapter prior to the expiration date of a certification by:

203 1. Obtaining a passing score on the recertification examination;

204 2. Successfully completing a ~~board~~department-approved training program during the last  
205 12 months of the term of the certificate but prior to its expiration date;

206 3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400  
207 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as  
208 defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1, and paying the required fee for  
209 recertification. Such professionals shall be deemed to satisfy the provisions of this  
210 subsection for classifications in subdivisions A 1 through 4 and subsection B of 9VAC25-  
211 850-40. However, such professionals when in the classification of plan reviewer for ESC  
212 shall be exempt from the recertification requirements and fees of this chapter provided  
213 they maintain their professional license;

214 4. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400  
215 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia and paying the required fee for  
216 recertification. Such professionals shall be deemed to satisfy the provisions of this  
217 subsection for classifications in subdivisions A 5 through 8 and subsection B of 9VAC25-  
218 850-40; or

219 5. Completing continuing professional education hours in accordance with department  
220 guidance.

221 **9VAC25-850-55. Classification acknowledgement for the purposes of program compliance**  
222 **reviews.**

223 For the purposes of VESCP or VSMP compliance reviews and evaluations, the certification  
224 requirements of §§ 62.1-44.15:53 and 62.1-44.15:30 of the Code of Virginia shall be deemed to  
225 have been met if the VESCP or the VSMP authority has a person or persons enrolled in the  
226 ~~board's~~ department's ESC or SWM training programs set forth in 9VAC25-850-50 A 1 and A 2 a  
227 through h for the necessary classifications and such person or persons obtains certification within  
228 one year of completing the necessary training programs.

229 **9VAC25-850-70. Examination.**

230 A. A ~~board~~department-approved examination shall be administered at least twice a year.

231 B. An individual may take the certification examination for the desired certificate of  
232 competence after fulfilling the prerequisite experience requirement or completing a  
233 ~~board~~department-approved training program in accordance with 9VAC25-850-50.

234 C. An individual who is unable to take an examination at the time scheduled shall notify the  
235 department within 48 hours prior to the date of the examination unless a later time is established  
236 by the department; such an individual may be rescheduled for the next examination. Failure to  
237 notify the department may require an individual to submit a new application and payment of fees  
238 in accordance with this chapter.

239 D. An applicant who is unsuccessful in passing an examination will be allowed to pay the  
240 appropriate fee and retake the appropriate exam within one year without resubmitting an  
241 application. After the one-year period has elapsed, an applicant will be required to submit a new  
242 application with the appropriate fee in accordance with this chapter in order to take the  
243 examination. Application for examination must be received at least 60 days prior to the scheduled  
244 examination unless a later date is established by the department to be eligible to sit for the  
245 examination.

246 E. A minimum passing score of 70% will be required on the appropriate certification exam(s).

247 F. All applicants will be notified within 60 days of the results of the examination.

248 **9VAC25-850-80. Application.**

249 A. Any person seeking certification or recertification by a combination of experience and  
250 examination or by the combination of completion of the training program and examination shall  
251 submit a completed application in a manner prescribed by the department with the appropriate  
252 fee(s). The application shall contain the following:

253 1. The applicant's name, address, daytime phone number, email address, and name and  
254 address of business or organization as well as the date the application was filled out.

255 2. The classification of certification the applicant is applying for as set forth in 9VAC25-  
256 850-40, and designation whether the applicant is applying for initial certification or  
257 recertification.

258 3. If any special arrangements must be provided for because of a handicap.

259 4. A verification of all work experience signed and dated by applicant's supervisor, if  
260 required.

261 5. A signed statement that the information provided in the application is true and accurate.  
262 Incomplete applications will be returned to the applicant. All applications must be received  
263 by the department at least 60 days prior to the scheduled examination date, unless a later  
264 date is established by the department, in order to be able to sit for the examination.

265 The department may establish other acceptable forms of documentation for the components  
266 of the application that provide similar assurances as those set forth in this subsection.

267 B. All complete applications of candidates will be reviewed by the department to determine  
268 eligibility for certification. All applicants will be notified of the results of the review. Any applicant  
269 may appeal the review, in writing, to the ~~board~~ department within 30 days of the department's  
270 determination. No applicant will be approved for certification unless he meets the requirements of  
271 this chapter.

272 C. Applicants who have been found ineligible to sit for an examination may request further  
273 consideration by submitting a letter to the ~~board~~ department with the necessary evidence of  
274 additional qualifications. No additional fee will be required provided that all requirements for  
275 certification are met within one year from the date of original application.

276 **9VAC25-850-90. Discipline of certified personnel.**

277 The ~~board~~ department may suspend, revoke or refuse to grant or renew the certification of  
278 any person if the ~~board~~ department, in an informal fact finding under § 2.2-4019 of the Code of  
279 Virginia, finds that:

- 280 1. The certification was obtained or renewed through fraud or misinterpretation;
- 281 2. The certified person has violated or cooperated with others in violating any provision of  
282 this chapter;
- 283 3. The certified person has not demonstrated reasonable care, judgment, or application of  
284 his knowledge and ability in the performance of his duties; or
- 285 4. The certified person has made any material misrepresentation in the course of  
286 performing his duties.

287 **~~9VAC25-850-100. Delegation of authority. (Repealed.)~~**

288 ~~The director, or his designee, may perform any act of the board provided under this chapter,~~  
289 ~~except as limited by § 62.1-44.14 of the Code of Virginia.~~



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-280
<b>VAC Chapter title(s)</b>	Ground Water Standards
<b>Action title</b>	Final Exempt CH 280 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 14, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-280) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

Changes to the regulations included a change in the definition of "Board and the repeal of the delegation of authority provisions to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-280 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7239 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 280 changes in response to 2022 Board Bill**

4 **9VAC25-280-10. Definitions.**

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

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

10 "Criteria" means elements of the board's ground water quality standards, expressed as  
11 constituent concentrations, levels, or narrative statements, representing a quality of water that  
12 supports a particular use. When criteria are met, ground water quality will generally protect the  
13 designated use.

14 "Department" means the Department of Environmental Quality.

15 "Ground water quality standards" means provisions of state law that consist of a designated  
16 use or uses for the waters of the Commonwealth and water quality criteria for such waters based  
17 upon such uses. Ground water quality standards are to protect the public health or welfare,  
18 enhance the quality of water and serve the purposes of the State Water Control Law (§ 62.1-44.2  
19 et seq. of the Code of Virginia).

20 **9VAC25-280-90. Designations of authority. (Repealed.)**

21 ~~The director or his designee may perform any act of the board provided under this chapter,~~  
22 ~~except as limited by § 62.1-44.14 of the Code of Virginia.~~



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-610
<b>VAC Chapter title(s)</b>	Groundwater Withdrawal Regulations
<b>Action title</b>	Final Exempt CH 610 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 14, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-610) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits and provide procedures for public comment on pending controversial permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”; the addition of a definition for “controversial permit”; the addition of language establishing “permit rationale”; the addition of language establishing “criteria for requesting and granting a public hearing in a permit action”; the addition of language related to “controversial permits” and “controversial permits reporting”; the repeal of the delegation of authority provisions. and the correction of Code references where necessary to implement the new statutory requirements.



Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

### **Mandate and Impetus**

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

---

SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these statutory changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

### **Statement of Final Agency Action**

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-610 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7151 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 610 changes in response to 2022 Board Bill**

4 **9VAC25-610-10. Definitions.**

5 Unless a different meaning is required by the context, the following terms as used in this  
6 chapter shall have the following meanings:

7 "Act" means the Ground Water Management Act of 1992, Chapter 25 (§ 62.1-254 et seq.) of  
8 Title 62.1 of the Code of Virginia.

9 "Adverse impact" means reductions in groundwater levels or changes in groundwater quality  
10 that limit the ability of any existing groundwater user lawfully withdrawing or authorized to  
11 withdraw groundwater at the time of permit or special exception issuance to continue to withdraw  
12 the quantity and quality of groundwater required by the existing use. Existing groundwater users  
13 include all those persons who have been granted a groundwater withdrawal permit subject to this  
14 chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

15 "Agricultural use" means utilizing groundwater for the purpose of agricultural, silvicultural,  
16 horticultural, or aquacultural operations. Agricultural use includes withdrawals for turf farm  
17 operations, but does not include withdrawals for landscaping activities or turf installment and  
18 maintenance associated with landscaping activities.

19 "Applicant" means a person filing an application to initiate or enlarge a groundwater withdrawal  
20 in a groundwater management area.

21 "Area of impact" means the areal extent of each aquifer where more than one foot of  
22 drawdown is predicted to occur due to a proposed withdrawal.

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

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

28 "Consumptive use" means the withdrawal of groundwater, without recycle of said waters to  
29 their source of origin.

30 "Controversial permit" means a water permitting action for which a public hearing has been  
31 granted pursuant to 9VAC25-610-270 and 9VAC25-610-275.

32 "Department" means the Department of Environmental Quality.

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

34 "Draft permit" means a prepared document indicating the ~~board's~~ department's tentative  
35 decision relative to a permit action.

36 "Geophysical investigation" means any hydrogeologic evaluation to define the hydrogeologic  
37 framework of an area or determine the hydrogeologic properties of any aquifer or confining unit  
38 to the extent that withdrawals associated with such investigations do not result in unmitigated  
39 adverse impacts to existing groundwater users. Geophysical investigations include pump tests  
40 and aquifer tests.

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

45 "Human consumption" means the use of water to support human survival and health, including  
46 drinking, bathing, showering, cooking, dishwashing, and maintaining hygiene.

47 "Mitigate" means to take actions necessary to assure that all existing groundwater users at  
48 the time of issuance of a permit or special exception who experience adverse impacts continue  
49 to have access to the amount and quality of groundwater needed for existing uses.

50 "Permit" means a groundwater withdrawal permit issued under the Ground Water  
51 Management Act of 1992 permitting the withdrawal of a specified quantity of groundwater under  
52 specified conditions in a groundwater management area.

53 "Permittee" means a person that currently has an effective groundwater withdrawal permit  
54 issued under the Ground Water Act of 1992.

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

59 "Practicable" means available and capable of being done after taking into consideration cost,  
60 existing technology, and logistics in light of overall project purposes.

61 "Private well" means, as defined in § 32.1-176.3 of the Code of Virginia, any water well  
62 constructed for a person on land that is owned or leased by that person and is usually intended  
63 for household, groundwater source heat pump, agricultural use, industrial use, or other nonpublic  
64 water well.

65 "Public hearing" means a fact finding proceeding held to afford interested persons an  
66 opportunity to submit factual data, views, and comments to the ~~board pursuant to § 62.1-44.15:02~~  
67 ~~of the Code of Virginia~~ department.

68 "Salt water intrusion" means the encroachment of saline waters in any aquifer that creates  
69 adverse impacts to existing groundwater users or is counter to the public interest.

70 "Special exception" means a document issued by the ~~board~~ department for withdrawal of  
71 groundwater in unusual situations where requiring the user to obtain a groundwater withdrawal  
72 permit would be contrary to the purpose of the Ground Water Management Act of 1992. Special  
73 exceptions allow the withdrawal of a specified quantity of groundwater under specified conditions  
74 in a groundwater management area.

75 "Supplemental drought relief well" means a well permitted to withdraw a specified amount of  
76 groundwater to meet human consumption needs during declared drought conditions after  
77 mandatory water use restrictions have been implemented.

78 "Surface water and groundwater conjunctive use system" means an integrated water supply  
79 system wherein surface water is the primary source and groundwater is a supplemental source  
80 that is used to augment the surface water source when the surface water source is not able to  
81 produce the amount of water necessary to support the annual water demands of the system.

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

84 "Water well systems provider" means any individual who is certified by the Board for  
85 Contractors in accordance with § 54.1-1128 et seq. of the Code of Virginia and who is engaged  
86 in drilling, installation, maintenance, or repair of water wells, water well pumps, ground source  
87 heat exchangers, and other equipment associated with the construction, removal, or repair of  
88 water wells, water well systems, and ground source heat pump exchangers to the point of  
89 connection to the ground source heat pump.

90 "Well" means any artificial opening or artificially altered natural opening, however made, by  
 91 which groundwater is sought or through which groundwater flows under natural pressure or is  
 92 intended to be withdrawn.

93 "Withdrawal system" means (i) one or more wells or withdrawal points located on the same or  
 94 contiguous properties under common ownership for which the withdrawal is applied to the same  
 95 beneficial use or (ii) two or more connected wells or withdrawal points which are under common  
 96 ownership but are not necessarily located on contiguous properties.

97 **9VAC25-610-20. Purpose.**

98 The Ground Water Management Act of 1992 recognizes and declares that the right to  
 99 reasonable control of all groundwater resources within the Commonwealth belongs to the public  
 100 and that in order to conserve, protect and beneficially utilize the groundwater resource and to  
 101 ensure the public welfare, safety and health, provisions for management and control of  
 102 groundwater resources are essential. This chapter delineates the procedures and requirements  
 103 to be followed when establishing groundwater management areas and the issuance of  
 104 groundwater withdrawal permits by the board or department pursuant to the Ground Water  
 105 Management Act of 1992.

106 **9VAC25-610-25. Permit Rationale.**

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

114 **9VAC25-610-42. Private well registration.**

115 A. Each certified water well systems provider shall register with the ~~board~~ department each  
 116 private well, as defined in 9VAC25-610-10, that is constructed in a groundwater management  
 117 area after September 22, 2016.

118 B. The registration shall be made within 30 calendar days of the completion of well  
 119 construction.

120 C. Such registration shall be submitted to the department on a form, paper or electronic,  
 121 provided by the department for registration purposes.

122 D. The following information, at a minimum, shall be required for each registration:

123 1. Contact information, including:

124 a. The well owner's name and mailing address; and

125 b. The certified water well system provider's name and mailing address.

126 2. The well location, including:

127 a. The physical address, tax map number, or grid parcel identification number (GPIN)  
 128 of the property at which the well is located;

129 b. The subdivision name and appropriate section, block and lot numbers, if applicable;  
 130 and

131 c. The latitude, longitude, and datum of the well.

132 3. The type of use of the well water.

133 4. Well construction information, including:

134 a. The well designation name or number;

135 b. The start and completion dates of well construction;

- 136 c. The depth of the well and borehole depth;  
 137 d. Borehole sizes;  
 138 e. Height of casing above the land surface, if applicable;  
 139 f. Size, depth, and material weight per foot or wall thickness of the casing, if applicable;  
 140 g. Size, type, and mesh of the screen or water zones, if applicable; and  
 141 h. The type of grout, grouting method, and type of seal, if applicable.  
 142 5. If a pump test is conducted, the pump test information, including:  
 143 a. Date and duration of test;  
 144 b. Pre-pumped static water level; and  
 145 c. Stabilized measured pumping level and yield.  
 146 6. Production pump intake depth, if applicable.  
 147 7. Drillers log.  
 148 8. The certified water well system provider's certification statement.

149 **9VAC25-610-50. Exclusions.**

150 The following do not require a groundwater withdrawal permit:

- 151 1. Withdrawals of less than 300,000 gallons per month;  
 152 2. Withdrawals associated with temporary construction dewatering that do not exceed 24  
 153 months in duration;  
 154 3. Withdrawals associated with a state-approved groundwater remediation that do not  
 155 exceed 60 months in duration;  
 156 4. Withdrawals for use by a groundwater source heat pump where the discharge is  
 157 reinjected into the aquifer from which it was withdrawn;  
 158 5. Withdrawals from ponds recharged by groundwater without mechanical assistance;  
 159 6. Withdrawals for the purpose of conducting geophysical investigations, including pump  
 160 tests;  
 161 7. Withdrawals coincident with exploration for and extraction of coal or activities  
 162 associated with coal mining regulated by the Department of Energy;  
 163 8. Withdrawals coincident with the exploration for or production of oil, gas or other minerals  
 164 other than coal, unless such withdrawal adversely impacts aquifer quantity or quality or  
 165 other groundwater users within a groundwater management area;  
 166 9. Withdrawals in any area not declared to be a groundwater management area;  
 167 10. Withdrawal of groundwater authorized pursuant to a special exception issued by the  
 168 ~~board~~ department; and  
 169 11. Withdrawal of groundwater discharged from free flowing springs where the natural flow  
 170 of the spring has not been increased by any method.

171 **9VAC25-610-80. Declaration of groundwater management areas.**

172 A. If the board finds that any of the conditions listed in 9VAC25-610-70 exist, and further  
 173 determines that the public welfare, safety and health require that regulatory efforts be initiated,  
 174 the board shall declare the area in question a groundwater management area, by regulation.

175 B. Such regulations shall be promulgated in accordance with the agency's Public Participation  
 176 Guidelines (9VAC25-11) and the Administrative Process Act (§ 2.2-4000 et seq. of the Code of  
 177 Virginia).

178 C. The regulation shall define the boundaries of the groundwater management area and  
 179 identify the aquifers to be included in the groundwater management area. Any number of aquifers

180 that either wholly or partially overlie one another may be included within the same groundwater  
181 management area.

182 D. After adoption the ~~board~~ department shall mail by postal or electronic delivery a copy of  
183 the regulation to the mayor or chairman of the governing body of each county, city or town within  
184 which any part of the groundwater management area lies.

185 **9VAC25-610-90. Application for a permit by groundwater users in existing groundwater**  
186 **management areas withdrawing prior to July 1, 1992.**

187 Persons withdrawing groundwater or who have rights to withdraw groundwater prior to July 1,  
188 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and not excluded  
189 from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

190 1. Any person who was issued a certificate of groundwater right or a permit to withdraw  
191 groundwater prior to July 1, 1991, and who was withdrawing groundwater pursuant to said  
192 permit or certificate on July 1, 1992, shall file an application on or before December 31,  
193 1992, to continue said withdrawal. The applicant shall demonstrate the claimed prior  
194 withdrawals through withdrawal reports required by the existing certificate or permit or by  
195 reports required by Water Withdrawal Reporting Regulations) (9VAC25-200).

196 2. Any person who was issued a certificate of groundwater right or a permit to withdraw  
197 groundwater prior to July 1, 1991, and who had not initiated the withdrawal prior to July 1,  
198 1992, may initiate a withdrawal on or after July 1, 1992, pursuant to the terms and  
199 conditions of the certificate or permit and shall file an application for a groundwater  
200 withdrawal permit on or before December 31, 1995, to continue said withdrawal. The  
201 applicant shall demonstrate the claimed prior withdrawals through withdrawal reports  
202 required by the existing certificate or permit or by reports required by Water Withdrawal  
203 Reporting Regulations (9VAC25-200).

204 3. Any person who was issued a permit to withdraw groundwater on or after July 1, 1991,  
205 and prior to July 1, 1992, shall not be required to apply for a groundwater withdrawal permit  
206 until the expiration of the permit to withdraw groundwater or 10 years from the date of  
207 issuance of the permit to withdraw groundwater whichever occurs first. Such persons shall  
208 reapply for a groundwater withdrawal permit as described in 9VAC25-610-96.

209 4. Any person withdrawing groundwater for agricultural or livestock watering purposes on  
210 or before July 1, 1992, shall file an application for a groundwater withdrawal permit on or  
211 before December 31, 1993. The applicant shall demonstrate the claimed prior withdrawals  
212 by voluntary withdrawal reports required by Water Withdrawal Reporting Regulations)  
213 (9VAC25-200) when such reports have been filed with the board. When such reports are  
214 not available, estimates of withdrawal will be accepted that are based on the area irrigated,  
215 depth of irrigation, and annual number of irrigations; pumping capacity and annual  
216 pumping time; annual energy consumption for pumps, energy consumption per hour, and  
217 pumping capacity; number and type of livestock watered annually; number and type of  
218 livestock where water is used for cooling purposes; or other methods approved by the  
219 ~~board~~ department.

220 5. Any political subdivision, or authority serving a political subdivision, holding a certificate  
221 of groundwater right or a permit to withdraw groundwater issued prior to July 1, 1992, for  
222 the operation of a public water supply well for the purpose of providing supplemental water  
223 during drought conditions, shall file an application on or before December 31, 1992. Any  
224 political subdivision, or authority serving a political subdivision, shall submit, as part of the  
225 application, a water conservation and management plan as described in 9VAC25-610-100  
226 B.

227 6. Any person who is required to apply in subdivision 1, 2, or 5 of this section and who  
228 uses the certificated or permitted withdrawal to operate a public water supply system shall

229 provide a copy of the waterworks operation permit, or equivalent, with the required  
230 application for a groundwater withdrawal permit.

231 7. Any person described in subdivision 1, 2, 3, or 5 of this section who files a complete  
232 application by the date required may continue to withdraw groundwater pursuant to the  
233 existing certificate or permit until such time as the ~~board~~ department takes action on the  
234 outstanding application for a groundwater withdrawal permit.

235 8. Any person described in subdivision 4 of this section who files a complete application  
236 by the date required may continue his existing withdrawal until such time as the ~~board~~  
237 department takes action on the outstanding application for a groundwater withdrawal  
238 permit.

239 9. Any person described in subdivision 1, 2, 3, 4, or 5 of this section who files an  
240 incomplete application by the date required may continue to withdraw groundwater as  
241 described in subdivisions 7 and 8 of this section provided that all information required to  
242 complete the application is provided to the ~~board~~ department within 60 days of the ~~board's~~  
243 department's notice to the applicant of deficiencies. Should such person not provide the  
244 ~~board~~ department the required information within 60 days, he shall cease withdrawals until  
245 he provides any additional information to the ~~board~~ department and the ~~board~~ department  
246 concurs that the application is complete.

247 10. A complete application for those persons described in subdivision 1, 2, 3, 4, or 5 of  
248 this section shall contain:

249 a. The permit fee as required by the Fees for Permits and Certificates Regulations  
250 (9VAC25-20);

251 b. A groundwater withdrawal permit application completed in its entirety with all maps,  
252 attachments, and addenda that may be required. Application forms shall be submitted  
253 in a format specified by the ~~board~~ department. Such application forms are available  
254 from the Department of Environmental Quality;

255 c. A signature as described in 9VAC25-610-150;

256 d. Well construction documentation for all wells associated with the application  
257 submitted on the Water Well Completion Report, Form GW2, which includes the  
258 following information:

259 (1) The depth of the well;

260 (2) The diameter, top and bottom, and material of each cased interval;

261 (3) The diameter, top and bottom, for each screened interval; and

262 (4) The depth of pump intake;

263 e. Locations of all wells associated with the application shown on United States  
264 Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the  
265 latitude and longitude coordinates in a datum specified by the department for each  
266 existing and proposed well. The detailed location map shall be of sufficient detail such  
267 that all wells may be easily located for site inspection;

268 f. A map identifying the service areas for public water supplies;

269 g. Information on surface water and groundwater conjunctive use systems as  
270 described in 9VAC25-610-104 if applicable;

271 h. Persons described in subdivision 5 of this section shall submit a water conservation  
272 and management plan as described in 9VAC25-610-100;

273 i. Withdrawal reports required by the existing groundwater certificate or permit, reports  
274 required by Water Withdrawal Reporting Regulations (9VAC25-200), or estimates of

275 withdrawals as described in subdivision 4 of this section to support any claimed prior  
276 withdrawal; and

277 j. A copy of the Virginia Department of Health waterworks operation permit, or  
278 equivalent, where applicable.

279 11. The ~~board~~ department may waive the requirement for information listed in subdivision  
280 10 of this section to be submitted if it has access to substantially identical information that  
281 remains accurate and relevant to the permit application.

282 12. Any person described in subdivision 1, 2, 3, or 5 of this section who fails to file an  
283 application by the date required creates the presumption that all claims to groundwater  
284 withdrawal based on historic use have been abandoned. Should any such person wish to  
285 rebut the presumption that claims to groundwater withdrawal based on historic use have  
286 been abandoned, he shall have filed an application with a letter of explanation to the board  
287 by November 21, 1993. Any such person failing to rebut the presumption that claims to  
288 groundwater withdrawal based on historic use have been abandoned who wishes to  
289 withdraw groundwater shall apply for a new withdrawal as described in 9VAC25-610-94.

290 13. Any person described in subdivision 4 of this section who fails to file an application by  
291 the date required creates the presumption that all claims to groundwater withdrawal based  
292 on historic use have been abandoned. Should any such person wish to rebut the  
293 presumption that claims to groundwater withdrawal based on historic use have been  
294 abandoned, he may do so by filing an application with a letter of explanation to the board  
295 within 60 days of the original required date or within 60 days of January 1, 1999, whichever  
296 is later. Any such person failing to rebut the presumption that claims to groundwater  
297 withdrawal based on historic use have been abandoned who wishes to withdraw  
298 groundwater shall apply for a new withdrawal as described in 9VAC25-610-94.

299 **9VAC25-610-92. Application for a permit by existing users when a groundwater**  
300 **management area is declared or expanded on or after July 1, 1992.**

301 Persons withdrawing groundwater when a groundwater management area is declared or  
302 expanded on or after July 1, 1992, and not excluded from requirements of this chapter by  
303 9VAC25-610-50 shall apply for a permit.

304 1. Any person withdrawing groundwater in an area that is declared to be a groundwater  
305 management area on or after July 1, 1992, shall file an application for a groundwater  
306 permit within six months of the effective date of the regulation creating or expanding the  
307 groundwater management area. The applicant shall demonstrate the claimed prior  
308 withdrawals through withdrawal reports required by Water Withdrawal Reporting  
309 Regulations (9VAC25-200), or other methods approved by the ~~board~~ department if  
310 reporting information pursuant to the Water Withdrawal Reporting Regulations is not  
311 available. In the case of agricultural groundwater withdrawals not required to report by  
312 Water Withdrawal Reporting Regulations, estimates of withdrawal will be accepted that  
313 are based on the area irrigated, depth of irrigation, and annual number of irrigations;  
314 pumping capacity and annual pumping time; annual energy consumption for pumps,  
315 energy consumption per hour, and pumping capacity; number and type of livestock  
316 watered annually; number and type of livestock where water is used for cooling purposes;  
317 or other methods approved by the ~~board~~ department.

318 2. Any person withdrawing groundwater who uses the withdrawal to operate a public water  
319 supply system shall provide a copy of the waterworks operation permit, or equivalent, with  
320 the required application for a groundwater withdrawal permit.

321 3. Any person who is required to apply for a groundwater withdrawal permit and files a  
322 complete application within six months after the effective date of the regulation creating or  
323 expanding a groundwater management area may continue their existing documented



324 withdrawal until such time as the ~~board~~ department takes action on the outstanding  
325 application for a groundwater withdrawal permit.

326 4. Any person who is required to apply for a groundwater withdrawal permit and files an  
327 incomplete application within six months after the effective date of the regulation creating  
328 or expanding a groundwater management area may continue to withdraw groundwater as  
329 described in subdivision 3 of this section provided that all the information required to  
330 complete the application is provided to the ~~board~~ department within 60 days of the ~~board's~~  
331 department's notice to the applicant of deficiencies. Should such person not provide the  
332 ~~board~~ department the required information within 60 days, he shall cease withdrawals until  
333 he provides any additional information to the ~~board~~ department and the ~~board~~ department  
334 concurs that the application is complete.

335 5. A complete application for those persons described in subdivision 1 of this section shall  
336 contain:

337 a. The permit fee as required by the Fees for Permits and Certificates Regulations  
338 (9VAC25-20);

339 b. A groundwater withdrawal permit application completed in its entirety with all maps,  
340 attachments, and addenda that may be required. Application forms shall be submitted  
341 in a format specified by the ~~board~~ department. Such application forms are available  
342 from the Department of Environmental Quality;

343 c. A signature as described in 9VAC25-610-150;

344 d. Well construction documentation for all wells associated with the application  
345 submitted on the Water Well Completion Report, Form GW2, which includes the  
346 following information:

347 (1) The depth of the well;

348 (2) The diameter, top and bottom, and material of each cased interval;

349 (3) The diameter, top and bottom, for each screened interval; and

350 (4) The depth of pump intake;

351 e. Locations of all wells associated with the application shown on United States  
352 Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the  
353 latitude and longitude coordinates in a datum specified by the department for each  
354 existing and proposed well. The detailed location map shall be of sufficient detail such  
355 that all wells may be easily located for site inspection;

356 f. A map identifying the service areas for public water supplies;

357 g. Information on surface water and groundwater conjunctive use systems as  
358 described in 9VAC25-610-104 if applicable;

359 h. Withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25-  
360 200), other documentation demonstrating historical water use approved by the ~~board~~  
361 department to support claimed prior withdrawals if Water Withdrawal Reporting  
362 information is unavailable or estimates of withdrawals as described in subdivision 1 of  
363 this section to support any claimed prior withdrawal; and

364 i. A copy of the Virginia Department of Health waterworks operation permit where  
365 applicable.

366 6. The ~~board~~ department may waive the requirement for information listed in subdivision  
367 5 of this section to be submitted if it has access to substantially identical information that  
368 remains accurate and relevant to the permit application.

369 7. Any person who fails to file an application within six months after the effective date  
370 creating or expanding a groundwater management area creates the presumption that all

371 claims to groundwater withdrawal based on historic use have been abandoned. Should  
 372 any such person wish to rebut the presumption that claims to groundwater withdrawal  
 373 based on historic use have been abandoned, they may do so by filing an application with  
 374 a letter of explanation to the ~~board~~ department within eight months after the date creating  
 375 or expanding the groundwater management area. Any such person failing to rebut the  
 376 presumption that claims to groundwater withdrawal based on historic use have been  
 377 abandoned who wishes to withdraw groundwater shall apply for a new withdrawal as  
 378 described in 9VAC25-610-94.

379 **9VAC25-610-94. Application for a new permit, expansion of an existing withdrawal, or**  
 380 **reapplication for a current permitted withdrawal.**

381 Persons wishing to initiate a new withdrawal, expand an existing withdrawal, or reapply for a  
 382 current permitted withdrawal in any groundwater management area and not excluded from  
 383 requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

384 1. A groundwater withdrawal permit application shall be completed and submitted to the  
 385 ~~board~~ department and a groundwater withdrawal permit issued by the ~~board~~ department  
 386 prior to the initiation of any withdrawal not specifically excluded in 9VAC25-610-50 or  
 387 authorized by a general permit adopted by the board as a regulation.

388 2. A complete groundwater withdrawal permit application for a new or expanded  
 389 withdrawal, or reapplication for a current withdrawal, shall contain the following:

390 a. The permit fee as required by the Fees for Permits and Certificates Regulations  
 391 (9VAC25-20);

392 b. A groundwater withdrawal permit application completed in its entirety with all maps,  
 393 attachments, and addenda that may be required. Application forms shall be submitted  
 394 in a format specified by the ~~board~~ department. Such application forms are available  
 395 from the Department of Environmental Quality;

396 c. A signature as described in 9VAC25-610-150;

397 d. A completed well construction report for all existing wells associated with the  
 398 application submitted on the Water Well Completion Report, Form GW2;

399 e. The application shall include locations of all wells associated with the application  
 400 shown on United States Geological Survey 7-1/2 minute topographic maps. The  
 401 applicant shall provide the latitude and longitude coordinates in a datum specified by  
 402 the department for each existing and proposed well. The detailed location map shall  
 403 be of sufficient detail such that all wells may be easily located for site inspection;

404 f. A map identifying the service areas for public water supplies;

405 g. Information on surface water and groundwater conjunctive use systems as  
 406 described in 9VAC25-610-104 if applicable;

407 h. A water conservation and management plan as described in 9VAC25-610-100;

408 i. The application shall include notification from the local governing body in which the  
 409 withdrawal is to occur that the location and operation of the withdrawing facility is in  
 410 compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.)  
 411 of Title 15.2 of the Code of Virginia. If the governing body fails to respond to the  
 412 applicant's request for certification within 45 days of receipt of the written request, the  
 413 location and operation of the proposed facility shall be deemed to comply with the  
 414 provisions of such ordinances for the purposes of this chapter. The applicant shall  
 415 document the local governing body's receipt of the request for certification through the  
 416 use of certified mail or other means that establishes proof of delivery;

- 417 j. An alternatives analysis that evaluates sources of water supply other than  
 418 groundwater, including sources of reclaimed water, and the lowest quality of water  
 419 needed for the intended beneficial use as described in 9VAC25-610-102;
- 420 k. Documentation justifying the need for future water supply as described in 9VAC25-  
 421 610-102;
- 422 l. A plan to mitigate potential adverse impacts from the proposed withdrawal on  
 423 existing groundwater users. In lieu of developing individual mitigation plans, multiple  
 424 applicants may choose to establish a mitigation program to collectively develop and  
 425 implement a cooperative mitigation plan that covers the entire area of impact of all  
 426 members of the mitigation program; and
- 427 m. Other relevant information that may be required by the ~~board~~ department to  
 428 evaluate the application.
- 429 3. In addition to requirements contained in subdivision 2 of this section, the ~~board~~  
 430 department may require any or all of the following information prior to considering an  
 431 application complete.
- 432 a. The installation of monitoring wells and the collection and analysis of drill cuttings,  
 433 continuous cores, geophysical logs, water quality samples, or other hydrogeologic  
 434 information necessary to characterize the aquifer system present at the proposed  
 435 withdrawal site.
- 436 b. The completion of pump tests or aquifer tests to determine aquifer characteristics  
 437 at the proposed withdrawal site.
- 438 4. The ~~board~~ department may waive the requirement for information listed in subdivision  
 439 2 or 3 of this section to be submitted if it has access to substantially identical information  
 440 that remains accurate and relevant to the permit application.

441 **9VAC25-610-96. Duty to reapply for a permit.**

442 A. Any permittee with an effective permit shall submit a new permit application at least 270  
 443 days before the expiration date of an effective permit unless permission for a later date has been  
 444 granted by the ~~board~~ department. If a complete application for a new permit has been filed in a  
 445 timely manner, and the ~~board~~ department is unable, through no fault of the permittee, to issue a  
 446 new permit before the expiration date of the previous permit, the permit may be administratively  
 447 continued.

448 B. Permittees who have effective permits shall submit a new application 270 days prior to any  
 449 proposed modification to their activity or withdrawal system that will:

- 450 1. Result in an increase of withdrawals above permitted limits; or
- 451 2. Violate or lead to the violation of the terms and conditions of the permit.

452 C. The applicant shall provide all information described in 9VAC25-610-94 for any  
 453 reapplication. The information may be provided by referencing information previously submitted  
 454 to the department that remains accurate and relevant to the permit application. The ~~board~~  
 455 department may waive any requirement of 9VAC25-610-94 if it has access to substantially  
 456 identical information.

457 **9VAC25-610-98. Incomplete or inaccurate applications.**

458 A. Where the ~~board~~ department finds an application to be incomplete under the requirements  
 459 of 9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94, the ~~board~~ department shall require the  
 460 submission of additional information after an application has been filed, and may suspend  
 461 processing of the application until such time as the applicant has supplied the missing or deficient  
 462 information and the ~~board~~ department finds the application complete. An incomplete permit  
 463 application for a new or expanded withdrawal may be suspended from processing 180 days from

464 the date that the applicant received notification that the application is deficient. Once an  
465 application has been suspended from processing, the applicant must submit a new complete  
466 application; however, no additional permit fee will be assessed. Further, where the applicant  
467 becomes aware that one or more relevant facts from a permit application were omitted, or that  
468 incorrect information was submitted in a permit application or in any report to the ~~board~~  
469 department, the applicant shall immediately submit such facts or the correct information.

470 B. When an application does not accurately describe an existing or proposed groundwater  
471 withdrawal, the ~~board~~ department may require the applicant to revise the existing application or  
472 submit a new application before the application will be processed.

473 **9VAC25-610-100. Water conservation and management plans.**

474 A. Any application to initiate a new withdrawal or expand an existing withdrawal in any  
475 groundwater management area or the reapplication at the end of a permit cycle for all permits  
476 shall require a water conservation and management plan before the application or reapplication  
477 is considered complete. The ~~board~~ department shall review all water conservation and  
478 management plans and assure that such plans contain all elements required in subsection B of  
479 this section. The approved plan shall become an enforceable part of the approved permit.

480 B. A water conservation and management plan is an operational plan to be referenced and  
481 implemented by the permittee. Water conservation and management plans shall be consistent  
482 with local and regional water supply plans in the applicant's geographic area developed as  
483 required by 9VAC25-780. The water conservation and management plan shall be specific to the  
484 type of water use and include the following:

485 1. For municipal and nonmunicipal public water supplies:

486 a. Where practicable, the plan should require use of water-saving equipment and  
487 processes for all water users including technological, procedural, or programmatic  
488 improvements to the facilities and processes to decrease the amount of water  
489 withdrawn or to decrease water demand. The goal of these requirements is to assure  
490 the most efficient use of groundwater. Information on the water-saving alternatives  
491 examined and the water savings associated with the alternatives shall be provided.  
492 Water conservation and management plans shall discuss high volume water  
493 consumption by users on the system and where conservation measures have  
494 previously been implemented and shall be applied. Also, where appropriate, the use  
495 of water-saving fixtures in new and renovated plumbing as provided in the Uniform  
496 Statewide Building Code (13VAC5-63) shall be identified in the plan;

497 b. A water loss reduction program, which defines the applicant's leak detection and  
498 repair program. The water loss reduction program shall include requirements for an  
499 audit of the total amount of groundwater used in the distribution system and  
500 operational processes during the first two years of the permit cycle. Implementation of  
501 a leak detection and repair program shall be required within one year of the date the  
502 permit is issued. The program shall include a schedule for inspection of equipment  
503 and piping for leaks;

504 c. A water use education program that contains requirements for the education of  
505 water users and training of employees controlling water consuming processes to  
506 assure that water conservation principles are well known by the users of the resource.  
507 The program shall include a schedule for information distribution and the type of  
508 materials used;

509 d. An evaluation of water reuse options and assurances that water shall be reused in  
510 all instances where reuse is practicable. Potential for expansion of the existing reuse  
511 practices or adoption of additional reuse practices shall also be included; and

512 e. Requirements for mandatory water use reductions during water shortage  
513 emergencies declared by the local governing body or water authority consistent with  
514 §§ 15.2-923 and 15.2-924 of the Code of Virginia. This shall include, where  
515 appropriate, ordinances in municipal systems prohibiting the waste of water generally  
516 and requirements providing for mandatory water use restrictions in accordance with  
517 drought response and contingency ordinances implemented to comply with 9VAC25-  
518 780-120 during water shortage emergencies. The water conservation and  
519 management plan shall also contain requirements for mandatory water use restrictions  
520 during water shortage emergencies that restricts or prohibits all nonessential uses  
521 such as lawn watering, car washing, and similar nonessential residential, industrial,  
522 and commercial uses for the duration of the water shortage emergency. Penalties for  
523 failure to comply with mandatory water use restrictions shall be included in municipal  
524 system plans.

525 2. For nonpublic water supply applicants - commercial and industrial users:

526 a. Where applicable, the plan should require use of water-saving equipment and  
527 processes for all water users including technological, procedural, or programmatic  
528 improvements to the facilities and processes to decrease the amount of water  
529 withdrawn or to decrease water demand. The goal of these requirements is to assure  
530 the most efficient use of groundwater. Information on the water-saving alternatives  
531 examined and the water savings associated with the alternatives shall be provided.  
532 Also, where appropriate, the use of water-saving fixtures in new and renovated  
533 plumbing as provided in the Uniform Statewide Building Code (13VAC5-63) shall be  
534 identified in the plan;

535 b. A water loss reduction program, which defines the applicant's leak detection and  
536 repair program. The water loss reduction program shall include requirements for an  
537 audit of the total amount of groundwater used in the distribution system and  
538 operational processes during the first two years of the permit cycle. Implementation of  
539 a leak detection and repair program shall be required within one year of the date the  
540 permit is issued. The program shall include a schedule for inspection of equipment  
541 and piping for leaks;

542 c. A water use education program that contains requirements for the education of  
543 water users and training of employees controlling water consuming processes to  
544 assure that water conservation principles are well known by the users of the resource.  
545 The program shall include a schedule for information distribution and the type of  
546 materials used;

547 d. An evaluation of water reuse options and assurances that water shall be reused in  
548 all instances where reuse is practicable. Potential for expansion of the existing reuse  
549 practices or adoption of additional reuse practices shall also be included; and

550 e. Requirements for complying with mandatory water use reductions during water  
551 shortage emergencies declared by the local governing body or water authority in  
552 accordance with §§ 15.2-923 and 15.2-924 of the Code of Virginia. This shall include,  
553 where appropriate, ordinances prohibiting the waste of water generally and  
554 requirements providing for mandatory water use restrictions in accordance with  
555 drought response and contingency ordinances implemented to comply with 9VAC25-  
556 780-120 during water shortage emergencies. The water conservation and  
557 management plan shall also contain requirements for mandatory water use restrictions  
558 during water shortage emergencies that restricts or prohibits all nonessential uses  
559 such as lawn watering, car washing, and similar nonessential industrial and  
560 commercial uses for the duration of the water shortage emergency.

- 561 3. For nonpublic water supply applicants - agricultural users:
- 562 a. Requirements for the use of water-saving plumbing and processes to decrease the
- 563 amount of water withdrawn or to decrease water demand. Plans submitted for the use
- 564 of groundwater for irrigation shall identify the specific type of irrigation system that will
- 565 be utilized, the efficiency rating of the irrigation system in comparison to less efficient
- 566 systems, the irrigation schedule used to minimize water demand, and the crop
- 567 watering requirements. Multiple types of irrigation methods may be addressed in the
- 568 plan. For livestock watering operations, plans shall include livestock watering
- 569 requirements (per head) and processes to minimize waste of water. These
- 570 requirements shall assure that the most practicable use is made of groundwater. If
- 571 these options are not implemented in the plan, information on the water-saving
- 572 alternatives examined and the water savings associated with the alternatives shall be
- 573 provided;
- 574 b. A water loss reduction program, which defines the applicant's leak detection and
- 575 repair program. The water loss reduction program shall include requirements for an
- 576 audit of the total amount of groundwater used in the distribution system and
- 577 operational processes during the first two years of the permit cycle. Implementation of
- 578 a leak detection and repair program shall be required within one year of the date the
- 579 permit is issued. The program shall include a schedule for inspection of equipment
- 580 and piping for leaks;
- 581 c. A water use education program that contains requirements for the training of
- 582 employees controlling water consuming processes to assure that water conservation
- 583 principles are well known by the users of the resource. The program shall include a
- 584 schedule for training employees. This requirement may be met through training
- 585 employees on water use requirements contained in irrigation management plans or
- 586 livestock management plans;
- 587 d. An evaluation of potential water reuse options and assurances that water shall be
- 588 reused in all instances where reuse is practicable and not prohibited by other
- 589 regulatory programs; Potential for expansion of the existing reuse practices or
- 590 adoption of additional reuse practices shall also be included; and
- 591 e. Requirements for mandatory water use reductions during water shortage
- 592 emergencies and compliance with ordinances prohibiting the waste of water generally.
- 593 This shall include requirements providing for mandatory water use restrictions in
- 594 accordance with drought response and contingency ordinances implemented to
- 595 comply with 9VAC25-780-120 during water shortage emergencies.
- 596 f. The permittee may submit portions of Agricultural Management Plans or Irrigation
- 597 Management Plans developed to comply with requirements of federal or state laws,
- 598 regulations, or guidelines to demonstrate the requirements of subdivisions B 3 a
- 599 through d of this section are being achieved.

600 **9VAC25-610-102. Evaluation of need for withdrawal and alternatives.**

601 A. The applicant shall identify the purpose of the proposed withdrawal by providing a narrative

602 description of the water supply issues that form the basis of the proposed withdrawal.

603 B. The applicant shall subsequently demonstrate to the satisfaction of the ~~board~~ department

604 that the withdrawal meets an established water supply need.

605 1. In establishing local need for a public water supply, the applicant shall provide the

606 following information:

607 a. Existing supply sources, yields and demands, including:

608 (1) Peak day and average daily withdrawal;

- 609 (2) Total consumptive use component of the withdrawal, including identification of the  
610 amount needed for human consumption;
- 611 (3) Types of water uses; and
- 612 (4) Existing water conservation measures and drought response plan, including what  
613 conditions trigger their implementation.
- 614 b. Projected demands in 10 year increments over a minimum 30-year planning period  
615 that includes the following:
- 616 (1) Projected demand contained in the local or regional water supply plan developed  
617 in accordance with 9VAC25-780 or for the project service area if such area is smaller  
618 than the planning area; or
- 619 (2) Statistical population (growth) trends, projected demands by use type including  
620 projected demand with and without water conservation measures.
- 621 2. In establishing need for agricultural water supply, the applicant shall provide the  
622 following information:
- 623 a. For crop irrigation: crop, acreage, crop spacing, crop watering requirements for the  
624 particular crop (crop rooting depth), soil types, soil holding capacity (available water  
625 capacity), allowable soil water depletion, historic precipitation records (precipitation  
626 contribution), peak irrigation months, irrigation scheduling approaches (tensiometers  
627 vs. feel method), irrigation type (drip, overhead, center pivot etc.), and irrigation system  
628 efficiency rating.
- 629 b. For livestock watering: kind and size of animal, rate and composition of gain,  
630 presence of pregnant animals or lactating animals, type of diet, level of dry matter  
631 intake, level of activity, quality of the water, temperature of the water offered, and  
632 surrounding air temperature.
- 633 3. In establishing need for commercial water supply, the applicant shall provide the  
634 following information:
- 635 a. Number of employees by month for an average year;
- 636 b. Average gallons per day used per month;
- 637 c. Average daily water use rate per employee per month; and
- 638 d. Identification of peak month of water demand.
- 639 4. In establishing need for industrial water supply, the applicant shall provide the following  
640 information:
- 641 a. SIC or NAICS industry code;
- 642 b. Number of employees by month for an average year;
- 643 c. Average gallons per day used per month;
- 644 d. Average daily water use rate per employee per month;
- 645 e. Identification of peak month of water demand;
- 646 f. Amount of withdrawal per unit of output or similar metric identified by the user; and
- 647 g. Monthly amount of water used for industrial processes.
- 648 C. The applicant shall provide an alternatives analysis that evaluates sources of water supply  
649 other than groundwater and the availability and use of lower qualities of groundwater that can still  
650 be put to beneficial use. For all proposed withdrawals, the applicant shall demonstrate to the  
651 satisfaction of the ~~board~~ department:

- 652 1. Opportunities to reduce and minimize the use of groundwater have been identified and  
 653 the requested amount is the minimum amount of groundwater necessary for the proposed  
 654 activity;
- 655 2. The project utilizes the lowest quality water for the proposed activity;
- 656 3. Alternate sources of supply other than groundwater, including surface water and water  
 657 reuse, were considered for use in the proposed activity particularly for consumptive use  
 658 purposes; and
- 659 4. Practicable alternatives, including design alternatives, have been evaluated for the  
 660 proposed activity. Measures that would avoid or result in less adverse impact to high  
 661 quality groundwater shall be considered to the maximum extent practicable.

662 D. Any alternatives analysis conducted specifically for public water supply projects shall  
 663 include:

- 664 1. All applicable alternatives contained in the local or regional water supply plan developed  
 665 in accordance with 9VAC25-780;
- 666 2. Alternatives that are practicable that had not been identified in the local or regional  
 667 water supply plan developed in accordance with 9VAC25-780;
- 668 3. Water conservation measures that could be considered as a means to reduce demand  
 669 for each alternative considered by the applicant; and
- 670 4. A narrative description that outlines the opportunities and status of regionalization  
 671 efforts undertaken by the applicant, including the interconnectivity of water systems and  
 672 the ability for applicants to purchase water from other water supplies.

673 E. The alternatives analysis shall discuss the criteria used to evaluate each alternative  
 674 including, but not limited to:

- 675 1. Demonstration that the proposed alternative meets the project purpose and project  
 676 demonstrated need;
- 677 2. Availability of the alternative to the applicant;
- 678 3. Evaluation of interconnectivity of water supply systems and the ability to purchase water  
 679 from other supplies when applicable (both existing and proposed); and
- 680 4. Evaluation of the cost of the alternative on an equivalent basis.

681 **9VAC25-610-104. Surface water and groundwater conjunctive use systems.**

682 A. Surface water and groundwater conjunctive use systems for public water supplies.

683 1. Applicants proposing to withdraw groundwater as part of a surface water and  
 684 groundwater conjunctive use system for public water supplies shall provide the following  
 685 information to the ~~board~~ department in addition to information required by 9VAC25-610-  
 686 90, 9VAC25-610-92, or 9VAC25-610-94 as part of their permit application:

687 a. A detailed description of the surface water and groundwater conjunctive use system,  
 688 including:

689 (1) Identification of all surface water sources, including pond and reservoir volumes  
 690 where applicable;

691 (2) Identification of the wells used on a continual basis to supplement surface water  
 692 supply needs and wells to be utilized in periods of reduced surface water availability.  
 693 Well construction information for all wells shall be submitted on the Water Well  
 694 Completion Report, Form GW2, which includes the following information:

695 (a) The depth of the well;

696 (b) The diameter, top and bottom, and material of each cased interval;

697 (c) The diameter, top and bottom, for each screened interval; and



- 698 (d) The depth of pump intake.
- 699 (3) A description of the storage system, excluding surface water sources described in  
700 subdivision 1 a (1) of this subsection;
- 701 (4) A copy of the Engineering Description Sheet developed by the Virginia Department  
702 of Health for the withdrawal; and
- 703 (5) A line drawing of the water supply system illustrating the water balance of the  
704 system.
- 705 b. Records documenting the amount of water withdrawn on a daily basis for each water  
706 source during average weather conditions and during drought conditions;
- 707 c. Documentation of the seasonal supply of surface water during both average and  
708 drought conditions;
- 709 d. Documentation of any seasonal changes in demand that occur during an annual  
710 cycle of the specified beneficial use or uses; and
- 711 e. Other relevant information that may be required by the ~~board~~ department to evaluate  
712 the application.
- 713 2. The applicant shall demonstrate that the groundwater withdrawal will originate from the  
714 aquifer that contains the lowest quality water that will support the proposed beneficial use  
715 or uses.
- 716 3. The ~~board~~ department shall evaluate the proposed groundwater withdrawal for  
717 consistency with criteria specified in 9VAC25-610-110.
- 718 4. In addition to conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-  
719 610-120, 9VAC25-610-130, and 9VAC25-610-140, the permit shall specify the maximum  
720 amount of groundwater that may be withdrawn during the term of the permit and shall  
721 address variations in the groundwater withdrawal amounts that may occur.
- 722 5. The ~~board~~ department may issue any permit with terms, conditions, or limitations  
723 necessary to protect the public welfare, safety, and health, or to protect the resource.
- 724 6. Applicants may request approval to withdraw groundwater amounts that exceed the  
725 withdrawal limits established in subdivision 4 of this section from wells that are part of a  
726 conjunctive use system to meet human consumption needs during periods of drought by  
727 applying for a supplemental drought relief permit as described in 9VAC25-610-106.
- 728 B. Surface water and groundwater conjunctive use systems for uses other than public water  
729 supplies.
- 730 1. Applicants proposing to withdraw groundwater as part of a surface water and  
731 groundwater conjunctive use system for uses other than public water supplies shall  
732 provide the following information to the ~~board~~ department in addition to information  
733 required by 9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94 as part of their permit  
734 application:
- 735 a. A detailed description of the surface water and groundwater conjunctive use system,  
736 including:
- 737 (1) Identification of all surface water sources, including pond and reservoir volumes  
738 where applicable;
- 739 (2) Identification of the wells used on a continual basis to supplement surface water  
740 supply needs and wells to be utilized in periods of reduced surface water availability.  
741 Well construction information for all wells shall be submitted on the Water Well  
742 Completion Report, Form GW2, which includes the following information:
- 743 (a) The depth of the well;

- 744 (b) The diameter, top and bottom, and material of each cased interval;  
 745 (c) The diameter, top and bottom, for each screened interval; and  
 746 (d) The depth of pump intake.
- 747 (3) A description of the storage system, excluding surface water sources described in  
 748 subdivision 1 a (1) of this subsection; and
- 749 (4) A map delineating the area in which the water will be beneficially used.
- 750 b. Records documenting the amount of water withdrawn on a monthly basis and  
 751 annual basis for each water source during average weather conditions and during  
 752 drought conditions;
- 753 c. Documentation of the seasonal supply of surface water during both average and  
 754 drought conditions;
- 755 d. Documentation of any seasonal changes in demand that occur during an annual  
 756 cycle of the specified beneficial use or uses;
- 757 e. Other relevant information that may be required by the ~~board~~ department to evaluate  
 758 the application.
- 759 2. The applicant shall demonstrate that the groundwater withdrawal will originate from the  
 760 aquifer that contains the lowest quality water that will support the proposed beneficial use  
 761 or uses.
- 762 3. The ~~board~~ department shall evaluate the proposed groundwater withdrawal for  
 763 consistency with criteria specified in 9VAC25-610-110.
- 764 4. In addition to conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-  
 765 610-130, and 9VAC25-610-140, the permit shall specify the maximum amount of  
 766 groundwater that may be withdrawn during the term of the permit and shall address  
 767 variations in the groundwater withdrawal amounts that may occur.
- 768 5. The ~~board~~ department may issue any permit with terms, conditions, or limitations  
 769 necessary to protect the public welfare, safety, and health, or to protect the resource.
- 770 **9VAC25-610-106. Supplemental drought relief wells.**
- 771 A. Public water supplies wishing to withdraw groundwater for human consumption during  
 772 periods of drought through the use of supplemental drought relief wells in any groundwater  
 773 management area and not excluded from requirements of this chapter by 9VAC25-610-50 shall  
 774 apply for a permit.
- 775 B. A groundwater withdrawal permit application shall be completed and submitted to the ~~board~~  
 776 department and a groundwater withdrawal permit issued by the ~~board~~ department prior to the  
 777 initiation of any withdrawal not specifically excluded in 9VAC25-610-50 or authorized by a general  
 778 permit adopted by the board as a regulation.
- 779 C. A complete groundwater withdrawal permit application for supplemental drought relief wells  
 780 shall contain the following:
- 781 1. The permit fee as required by the Fees for Permits and Certificates Regulations  
 782 (9VAC25-20);
- 783 2. A groundwater withdrawal permit application completed in its entirety with all maps,  
 784 attachments, and addenda that may be required. Application forms shall be submitted in  
 785 a format specified by the ~~board~~ department. Such application forms are available from the  
 786 Department of Environmental Quality;
- 787 3. A signature as described in 9VAC25-610-150;

- 788 4. Well construction documentation for all wells associated with the application submitted  
789 on the Water Well Completion Report, Form GW2, which includes the following  
790 information:
- 791 a. The depth of the well;
  - 792 b. The diameter, top and bottom, and material of each cased interval;
  - 793 c. The diameter, top and bottom, for each screened interval; and
  - 794 d. The depth of pump intake.
- 795 5. The application shall include locations of all wells associated with the application shown  
796 on United States Geological Survey 7-1/2 minute topographic maps. The applicant shall  
797 provide the latitude and longitude coordinates in a datum specified by the department for  
798 each existing and proposed well. The detailed location map shall be of sufficient detail  
799 such that all wells may be easily located for site inspection;
- 800 6. A map identifying the service areas for public water supplies;
- 801 7. Information on surface water and groundwater conjunctive use systems as described  
802 in 9VAC25-610-104 if applicable;
- 803 8. A water conservation and management plan as described in 9VAC25-610-100;
- 804 9. The application shall include notification from the local governing body in which the  
805 withdrawal is to occur that the location and operation of the withdrawing facility is in  
806 compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of  
807 Title 15.2 of the Code of Virginia. If the governing body fails to respond to the applicant's  
808 request for certification within 45 days of receipt of the written request, the location and  
809 operation of the proposed facility shall be deemed to comply with the provisions of such  
810 ordinances for the purposes of this chapter. The applicant shall document the local  
811 governing body's receipt of the request for certification through the use of certified mail or  
812 other means that establishes proof of delivery;
- 813 10. A plan to mitigate potential adverse impacts from the proposed withdrawal on existing  
814 groundwater users. In lieu of developing individual mitigation plans, multiple applicants  
815 may choose to establish a mitigation program to collectively develop and implement a  
816 cooperative mitigation plan that covers the entire area of impact of all members of the  
817 mitigation program;
- 818 11. Documentation on the maximum amount of groundwater needed annually to meet  
819 human consumption needs; and
- 820 12. Other relevant information that may be required by the ~~board~~ department to evaluate  
821 the application.
- 822 D. Permits issued by the ~~board~~ department for groundwater withdrawals from supplemental  
823 drought relief wells shall include the following permit conditions:
- 824 1. Permits shall include a maximum amount of groundwater allowed to be withdrawn over  
825 the term of the permit.
  - 826 2. The permit shall specify an annual limit on the amount of groundwater to be withdrawn  
827 based on the amount of groundwater needed annually to meet human consumption  
828 needs. Groundwater withdrawals from supplemental drought relief wells shall be subject  
829 to monthly groundwater withdrawal limits.
  - 830 3. Permits shall specify that groundwater withdrawn from supplemental drought relief wells  
831 shall be used to meet human consumption needs.
  - 832 4. Permits shall specify that groundwater shall only be withdrawn from supplemental  
833 drought relief wells after mandatory water restrictions have been implemented pursuant

- 834 to approved water conservation and management plans as required by § 62.1-265 of the  
835 Code of Virginia.
- 836 5. A permit shall contain the total depth of each permitted well in feet.
- 837 6. A permit shall specify the screened intervals of wells authorized for use by the permit.
- 838 7. A permit shall contain the designation of the aquifers to be utilized.
- 839 8. A permit may contain conditions limiting the withdrawal amount of a single well or a  
840 group of wells within a withdrawal system to a quantity specified by the ~~board~~ department.
- 841 9. A groundwater withdrawal permit for a public water supply shall contain a condition  
842 allowing daily withdrawals at a level consistent with the requirements and conditions  
843 contained in the waterworks operation permit, or equivalent, issued by the Virginia  
844 Department of Health. This requirement shall not limit the authority of the ~~board~~  
845 department to reduce or eliminate groundwater withdrawals by public water suppliers if  
846 necessary to protect human health or the environment.
- 847 10. The permit shall state that no pumps or water intake devices are to be placed lower  
848 than the top of the uppermost confined aquifer that a well utilizes as a groundwater source  
849 or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater  
850 source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or  
851 damage to the aquifer from compaction.
- 852 11. All permits shall specify monitoring requirements as conditions of the permit.
- 853 a. Permitted users shall install in-line totalizing flow meters to read gallons, cubic feet,  
854 or cubic meters on each permitted well prior to beginning the permitted use. Such  
855 meters shall produce volume determinations within plus or minus 10% of actual flows.  
856 A defective meter or other device must be repaired or replaced within 30 days. A  
857 defective meter is not grounds for not reporting withdrawals. During any period when  
858 a meter is defective, generally accepted engineering methods shall be used to  
859 estimate withdrawals and the period during which the meter was defective must be  
860 clearly identified in groundwater withdrawal reports. An alternative method for  
861 determining flow may be approved by the ~~board~~ department on a case-by-case basis.
- 862 b. Permits shall contain requirements concerning the proper use, maintenance, and  
863 installation, when appropriate, of monitoring equipment or methods when required as  
864 a condition of the permit.
- 865 c. Permits shall contain required monitoring including type, intervals, and frequency  
866 sufficient to yield data that are representative of the monitored activity and including,  
867 when appropriate, continuous monitoring and sampling.
- 868 d. Each permitted well shall be equipped in a manner such that water levels can be  
869 measured during pumping and nonpumping periods without dismantling any  
870 equipment. Any opening for tape measurement of water levels shall have an inside  
871 diameter of at least 0.5 inches and be sealed by a removable plug or cap. The  
872 permittee shall provide a tap for taking raw water samples from each permitted well.
- 873 12. All permits shall prohibit withdrawals from wells not authorized in the permit.
- 874 13. All permits shall include requirements to report the amount of water withdrawn from  
875 each permitted well or well system on forms provided by the ~~board~~ department with a  
876 frequency dependent on the nature and effect of the withdrawal, but in no case less than  
877 once per year.
- 878 14. Groundwater withdrawal permits issued under this chapter shall have an effective and  
879 expiration date that will determine the life of the permit. Groundwater withdrawal permits  
880 shall be effective for a fixed term not to exceed 15 years. Permit duration of less than the

881 maximum period of time may be recommended in areas where hydrologic conditions are  
882 changing or are not adequately known. The term of any permit shall not be extended by  
883 modification beyond the maximum duration. Extension of permits for the same activity  
884 beyond the maximum duration specified in the original permit will require reapplication and  
885 issuance of a new permit.

886 15. Each permit shall have a condition allowing the reopening of the permit for the purpose  
887 of modifying the conditions of the permit to meet new regulatory standards duly adopted  
888 by the board.

889 16. Each well that is included in a groundwater withdrawal permit shall have affixed to the  
890 well casing, in a prominent place, a permanent well identification plate that records the  
891 Department of Environmental Quality well identification number, the groundwater  
892 withdrawal permit number, the total depth of the well, and the screened intervals in the  
893 well, at a minimum. Such well identification plates shall be in a format specified by the  
894 ~~board~~ department and are available from the Department of Environmental Quality.

895 E. The permit shall address variations in the groundwater withdrawal amounts that may occur.

896 F. In addition to the permit conditions listed in subsection D of this section, the ~~board~~  
897 department may issue any permit with terms, conditions, or limitations necessary to protect the  
898 public welfare, safety, and health, or to protect the resource.

899 G. The ~~board~~ department shall evaluate the application for supplemental drought relief wells  
900 based on the following criteria:

901 1. The applicant demonstrates that no pumps or water intake devices are placed lower  
902 than the top of the uppermost confined aquifer that a well utilizes as a groundwater source  
903 or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater  
904 source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or  
905 damage to the aquifer from compaction.

906 2. The applicant demonstrates that the amount of groundwater withdrawal requested is  
907 the smallest amount of withdrawal necessary to support human consumption when  
908 mandatory water use restrictions have been implemented.

909 3. The applicant provides a water conservation and management plan as described in  
910 9VAC25-610-100 and implements the plan as an enforceable condition of the groundwater  
911 withdrawal permit.

912 4. The applicant provides certification by the local governing body that the location and  
913 operation of the withdrawing facility is in compliance with all ordinances adopted pursuant  
914 to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

915 5. The ~~board's~~ department's technical evaluation demonstrates that the area of impact of  
916 the proposed withdrawal will remain on property owned by the applicant or that there are  
917 no existing groundwater withdrawers within the area of impact of the proposed withdrawal.

918 In cases where the area of impact does not remain on the property owned by the applicant  
919 or existing groundwater withdrawers will be included in the area of impact, the applicant  
920 shall provide and implement a plan to mitigate all adverse impacts on existing groundwater  
921 users. Approvable mitigation plans shall, at a minimum, contain the following features and  
922 implementation of the mitigation plan shall be included as enforceable permit conditions:

923 a. The rebuttable presumption that water level declines that cause adverse impacts to  
924 existing wells within the area of impact are due to the proposed withdrawal;

925 b. A commitment by the applicant to mitigate undisputed adverse impacts due to the  
926 proposed withdrawal in a timely fashion;

927 c. A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for  
928 mitigation between the applicant and any claimant; and

929 d. The requirement that the claimant provide documentation that he is the owner of  
930 the well; documentation that the well was constructed and operated prior to the  
931 initiation of the applicant's withdrawal; the depth of the well, the pump, and screens,  
932 and any other construction information that the claimant possesses; the location of the  
933 well with enough specificity that it can be located in the field; the historic yield of the  
934 well, if available; historic water levels for the well, if available; and the reasons the  
935 claimant believes that the applicant's withdrawals have caused an adverse impact on  
936 the well.

937 6. The ~~board~~ department conducts a technical evaluation of the effects of the proposed  
938 withdrawal with the stabilized cumulative effects of all existing lawful withdrawals to  
939 identify if the withdrawal will lower water levels in any confined aquifer below a point that  
940 represents 80% of the distance between the land surface and the top of the aquifer.

941 7. The ~~board's~~ department's technical evaluation demonstrates that the proposed  
942 groundwater withdrawal will not result in salt water intrusion or the movement of waters of  
943 lower quality to areas where such movement would result in adverse impacts on existing  
944 groundwater users or the groundwater resource. This provision shall not exclude the  
945 withdrawal of brackish water provided that the proposed withdrawal will not result in  
946 unmitigated adverse impacts.

947 **9VAC25-610-110. Evaluation criteria for permit applications.**

948 A. The ~~board~~ department shall not issue any permit for more groundwater than will be applied  
949 to the proposed beneficial use.

950 B. The ~~board~~ department shall issue groundwater withdrawal permits to persons withdrawing  
951 groundwater or who have rights to withdraw groundwater prior to July 1, 1992, in the Eastern  
952 Virginia or Eastern Shore Groundwater Management Area and not excluded from requirements  
953 of this chapter by 9VAC25-610-50 based on the following criteria:

954 1. The ~~board~~ department shall issue a groundwater withdrawal permit for persons meeting  
955 the criteria of subdivision 1 of 9VAC25-610-90 for the total amount of groundwater  
956 withdrawn in any consecutive 12-month period between July 1, 1987, and June 30, 1992;  
957 however, with respect to a political subdivision, an authority serving a political subdivision  
958 or a community waterworks regulated by the Department of Health, the ~~board~~ department  
959 shall issue a groundwater withdrawal permit for the total amount of water withdrawn in any  
960 consecutive 12-month period between July 1, 1980, and June 30, 1992.

961 2. The ~~board~~ department shall issue a groundwater withdrawal permit for persons meeting  
962 the criteria of subdivision 2 of 9VAC25-610-90 for the total amount of groundwater  
963 withdrawn and applied to a beneficial use in any consecutive 12-month period between  
964 July 1, 1992, and June 30, 1995.

965 3. The ~~board~~ department shall issue a groundwater withdrawal permit for persons meeting  
966 the criteria of subdivision 4 of 9VAC25-610-90 for the total amount of groundwater  
967 withdrawn in any consecutive 12-month period between July 1, 1983, and June 30, 1993.  
968 The ~~board~~ department shall evaluate all estimates of groundwater withdrawal based on  
969 projected water demands for crops and livestock as published by the Virginia Cooperative  
970 Extension Service, the United States Natural Resources Conservation Service, or other  
971 similar references and make a determination whether they are reasonable. In all cases  
972 only reasonable estimates will be used to document a permit limit.

973 4. The ~~board~~ department shall issue a groundwater withdrawal permit for persons meeting  
974 the criteria of subdivision 5 of 9VAC25-610-90 for the amount of groundwater withdrawal

975 needed to annually meet human consumption needs as proven in the water conservation  
976 and management plan approved by the board department. The board department shall  
977 include conditions in such permits that require the implementation of mandatory use  
978 restrictions before such withdrawals can be exercised.

979 5. When requested by persons described in subdivisions 1, 2, and 4 of 9VAC25-610-90  
980 the board department may issue groundwater withdrawal permits that include withdrawal  
981 amounts in excess of those which an applicant can support based on historic usage.  
982 These additional amounts shall be based on documentation of water savings achieved  
983 through water conservation measures. The applicant shall demonstrate withdrawals prior  
984 to implementation of water conservation measures, type of water conservation measure  
985 implemented, and withdrawals after implementation of water conservation measures. The  
986 applicant shall provide evidence of withdrawal amounts through metered withdrawals and  
987 estimated amounts shall not be accepted to claim additional withdrawal amounts due to  
988 water conservation. Decreases in withdrawal amounts due to production declines, climatic  
989 conditions, population declines, or similar events shall not be used as a basis to claim  
990 additional withdrawal amounts based on water conservation.

991 C. The board department shall issue groundwater withdrawal permits to persons withdrawing  
992 groundwater when a groundwater management area is declared or expanded after July 1, 1992,  
993 and not excluded from requirements of this chapter by 9VAC25-610-50 based on the following  
994 criteria:

995 1. The board department shall issue a groundwater withdrawal permit to nonagricultural  
996 users for the total amount of groundwater withdrawn in any consecutive 12-month period  
997 during the five years preceding the effective date of the regulation creating or expanding  
998 the groundwater management area.

999 2. The board department shall issue a groundwater withdrawal permit to agricultural users  
1000 for the total amount of groundwater withdrawn in any consecutive 12-month period during  
1001 the 10 years preceding the effective date of the regulation creating or expanding the  
1002 groundwater management area. The board department shall evaluate all estimates of  
1003 groundwater withdrawal based on projected water demands for crops and livestock as  
1004 published by the Virginia Cooperative Extension Service, the United States Natural  
1005 Resources Conservation Service, or other similar references and make a determination  
1006 whether they are reasonable. In all cases only reasonable estimates will be used to  
1007 document a permit limit.

1008 3. When requested by the applicant the board department may issue groundwater  
1009 withdrawal permits that include withdrawal amounts in excess of those which an applicant  
1010 can support based on historic usage. These additional amounts shall be based on  
1011 documentation of water savings achieved through water conservation measures. The  
1012 applicant shall demonstrate withdrawals prior to implementation of water conservation  
1013 measures, type of water conservation measure implemented, and withdrawals after  
1014 implementation of water conservation measures. The applicant shall provide evidence of  
1015 withdrawal amounts through metered withdrawals and estimated amounts shall not be  
1016 accepted to claim additional withdrawal amounts due to water conservation. Decreases in  
1017 withdrawal amounts due to production declines, climatic conditions, population declines,  
1018 or similar events shall not be used as a basis to claim additional withdrawal amounts based  
1019 on water conservation.

1020 D. The board department shall issue groundwater withdrawal permits to persons wishing to  
1021 initiate a new withdrawal, expand an existing withdrawal, or reapply for a current withdrawal in  
1022 any groundwater management area who have submitted complete applications and are not  
1023 excluded from requirements of this chapter by 9VAC25-610-50 based on the following criteria:

- 1024 1. The applicant shall provide all information required in subdivision 2 of 9VAC25-610-94  
1025 prior to the ~~board's~~ department's determination that an application is complete. The ~~board~~  
1026 department may require the applicant to provide any information contained in subdivision  
1027 3 of 9VAC25-610-94 prior to considering an application complete based on the anticipated  
1028 impact of the proposed withdrawal on existing groundwater users or the groundwater  
1029 resource.
- 1030 2. The ~~board~~ department shall perform a technical evaluation to determine the areas of  
1031 any aquifers that will experience at least one foot of water level declines due to the  
1032 proposed withdrawal and may evaluate the potential for the proposed withdrawal to cause  
1033 salt water intrusion into any portions of any aquifers or the movement of waters of lower  
1034 quality to areas where such movement would result in adverse impacts on existing  
1035 groundwater users or the groundwater resource. Prior to public notice of a draft permit  
1036 developed in accordance with the findings of the technical evaluation and at the request  
1037 of the applicant, the results of the technical evaluation, including all assumptions and input,  
1038 will be provided to the applicant for review.
- 1039 3. The ~~board~~ department shall issue a groundwater withdrawal permit when it is  
1040 demonstrated, by a complete application and the ~~board's~~ department's technical  
1041 evaluation, to the ~~board's~~ department's satisfaction that the maximum safe supply of  
1042 groundwater will be preserved and protected for all other beneficial uses and that the  
1043 applicant's proposed withdrawal will have no significant unmitigated impact on existing  
1044 groundwater users or the groundwater resource. In order to assure that the applicant's  
1045 proposed withdrawal complies with the above stated requirements, the demonstration  
1046 shall include, but not be limited to, compliance with the following criteria:
- 1047 a. The applicant demonstrates that no other sources of water supply, including  
1048 reclaimed water, are practicable.
- 1049 b. The applicant demonstrates that the groundwater withdrawal will originate from the  
1050 aquifer that contains the lowest quality water that will support the proposed beneficial  
1051 use.
- 1052 c. The applicant demonstrates that no pumps or water intake devices are placed lower  
1053 than the top of the uppermost confined aquifer that a well utilizes as a groundwater  
1054 source or lower than the bottom of an unconfined aquifer that a well utilizes as a  
1055 groundwater source in order to prevent dewatering of a confined aquifer, loss of  
1056 inelastic storage, or damage to the aquifer from compaction.
- 1057 d. The applicant demonstrates that the amount of groundwater withdrawal requested  
1058 is the smallest amount of withdrawal necessary to support the proposed beneficial use  
1059 and that the amount is representative of the amount necessary to support similar  
1060 beneficial uses when adequate conservation measures are employed.
- 1061 e. The applicant provides a water conservation and management plan as described in  
1062 9VAC25-610-100 and implements the plan as an enforceable condition of the  
1063 groundwater withdrawal permit.
- 1064 f. The applicant provides certification by the local governing body that the location and  
1065 operation of the withdrawing facility is in compliance with all ordinances adopted  
1066 pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.
- 1067 g. The ~~board's~~ department's technical evaluation demonstrates that the area of impact  
1068 of the proposed withdrawal will remain on property owned by the applicant or that there  
1069 are no existing groundwater withdrawers within the area of impact of the proposed  
1070 withdrawal.



1071 In cases where the area of impact does not remain on the property owned by the  
 1072 applicant or existing groundwater withdrawers will be included in the area of impact,  
 1073 the applicant shall provide and implement a plan to mitigate all adverse impacts on  
 1074 existing groundwater users. Approvable mitigation plans shall, at a minimum, contain  
 1075 the following features and implementation of the mitigation plan shall be included as  
 1076 enforceable permit conditions:

1077 (1) The rebuttable presumption that water level declines that cause adverse impacts  
 1078 to existing wells within the area of impact are due to the proposed withdrawal;

1079 (2) A commitment by the applicant to mitigate undisputed adverse impacts due to the  
 1080 proposed withdrawal in a timely fashion;

1081 (3) A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for  
 1082 mitigation between the applicant and any claimant; and

1083 (4) The requirement that the claimant provide documentation that he is the owner of  
 1084 the well; documentation that the well was constructed and operated prior to the  
 1085 initiation of the applicant's withdrawal; the depth of the well, the pump, and screens  
 1086 and any other construction information that the claimant possesses; the location of the  
 1087 well with enough specificity that it can be located in the field; the historic yield of the  
 1088 well, if available; historic water levels for the well, if available; and the reasons the  
 1089 claimant believes that the applicant's withdrawals have caused an adverse impact on  
 1090 the well.

1091 h. The ~~board's~~ department's technical evaluation demonstrates that the stabilized  
 1092 effects from the proposed withdrawal in combination with the stabilized combined  
 1093 effects of all existing lawful withdrawals will not lower water levels, in any confined  
 1094 aquifer that the withdrawal impacts, below a point that represents 80% of the distance  
 1095 between the land surface and the top of the aquifer. Compliance with the 80%  
 1096 drawdown criteria will be determined at the points where the predicted one-foot  
 1097 drawdown contour is predicted for the proposed withdrawal.

1098 i. The ~~board's~~ department's technical evaluation demonstrates that the proposed  
 1099 groundwater withdrawal will not result in salt water intrusion or the movement of waters  
 1100 of lower quality to areas where such movement would result in adverse impacts on  
 1101 existing groundwater users or the groundwater resource. This provision shall not  
 1102 exclude the withdrawal of brackish water provided that the proposed withdrawal will  
 1103 not result in unmitigated adverse impacts.

1104 4. The ~~board~~ department shall also take the following factors into consideration when  
 1105 evaluating a groundwater withdrawal permit application or special conditions associated  
 1106 with a groundwater withdrawal permit:

1107 a. The nature of the use of the proposed withdrawal;

1108 b. The public benefit provided by the proposed withdrawal;

1109 c. The proposed use of innovative approaches such as aquifer storage and recovery  
 1110 systems, surface water and groundwater conjunctive use systems, multiple well  
 1111 systems that blend withdrawals from aquifers that contain different quality groundwater  
 1112 in order to produce potable water, and desalinization of brackish groundwater;

1113 d. Prior public investment in existing facilities for withdrawal, transmission, and  
 1114 treatment of groundwater;

1115 e. Climatic cycles;

1116 f. Economic cycles;

1117 g. The unique requirements of nuclear power stations;

- 1118 h. Population and water demand projections during the term of the proposed permit;  
 1119 i. The status of land use and other necessary approvals; and  
 1120 j. Other factors that the ~~board~~ department deems appropriate.

1121 E. When proposed uses of groundwater are in conflict or available supplies of groundwater  
 1122 are not sufficient to support all those who desire to use them, the ~~board~~ department shall prioritize  
 1123 the evaluation of applications in the following manner:

- 1124 1. Applications for human consumption shall be given the highest priority;  
 1125 2. Should there be conflicts between applications for human consumption, applications  
 1126 will be evaluated in order based on the date that said applications were considered  
 1127 complete; and  
 1128 3. Applications for all uses, other than human consumption, will be evaluated following the  
 1129 evaluation of proposed human consumption in order based on the date that said  
 1130 applications were considered complete.

1131 F. Criteria for review of reapplications for groundwater withdrawal permit.

- 1132 1. The ~~board~~ department shall consider all criteria in subsection D of this section prior to  
 1133 reissuing a groundwater withdrawal permit. Existing permitted withdrawal amounts shall  
 1134 not be the sole basis for determination of the appropriate withdrawal amounts when a  
 1135 permit is reissued.  
 1136 2. The ~~board~~ department shall reissue a permit to any public water supply user for an  
 1137 annual amount no less than the amount equal to that portion of the permitted withdrawal  
 1138 that was used by said system to support human consumption during 12 consecutive  
 1139 months of the previous term of the permit.

1140 **9VAC25-610-120. Public water supplies.**

1141 The ~~board~~ department shall evaluate all applications for groundwater withdrawals for public  
 1142 water supplies as described in 9VAC25-610-110. The ~~board~~ department shall make a preliminary  
 1143 decision on the application and prepare a draft groundwater withdrawal permit and forward the  
 1144 draft permit to the Virginia Department of Health. The ~~board~~ department shall not issue a final  
 1145 groundwater withdrawal permit until such time as the Virginia Department of Health issues a  
 1146 waterworks operation permit, or equivalent. The ~~board~~ department shall establish withdrawal  
 1147 limits for such permits as described in 9VAC25-610-140 A 4 and 5. Under the Virginia Department  
 1148 of Health's Waterworks Regulation any proposed use of reclaimed, reused, or recycled water  
 1149 contained in a groundwater withdrawal application to support a public water supply is required to  
 1150 be approved by the Virginia Department of Health.

1151 **9VAC25-610-130. Conditions applicable to all groundwater permits.**

1152 A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this  
 1153 chapter shall be construed to relieve the groundwater withdrawal permit holder of the duty to  
 1154 comply with all applicable federal and state statutes and prohibitions. At a minimum, a person  
 1155 must obtain a well construction permit or a well site approval letter from the Virginia Department  
 1156 of Health prior to the construction of any well for any withdrawal authorized by the Department of  
 1157 Environmental Quality. Any permit violation is a violation of the law and is grounds for enforcement  
 1158 action, permit termination, revocation, modification, or denial of a permit application.

1159 B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement  
 1160 action that it would have been necessary to halt or reduce the activity for which a permit has been  
 1161 granted in order to maintain compliance with the conditions of the permit.

1162 C. Duty to mitigate. The permittee shall take all reasonable steps to:

- 1163 1. Avoid all adverse impacts to lawful groundwater users which could result from the  
 1164 withdrawal; and

1165 2. Where impacts cannot be avoided, provide mitigation of the adverse impact as  
1166 described in 9VAC25-610-110 D 3 g.

1167 D. Inspection and entry. Upon presentation of credentials, the permittee shall allow the ~~board~~  
1168 department or any duly authorized agent of the ~~board~~ department, at reasonable times and under  
1169 reasonable circumstances, to conduct actions listed in this section. For the purpose of this section,  
1170 the time for inspection shall be deemed reasonable during regular business hours. Nothing  
1171 contained herein shall make an inspection time unreasonable during an emergency.

1172 1. Entry upon any permittee's property, public or private, and have access to, inspect and  
1173 copy any records that must be kept as part of the permit conditions;

1174 2. Inspect any facilities, operations or practices (including monitoring and control  
1175 equipment) regulated or required under the permit; and

1176 3. Sample or monitor any substance, parameter or activity for the purpose of assuring  
1177 compliance with the conditions of the permit or as otherwise authorized by law.

1178 E. Duty to provide information. The permittee shall furnish to the ~~board~~ department, within a  
1179 reasonable time, any information that the ~~board~~ department may request to determine whether  
1180 cause exists for modifying or revoking, reissuing, or terminating the permit, or to determine  
1181 compliance with the permit. The permittee shall also furnish to the ~~board~~ department, upon  
1182 request, copies of records required to be kept by the permittee.

1183 F. Monitoring and records requirements.

1184 1. Monitoring of parameters, other than pollutants, shall be conducted according to  
1185 approved analytical methods as specified in the permit. Analysis of pollutants will be  
1186 conducted according to 40 CFR Part 136 as published in the 40 CFR July 1, 2017, update  
1187 and 82 FR 40836 (August 28, 2017).

1188 2. Samples and measurements taken for the purpose of monitoring shall be representative  
1189 of the monitored activity.

1190 3. The permittee shall retain records of all monitoring information, including all calibration  
1191 and maintenance records and all original strip chart or electronic recordings for continuous  
1192 monitoring instrumentation, copies of all reports required by the permit, and records of all  
1193 data used to complete the application for the permit, for a period of at least three years  
1194 from the date of the expiration of a granted permit. This period may be extended by request  
1195 of the ~~board~~ department at any time.

1196 4. Records of monitoring information shall include as appropriate:

1197 a. The date, exact place and time of sampling or measurements;

1198 b. The name of the individuals who performed the sampling or measurements;

1199 c. The date the analyses were performed;

1200 d. The name of the individuals who performed the analyses;

1201 e. The analytical techniques or methods supporting the information such as  
1202 observations, readings, calculations, and bench data used;

1203 f. The results of such analyses; and

1204 g. Chain of custody documentation.

1205 G. Permit action.

1206 1. A permit may be modified or revoked as set forth in Part VI (9VAC25-610-290 et seq.)  
1207 of this chapter.

1208 2. If a permittee files a request for permit modification or revocation, or files a notification  
1209 of planned changes, or anticipated noncompliance, the permit terms and conditions shall

1210 remain effective until the ~~board~~ department makes a final case decision. This provision  
1211 shall not be used to extend the expiration date of the effective permit.

1212 3. Permits may be modified or revoked upon the request of the permittee, or upon ~~board~~  
1213 department initiative, to reflect the requirements of any changes in the statutes or  
1214 regulations.

1215 **9VAC25-610-140. Establishing applicable standards, limitations or other permit conditions.**

1216 A. In addition to the conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-  
1217 610-120, and 9VAC25-610-130, each permit shall include conditions with the following  
1218 requirements:

1219 1. A permit shall contain the total depth of each permitted well in feet;

1220 2. A permit shall specify the screened intervals of wells authorized for use by the permit;

1221 3. A permit shall contain the designation of the aquifers to be utilized;

1222 4. A permit shall contain conditions limiting the withdrawal amount of a single well or a  
1223 group of wells that comprise a withdrawal system to a quantity specified by the ~~board~~  
1224 department. A permit shall contain a maximum annual withdrawal and a maximum monthly  
1225 groundwater withdrawal limit;

1226 5. A groundwater withdrawal permit for a public water supply shall contain a condition  
1227 allowing daily withdrawals at a level consistent with the requirements and conditions  
1228 contained in the waterworks operation permit, or equivalent, issued by the Virginia  
1229 Department of Health. This requirement shall not limit the authority of the ~~board~~  
1230 department to reduce or eliminate groundwater withdrawals by public water suppliers if  
1231 necessary to protect human health or the environment;

1232 6. The permit shall state that no pumps or water intake devices are to be placed lower  
1233 than the top of the uppermost confined aquifer that a well utilizes as a groundwater source  
1234 or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater  
1235 source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or  
1236 damage to the aquifer from compaction.

1237 7. All permits shall specify monitoring requirements as conditions of the permit.

1238 a. Permitted users who are issued groundwater withdrawal permits based on 9VAC25-  
1239 610-110 B 3 and C 2 shall install either in-line totalizing flow meters or hour meters  
1240 that record the hours of operation of withdrawal pumps on each permitted well prior to  
1241 beginning the permitted use. Flow meters shall produce volume determinations within  
1242 plus or minus 10% of actual flows. Hour meters shall produce run times within plus or  
1243 minus 10% of actual run times. Hour meter readings will be multiplied by the maximum  
1244 capacity of the withdrawal pump to determine withdrawal amounts. A defective meter  
1245 or other device must be repaired or replaced within 30 days. A defective meter is not  
1246 grounds for not reporting withdrawals. During any period when a meter is defective,  
1247 generally accepted engineering methods shall be used to estimate withdrawals and  
1248 the period during which the meter was defective must be clearly identified in  
1249 groundwater withdrawal reports. An alternative method for determining flow may be  
1250 approved by the ~~board~~ department on a case-by-case basis.

1251 b. Permitted users who are issued groundwater withdrawal permits based on any  
1252 section of this chapter not included in subdivision 7 a of this subsection shall install in-  
1253 line totalizing flow meters to read gallons, cubic feet, or cubic meters on each permitted  
1254 well prior to beginning the permitted use. Such meters shall produce volume  
1255 determinations within plus or minus 10% of actual flows. A defective meter or other  
1256 device must be repaired or replaced within 30 days. A defective meter is not grounds  
1257 for not reporting withdrawals. During any period when a meter is defective, generally

- 1258 accepted engineering methods shall be used to estimate withdrawals and the period  
 1259 during which the meter was defective must be clearly identified in groundwater  
 1260 withdrawal reports. An alternative method for determining flow may be approved by  
 1261 the ~~board~~ department on a case-by-case basis.
- 1262 c. Permits shall contain requirements concerning the proper use, maintenance and  
 1263 installation, when appropriate, of monitoring equipment or methods when required as  
 1264 a condition of the permit.
- 1265 d. Permits shall contain required monitoring including type, intervals, and frequency  
 1266 sufficient to yield data which are representative of the monitored activity and including,  
 1267 when appropriate, continuous monitoring and sampling.
- 1268 e. Each permitted well shall be equipped in a manner such that water levels can be  
 1269 measured during pumping and nonpumping periods without dismantling any  
 1270 equipment. Any opening for tape measurement of water levels shall have an inside  
 1271 diameter of at least 0.5 inches and be sealed by a removable plug or cap. The  
 1272 permittee shall provide a tap for taking raw water samples from each permitted well.
- 1273 8. All permits shall prohibit withdrawals from wells not authorized in the permit.
- 1274 9. All permits shall include requirements to report the amount of water withdrawn from  
 1275 each permitted well and well system on forms provided by the ~~board~~ department with a  
 1276 frequency dependent on the nature and effect of the withdrawal, but in no case less than  
 1277 once per year.
- 1278 10. Groundwater withdrawal permits issued under this chapter shall have an effective and  
 1279 expiration date which will determine the life of the permit. Groundwater withdrawal permits  
 1280 shall be effective for a fixed term not to exceed 15 years. Permit duration of less than the  
 1281 maximum period of time may be recommended in areas where hydrologic conditions are  
 1282 changing or are not adequately known. The term of any permit shall not be extended by  
 1283 modification beyond the maximum duration. Extension of permits for the same activity  
 1284 beyond the maximum duration specified in the original permit will require reapplication and  
 1285 issuance of a new permit.
- 1286 11. Each permit shall have a condition allowing the reopening of the permit for the purpose  
 1287 of modifying the conditions of the permit to meet new regulatory standards duly adopted  
 1288 by the board.
- 1289 12. Each well that is included in a groundwater withdrawal permit shall have affixed to the  
 1290 well casing, in a prominent place, a permanent well identification plate that records the  
 1291 Department of Environmental Quality well identification number, the groundwater  
 1292 withdrawal permit number, the total depth of the well and the screened intervals in the  
 1293 well, at a minimum. Such well identification plates shall be in a format specified by the  
 1294 ~~board~~ department and are available from the Department of Environmental Quality.
- 1295 B. In addition to the conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-  
 1296 610-120, 9VAC25-610-130, and subsection A of this section, each permit may include conditions  
 1297 with the following requirements where applicable:
- 1298 1. A withdrawal limit may be placed on one or more of the wells that constitute a withdrawal  
 1299 system;
- 1300 2. A permit may contain quarterly, monthly, or daily withdrawal limits or withdrawal limits  
 1301 based on any other frequency as determined by the ~~board~~ department;
- 1302 3. A permit may contain conditions requiring water quality and water levels monitoring at  
 1303 specified intervals in any wells deemed appropriate by the ~~board~~ department;
- 1304 4. A permit may contain conditions specifying water levels and water quality action levels  
 1305 in pumping and observation/monitoring wells to protect against or mitigate water quality

1306 levels or aquifer degradation. The ~~board~~ department may require permitted users to initiate  
 1307 control measures which include the following:

- 1308 a. Pumping arrangements to reduce groundwater withdrawal in areas of concentrated  
 1309 pumping;
- 1310 b. Location of wells to eliminate or reduce groundwater withdrawals near saltwater-  
 1311 freshwater interfaces;
- 1312 c. Requirement of selective withdrawal from other available aquifers than those  
 1313 presently used or proposed;
- 1314 d. Selective curtailment, reduction or cessation of groundwater withdrawals to protect  
 1315 the public welfare, safety, or health or to protect the resource;
- 1316 e. Conjunctive use of freshwater and saltwater aquifers, or waters of less desirable  
 1317 quality where water quality of a specific character is not essential;
- 1318 f. Construction and use of observation or monitoring wells;
- 1319 g. Well construction techniques that prohibit the hydraulic connection of aquifers that  
 1320 contain different quality waters, such as gravel packing, that could result in  
 1321 deterioration of water quality in an aquifer; and
- 1322 h. Such other necessary control or abatement techniques as are practicable to protect  
 1323 and beneficially utilize the groundwater resource.

1324 5. A permit may contain conditions limiting water level declines in pumping wells and  
 1325 observation wells;

1326 6. All permits may include requirements to report water quality and water level information  
 1327 on forms provided by the ~~board~~ department with a frequency dependent on the nature and  
 1328 effect of the withdrawal, but in no case less than once per year; and

1329 7. Permits shall require implementation of water conservation and management plans  
 1330 developed to comply with requirements of 9VAC25-610-100.

1331 C. In addition to conditions described in 9VAC25-610-130 and subsections A and B of this  
 1332 section, the ~~board~~ department may issue any groundwater withdrawal permit with any terms,  
 1333 conditions and limitations necessary to protect the public welfare, safety, and health or to protect  
 1334 the resource.

1335 **9VAC25-610-150. Signatory requirements.**

1336 A. Application. Any application for a permit under this chapter must bear the applicant's  
 1337 signature or the signature of a person acting in the applicant's behalf with the authority to bind the  
 1338 applicant. Electronic submittals containing the original signature page, such as that contained in  
 1339 a scanned document file, are acceptable.

1340 B. Reports. All reports required by permits and other information requested by the ~~board~~  
 1341 department shall be signed by:

- 1342 1. The permittee; or
- 1343 2. A duly authorized representative of that person. A person is a duly authorized  
 1344 representative only if:
  - 1345 a. The authorization is made in writing to the ~~board~~ department by a person described  
 1346 in subsection A of this section; and
  - 1347 b. The authorization specifies either an individual or a position having responsibility for  
 1348 the overall operation of the regulated withdrawal system or activity, such as the  
 1349 position of plant manager, superintendent, or position of equivalent responsibility. A  
 1350 duly authorized representative may thus be either a named individual or any individual  
 1351 occupying a named position.

1352 If an authorization is no longer accurate because a different individual or position has  
 1353 responsibility for the overall operation of the facility, a new authorization must be  
 1354 submitted to the ~~board~~ department prior to or together with any separate information,  
 1355 or applications to be signed by an authorized representative.

1356 C. Certification of application and reports. Any person signing a document under subsection  
 1357 A or B of this section shall make the following certification: I certify under penalty of law that this  
 1358 document and all attachments were prepared under my direction or supervision in accordance  
 1359 with a system designed to assure that qualified personnel properly gather and evaluate the  
 1360 information submitted. Based on my inquiry of the person or persons who manage the system or  
 1361 those persons directly responsible for gathering the information, the information submitted is to  
 1362 the best of my knowledge and belief true, accurate, and complete. I am aware that there are  
 1363 significant penalties for submitting false information including the possibility of fine and  
 1364 imprisonment for knowing violations.

1365 **9VAC25-610-160. Draft permit.**

1366 A. Upon receipt of a complete application for a new or expanded withdrawal or a complete  
 1367 application to modify an existing withdrawal, the ~~board~~ department shall make a tentative decision  
 1368 to issue or deny the permit. If a tentative decision is to issue the permit then a draft permit shall  
 1369 be prepared in advance of public notice. The following tentative determinations shall be  
 1370 incorporated into a draft permit:

- 1371 1. Conditions, withdrawal limitations, standards and other requirements applicable to the
- 1372 permit;
- 1373 2. Monitoring and reporting requirements;
- 1374 3. Requirements for mitigation of adverse impacts; and
- 1375 4. Requirements for a water conservation and management plan.

1376 B. If the tentative decision is to deny the permit, the ~~board~~ department shall do so in  
 1377 accordance with 9VAC25-610-340.

1378 **9VAC25-610-170. Application for a special exception.**

1379 A. Any person who wishes to initiate a groundwater withdrawal in any groundwater  
 1380 management area and is not exempted from the provisions of this chapter by 9VAC25-610-50  
 1381 may apply for a special exception in unusual cases where requiring the proposed user to obtain  
 1382 a groundwater withdrawal permit would be contrary to the purpose of the Ground Water  
 1383 Management Act of 1992.

1384 B. A special exception application shall be completed and submitted to the ~~board~~ department  
 1385 and a special exception issued by the ~~board~~ department prior to the initiation of any withdrawal  
 1386 not specifically excluded in 9VAC25-610-50. Special exception application forms shall be in a  
 1387 format specified by the ~~board~~ department and are available from the Department of Environmental  
 1388 Quality.

1389 C. Due to the unique nature of applications for special exceptions the ~~board~~ department shall  
 1390 determine the completeness of an application on a case-by-case basis. The ~~board~~ department  
 1391 may require any information required in 9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94,  
 1392 prior to considering an application for a special exception complete.

1393 D. Where the ~~board~~ department finds an application incomplete, the ~~board~~ department shall  
 1394 require the submission of additional information after an application has been filed, and may  
 1395 suspend processing of any application until such time as the applicant has supplied missing or  
 1396 deficient information and the ~~board~~ department finds the application complete. An incomplete  
 1397 permit application for a special exception may be suspended from processing 180 days from the  
 1398 date that the applicant received notification that the application is deficient. Further, where the  
 1399 applicant becomes aware that he omitted one or more relevant facts from a special exception

1400 application, or submitted incorrect information in a special exception application or in any report  
 1401 to the ~~board~~ department, he shall immediately submit such facts or the correct information.

1402 **9VAC25-610-180. Water conservation and management plans.**

1403 A. The ~~board~~ department may require water conservation and management plans or specific  
 1404 elements of water conservation and management plans as described in 9VAC25-610-100 B prior  
 1405 to considering an application for special exception complete.

1406 B. In instances where a water conservation and management plan is required, the ~~board~~  
 1407 department may include the implementation of such plans as an enforceable condition of the  
 1408 applicable special exception.

1409 **9VAC25-610-190. Criteria for the issuance of special exceptions.**

1410 A. The ~~board~~ department shall issue special exceptions only in unusual situations where the  
 1411 applicant demonstrates to the ~~board's~~ department's satisfaction that requiring the applicant to  
 1412 obtain a groundwater withdrawal permit would be contrary to the intended purposes of the Ground  
 1413 Water Management Act of 1992.

1414 B. The ~~board~~ department may require compliance with any criteria described in 9VAC25-610-  
 1415 110.

1416 **9VAC25-610-200. Public water supplies.**

1417 The ~~board~~ department shall not issue special exceptions for the normal operations of public  
 1418 water supplies.

1419 **9VAC25-610-220. Establishing applicable standards, limitations or other special exception  
 1420 conditions.**

1421 The ~~board~~ department may issue special exceptions which include any requirement for  
 1422 permits as described in 9VAC25-610-140. Special exceptions shall not be renewed, except in the  
 1423 case of special exceptions that have been issued to allow groundwater withdrawals associated  
 1424 with state-approved groundwater remediation activities. In the case of reissuance of a special  
 1425 exception for a state-approved groundwater remediation activity, the ~~board~~ department may  
 1426 require the holder of the special exception to submit any information required in 9VAC25-610-90,  
 1427 9VAC25-610-92, and 9VAC25-610-94, and may require compliance with any criteria described in  
 1428 9VAC25-610-110. In the case where any other activity that is being supported by the specially  
 1429 excepted withdrawal will require that the withdrawal extend beyond the term of the existing special  
 1430 exception, the groundwater user shall apply for a permit to withdraw groundwater.

1431 **9VAC25-610-240. Draft special exception.**

1432 A. Upon receipt of a complete application, the ~~board~~ department shall make a tentative  
 1433 decision to issue or deny the special exception. If a tentative decision is to issue the special  
 1434 exception then a draft special exception shall be prepared in advance of public notice. The  
 1435 following tentative determinations shall be incorporated into a draft special exception:

- 1436 1. Conditions, withdrawal limitations, standards and other requirements applicable to the  
 1437 special exception;
- 1438 2. Monitoring and reporting requirements; and
- 1439 3. Requirements for mitigation of adverse impacts.

1440 B. If the tentative decision is to deny the special exception, the ~~board~~ department shall return  
 1441 the application to the applicant. The applicant may then apply for a groundwater withdrawal permit  
 1442 for the proposed withdrawal in accordance with Part III (9VAC25-610-85 et seq.) of this chapter.



1443 **9VAC25-610-250. Public notice of permit or special exception action and public comment**  
 1444 **period.**

1445 A. Every draft permit described in 9VAC25-610-160 A and draft special exception shall be  
 1446 given public notice, paid for by the applicant, by publication once in a newspaper of general  
 1447 circulation in the area affected by the withdrawal.

1448 B. Notice of each draft permit described in 9VAC25-610-160 A and draft special exception will  
 1449 be mailed by the ~~board~~ department to each local governing body within the groundwater  
 1450 management area within which the proposed withdrawal will occur on or before the date of public  
 1451 notice.

1452 C. The ~~board~~ department shall allow a period of at least 30 days following the date of the  
 1453 public notice for interested persons to submit written comments on the tentative decision and to  
 1454 request a public hearing.

1455 D. The contents of the public notice of a draft permit or draft special exception action shall  
 1456 include:

- 1457 1. Name and address of the applicant. If the location of the proposed withdrawal differs  
 1458 from the address of the applicant the notice shall also state the location in sufficient detail  
 1459 such that the specific location may be easily identified;
- 1460 2. Brief description of the beneficial use that the groundwater withdrawal will support;
- 1461 3. The name and depth below ground surface of the aquifer that will support the proposed  
 1462 withdrawal;
- 1463 4. The amount of groundwater withdrawal requested expressed as an average gallonage  
 1464 per day;
- 1465 5. A statement of the tentative determination to issue or deny a permit or special exception;
- 1466 6. A brief description of the final determination procedure;
- 1467 7. The address, email address, and phone number of a specific person or persons at the  
 1468 department's office from whom further information may be obtained; and
- 1469 8. A brief description on how to submit comments and request a public hearing.

1470 E. Public notice shall not be required for submission or approval of plans and specifications  
 1471 or conceptual engineering reports not required to be submitted as part of the application or for  
 1472 draft permits for existing groundwater withdrawals when such draft permits are based solely on  
 1473 historic withdrawals.

1474 F. When a permit or special exception is denied the ~~board~~ department will do so in accordance  
 1475 with 9VAC25-610-340.

1476 **9VAC25-610-260. Public access to information.**

1477 All information pertaining to groundwater permit processing or in reference to any activity  
 1478 requiring a groundwater permit under this chapter shall be available to the public unless the  
 1479 applicant has made a showing that the information is protected by the applicant as a trade secret  
 1480 covered by § 62.1-44.21 of the Code of Virginia. All information claimed confidential must be  
 1481 identified as such at the time of submission to the ~~board~~ department.

1482 **9VAC25-610-270. Public comments and public hearing.**

1483 A. The director shall consider all written comments and requests for a public hearing received  
 1484 during the comment period, and shall make a determination on the necessity of a public hearing  
 1485 in accordance with ~~§ 62.1-44.15:02 of the Code of Virginia~~ 9VAC25-610-275. All proceedings,  
 1486 public hearings, and decisions from it will be in accordance with ~~§ 62.1-44.15:02 of the Code of~~  
 1487 Virginia 9VAC25-610-275.

1488 B. Any applicant or permittee aggrieved by an action of the ~~board~~ department or director taken  
 1489 without a formal hearing or inaction of the ~~board~~ department or director may request in writing a  
 1490 formal hearing pursuant to § 62.1-44.25 of the Code of Virginia.

1491 **9VAC25-610-275. Criteria for requesting and granting a public hearing on an individual**  
 1492 **permit or a special exception action.**

1493 A. During the public comment period on a permit action in those instances where a public  
 1494 hearing is not mandatory under state or federal law or regulation, interested persons may  
 1495 request a public hearing to contest the action or terms and conditions of a permit.

1496 B. Requests for a public hearing shall contain the following information:

1497 1. The name and postal mailing or email address of the requester.

1498 2. The names and addresses of all persons for whom the requester is acting as a  
 1499 representative.

1500 3. The reason for the request for a public hearing.

1501 4. A brief, informal statement setting forth the factual nature and extent of the interest  
 1502 of the requester or of the persons for whom the requester is acting as representative  
 1503 in the application or tentative determination, including an explanation of how and to  
 1504 what extent such interest would be directly and adversely affected by the issuance,  
 1505 denial, modification, or revocation of the permit in question, and.

1506 5. Where possible, specific references to the terms and conditions of the permit in  
 1507 question, together with suggested revisions and alterations to those terms and  
 1508 conditions that the requester considers are needed to conform the permit to the intent  
 1509 and provisions of the basic laws of the State Water Control Board.

1510 C. Upon completion of the public comment period on a permit action, the director shall  
 1511 review all timely requests for public hearing filed during the comment period on the permit  
 1512 action, and within 30 calendar days following the expiration of the time period for the  
 1513 submission of requests shall grant a public hearing, unless the permittee or applicant  
 1514 agrees to a later date, if the director finds the following:

1515 1. That there is a significant public interest in the issuance, denial, modification or  
 1516 revocation of the permit in question as evidenced by receipt of a minimum of 25  
 1517 individual requests for a public hearing.

1518 2. That the requesters raise substantial, disputed issues relevant to the issuance,  
 1519 denial, modification, or revocation of the permit in question, and,

1520 3. That the action requested by the interested party is not on its face inconsistent with  
 1521 or in violation of the basic laws of the State Water Control Board for a water permit  
 1522 action, federal law, or any regulation promulgated thereunder.

1523 D. The director of DEQ shall notify by email or mail at his last known address: (i) each  
 1524 requester and (ii) the applicant or permittee of the decision to grant or deny a public  
 1525 hearing.

1526 E. If the request for a public hearing is granted, the director shall:

1527 1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of  
 1528 the notice of the decisions to grant the public hearing.

1529 2. Cause, or require the applicant to publish, notice of a public hearing to be published  
 1530 once, in a newspaper or general circulation in the city or county where the facility or  
 1531 operation that is the subject of the permit or permit application is located, at least 30  
 1532 days before the hearing date.

1533 F. The public comment period shall remain open for 15 days after the close of the public  
 1534 hearing if required by §62.1-44.15:01 of the Code of Virginia.

1535 G. The director may, at his discretion, convene a public hearing in a permit action.

1536 **9VAC25-610-280. Public notice of hearing.**

1537 A. Public notice of any public hearing held pursuant to 9VAC25-610-270 and 9VAC25-610-  
1538 275 shall be circulated as follows:

1539 1. Notice shall be published once in a newspaper of general circulation in the area affected  
1540 by the proposed withdrawal at least 30 days in advance of the public hearing; and

1541 2. Notice of the public hearing shall be sent to all persons and government agencies which  
1542 received a copy of the public notice of the draft permit or special exception and to those  
1543 persons requesting a public hearing or having commented in response to the public in  
1544 accordance with ~~§ 62.1-44.15:02 of the Code of Virginia~~ 9VAC25-610-275.

1545 B. The cost of public notice shall be paid by the applicant.

1546 C. The content of the public notice of any public hearing held pursuant to 9VAC25-610-270  
1547 and 9VAC25-610-275 shall include at least the following:

1548 1. Name and address of each person whose application will be considered at the public  
1549 hearing, the amount of groundwater withdrawal requested expressed as an average  
1550 gallonage per day, and a brief description of the beneficial use that will be supported by  
1551 the proposed groundwater withdrawal.

1552 2. The precise location of the proposed withdrawal and the aquifers that will support the  
1553 withdrawal. The location should be described, where possible, with reference to route  
1554 numbers, road intersections, map coordinates or similar information.

1555 3. A brief reference to the public notice issued for the permit or special exception  
1556 application and draft permit or special exception, including identification number and date  
1557 of issuance unless the public notice includes the public hearing notice.

1558 4. Information regarding the time and location for the public hearing.

1559 5. The purpose of the public hearing.

1560 6. A concise statement of the relevant issues raised by the persons requesting the public  
1561 hearing.

1562 7. Contact person and the mailing address, email address, phone number, and name of  
1563 the Department of Environmental Quality office at which interested persons may obtain  
1564 further information or request a copy of the draft permit or special exception.

1565 8. A brief reference to the rules and procedures to be followed at the public hearing.

1566 D. Public notice of any formal hearing held pursuant to 9VAC25-610-270 B shall be in  
1567 accordance with Procedural Rule No.1 (9VAC25-230).

1568 E. The public comment period shall remain open for 15 days after the close of the public  
1569 hearing required by §62.1-44.15:01 of the Code of Virginia.

1570 **9VAC25-610-285. Controversial Permits.**

1571 Before rendering a final decision on a controversial permit, the department shall publish a  
1572 summary of public comments received during the applicable public comment period and public  
1573 hearing. After such publication, the department shall publish responses to the public comment  
1574 summary and hold a public hearing to provide an opportunity for individuals who previously  
1575 commented, either at a public hearing or in writing during the applicable public comment period,  
1576 to respond to the department's public comment summary and response. No new information will  
1577 be accepted at that time. In making its decision, the department shall consider: (i) the verbal and  
1578 written comments received during the comment period and the public hearing made part of the  
1579 record, (ii) any commentary of the board, and (iii) the agency files.

1580 **9VAC25-610-287. Controversial permits reporting.**

1581 At each regular meeting of the board, the department shall provide an overview and update  
 1582 regarding any controversial permits pending before the department that are relevant. Immediately  
 1583 after such presentation by the department, the board shall have an opportunity to respond to the  
 1584 department's presentation and provide commentary regarding such pending permits.

1585 **9VAC25-610-290. Rules for modification and revocation.**

1586 Permits and special exceptions shall be modified or revoked only as authorized by this part of  
 1587 this chapter as follows:

- 1588 1. A permit or special exception may be modified in whole or in part, or revoked;
- 1589 2. Permit or special exception modifications shall not be used to extend the term of a  
 1590 permit or special exception; and
- 1591 3. Modification or revocation may be initiated by the ~~board~~ department, at the request of  
 1592 the permittee, or other person at the ~~board's~~ department's discretion under applicable laws  
 1593 or the provisions of this chapter.

1594 **9VAC25-610-300. Causes for revocation.**

1595 A. After public notice and opportunity for a formal hearing pursuant to 9VAC25-230-100 a  
 1596 permit or special exception can be revoked for cause. Causes for revocation are as follows:

- 1597 1. Noncompliance with any condition of the permit or special exception;
- 1598 2. Failure to fully disclose all relevant facts or misrepresentation of a material fact in  
 1599 applying for a permit or special exception, or in any other report or document required by  
 1600 the Act, this chapter or permit or special exception conditions;
- 1601 3. The violation of any regulation of the board or order of the ~~board~~ department, or any  
 1602 order of a court, pertaining to groundwater withdrawal;
- 1603 4. A determination that the withdrawal authorized by the permit or special exception  
 1604 endangers human health or the environment and cannot be regulated to acceptable levels  
 1605 by permit or special exception modification;
- 1606 5. A material change in the basis on which the permit or special exception was issued that  
 1607 requires either a temporary or permanent reduction, application of special conditions or  
 1608 elimination of any groundwater withdrawal controlled by the permit or special exception.

1609 B. After public notice and opportunity for a formal hearing pursuant to 9VAC25-230-100 a  
 1610 permit or special exception may be revoked when any of the developments described in 9VAC25-  
 1611 610-310 occur.

1612 **9VAC25-610-310. Causes for modification.**

1613 A. A permit or special exception may, at the ~~board's~~ department's discretion, be modified for  
 1614 any cause as described in 9VAC25-610-300.

1615 B. A permit or special exception may be modified when any of the following developments  
 1616 occur:

- 1617 1. When new information becomes available about the groundwater withdrawal covered  
 1618 by the permit or special exception, or the impact of the withdrawal, which was not available  
 1619 at permit or special exception issuance and would have justified the application of different  
 1620 conditions at the time of issuance;
- 1621 2. When groundwater withdrawal reports submitted by the permittee indicate that the  
 1622 permittee is using less than 60% of the permitted withdrawal amount for a five-year period;
- 1623 3. When a change is made in the regulations on which the permit or special exception was  
 1624 based; or

1625 4. When changes occur which are subject to "reopener clauses" in the permit or special  
1626 exception.

1627 **9VAC25-610-320. Transferability of permits and special exceptions.**

1628 A. Transfer by modification. Except as provided for under automatic transfer in subsection B  
1629 of this section, a permit or special exception shall be transferred only if the permit has been  
1630 modified to reflect the transfer.

1631 B. Automatic transfer. Any permit or special exception shall be automatically transferred to a  
1632 new owner as allowed by the minor modification process described in 9VAC25-610-330 B 8 if:

1633 1. The current owner notifies the ~~board~~ department within 30 days in advance of the  
1634 proposed transfer of ownership;

1635 2. The notice to the ~~board~~ department includes a notarized written agreement between  
1636 the existing permittee and proposed new permittee containing a specific date of transfer  
1637 of permit or special exception responsibility, coverage and liability to the new permittee,  
1638 or that the existing permittee will retain such responsibility, coverage, or liability, including  
1639 liability for compliance with the requirements of any enforcement activities related to the  
1640 permitted activity;

1641 3. The ~~board~~ department does not within the 30-day time period notify the existing  
1642 permittee and the proposed permittee of its intent to modify, revoke, or reissue the permit  
1643 or special exception; and

1644 4. The permit transferor and the permit transferee provide written notice to the ~~board~~  
1645 department of the actual transfer date.

1646 **9VAC25-610-330. Minor modification.**

1647 A. Upon request of the holder of a permit or special exception, or upon ~~board~~ department  
1648 initiative with the consent of the holder of a permit or special exception, minor modifications may  
1649 be made in the permit or special exception without following the public involvement procedures.

1650 B. For groundwater withdrawal permits and special exceptions, minor modifications may only:

1651 1. Correct typographical errors;

1652 2. Require reporting at a greater frequency than required in the permit or special exception;

1653 3. Add additional or more restrictive monitoring requirements than required in the permit  
1654 or special exception;

1655 4. Replace an existing well provided that the replacement well is screened in the same  
1656 aquifer or aquifers as the existing well, the replacement well is in the near vicinity of the  
1657 existing well, the groundwater withdrawal does not increase, and the area of impact does  
1658 not increase;

1659 5. Add additional wells so long as the additional wells are screened in the same aquifer or  
1660 aquifers as the existing well, additional wells are in the near vicinity of the existing well,  
1661 the total groundwater withdrawal does not increase, and the area of impact does not  
1662 increase;

1663 6. Combine the withdrawals governed by multiple permits into one permit when the  
1664 systems that were governed by the multiple permits are physically connected, as long as  
1665 the interconnection will not result in additional groundwater withdrawal and the area of  
1666 impact will not increase;

1667 7. Change an interim compliance date in a schedule of compliance to no more than 120  
1668 days from the original compliance date and provided it will not interfere with the final  
1669 compliance date;

1670 8. Allow for a change in ownership or operational control when the ~~board~~ department  
 1671 determines that no other change in the permit or special exception is necessary, provided  
 1672 that a written agreement containing a specific date for transfer of permit or special  
 1673 exception responsibility, coverage and liability from the current to the new owner has been  
 1674 submitted to the ~~board~~ department; and

1675 9. Revise a water conservation and management plan to update conservation measures  
 1676 being implemented by the permittee that increase the amount of groundwater conserved.

1677 **9VAC25-610-350. Enforcement.**

1678 The ~~board~~ department may enforce the provisions of this chapter utilizing all applicable  
 1679 procedures under the Ground Water Management Act of 1992 or any other section of the Code  
 1680 of Virginia that may be applicable.

1681 **9VAC25-610-360. Delegation of authority. (Repealed.)**

1682 ~~The director, or his designee, may perform any act of the board provided under this chapter,~~  
 1683 ~~except as limited by subdivision 9 of § 62.1-256 of the Code of Virginia.~~

1684 **9VAC25-610-380. Statewide information requirements.**

1685 The ~~board~~ department may require any person withdrawing groundwater for any purpose  
 1686 anywhere in the Commonwealth, whether or not declared to be a groundwater management area,  
 1687 to furnish to the ~~board~~ department such information that may be necessary to carry out the  
 1688 provisions of the Ground Water Management Act of 1992. Groundwater withdrawals that occur in  
 1689 conjunction with activities related to the exploration and production of oil, gas, coal, or other  
 1690 minerals regulated by the Department of Energy are exempt from any information reporting  
 1691 requirements.

1692 **9VAC25-610-390. Statewide right to inspection and entry.**

1693 Upon presentation of credentials the ~~board~~ department, or any duly authorized agent, shall  
 1694 have the power to enter, at reasonable times and under reasonable circumstances, any  
 1695 establishment or upon any property, public or private, located anywhere in the Commonwealth  
 1696 for the purposes of obtaining information, conducting surveys or inspections, or inspecting wells  
 1697 and springs to ensure compliance with any regulations adopted by the board or permits,  
 1698 standards, policies, rules, ~~regulations,~~ rulings and special orders which the ~~board or~~ department  
 1699 may adopt, issue or establish to carry out the provisions of the Ground Water Management Act  
 1700 of 1992 and this chapter.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-20
<b>VAC Chapter title(s)</b>	Fees for Permits and Certificates
<b>Action title</b>	Final Exempt CH 20 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	July 14, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-20) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits and provide procedures for public comment on pending controversial permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”; and the repeal of the delegation of authority provisions.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-20 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.



1 **Project 7259 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 20 changes in response to 2022 Board Bill**

4 **9VAC25-20-10. Definitions.**

5 Unless otherwise defined in this chapter or unless the context clearly indicates otherwise, the  
6 terms used in this regulation shall have the meanings ascribed to them by the State Water Control  
7 Law, § 62.1-44.3; the board's Virginia Pollutant Discharge Elimination System Permit Regulation,  
8 9VAC25-31-10; the board's Virginia Pollution Abatement Permit Regulation, 9VAC25-32-10; the  
9 board's Virginia Water Protection Permit Program Regulation, 9VAC25-210-10; the board's  
10 Surface Water Management Area Regulation, 9VAC25-220-10; and the board's Groundwater  
11 Withdrawal Regulations, 9VAC25-610-10, including any general permits issued thereunder.

12 "Applicant" means for the purposes of this chapter any person filing an application for  
13 issuance, reissuance, or modification, except as exempted by 9VAC25-20-50, of a permit,  
14 certificate or special exception or filing a registration statement or application for coverage under  
15 a general permit issued in response to Chapters 3.1 (§ 62.1-44.2 et seq.), 24 (§ 62.1-242 et seq.),  
16 and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

17 "Application" means for the purposes of this chapter the forms approved by the ~~State Water~~  
18 ~~Control Board~~ department for applying for issuance or reissuance of a permit, certificate or special  
19 exception or for filing a registration statement or application for coverage under a general permit  
20 issued in response to Chapters 3.1, 24, and 25 of Title 62.1 of the Code of Virginia. In the case  
21 of modifications to an existing permit, permit authorization, certificate or special exception  
22 requested by the permit, permit authorization, certificate or special exception holder and not  
23 exempted by 9VAC25-20-50, the application shall consist of the formal written request and any  
24 accompanying documentation submitted by the permit, permit authorization, certificate or special  
25 exception holder to initiate the modification.

26 "Biosolids" means a sewage sludge that has received an established treatment for required  
27 pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and  
28 contains acceptable levels of pollutants, such that it is acceptable for use for land application,  
29 marketing or distribution in accordance with 9VAC25-31 or 9VAC25-32.

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

33 "Dry tons" means dry weight established as representative of land applied biosolids or  
34 industrial residuals, and expressed in units of English tons.

35 "Existing permit" means for the purposes of this chapter a permit, permit authorization,  
36 certificate or special exception issued by the ~~board~~ department or general permit issued as a  
37 regulation by the board and currently held by an applicant.

38 "Established fees" means a fee established by the department per dry ton of biosolids or  
39 industrial residuals managed by land appliers.

40 "Industrial residual" means solid or semisolid industrial waste including solids, residues, and  
41 precipitates separated or created by the unit processes of a device or system used to treat  
42 industrial wastes.

43 "Land application" means, in regard to sewage, biosolids, and industrial residuals, the  
44 distribution of treated wastewater of acceptable quality, referred to as effluent, or stabilized  
45 sewage sludge of acceptable quality, referred to as biosolids, or industrial residuals by spreading  
46 or spraying on the surface of the land, injecting below the surface of the land, or incorporating into

47 the soil with a uniform application rate for the purpose of fertilizing crops or vegetation or  
 48 conditioning the soil. Bulk disposal of stabilized sludge or industrial residuals in a confined area,  
 49 such as in landfills, is not land application. Sites approved for land application of biosolids in  
 50 accordance with 9VAC25-31 or 9VAC25-32 are not to be considered to be treatment works.

51 "Land applier" means someone who land applies biosolids or industrial residuals pursuant to  
 52 a valid permit from the department as set forth in 9VAC25-31 or 9VAC25-32.

53 "Local monitor" means a person or persons employed by local government to perform the  
 54 duties of monitoring the operations of land appliers pursuant to a local ordinance.

55 "Major modification" means for the purposes of this chapter modification or amendment of an  
 56 existing permit, permit authorization, certificate or special exception before its expiration which is  
 57 not a minor modification as defined in this regulation.

58 "Major reservoir" means for the purposes of this chapter any new or expanded reservoir with  
 59 greater than or equal to 17 acres of total surface water impacts (stream and wetlands), or a water  
 60 withdrawal of greater than or equal to 3,000,000 gallons in any one day.

61 "Minor modification" means for the purposes of this chapter minor modification or amendment  
 62 of an existing permit, permit authorization, certificate or special exception before its expiration as  
 63 specified in 9VAC25-31-400, 9VAC25-32-240, 9VAC25-210-180, 9VAC25-220-230, or in  
 64 9VAC25-610-330. Minor modification for the purposes of this chapter also means other  
 65 modifications and amendments not requiring extensive review and evaluation including, but not  
 66 limited to, changes in EPA promulgated test protocols, increasing monitoring frequency  
 67 requirements, changes in sampling locations, and changes to compliance dates within the overall  
 68 compliance schedules. A minor permit modification or amendment does not substantially alter  
 69 permit conditions, substantially increase or decrease the amount of surface water impacts,  
 70 increase the size of the operation, or reduce the capacity of the facility to protect human health or  
 71 the environment.

72 "Minor reservoir" means for the purposes of this chapter any new or expanded reservoir with  
 73 less than 17 acres of total surface water impacts (stream and wetlands), or a water withdrawal of  
 74 less than 3,000,000 gallons in any one day.

75 "New permit" means for the purposes of this chapter a permit, permit authorization, certificate  
 76 or special exception issued by the ~~board~~ department or coverage issued, pursuant to a general  
 77 permit issued as a regulation adopted by the board, to an applicant that does not currently hold  
 78 and has never held a permit, permit authorization, certificate or special exception of that type, for  
 79 that activity, at that location.

80 "Reimbursement application" means forms approved by the department to be used to apply  
 81 for reimbursement of local monitoring costs for land application of biosolids or industrial residuals  
 82 in accordance with the provisions of this regulation. The application shall consist of a formal  
 83 written request and any accompanying documentation submitted by a local government in  
 84 accordance with a local ordinance.

85 "Revoked permit" means, for the purposes of this chapter, an existing permit, permit  
 86 authorization, certificate or special exception which is terminated by the ~~board~~ department before  
 87 its expiration.

88 "Single jurisdiction" means for the purposes of this chapter a single county or city. The term  
 89 county includes incorporated towns which are part of the county.

90 **9VAC25-20-20. Purpose.**

91 Section 62.1-44.15:6 of the Code of Virginia requires the promulgation of regulations  
 92 establishing a fee assessment and collection system to recover a portion of the ~~State Water~~  
 93 ~~Control Board's~~ Department of Environmental Quality's, Department of Game and Inland  
 94 Fisheries', and the Department of Conservation and Recreation's direct and indirect costs

95 associated with the processing of an application to issue, reissue, or modify any permit, permit  
 96 authorization or certificate which the board or department has the authority to issue from the  
 97 applicant for such permit, permit authorization or certificate. Section 62.1-44.19:3 of the Code of  
 98 Virginia requires the promulgation of regulations establishing a fee to be charged to all permit  
 99 holders and persons applying for permits and permit modifications associated with land  
 100 application of biosolids. Section 62.1-44.16 of the Code of Virginia requires the promulgation of  
 101 regulations requiring the payment of a fee by persons land applying solid or semisolid industrial  
 102 wastes. Section 62.1-44.19:3 of the Code of Virginia also requires the promulgation of regulations  
 103 requiring the payment of a fee by persons land applying biosolids. These regulations establish  
 104 the required fee assessment and collection system.

105 **9VAC25-20-50. Exemptions.**

106 A. No permit application fees will be assessed to:

- 107 1. An applicant for a permit, permit authorization, certificate or special exception pertaining  
 108 to a farming operation engaged in production for market.
- 109 2. An applicant for a permit, permit authorization, or certificate pertaining to maintenance  
 110 dredging for federal navigation channels or other U.S. Army Corps of Engineers-  
 111 sponsored or Department of the Navy-sponsored dredging projects.
- 112 3. Permit holders who request minor modifications or minor amendments to permits,  
 113 permit authorizations or certificates as defined in 9VAC25-20-10.
- 114 4. Permit, permit authorization or certificate holders whose permits, permit authorizations  
 115 or certificates are modified or amended at the initiative of the ~~board~~ department.
- 116 5. VPDES permit holders or VPA permit holders for the regularly scheduled renewal of an  
 117 individual permit for an existing facility, except VPDES and VPA permit holders whose  
 118 permits expire on or before December 27, 2004.
- 119 6. An applicant for a permit, permit authorization, permit modification, or certificate  
 120 pertaining solely to biosolids research.

121 B. No permit maintenance fees will be assessed to:

- 122 1. VPDES and VPA facilities operating under a general permit.
- 123 2. Permits pertaining to a farming operation engaged in production for market.
- 124 3. Virginia Water Protection (VWP), Surface Water Withdrawal (SWW), and Ground Water  
 125 Withdrawal (GWW) permits, permit authorizations, certificates and special exceptions.
- 126 4. Permits pertaining solely to biosolids research.

127 **9VAC25-20-60. Due dates.**

128 A. Virginia Pollutant Discharge Elimination System (VPDES) and Virginia Pollution Abatement  
 129 (VPA) permits.

- 130 1. Application fees for all new permit applications are due on the day an application is  
 131 submitted and shall be paid in accordance with 9VAC25-20-70 A. Applications will not be  
 132 processed without payment of the required fee.
- 133 2. For reissuance of permits that expire on or before December 27, 2004, the application  
 134 fee for new permit applications as set forth in this regulation is due on the day the  
 135 application is submitted.
- 136 3. An application fee is due on the day an application is submitted for either a major  
 137 modification or a permit reissuance that occurs (and becomes effective) before the stated  
 138 permit expiration date. There is no application fee for a regularly scheduled renewal of an  
 139 individual permit for an existing facility, unless the permit for the facility expires on or before

140 December 27, 2004. There is no application fee for a major modification or amendment  
141 that is made at the ~~board's~~ department's initiative.

142 4. Permit maintenance fees shall be paid to the ~~board~~ department by October 1 of each  
143 year. Additional permit maintenance fees for facilities that are authorized to land apply,  
144 distribute, or market biosolids; are in a toxics management program; or have more than  
145 five process wastewater discharge outfalls at a single facility (not including "internal"  
146 outfalls) shall also be paid to the ~~board~~ department by October 1 of each year. No permit  
147 will be reissued or administratively continued without payment of the required fee.

148 a. Existing individual permit holders with an effective permit as of July 1, 2004  
149 (including permits that have been administratively continued) shall pay the permit  
150 maintenance fee or fees to the ~~board~~ department by October 1, 2004, unless one of  
151 the following conditions apply:

152 (1) The permit is terminated prior to October 1, 2004; or

153 (2) The permit holder applied or reapplied for a municipal minor VPDES permit with a  
154 design flow of 10,000 gallons per day or less between July 1, 2003, and July 1, 2004,  
155 and paid the applicable permit application fee.

156 b. Effective April 1, 2005, any permit holder whose permit is effective as of April 1 of a  
157 given year (including permits that have been administratively continued) shall pay the  
158 permit maintenance fee or fees to the ~~board~~ department by October 1 of that same  
159 year.

160 B. Surface Water Withdrawal (SWW) and Groundwater Withdrawal (GWW) permits.

161 1. All permit application fees are due on the day an application is submitted and shall be  
162 paid in accordance with 9VAC25-20-70 A. Applications will not be processed without  
163 payment of the required fee. No permit will be administratively continued without payment  
164 of the required fee.

165 2. For reissuance of GWW permits that expire on or before March 27, 2005, the application  
166 fee for new permit applications as set forth in this regulation is due on the day the  
167 application is submitted.

168 3. Application fees for major modifications or amendments are due on the day an  
169 application is submitted. Applications will not be processed without payment of the  
170 required fee. There is no fee for a major modification or amendment that is made at the  
171 ~~board's~~ department's initiative.

172 C. Virginia Water Protection (VWP) permits.

173 1. VWP permit application fees shall be paid in accordance with 9VAC25-20-70 A. Review  
174 of applications may be initiated before the fee is received; however, draft permits or  
175 authorizations shall not be issued prior to payment of the required fee. No permit or permit  
176 authorization shall be administratively continued without payment of the required fee.

177 2. VWP application fees for major modifications shall be paid in accordance with 9VAC25-  
178 20-70 A. Review of applications may be initiated before the fee is received; however, major  
179 modifications shall not be issued prior to payment of the required fee. There is no  
180 application fee for a major modification that is made at the ~~board's~~ department's initiative.

181 D. Land application fees for biosolids and industrial residuals. The department may bill the  
182 land applier for amounts due following the submission of the monthly land application report.  
183 Payments are due 30 days after receipt of a bill from the department. No permit or modification  
184 of an existing permit will be approved in the jurisdiction where payment of the established fee by  
185 the land applier has not been received by the due date; until such time that the fees are paid in  
186 full. Existing permits may be revoked or approved sources may be reclassified as unapproved

187 unless the required fee is paid by the due date. No permit will be reissued or administratively  
 188 continued or modified without full payment of any past due fee.

189 **9VAC25-20-100. General.**

190 Each application for a new permit, permit authorization or certificate, each application for  
 191 reissuance of a permit, permit authorization or certificate, each application for major modification  
 192 of a permit, permit authorization or certificate, each revocation and reissuance of a permit, permit  
 193 authorization or certificate, and each application of a dry ton of biosolids or industrial residuals is  
 194 a separate action and shall be assessed a separate fee, as applicable. The fees for each type of  
 195 permit, permit authorization or certificate that the board or department has the authority to issue,  
 196 reissue or modify will be as specified in this part.

197 **9VAC25-20-130. Fees for filing registration statements or applications for general permits**  
 198 **issued by the board.**

199 The following fees apply to filing of applications or registration statements for all general  
 200 permits issued by the board, except:

- 201 1. The fee for filing a registration statement for coverage under 9VAC25-110 (General  
 202 VPDES Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 GPD) is  
 203 \$0.
- 204 2. The fee for filing a registration statement for coverage under 9VAC25-120 (General  
 205 VPDES Permit Regulation for Discharges from Petroleum Contaminated Sites) is \$0.
- 206 3. The fee for filing an application or registration statement for coverage under a VWP  
 207 General Permit issued by the board shall be:

VWP General/Less Than 4,356 sq. ft. (1/10 acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	\$0
VWP General/4,356 sq. ft. to 21,780 sq. ft. (1/10 acre to 1/2 acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	\$600
VWP General/21,781 sq. ft. to 43,560 sq. ft. (greater than 1/2 acre to one acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	\$1,200
VWP General/43,561 sq. ft. to 87,120 sq. ft. (greater than one acre to two acres) of Surface Water Impact (Wetlands, Streams and/or Open Water)	\$1,200 plus \$120 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 43,560 sq. ft. (one acre) (\$2,400 maximum)
VWP General/Minimum Instream Flow/Reservoir - Water withdrawals and/or pond construction	\$2,400

208 4. The fee for filing a registration statement for coverage under a VPDES general permit  
 209 issued as a regulation adopted by the board or an industrial stormwater permit issued by  
 210 the board department shall be \$500.

211 5. Except as specified in subdivisions 1, 2, 3 and 4 of this section, the fee for filing an  
 212 application or registration statement for coverage under any general permit issued by the  
 213 board shall be \$600.

214 **9VAC25-20-142. Permit maintenance fees.**

215 A. The following annual permit maintenance fees apply to each individual VPDES and VPA  
 216 permit, including expired permits that have been administratively continued, except those  
 217 exempted by 9VAC25-20-50 B or 9VAC25-20-60 A 4:

218 1. Base fee rate for Virginia Pollutant Discharge Elimination System (VPDES) permitted  
 219 facilities. (Note: All flows listed in the table below are facility "design" flows.)

VPDES Industrial Major	\$7,876
VPDES Municipal Major/Greater Than 10 MGD	\$7,794
VPDES Municipal Major/2 MGD - 10 MGD	\$7,138
VPDES Municipal Major/Less Than 2 MGD	\$6,317
VPDES Industrial Minor/No Standard Limits	\$3,347
VPDES Industrial Minor/Standard Limits	\$1,969
VPDES Industrial Minor/Water Treatment System	\$1,969
VPDES Industrial Stormwater	\$2,363
VPDES Municipal Minor/Greater Than 100,000 GPD	\$2,461
VPDES Municipal Minor/10,001 GPD - 100,000 GPD	\$1,969
VPDES Municipal Minor/1,001 GPD - 10,000 GPD	\$1,772
VPDES Municipal Minor/1,000 GPD or Less	\$656

220 2. Base fee rate for Virginia Pollution Abatement (VPA) permits.

VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year	\$2,461
VPA Industrial Wastewater Operation/Land Application of Less Than 10 Inches Per Year	\$1,723
VPA Industrial Sludge Operation	\$1,231
VPA Combined Sludge Operation - Industrial Sludges (excluding water treatment plant residuals) and Municipal Biosolids	\$1,231
VPA Municipal Wastewater Operation	\$2,215
VPA Municipal Biosolids Operation	\$100
VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
All other operations not specified above	\$123

221 3. The amount of the annual permit maintenance fee due from the owner for VPDES and  
 222 VPA permits for a specified year as required by 9VAC25-20-40 C shall be calculated  
 223 according to the following formulae:

$$F = B \times C$$

$$C = \frac{1 + \%u2206CPI}{CPI - 215.15}$$

$$\%u2206CPI = \frac{CPI - 215.15}{215.15}$$

224 Where:

225 F = the permit maintenance fee amount due for the specified calendar year, expressed  
226 in dollars.

227 B = the base fee rate for the type of VPDES or VPA permit from subdivision 1 or 2 of  
228 this subsection, expressed in dollars.

229 C = the Consumer Price Index adjustment factor.

230  $\%u2206CPI$  = the difference between CPI and 215.15 (the average of the Consumer  
231 Price Index values for all-urban consumers for the 12-month period ending on April  
232 30, 2009), expressed as a proportion of 215.15.

233 CPI = the average of the Consumer Price Index values for all-urban consumers for the  
234 12-month period ending on April 30 of the calendar year before the specified year for  
235 which the permit maintenance fee is due. (The Consumer Price Index for all-urban  
236 consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics,  
237 U.S. All items, CUUR0000SA0).

238 For example, if calculating the 2010 permit maintenance fee (F) for a VPDES Industrial  
239 Major source:

240 CPI = 215.15 (the average of CPI values from May 1, 2008, to April 30, 2009, inclusive  
241 would be used for the 2010 permit maintenance fee calculation).

242  $\%u2206CPI$  = zero for the 2010 permit maintenance fee calculation (i.e.,  $(CPI -$   
243  $215.15)/215.15 = (215.15 - 215.15)/215.15 = 0$ ). (Note:  $\%u2206CPI$  for other years  
244 would not be zero.)

245 C = 1.0 for the 2010 permit maintenance fee calculation (i.e.,  $1 + \%u2206CPI = 1 + 0$   
246  $= 1.0$ ).

247 B = \$7,876 (i.e. the value for a VPDES Industrial Major source, taken from subdivision  
248 1 of this subsection).

249 F = \$7,876 for the 2010 permit maintenance fee calculation for this VPDES Industrial  
250 Major source (i.e.,  $\$7,876 \times 1.0 = \$7,876$ ).

251 4. Permit maintenance fees (F) calculated for each facility shall be rounded to the nearest  
252 dollar.

253 5. The total amount of permit fees collected by the ~~board~~ department (permit maintenance  
254 fees plus permit application fees) shall not exceed 50% of direct costs for administration,  
255 compliance, and enforcement of VPDES and VPA permits. The director shall take  
256 whatever action is necessary to ensure that this limit is not exceeded.

257 B. Additional permit maintenance fees.

258 1. An additional permit maintenance fee of \$1,000 shall be paid annually by permittees in  
259 a toxics management program. Any facility that performs acute or chronic biological testing  
260 for compliance with a limit or special condition requiring monitoring in a VPDES permit is  
261 included in the toxics management program.

262 2. An additional permit maintenance fee of \$1,000 shall be paid annually by permittees  
263 that have more than five process wastewater discharge outfalls at a single facility (not  
264 including "internal" outfalls).

265 3. For a local government or public service authority with permits for multiple facilities in a  
266 single jurisdiction, the total permit maintenance fees for all permits held as of April 1, 2004,  
267 shall not exceed \$32,818 per year.

268 C. If the category of a facility (as described in subdivision A 1 or A 2 of this section) changes  
269 as the result of a permit modification, the permit maintenance fee based upon the permit category  
270 as of April 1 shall be submitted by October 1.

271 D. Annual permit maintenance fees may be discounted for participants in the Environmental  
272 Excellence Program as described in 9VAC25-20-145.

273 **Part V**

274 **Delegation of Authority**

275 **9VAC25-20-150. Delegation of authority. (Repealed.)**

276 ~~The director, or his designee, may perform any action of the State Water Control Board~~  
277 ~~provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~





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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-40
<b>VAC Chapter title(s)</b>	Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed
<b>Action title</b>	Final Exempt CH 40 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 18, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-40) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

Changes to the regulations included adding the statutory the definition of “Board” and “Department” to the regulation to implement the new statutory requirements and changing designations from “board” to “department” where appropriate.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-40 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7262 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 40 changes in response to 2022 Board Bill**

4 **9VAC25-40-25. Definitions.**

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

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

10 "Department" means the Department of Environmental Quality.

11 "Equivalent load" means 2,300 pounds per year of total nitrogen and 300 pounds per year of  
12 total phosphorus at a flow volume of 40,000 gallons per day; 5,700 pounds per year of total  
13 nitrogen and 760 pounds per year of total phosphorus at a flow volume of 100,000 gallons per  
14 day; and 28,500 pounds per year of total nitrogen and 3,800 pounds per year of total phosphorus  
15 at a flow volume of 500,000 gallons per day.

16 "Expansion" or "expands" means initiating construction at an existing facility after July 1, 2005,  
17 to increase treatment capacity, except that the term does not apply in those cases where a  
18 Certificate to Construct was issued on or before July 1, 2005.

19 "Point source dischargers" or "dischargers" do not include permitted discharges of noncontact  
20 cooling water or storm water.

21 **9VAC25-40-40. Permit amendments.**

22 Whenever the ~~board~~ department determines that a permittee has the potential for discharging  
23 monthly average total phosphorus concentrations greater than or equal to 2.0 mg/l or monthly  
24 average total nitrogen concentrations greater than or equal to 10 mg/l to "nutrient enriched  
25 waters," the ~~board~~ department may reopen the VPDES permit to impose monitoring requirements  
26 for nutrients in the discharge.

27 **9VAC25-40-70. Strategy for Chesapeake Bay Watershed.**

28 A. As specified herein, the ~~board~~ department shall include technology-based effluent  
29 concentration limitations in the individual permit for any facility that has installed technology for  
30 the control of nitrogen and phosphorus whether by new construction, expansion, or upgrade. Such  
31 limitations shall be based upon the technology installed by the facility and shall be expressed as  
32 annual average concentrations.

33 1. Except as provided under subdivision 4 of this subsection, an owner or operator of a  
34 facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued  
35 before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per  
36 day, or an equivalent load directly into tidal waters, or 500,000 gallons or more per day,  
37 or an equivalent load, directly into nontidal waters shall install state-of-the-art nutrient  
38 removal technology at the time of the expansion and achieve an annual average total  
39 nitrogen effluent concentration of 3.0 milligrams per liter and an annual average total  
40 phosphorus effluent concentration of 0.3 milligrams per liter.

41 2. Except as provided under subdivision 4 of this subsection, an owner or operator of a  
42 facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued  
43 before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day  
44 up to and including 499,999 gallons per day, or an equivalent load, directly into nontidal  
45 waters shall install, at a minimum, biological nutrient removal technology at the time of the

46 expansion and achieve an annual average total nitrogen effluent concentration of 8.0  
47 milligrams per liter and an annual average total phosphorus effluent concentration of 1.0  
48 milligrams per liter.

49 3. Except as provided under subdivision 4 of this subsection, an owner or operator of a  
50 facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued  
51 on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent  
52 load, shall install:

53 a. At a minimum, biological nutrient removal technology at any facility authorized to  
54 discharge up to and including 99,999 gallons per day, or an equivalent load, directly  
55 into tidal and nontidal waters or up to and including 499,999 gallons per day, or an  
56 equivalent load, to nontidal waters and achieve an annual average total nitrogen  
57 effluent concentration of 8.0 milligrams per liter and an annual average total  
58 phosphorus effluent concentration of 1.0 milligrams per liter; and

59 b. State-of-the-art nutrient removal technology at any facility authorized to discharge  
60 100,000 gallons or more per day, or an equivalent load, directly into tidal waters or  
61 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters  
62 and achieve an annual average total nitrogen effluent concentration of 3.0 milligrams  
63 per liter and an annual average total phosphorus effluent concentration of 0.3  
64 milligrams per liter.

65 4. On a case-by-case basis, the ~~board~~ department may establish a technology-based  
66 standard and associated concentration limitation less stringent than the applicable  
67 standard specified in subdivision 1, 2 or 3 of this subsection, as applicable, based on a  
68 demonstration by an owner or operator that the specified standard is not technically or  
69 economically feasible for the affected facility or that the technology-based standard and  
70 associated concentration limitation would degrade receiving waters or require the owner  
71 or operator to construct treatment facilities not otherwise necessary to comply with his  
72 waste load allocation without reliance on nutrient credit exchanges pursuant to § 62.1-  
73 44.19:18 of the Code of Virginia, provided, however, the discharger must achieve an  
74 annual total nitrogen waste load allocation and an annual total phosphorus waste load  
75 allocation as required by the Water Quality Management Planning Regulation (9VAC25-  
76 720).

77 5. Any effluent limitation concerning a nutrient that is imposed under any other requirement  
78 of state or federal law or regulation that is more stringent than those established herein  
79 shall not be affected by this regulation.

80 B. In accordance with Article 1.1 (§ 10.1-1187.1 et seq.) of Chapter 11.1 of Title 10.1 of the  
81 Code of Virginia, the ~~board~~ department may approve an alternate compliance method to the  
82 technology-based effluent concentration limitations as required by subsection A of this section.  
83 Such alternate compliance method shall be incorporated into the permit of an Exemplary  
84 Environmental Enterprise (E3) facility or an Extraordinary Environmental Enterprise (E4) facility  
85 to allow the suspension of applicable technology-based effluent concentration limitations during  
86 the period the E3 or E4 facility has a fully implemented environmental management system that  
87 includes operation of installed nutrient removal technologies at the treatment efficiency levels for  
88 which they were designed.

89 C. Notwithstanding subsection A of this section, point source dischargers within the  
90 Chesapeake Bay Watershed are also governed by the Water Quality Management Planning  
91 Regulation (9VAC25-720).



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-71
<b>VAC Chapter title(s)</b>	Regulations Governing the Discharge of Sewage and Other Wastes from Boats
<b>Action title</b>	Final Exempt CH 71 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 14, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-71) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

The changes to the regulation involved a change in the definition of "Board" to implement the new statutory requirements and the addition of the statutory definition of "department".

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-71 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7241 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 71 changes in response to 2022 Board Bill**

4 **9VAC25-71-10. Definitions.**

5 For the purposes of this chapter, the following definitions apply:

6 "Act" means the Clean Water Act (33 USC § 1251 et seq.) and standards and regulations  
7 promulgated thereunder.

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

11 "Container seal" means a tamper-evident plastic or wire security device.

12 "Department" means the Department of Environmental Quality.

13 "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting,  
14 emptying, or dumping.

15 "Discharges incidental to the normal operation of a vessel" means discharges of graywater  
16 (galley, bath and shower water), bilge water, cooling water, weather deck runoff, ballast water, oil  
17 water separator effluent, and any other discharge from a properly functioning marine engine or  
18 propulsion system, shipboard maneuvering system, crew habitability system, or installed major  
19 equipment, such as an aircraft carrier elevator or catapult, or from a protective, preservative, or  
20 adsorptive application to the hull of a vessel, or a discharge in connection with the testing,  
21 maintenance, and repair of a system described above whenever the vessel is waterborne. It does  
22 not include a discharge of rubbish, trash, garbage, other such material discharged overboard or  
23 pollution.

24 "Houseboat" means a vessel that is used primarily as a residence and is not used primarily  
25 as a means of transportation.

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

28 "Macerator pump valve" means a valve in a vessel's sewage piping that in the open position  
29 allows an overboard discharge of sewage via a through-hull fitting.

30 "Marina" means any installation, operating under public or private ownership, that provides  
31 dockage or moorage for boats (exclusive of paddle or rowboats) and provides, through sale, rental  
32 or fee basis, any equipment, supply or service (fuel, electricity or water) for the convenience of  
33 the public or its lessee, renters or users of its facilities.

34 "Marine sanitation device" means any equipment installed on a boat or vessel and that is  
35 designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.

36 "No Discharge Zone" means an area where a state has received an affirmative determination  
37 from the U.S. Environmental Protection Agency that there are adequate facilities for the removal  
38 of sewage from vessels (holding tank pump-out facilities) in accordance with § 312(f)(3) of the  
39 Act, and where federal approval has been received allowing a complete prohibition of all treated  
40 or untreated discharges of sewage from all vessels;

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

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

56 "Pump-out facility" means any device, equipment or method of removing sewage from a  
57 marine sanitation device. Also it shall include any holding tanks either portable, movable or  
58 permanently installed, and any sewage treatment method or disposable equipment used to treat,  
59 or ultimately dispose of, sewage removed from boats.

60 "Sewage" means human body wastes, the wastes from toilets and other receptacles intended  
61 to receive or retain human wastes, and liquid-carried human wastes together with such industrial  
62 wastes and other liquid as may be present.

63 "State" means the Commonwealth of Virginia.

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

66 "Vessel" means every description of watercraft or other artificial contrivance used, or capable  
67 of being used on the waters of the state, including boats and houseboats regardless of size,  
68 means of propulsion or place of registry.

69 "Y-valve" means a valve in a vessel's sewage piping that in the open position allows an  
70 overboard discharge of sewage via a through-hull fitting, and in the closed position prevents an  
71 overboard discharge and retains sewage in a holding tank.





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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-200
<b>VAC Chapter title(s)</b>	Water Withdrawal Reporting
<b>Action title</b>	Final Exempt CH 200 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 14, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-200) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-200 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7238 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 200 changes in response to 2022 Board Bill**

4 **9VAC25-200-30. Applicability and exemptions.**

5 A. Applicability.

6 1. Except as stated in this section, this chapter applies to every user withdrawing  
7 groundwater or surface water in Virginia including the Potomac River abutting Virginia  
8 whose average daily withdrawal during any single month exceeds 10,000 gallons per day.  
9 Reportable withdrawals include, but are not limited to, those for public water supply,  
10 manufacturing, mining, commercial, institutional, livestock watering, artificial fish culture,  
11 and steam-electric power generation uses.

12 2. This chapter applies to every user withdrawing ground or surface water for the purpose  
13 of irrigating crops whose withdrawal exceeds 1 million gallons in any single month. Such  
14 users need not report withdrawals from ponds collecting diffuse surface water and not  
15 situated on a perennial stream as defined on U.S. Geological Survey 7.5-minute series  
16 topographic maps, unless the ponds are dug ponds which intercept the groundwater table  
17 and hence contain groundwater.

18 B. Exemptions.

19 1. This chapter does not apply to:

20 a. Users reporting under the provisions of the Groundwater Act the information here  
21 required, provided the withdrawal is gaged in accordance with this chapter;

22 b. Drydock fillings;

23 c. Withdrawals from mines or quarries made for the sole purpose of dewatering the  
24 mine or quarry, provided that the water withdrawn is not put to other beneficial uses  
25 such as, but not limited to, washing or cooling; and

26 d. Withdrawals made for the sole purpose of hydroelectric power generation, provided  
27 that the water withdrawn is not put to other beneficial uses and that none of it is  
28 consumptively used.

29 2. Users subject to the Virginia Department of Health Waterworks Regulations shall  
30 annually report to the board the source and location of water withdrawals and the type of  
31 use information required here. They may provide the monthly withdrawal data required  
32 here by reference to reports filed with the Virginia Department of Health.

33 3. Industrial VPDES permittees shall annually report to the board the source and location  
34 of water withdrawals and the type of use information required here. They may provide the  
35 monthly withdrawal data required here by reference to VPDES discharge monitoring  
36 reports filed with the ~~board~~ department provided that:

37 a. The wastewater return flow to the receiving natural water body is gaged and the  
38 total monthly volume is reported on the discharge monitoring reports;

39 b. There is no substantial temporal lag between natural water withdrawal and  
40 wastewater return;

41 c. Augmentation of the withdrawal (e.g., by collected surface run-off or  
42 infiltration/inflow) and diminution of the withdrawal (e.g., by consumption in product or  
43 evaporation) are either shown to be negligible or are separately reported pursuant to  
44 this chapter as adjustments to the wastewater return flow; and

45  
46  
47

d. The monthly wastewater return flow, adjusted as necessary in accordance with subdivision 3 c of subsection B, is volumetrically equivalent to monthly withdrawal within a tolerance of  $\pm 10\%$ .



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-220
<b>VAC Chapter title(s)</b>	Surface Water Management Area Regulation
<b>Action title</b>	Final Exempt CH 220 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 14, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-220) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits and provide procedures for public comment on pending controversial permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”; the addition of a definition for “controversial permit”; the addition of language establishing “permit rationale”; the addition of language establishing “criteria for requesting and granting a public hearing in a permit action”; the addition of language related to “controversial permits” and “controversial permits reporting”; the repeal of the delegation of authority provisions, and the correction of Code references where necessary to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

**Mandate and Impetus**

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board’s existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these statutory changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

**Statement of Final Agency Action**

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-220 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7175 - Exempt Final**2 **State Water Control Board**3 **Final exempt- CH220 Changes in response to 2022 Board bill**4 **9VAC25-220-10. Definitions.**

5 Unless a different meaning is required by the context, the following terms, as used in this  
6 chapter, shall have the following meanings:

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

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

16 "Controversial permit" means a water permitting action for which a public hearing has been  
17 granted pursuant to 9VAC25-220-170 and 9VAC25-220-175.

18 "Department" means the Department of Environmental Quality.

19 "Existing beneficial consumptive user" means a person who is currently withdrawing water  
20 from a stream for a beneficial use and not returning that water to the stream near the point from  
21 which it was taken.

22 "Investor-owned water company" means a water supplier owned by private investors which  
23 operates independently of the local government and is regulated by the Department of Health.

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

27 "Public hearing" means a fact-finding proceeding held to afford interested persons an  
28 opportunity to submit factual data, views, and arguments to the ~~board~~ department.

29 "Serious harm" means man induced reduction to the flow of a surface water resource that  
30 results in impairment of one or more beneficial uses.

31 "Surface water" means any water in the Commonwealth, except groundwater as defined in §  
32 62.1-255 of the Code of Virginia.

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

36 "Surface water withdrawal certificate" means a document issued by the ~~board~~ department as  
37 found in subsection D of § 62.1-243 of the Code of Virginia.

38 "Surface water withdrawal permit" means a document issued by the ~~board~~ department  
39 evidencing the right to withdraw surface water.

40 "Water conservation program" means a program incorporating measures or practices which  
41 will result in the alteration of water uses resulting in reduction of water losses as contemplated by  
42 subsection B of § 62.1-243 of the Code of Virginia.

43 "Water management program" means a program incorporating measures or practices which  
44 will result in the alteration of water uses resulting in reduction of water losses as contemplated by  
45 subsection C of § 62.1-243 of the Code of Virginia.

46 **9VAC25-220-15. Permit Rationale.**

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

54 **9VAC25-220-20. Purpose.**

55 This chapter delineates the procedures and requirements to be followed in connection with  
56 establishment of surface water management areas, the issuance of surface water withdrawal  
57 permits and the issuance of surface water withdrawal certificates by the ~~board~~ department  
58 pursuant to the Code of Virginia. The establishment of surface water management areas, the  
59 issuance of surface water withdrawal permits and surface water withdrawal certificates provide  
60 for the protection of beneficial uses during periods of low stream flow.

61 **9VAC25-220-40. Initiate surface water management area proceeding.**

62 A. The board upon its own motion or, in its discretion, upon receipt of a petition by any county,  
63 city or town within the surface water management area in question, or any state agency, may  
64 initiate a surface water management area proceeding whenever in its judgment there is evidence  
65 to indicate that:

- 66 1. A stream has substantial instream values as indicated by evidence of fishery,  
67 recreation, habitat, cultural or aesthetic properties;
- 68 2. Historical records or current conditions indicate that a low flow condition could occur  
69 which would threaten important instream uses; and
- 70 3. Current or potential offstream uses contribute to or are likely to exacerbate natural low  
71 flow conditions to the detriment of instream values.

72 B. If the board finds that the conditions required in subsection A of this section exist and further  
73 finds that the public welfare, health and safety require that regulatory efforts be initiated, the board  
74 shall, by regulation, declare the area in question to be a surface water management area.

75 C. In its proceeding to declare an area to be a surface water management area, the board  
76 shall, by regulation, determine when the level of flow is such that permit conditions in a surface  
77 water management area are in force. This flow level will be determined for each regulation  
78 establishing a surface water management area and included in it.

79 D. The board shall include in its decision a definition of the boundaries of the surface water  
80 management area.

81 E. The regulations may provide that the ~~board~~ department, or the ~~board-executive~~ director  
82 may by order, declare that the level of flow is such that permit conditions are applicable for all or  
83 part of a surface water management area.

84 F. The board shall follow its Public Participation Guidelines (9VAC25-11) for all hearings  
85 contemplated under this section. If after a public hearing held pursuant to § 2.2-4007.01 of the  
86 Virginia Administrative Process Act, or at the request of an affected person or on the board motion,  
87 a hearing shall be held under § 2.2-4009 of the Virginia Administrative Process Act.



88 **9VAC25-220-50. Notice of surface water management area.**

89 A. The ~~board~~ department shall cause notice of the declaration of a surface water management  
90 area to be published in a newspaper of general circulation throughout the area covered by the  
91 declaration.

92 B. The ~~board~~ department shall mail, by electronic or postal delivery, a copy of its decision on  
93 the proposed declaration of a surface water management area to the mayor or chairman of the  
94 governing body of each county, city or town within which any part of the area lies, or which is  
95 known by the ~~board~~ department to make offstream use of water from the area, and to the chief  
96 administrative officer of any federal facility known by the ~~board~~ department to be using water from  
97 within the area.

98 **9VAC25-220-60. Agreements.**

99 A. The ~~board~~ department shall encourage, promote and recognize voluntary agreements  
100 among persons withdrawing surface water in the same surface water management area.

101 B. When the ~~board~~ department finds that any such agreement, executed in writing and filed  
102 with the ~~board~~ department, is consistent with the intent, purposes and requirements of this  
103 chapter, the ~~board~~ department shall approve the agreement following a public hearing.

104 C. The ~~board~~ department shall provide at least 60 days' notice of the public hearing to the  
105 public in general and individually to those persons withdrawing surface water in the surface water  
106 management area who are not parties to the agreement and shall make a good faith effort to so  
107 notify recreational user groups, conservation organizations and fisheries management agencies.  
108 The ~~board~~ department shall be a party to the agreement.

109 D. The agreement, until terminated, shall control in lieu of a formal order, rule, ~~regulation~~, or  
110 permit issued by the ~~board~~ department or a regulation adopted by the board under the provisions  
111 of this chapter and shall be deemed to be a case decision under the Administrative Process Act  
112 (§ 2.2-4000 et seq. of the Code of Virginia). Permits issued in accordance with this chapter shall  
113 incorporate the terms of this agreement.

114 E. Any agreement shall specify the amount of water affected by it.

115 F. Any agreement approved by the ~~board~~ department may include conditions that can result  
116 in its amendment or termination by the ~~board~~ department, following a public hearing if the ~~board~~  
117 department finds that it or its effect is inconsistent with the intent, purposes and requirements of  
118 this chapter. Such conditions include the following:

- 119 1. A determination by the ~~board~~ department that the agreement originally approved by the  
120 ~~board~~ department will not further the purposes of this chapter;
- 121 2. A determination by the ~~board~~ department that circumstances have changed such that  
122 the agreement originally approved by the ~~board~~ department will no longer further the  
123 purposes of this chapter; or
- 124 3. One or more of the parties to the agreement is not fulfilling its commitments under the  
125 agreement.

126 The ~~board~~ department shall provide at least 60 days' notice of the public hearing to the public  
127 and individually to those persons withdrawing surface water in the surface water management  
128 area who are not parties to the agreement and shall make a good faith effort to so notify  
129 recreational user groups, conservation organizations and fisheries management agencies.

130 **9VAC25-220-70. Application for a permit.**

131 A. Duty to apply. Any person who withdraws surface water or proposes to withdraw surface  
132 water in a surface water management area must have a surface water withdrawal permit, except  
133 persons excluded under subsection B of this section or exempted under subsection C of this  
134 section, or withdrawals made pursuant to a voluntary agreement approved by the ~~board~~

135 department pursuant to 9VAC25-220-60. A complete application shall be submitted to the ~~board~~  
136 department in accordance with this section.

137 B. Exclusions. The following do not require a surface water withdrawal permit but may require  
138 other permits under state and federal law:

- 139 1. Any nonconsumptive use;
- 140 2. Any water withdrawal of less than 300,000 gallons in any single month;
- 141 3. Any water withdrawal from a farm pond collecting diffuse surface water and not situated  
142 on a perennial stream as defined in the United States Geological Survey 7.5-minute series  
143 topographic maps;
- 144 4. Any withdrawal in any area which has not been declared a surface water management  
145 area; and
- 146 5. Any withdrawal from a wastewater treatment system permitted by the ~~State Water~~  
147 ~~Control Board~~ Department of Environmental Quality or the Department of Energy.

148 C. Exemptions. The following do not require a surface water withdrawal permit but may require  
149 other permits under state and federal law. However, the following do require a surface water  
150 withdrawal certificate containing details of a ~~board~~ department approved water conservation or  
151 management plan as found in subdivision 2 of 9VAC25-220-100 and Part V (9VAC25-220-250 et  
152 seq.) of this chapter. It is not the intent or purpose of this certification program to affect the  
153 withdrawal of water approved by the ~~board~~ department.

154 1. No political subdivision or investor-owned water company permitted by the Department  
155 of Health shall be required to obtain a surface water withdrawal permit for:

156 a. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in  
157 a declared surface water management area before the daily rate of any such existing  
158 withdrawal is increased beyond the maximum daily withdrawal made before July 1,  
159 1989.

160 b. Any withdrawal not in existence on July 1, 1989, if the person proposing to make  
161 the withdrawal has received, by that date, a § 401 certification from the State Water  
162 Control Board pursuant to the requirements of the Clean Water Act to install any  
163 necessary withdrawal structures and make such withdrawal; however, a permit shall  
164 be required in any surface water management area before any such withdrawal is  
165 increased beyond the amount authorized by the said certification.

166 c. Any withdrawal in existence on July 1, 1989, from an instream impoundment of  
167 water used for public water supply purposes; however, during periods when permit  
168 conditions in a water management area are in force pursuant to subsection G of  
169 9VAC25-220-80 and 9VAC25-220-190, and when the rate of flow of natural surface  
170 water into the impoundment is equal to or less than the average flow of natural surface  
171 water at that location, the ~~board~~ department may require release of water from the  
172 impoundment at a rate not exceeding the existing rate of flow of natural surface water  
173 into the impoundment. Withdrawals by a political subdivision or investor-owned water  
174 company permitted by the Department of Health shall be affected by this subdivision  
175 only at the option of that political subdivision or investor-owned water company.

176 2. No existing beneficial consumptive user shall be required to obtain a surface water  
177 withdrawal permit for:

178 a. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in  
179 a declared surface water management area before the daily rate of any such existing  
180 withdrawal is increased beyond the maximum daily withdrawal made before July 1,  
181 1989; and

182 b. Any withdrawal not in existence on July 1, 1989, if the person proposing to make  
183 the withdrawal has received, by that date, a § 401 certification from the State Water  
184 Control Board pursuant to the requirements of the Clean Water Act to install any  
185 necessary withdrawal structures and make such withdrawals; however, a permit shall  
186 be required in any surface water management area before any such withdrawal is  
187 increased beyond the amount authorized by the said certification.

188 D. Duty to reapply.

189 1. Any permittee with an effective permit shall submit a new permit application at least 180  
190 days before the expiration date of an effective permit unless permission for a later date  
191 has been granted by the ~~board~~ department.

192 2. Owners or persons who have effective permits shall submit a new application 180 days  
193 prior to any proposed modification to their activity which will:

194 a. Result in a significantly new or substantially increased water withdrawal; or

195 b. Violate or lead to the violation of the terms and conditions of the permit.

196 E. Complete application required.

197 1. Any person proposing to withdraw water shall submit a complete application and secure  
198 a permit prior to the date planned for commencement of the activity resulting in the  
199 withdrawal. There shall be no water withdrawal prior to the issuance of a permit.

200 2. Any person reapplying to withdraw water shall submit a complete application.

201 3. A complete surface water withdrawal permit application to the ~~State Water Control~~  
202 ~~Board~~ department shall, as a minimum, consist of the following:

203 a. The location of the water withdrawal, including the name of the waterbody from  
204 which the withdrawal is being made;

205 b. The average daily withdrawal, the maximum proposed withdrawal, and any  
206 variations of the withdrawal by season including amounts and times of the day or year  
207 during which withdrawals may occur;

208 c. The use for the withdrawal, including the importance of the need for this use;

209 d. Any alternative water supplies or water storage; and

210 e. If it is determined that special studies are needed to develop a proper instream flow  
211 requirement, then additional information may be necessary.

212 4. Where an application is considered incomplete, the ~~board~~ department may require the  
213 submission of additional information after an application has been filed and may suspend  
214 processing of any application until such time as the applicant has supplied missing or  
215 deficient information and the ~~board~~ department considers the application complete.  
216 Further, where the applicant becomes aware that he omitted one or more relevant facts  
217 from a permit application, or submitted incorrect information in a permit application or in  
218 any report to the ~~board~~ department, he shall immediately submit such facts or the correct  
219 information.

220 5. Any person proposing to withdraw water shall submit an application for a permit 180  
221 days prior to the date planned for commencement of the activity resulting in the withdrawal.  
222 There shall be no water withdrawal prior to the issuance of a permit.

223 6. Any person with an existing unpermitted water withdrawal operation shall submit an  
224 application immediately upon discovery by the owner or within 30 days upon being  
225 requested to by the ~~board~~ department whichever comes first.

226 F. Informational requirements. All applicants for a surface water withdrawal permit shall  
227 provide all such information consistent with this chapter as the ~~board~~ department deems

228 necessary. All applicants for a permit must submit a complete permit application in accordance  
 229 with subsection A of this section.

230 **9VAC25-220-80. Conditions applicable to all permits.**

231 A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this  
 232 chapter shall be construed to relieve the surface water withdrawal permit holder of the duty to  
 233 comply with all applicable federal and state statutes, regulations, standards and prohibitions. Any  
 234 permit noncompliance is a violation of the law and is grounds for enforcement action, permit  
 235 suspension, cancellation, revocation, modification or denial of a permit renewal application.

236 B. Duty to mitigate. The permittee shall take all reasonable steps to (i) avoid all adverse  
 237 environmental impact which could result from the activity, (ii) where avoidance is impractical,  
 238 minimize the adverse environmental impact, and (iii) where impacts cannot be avoided, provide  
 239 mitigation of the adverse impact on an in-kind basis.

240 C. Permit action.

241 1. A permit may be modified, revoked, suspended, cancelled, reissued, or terminated as  
 242 set forth in this chapter.

243 2. If a permittee files a request for permit modification, suspension or cancellation, or files  
 244 a notification of planned changes, or anticipated noncompliance, the permit terms and  
 245 conditions shall remain effective until the request is acted upon by the ~~board~~ department.  
 246 This provision shall not be used to extend the expiration date of the effective permit.

247 3. Permits may be modified, revoked and reissued or terminated upon the request of the  
 248 permittee, or upon ~~board~~ department initiative to reflect the requirements of any changes  
 249 in the statutes or regulations.

250 D. Inspection and entry. Upon presentation of credentials and upon consent of the owner or  
 251 custodian, any duly authorized agent of the ~~board~~ department may, at reasonable times and under  
 252 reasonable circumstances:

253 1. Enter upon any permittee's property, public or private, and have access to, inspect and  
 254 copy any records that must be kept as part of the permit conditions;

255 2. Inspect any facilities, operations or practices including monitoring and control  
 256 equipment regulated or required under the permit.

257 E. Duty to provide information. The permittee shall furnish to the ~~board~~ department, within a  
 258 reasonable time, any information which the ~~board~~ department may request to determine whether  
 259 cause exists for modifying, reissuing, suspending and cancelling the permit, or to determine  
 260 compliance with the permit. The permittee shall also furnish to the ~~board~~ department, upon  
 261 request, copies of records required to be kept by the permittee. This information shall be furnished  
 262 to the ~~board~~ department pursuant to § 62.1-244 of the Code of Virginia.

263 F. Monitoring and records requirements.

264 1. Monitoring shall be conducted according to approved methods as specified in the permit  
 265 or as approved by the ~~board~~ department.

266 2. Measurements taken for the purpose of monitoring shall be representative of the  
 267 monitored activity.

268 3. The permittee shall retain records of all monitoring information, including all calibration  
 269 and maintenance records and all original strip chart or electronic recordings for continuous  
 270 monitoring instrumentation, copies of all reports required by the permit, and records of all  
 271 data used to complete the application for the permit, for a period of at least three years  
 272 from the date of the expiration of a granted permit. This period may be extended by request  
 273 of the ~~board~~ department at any time.

274 4. Records of monitoring information shall include:

- 275 a. The date, exact place and time of measurements;  
 276 b. The name of the individuals who performed the measurements;  
 277 c. The date the measurements were compiled;  
 278 d. The name of the individuals who compiled the measurements;  
 279 e. The techniques or methods supporting the information such as observations,  
 280 readings, calculations and bench data used; and  
 281 f. The results of such techniques or methods.

282 G. Permit conditions become applicable.

283 1. Permit conditions become applicable in a surface water management area upon notice  
 284 by the ~~board~~ department to each permittee by mail, by electronic or postal delivery, or  
 285 cause notice of that to be published in a newspaper of general circulation throughout the  
 286 area.

287 2. The ~~board~~ department shall notify each permittee by mail or cause notice of that to be  
 288 published in a newspaper of general circulation throughout the surface water management  
 289 area when the declaration of water shortage is rescinded.

290 **9VAC25-220-90. Signatory requirements.**

291 Any application, report, or certification shall be signed as follows:

292 1. Application.

293 a. For a corporation: by a responsible corporate official. For purposes of this section,  
 294 a responsible corporate official means (i) a president, secretary, treasurer, or vice-  
 295 president of the corporation in charge of a principal business function, or any other  
 296 person who performs similar policy or decision making functions for the corporation,  
 297 or (ii) the manager of one or more manufacturing, production, or operating facilities  
 298 employing more than 250 persons or having gross annual sales or expenditures  
 299 exceeding \$25,000,000 in second-quarter 1980 dollars, if authority to sign documents  
 300 has been assigned or delegated to the manager in accordance with corporate  
 301 procedures.

302 b. For a municipality, state, federal or other public agency by either a principal  
 303 executive officer or ranking elected official. A principal executive officer of a federal,  
 304 municipal, or state agency includes the chief executive officer of the agency or head  
 305 executive officer having responsibility for the overall operation of a principal  
 306 geographic unit of the agency.

307 c. For a partnership or sole proprietorship, by a general partner or proprietor  
 308 respectively.

309 d. Any application for a permit under this regulation must bear the signatures of the  
 310 responsible party and any agent acting on the responsible party's behalf.

311 2. Reports. All reports required by permits and other information requested by the ~~board~~  
 312 department shall be signed by:

313 a. One of the persons described in subdivision a, b or c of this section; or

314 b. A duly authorized representative of that person. A person is a duly authorized  
 315 representative only if:

316 (1) The authorization is made in writing by a person described in subdivision a, b, or c  
 317 of this section; and

318 (2) The authorization specifies either an individual or a position having responsibility  
 319 for the overall operation of the regulated facility or activity, such as the position of plant  
 320 manager, superintendent, or position of equivalent responsibility. A duly authorized

321 representative may thus be either a named individual or any individual occupying a  
322 named position.

323 (3) If an authorization is no longer accurate because a different individual or position  
324 has responsibility for the overall operation of the facility, a new authorization shall be  
325 submitted to the ~~board~~ department prior to or together with any separate information,  
326 or applications to be signed by an authorized representative.

327 3. Certification of application and reports. Any person signing a document under  
328 subdivision 1 or 2 of this section shall make the following certification: "I certify under  
329 penalty of law that this document and all attachments were prepared under my direction  
330 or supervision in accordance with a system designed to assure that qualified personnel  
331 properly gather and evaluate the information submitted. Based on my inquiry of the person  
332 or persons who manage the system or those persons directly responsible for gathering  
333 the information, the information submitted is to the best of my knowledge and belief true,  
334 accurate, and complete."

335 **9VAC25-220-100. Establishing applicable limitations or other permit conditions.**

336 In addition to the conditions established in 9VAC25-220-80, each permit shall include  
337 conditions meeting the following requirements where applicable:

338 1. Instream flow conditions.

339 a. Subject to the provisions of § 62.1-242 et seq. of the Code of Virginia and subject  
340 to the authority of the State Corporation Commission over hydroelectric facilities  
341 contained in § 62.1-80 et seq. of the Code of Virginia instream flow conditions may  
342 include but are not limited to conditions that limit the volume and rate at which water  
343 may be withdrawn at certain times and conditions that require water conservation and  
344 reductions in water use.

345 b. This flow requirement shall be appropriate for the protection of beneficial uses.

346 c. In determining the level of flow in need of protection of beneficial uses, the ~~board~~  
347 department shall consider, among other things, recreation and aesthetic factors and  
348 the potential for substantial and long-term adverse impact on fish and wildlife found in  
349 that particular surface water management area. Should this determination indicate a  
350 need to restrict water withdrawal, the ~~board~~ department shall consider, among other  
351 things, the availability of alternative water supplies, the feasibility of water storage or  
352 other mitigating measures, and the socioeconomic impacts of such restriction on the  
353 potentially affected water users and on the citizens of the Commonwealth in general.

354 2. Water conservation or management plans.

355 a. Subject to the provisions of § 62.1-242 et seq. of the Code of Virginia permit  
356 conditions may include voluntary and mandatory conservation measures.

357 b. Political subdivisions and investor-owned water companies shall have water  
358 conservation plans which shall include, but not be limited to, the following:

359 (1) Use of water saving plumbing fixtures in new and renovated plumbing as provided  
360 under the Uniform Statewide Building Code, Chapter 6 (§ 36-97 et seq.) of Title 36 of  
361 the Code of Virginia;

362 (2) A water loss reduction program;

363 (3) A water use education program; and

364 (4) Ordinances prohibiting waste of water generally and providing for mandatory water  
365 use restrictions, with penalties during water shortage emergencies.

366 c. Beneficial consumptive users shall have water management plans which shall  
367 include, but not be limited to, the following:

- 368 (1) Use of water saving plumbing;  
 369 (2) A water loss reduction program;  
 370 (3) A water use education program; and  
 371 (4) Mandatory reductions during water shortage emergencies. However, these  
 372 reductions shall be on an equitable basis with other uses exempted under subsection  
 373 C of 9VAC25-220-70.
- 374 3. Compliance requirements. The permit shall include requirements to comply with all  
 375 appropriate provisions of state laws and regulations.
- 376 4. Duration of permits. Surface water withdrawal permits issued under this chapter shall  
 377 have an effective duration of not more than 10 years. The term of these permits shall not  
 378 be extended by modification beyond the maximum duration. Extension of permits for the  
 379 same activity beyond the maximum duration specified in the original permit will require  
 380 reapplication and reissuance of a new permit.
- 381 5. Monitoring requirements as conditions of permits.
- 382 a. All permits shall specify:
- 383 (1) Requirements concerning the proper use, maintenance and installation, when  
 384 appropriate, of monitoring equipment or methods when required as a condition of the  
 385 permit; and
- 386 (2) Required monitoring including type, intervals, and frequency sufficient to yield data  
 387 which are representative of the monitored activity and including, when appropriate,  
 388 continuous monitoring.
- 389 b. All permits shall include requirements to report monitoring results with a frequency  
 390 dependent on the nature and effect of the water withdrawal, but in no case less than  
 391 once per year.
- 392 6. Reissued permits. When a permit is renewed or reissued, limitations or conditions must  
 393 be in conformance with current limitations or conditions.

394 **9VAC25-220-110. Draft permit formulation.**

395 A. Upon receipt of a complete application, pursuant to subsection A of 9VAC25-220-70, the  
 396 ~~board~~ department shall review the application and make a tentative determination to issue the  
 397 permit or deny the application. In considering whether to issue or deny a permit under this section,  
 398 the ~~board~~ department shall consider:

- 399 1. The number of persons using a stream and the object, extent and necessity of their  
 400 representative withdrawal uses;
- 401 2. The nature and size of the stream;
- 402 3. The type of businesses or activities to which the various uses are related;
- 403 4. The importance and necessity of the uses claimed by permit applicants, or of the water  
 404 uses of the area and the extent of any injury or detriment caused or expected to be caused  
 405 to instream or offstream uses;
- 406 5. The effects on beneficial uses; and
- 407 6. Any other relevant factors.

408 B. If a tentative decision is to issue the permit then a draft permit shall be prepared in advance  
 409 of public notice. The following tentative determinations shall be incorporated into a draft permit:

- 410 1. The level of flow that activates the permit conditions, water withdrawal limitations, and  
 411 other requirements applicable to the permit;
- 412 2. Monitoring requirements;

- 413 3. Instream flow requirements; and  
 414 4. Water conservation or management requirements.

415 C. If the tentative decision is to deny the application, the ~~board~~ department shall do so in  
 416 accordance with 9VAC25-220-240.

417 **9VAC25-220-120. Permit issuance.**

418 A. Upon completion of all public involvement and consideration of all comments, the ~~executive~~  
 419 director may grant the permit, ~~or, at his discretion, transmit the application, together with all written~~  
 420 ~~comments thereon and relevant staff documents and staff recommendations, if any, to the board~~  
 421 ~~for its decision.~~

422 B. Permits issued by priority system.

423 1. For the purposes of this chapter, the following water-use classification system based  
 424 on beneficial uses, instream and offstream, shall be used by the ~~board~~ department when  
 425 issuing permits:

426 a. Class I uses are domestic (including public water supply). Class I uses are all  
 427 existing uses as of July 1, 1989. Included among existing uses shall be any projected  
 428 use which has been relied upon in the development of an industrial project and for  
 429 which a permit has been obtained by January 1, 1989, pursuant to § 404 of the Clean  
 430 Water Act;

431 b. Class II uses are new uses, not existing on July 1, 1989. These uses include both  
 432 instream uses, protection of fish and wildlife habitat, maintenance of waste  
 433 assimilation and offstream uses, agriculture, electric power generation, commercial  
 434 and industrial; and

435 c. Class III uses are new uses not existing on July 1, 1989. They include, but are not  
 436 limited to, recreation, navigation, and cultural and aesthetic values.

437 2. Class I uses shall be given the highest priority in the issuance of permits for other  
 438 beneficial uses. Class II and Class III uses are of decreasing priority respectively.

439 3. The ~~board~~ department may impose restrictions on one or more classes of beneficial  
 440 uses as may be necessary to protect the surface water resources of the area from serious  
 441 harm.

442 4. In its permit decision, the ~~board~~ department shall attempt to balance offstream and  
 443 instream uses so that the welfare of the citizens of the Commonwealth is maximized  
 444 without imposing unreasonable burdens on any individual water user or water-user group.  
 445 The decision to implement this balance may consist of approval of withdrawal without  
 446 restriction, approval subject to conditions designed to protect instream uses from  
 447 unacceptable adverse effects, or disapproval of the withdrawal.

448 **9VAC25-220-140. Variances and alternative measures.**

449 A. Variances may be applied for, and alternative measures may be used to:

- 450 1. Prevent undue hardship; and  
 451 2. Ensure equitable distribution of water resources.

452 B. Alternative measures may include, but are not limited to, the following:

- 453 1. Alternative or secondary water source;  
 454 2. Water storage during times of minimum use and high stream flow;  
 455 3. Ponds, pits, ditches and basins when the sole source of water is storm water run-off;  
 456 and  
 457 4. Vary water withdrawal based on time of day, the season or the stream flow.

458 C. The ~~board~~ department must approve all variances and use of alternative measures.



459 **9VAC25-220-150. Public notice of permit action and public comment period.**

460 A. Every draft permit shall be given public notice paid for by the owner, by publication once in  
461 a newspaper of general circulation in the area affected by the withdrawal.

462 B. The ~~board~~ department shall allow a period of at least 30 days following the date of the  
463 public notice for interested persons to submit written comments on the tentative decision and to  
464 request a public hearing.

465 C. The contents of the public notice of an application for a permit, or proposed permit action  
466 shall include:

- 467 1. Name and address of the applicant. If the location of the activity resulting in the  
468 withdrawal of water differs from the address of the applicant the notice shall also state the  
469 location of the withdrawal in sufficient detail such that the specific location may be easily  
470 identified;
- 471 2. Brief description of the business or activity to be conducted at the withdrawal site;
- 472 3. The name of the affected waterway;
- 473 4. A statement of the tentative determination to issue or deny a permit;
- 474 5. A brief description of the final determination procedure;
- 475 6. The address and phone number of a specific person at the state office from whom  
476 further information may be obtained; and
- 477 7. A brief description on how to submit comments and request a public hearing.

478 **9VAC25-220-170. Public comments and hearing.**

479 A. The ~~board~~ department shall provide a comment period of at least 30 days following the  
480 date of public notice of the formulation of a draft permit during which interested persons may  
481 submit written comments and requests for an informal hearing on the proposed permit. All written  
482 comments submitted during the comment period shall be retained by the ~~board~~ department and  
483 considered during its final decision process.

484 B. The ~~executive~~ director shall consider all written comments and requests for an informal  
485 hearing received during the comment period, and shall make a determination on the necessity of  
486 an informal hearing in accordance with ~~9VAC25-230-50. All proceedings, informal hearings and~~  
487 ~~decisions therefrom will be in accordance with Procedural Rule No. 1 (9VAC25-230-10 et seq.)~~  
488 9VAC25-220-175.

489 C. Should the ~~executive~~ director, in accordance with ~~Procedural Rule No. 1 (9VAC25-230-10~~  
490 ~~et seq.)~~ 9VAC25-220-175, determine to dispense with the informal hearing, he may grant the  
491 permit, ~~or, at his discretion, transmit the proposal, application or request, together with all written~~  
492 ~~comments thereon and relevant staff documents and staff recommendations, if any, to the board~~  
493 ~~for its decision.~~

494 **9VAC25-220-175. Criteria for requesting and granting a public hearing in a permit action.**

495 A. During the public comment period on a permit action in those instances where a public  
496 hearing is not mandatory under state or federal law or regulation, interested persons may request  
497 a public hearing to contest the action or terms and conditions of the permit.

498 B. Requests for a public hearing shall contain the following information:

- 499 1. The name and postal mailing or email address of the requester,
- 500 2. The names and addresses of all persons for whom the requester is acting as a  
501 representative,
- 502 3. The reason for the request for a public hearing,
- 503 4. A brief, informal statement setting forth the factual nature and extent of the interest of  
504 the requester or the persons for whom the requester is acting as representative in the

505 application or tentative determination, including an explanation of how and to what extent  
506 such interest would be directly and adversely affected by the issuance, denial,  
507 modification, or revocation of the permit in question, and,

508 5. Where possible, specific references to the terms and conditions of the permit in  
509 question, together with suggested revisions and alterations to those terms and conditions  
510 that the requester considers are needed to conform the permit to the intent and provisions  
511 of the basic laws of the State Water Control Board.

512 C. Upon completion of the public comment period on a permit action, the director shall review  
513 all timely requests for public hearing filed during the comment period on the permit action, and  
514 within 30 calendar days following the expiration of the time period for the submission of requests,  
515 shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director  
516 finds the following:

517 1. That there is a significant public interest in the issuance, denial, modification, or  
518 revocation of the permit in question as evidenced by receipt of a minimum of 25 individual  
519 requests for a public hearing.

520 2. That the requesters raise substantial, disputed issues relevant to the issuance, denial,  
521 modification, or revocation of the permit in question, and,

522 3. That the action requested by the interested party is not on its face inconsistent with, or  
523 in violation of, the basic laws of the State Water Control Board for a water permit action,  
524 federal law, or any regulation promulgated thereunder.

525 D. The director of DEQ shall notify by email or mail at his last known address: (i) each  
526 requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

527 E. If the request for a public hearing is granted, the director shall:

528 1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the  
529 notice of the decision to grant the public hearing.

530 2. Cause, or require the applicant to publish, notice of a public hearing to be published  
531 once, in a newspaper of general circulation in the city or county where the facility or  
532 operation that is the subject of the permit or permit application is located, at least 30 days  
533 before the hearing date.

534 F. The public comment period shall remain open for 15 days after the close of the public  
535 hearing if required by § 62.1-44.15:01 of the Code of Virginia.

536 G. The director may, at his discretion, convene a public hearing in a permit action.

537 **9VAC25-220-180. Public notice of hearing.**

538 A. Public notice of any informal hearing held pursuant to 9VAC25-220-170 and 9VAC25-220-  
539 175 shall be circulated as follows:

540 1. Notice shall be published once in a newspaper of general circulation in the county or  
541 city where the activity is to occur; and

542 2. Notice of the informal hearing shall be sent to all persons and government agencies  
543 which received a copy of the notice of proposed regulation or permit application and to  
544 those persons requesting an informal hearing or having commented in response to the  
545 public notice.

546 B. Notice shall be effected pursuant to subdivisions A 1 and 2 above at least 30 days in  
547 advance of the informal hearing.

548 C. The content of the public notice of any hearing held pursuant to 9VAC25-220-170 and  
549 9VAC25-220-175 shall include at least the following:

- 550 1. Name and address of each person whose application will be considered at the informal  
551 hearing and a brief description of the person's activities or operations;
- 552 2. The precise location of such activity and the state surface waters that will or may be  
553 affected. The location should be described, where possible, with reference to route  
554 numbers, road intersections, map coordinates or similar information;
- 555 3. A brief reference to the public notice issued for the permit application, including  
556 identification number and date of issuance of the permit application unless the public  
557 notice includes the informal hearing notice;
- 558 4. Information regarding the time and location for the informal hearing;
- 559 5. The purpose of the informal hearing;
- 560 6. A concise statement of the relevant water withdrawal issues raised by the persons  
561 requesting the informal hearing;
- 562 7. Contact person and the address of the ~~State Water Control Board~~ Department of  
563 Environmental Quality office at which the interested persons may obtain further  
564 information, request a copy of the draft permit prepared pursuant to 9VAC25-220-110;  
565 and
- 566 8. A brief reference to the rules and procedures to be followed at the informal hearing.

567 D. The public comment period shall remain open for 15 days after the close of the public  
568 hearing if required by §62.1-44.15:01 of the Code of Virginia.

569 **9VAC25-220-185. Controversial Permits.**

570 Before rendering a final decision on a controversial permit, the department shall publish a  
571 summary of public comments received during the applicable public comment period and public  
572 hearing. After such publication, the department shall publish responses to the public comment  
573 summary and hold a public hearing to provide an opportunity for individuals who previously  
574 commented, either at a public hearing or in writing during the applicable public comment period,  
575 to respond to the department's public comment summary and response. No new information will  
576 be accepted at that time. In making its decision, the department shall consider: (i) the verbal and  
577 written comments received during the comment period and the public hearing made part of the  
578 record, (ii) any commentary of the board, and (iii) the agency files.

579 **9VAC25-220-187. Controversial permits reporting.**

580 At each regular meeting of the board, the department shall provide an overview and update  
581 regarding any controversial permits pending before the department that are relevant. Immediately  
582 after such presentation by the department, the board shall have an opportunity to respond to the  
583 department's presentation and provide commentary regarding such pending permits.

584 **9VAC25-220-190. Public notice that permit conditions are in force.**

585 A. When permit conditions become applicable in a surface water management area, the ~~board~~  
586 department shall notify each permittee by mail, electronic or postal delivery, or cause notice of it  
587 to be published in a newspaper of general circulation throughout the area.

588 B. The ~~board~~ department shall notify each permittee by mail, electronic or postal delivery, or  
589 cause notice of it to be published in a newspaper of general circulation throughout the surface  
590 water management area when the declaration of water shortage is rescinded.

591 **9VAC25-220-200. Rules for modification, revocation and reissuance, suspension,**  
592 **cancellation and denial.**

593 Permits shall be modified, revoked and reissued, suspended, or cancelled only as authorized  
594 by this section as follows:

- 595 1. A permit may be modified in whole or in part, revoked and reissued, suspended, or  
596 cancelled.
- 597 2. Permit modifications shall not be used to extend the term of a permit.
- 598 3. Modification, revocation and reissuance, suspension, or cancellation may be initiated  
599 by the ~~board~~ department, permittee, or other person, under applicable laws or the  
600 provisions of this chapter.
- 601 4. After public notice and opportunity for a formal hearing pursuant to 9VAC25-230-100,  
602 a permit can be suspended or cancelled whenever the ~~board~~ department finds that the  
603 holder of a permit is willfully violating any provision of such permit or any other provision  
604 of § 62.1-242 et seq. of the Code of Virginia. Whenever a permit is suspended the  
605 conditions to lift the suspension will be included in the ~~board's~~ department's decision. The  
606 determination to suspend, cancel or impose conditions on its future use in order to prevent  
607 future violations shall be based on the seriousness of the offense, the permittee's past  
608 record, the effect on beneficial uses, the effect on other users in the area and any other  
609 relevant factors. The causes for suspension or cancellation are as follows:
- 610 a. Willful noncompliance by the permittee with any condition of the permit;
- 611 b. The permittee's failure in the application or during the permit issuance process to  
612 disclose fully all relevant facts or the permittee's misrepresentation of any relevant  
613 facts at any time;
- 614 c. The permittee's violation of a special or judicial order; and
- 615 d. A determination that the permitted activity endangers human health or the  
616 environment and can be regulated to acceptable levels by permit modification or  
617 cancellation.
- 618 5. In considering whether to modify, revoke and reissue, or deny a permit under this  
619 section, the ~~board~~ department shall consider:
- 620 a. The number of persons using a stream and the object, extent and necessity of their  
621 representative withdrawal uses;
- 622 b. The nature and size of the stream;
- 623 c. The type of businesses or activities to which the various uses are related;
- 624 d. The importance and necessity of the uses claimed by permit applicants, or of the  
625 water uses of the area and the extent of any injury or detriment caused or expected to  
626 be caused to instream or offstream uses;
- 627 e. The effects on beneficial uses; and
- 628 f. Any other relevant factors.

629 **9VAC25-220-210. Causes for modification.**

630 A permit may be modified, but not revoked and reissued, except when the permittee agrees  
631 or requests, when any of the following developments occur:

- 632 1. When additions or alterations have been made to the affected facility or activity which  
633 require the application of permit conditions that differ from those of the existing permit or  
634 are absent from it;
- 635 2. When new information becomes available about the operation or withdrawal covered  
636 by the permit which was not available at permit issuance and would have justified the  
637 application of different permit conditions at the time of permit issuance;
- 638 3. When a change is made in the methodology or regulations on which the permit was  
639 based;

640 4. When it becomes necessary to change final dates in schedules due to circumstances  
 641 over which the permittee has little or no control such as acts of God, materials shortages,  
 642 etc. However, in no case may a compliance schedule be modified to extend beyond any  
 643 applicable statutory deadline of the Act;

644 5. When the ~~board~~ department determines that minimum instream flow levels resulting  
 645 from the permittee's withdrawal of water is detrimental to the instream beneficial use and  
 646 that the withdrawal of water should be subject to further net limitations; and

647 6. When other states were not notified of the change in the permit and their waters may  
 648 be affected by the withdrawal.

649 **9VAC25-220-220. Transferability of permits.**

650 A. Transfer by modification. Except as provided for under automatic transfer in subsection B  
 651 of this section, a permit shall be transferred only if the permit has been modified to reflect the  
 652 transfer or has been revoked and reissued to the new owner.

653 B. Automatic transfer. Any permit shall be automatically transferred to a new user if:

654 1. The current user notifies the ~~board~~ department 30 days in advance of the proposed  
 655 transfer of the permit to the facility or property;

656 2. The notice to the ~~board~~ department includes a written agreement between the existing  
 657 and proposed new user containing a specific date of transfer of permit responsibility,  
 658 coverage and liability between them; and

659 3. The ~~board~~ department does not within the 30-day time period notify the existing user  
 660 and the proposed user of its intent to modify or revoke and reissue the permit.

661 **9VAC25-220-230. Minor modification.**

662 A. Upon request of the permittee, or upon ~~board~~ department initiative with the consent of the  
 663 permittee, minor modifications may be made in the permit without following the public involvement  
 664 procedures.

665 B. For surface water withdrawal permits, minor modification may only:

666 1. Correct typographical errors;

667 2. Require reporting by the permittee at a greater frequency than required in the permit;  
 668 and

669 3. Allow for a change in ownership or operational control when the ~~board~~ department  
 670 determines that no other change in the permit is necessary, provided that a written  
 671 agreement containing a specific date for transfer of permit responsibility, coverage and  
 672 liability from the current to the new permittee has been submitted to the ~~board~~ department.

673 **9VAC25-220-240. Denial of a permit.**

674 A. The applicant shall be notified by letter of the staff's decision to recommend to the ~~board~~  
 675 department denial of the permit requested.

676 B. The staff shall provide sufficient information to the applicant regarding the rationale for  
 677 denial, such that the applicant may at his option: (i) modify the application in order to achieve a  
 678 favorable recommendation; (ii) withdraw his application; or (iii) proceed with the processing on  
 679 the original application.

680 C. Should the applicant withdraw his application, no permit will be issued.

681 D. Should the applicant elect to proceed with the original project, the staff shall make its  
 682 recommendation of denial to the ~~executive~~ director for determination of the need for public notice  
 683 as provided for in accordance with Part III of this chapter (9VAC25-220-150 et seq.).

684 **9VAC25-220-270. Duty to re-apply.**

685 Any person who has an effective surface water withdrawal certificate must apply for a new  
686 certification at least 180 days before the expiration date of an effective certificate unless  
687 permission for a later date has been granted by the ~~board~~ department.

688 **9VAC25-220-280. Complete application required.**

689 A. A complete Surface Water Withdrawal Certificate application to the ~~State Water Control~~  
690 ~~Board~~ Department of Environmental Quality shall, as a minimum, consist of the following:

691 1. General requirements.

692 a. The location of the water withdrawal, including the name of the waterbody from  
693 which the withdrawal is being made;

694 b. The average daily withdrawal, the maximum withdrawal, and any variations of the  
695 withdrawal by season including amounts and times of the day or year during which  
696 withdrawals may occur;

697 c. The use of the withdrawal, including the importance for the need for this use; and

698 d. Any alternative water supplies or water storage.

699 2. Specific requirements. Water conservation or management plans as found in  
700 subdivision 2 of 9VAC25-220-100.

701 B. Where an application is considered incomplete the ~~board~~ department may require the  
702 submission of additional information after an application has been filed, and may suspend  
703 processing of any application until such time as the applicant has supplied missing or deficient  
704 information and the ~~board~~ department considers the application complete. Further, where the  
705 applicant becomes aware that he omitted one or more relevant facts from a certificate application,  
706 or submitted incorrect information in a certificate application or in any report to the ~~board~~  
707 department, he shall immediately submit such facts or the correct information.

708 **9VAC25-220-290. Information requirements.**

709 All applicants for a Surface Water Withdrawal Certificate shall provide all such information  
710 consistent with this chapter as the ~~board~~ department deems necessary. All applicants for a  
711 certificate must submit a complete application in accordance with 9VAC25-220-280.

712 **9VAC25-220-310. Enforcement.**

713 The ~~board~~ department may enforce the provisions of this chapter utilizing all applicable  
714 procedures under the law.

715 **9VAC25-220-320. Delegation of authority. (Repealed.)**

716 ~~The executive director, or a designee acting for him, may perform any act of the board~~  
717 ~~provided under this chapter.~~



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-260
<b>VAC Chapter title(s)</b>	Water Quality Standards
<b>Action title</b>	Final Exempt CH 260 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 23, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-260) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board.

Changes to the regulations included a change in the definition of "Board" and the repeal of the Designation of authority provisions to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-260 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.



1 **Project 7284 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 260 changes in response to 2022 Board Bill**

4 **9VAC25-260-5. Definitions.**

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

7 "Algicides" means chemical substances, most commonly copper-based, used as a treatment  
8 method to control algae growths.

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

12 "Chesapeake Bay and its tidal tributaries" means all tidally influenced waters of the  
13 Chesapeake Bay; western and eastern coastal embayments and tributaries; James, York,  
14 Rappahannock and Potomac Rivers and all their tidal tributaries to the end of tidal waters in each  
15 tributary (in larger rivers this is the fall line); and includes subdivisions 1, 2, 3, 4, 5, and 6 of  
16 9VAC25-260-390, subdivisions 1, 1b, 1d, 1f and 1o of 9VAC25-260-410, subdivisions 5 and 5a  
17 of 9VAC25-260-415, subdivisions 1 and 1a of 9VAC25-260-440, subdivisions 2, 3, 3a, 3b and 3e  
18 of 9VAC25-260-520, and subdivision 1 of 9VAC25-260-530. This definition does not include free  
19 flowing sections of these waters.

20 "Criteria" means elements of the board's water quality standards, expressed as constituent  
21 concentrations, levels, or narrative statements, representing a quality of water that supports a  
22 particular use. When criteria are met, water quality will generally protect the designated use.

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

24 "Designated uses" means those uses specified in water quality standards for each waterbody  
25 or segment whether or not they are being attained.

26 "Drifting organisms" means planktonic organisms that are dependent on the current of the  
27 water for movement.

28 "Epilimnion" means the upper layer of nearly uniform temperature in a thermally stratified man-  
29 made lake or reservoir listed in 9VAC25-260-187 B.

30 "Existing uses" means those uses actually attained in the waterbody on or after November  
31 28, 1975, whether or not they are included in the water quality standards.

32 "Lacustrine" means the zone within a lake or reservoir that corresponds to nonflowing lake-  
33 like conditions such as those near the dam. The other two zones within a reservoir are riverine  
34 (flowing, river-like conditions) and transitional (transition from river to lake conditions).

35 "Man-made lake or reservoir" means a constructed impoundment.

36 "Mixing zone" means a limited area or volume of water where initial dilution of a discharge  
37 takes place and where numeric water quality criteria can be exceeded but designated uses in the  
38 waterbody on the whole are maintained and lethality is prevented.

39 "Natural lake" means an impoundment that is natural in origin. There are two natural lakes in  
40 Virginia: Mountain Lake in Giles County and Lake Drummond located within the boundaries of  
41 Chesapeake and Suffolk in the Great Dismal Swamp.

42 "Passing organisms" means free swimming organisms that move with a mean velocity at least  
43 equal to the ambient current in any direction.

44 "Primary contact recreation" means any water-based form of recreation, the practice of which  
45 has a high probability for total body immersion or ingestion of water (examples include but are not  
46 limited to swimming, water skiing, canoeing and kayaking).

47 "Pycnocline" means the portion of the water column where density changes rapidly because  
48 of salinity and/or temperature. In an estuary the pycnocline is the zone separating deep, cooler  
49 more saline waters from the less saline, warmer surface waters. The upper and lower boundaries  
50 of a pycnocline are measured as a change in density per unit of depth that is greater than twice  
51 the change of the overall average for the total water column.

52 "Secondary contact recreation" means a water-based form of recreation, the practice of which  
53 has a low probability for total body immersion or ingestion of waters (examples include but are  
54 not limited to wading, boating and fishing).

55 "Swamp waters" means waters with naturally occurring low pH and low dissolved oxygen  
56 caused by (i) low flow velocity that prevents mixing and reaeration of stagnant, shallow waters  
57 and (ii) decomposition of vegetation that lowers dissolved oxygen concentrations and causes  
58 tannic acids to color the water and lower the pH.

59 "Use attainability analysis" means a structured scientific assessment of the factors affecting  
60 the attainment of the use which may include physical, chemical, biological, and economic factors  
61 as described in 9VAC25-260-10 H.

62 "Water quality standards" means provisions of state or federal law which consist of a  
63 designated use or uses for the waters of the Commonwealth and water quality criteria for such  
64 waters based upon such uses. Water quality standards are to protect the public health or welfare,  
65 enhance the quality of water and serve the purposes of the State Water Control Law (§ 62.1-44.2  
66 et seq. of the Code of Virginia) and the federal Clean Water Act (33 USC § 1251 et seq.).

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

71 ~~Part X~~

72 ~~Designations of Authority~~

73 **9VAC25-260-550. Designations of authority. (Repealed.)**

74 ~~The director or his designee may perform any act of the board provided under this chapter,~~  
75 ~~except as limited by § 62.1-44.14 of the Code of Virginia.~~



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-720
<b>VAC Chapter title(s)</b>	Water Quality Management Planning Regulation
<b>Action title</b>	Final Exempt CH 720 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 14, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-720) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

Changes to the regulations included a change in the definition of "Board"; the addition of a definition of "department"; changing designations from "board" to "department" where appropriate and the repeal of the delegation of authority provisions to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-720 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7258 - Exempt Final**2 **State Water Control Board**3 **Final exempt CH 720 changes in response to 2022 Board Bill**4 **9VAC25-720-10. Definitions.**

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

7 "Assimilative capacity" means the greatest amount of loading that a water can receive without  
8 violating water quality standards, significantly degrading waters of existing high quality, or  
9 interfering with the beneficial use of state waters.

10 "Best management practices (BMP)" means a schedule of activities, prohibition of practices,  
11 maintenance procedures and other management practices to prevent or reduce the pollution of  
12 state waters. BMPs include treatment requirements, operating and maintenance procedures,  
13 schedule of activities, prohibition of activities, and other management practices to control plant  
14 site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

15 "Best practicable control technology currently available (BPT)" means control measures  
16 required of point source discharges (other than POTWs) as determined by the EPA pursuant to  
17 § 304(b)(1) of the CWA (33 USC § 1251 et seq.) as of 1987.

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

21 "Chesapeake Bay Watershed" means the following Virginia river basins: Potomac River Basin  
22 (9VAC25-260-390 and 9VAC25-260-400), James River Basin (9VAC25-260-410, 9VAC25-260-  
23 415, 9VAC25-260-420, and 9VAC25-260-430), Rappahannock River Basin (9VAC25-260-440),  
24 Chesapeake Bay and small coastal basins (9VAC25-260-520, Sections 2 through 3g), and the  
25 York River Basin (9VAC25-260-530).

26 "Clean Water Act or Act (CWA)" means 33 USC § 1251 et seq. as amended, as of 1987.

27 "Delivery factor" means an estimate of the number of pounds of total nitrogen or total  
28 phosphorus delivered to tidal waters for every pound discharged from a permitted facility, as  
29 determined by the specific geographic location of the permitted facility, to account for attenuation  
30 that occurs during riverine transport between the permitted facility and tidal waters. Delivery  
31 factors shall be calculated using the Chesapeake Bay Program watershed model.

32 "Department" means the Department of Environmental Quality.

33 "Discharge" means when used without qualification, a discharge of a pollutant or any addition  
34 of any pollutant or combination of pollutants to state waters or waters of the contiguous zone or  
35 ocean or other floating craft when being used for transportation.

36 "Effluent limitation" means any restriction imposed by the board or the department on  
37 quantities, discharge rates or concentrations of pollutants that are discharged from point sources  
38 into state waters.

39 "Effluent limitation guidelines" means a regulation published by EPA under the Act and  
40 adopted by the board.

41 "Effluent limited segment (EL)" means a stream segment where the water quality does and  
42 probably will continue to meet state water quality standards after the application of technology-  
43 based effluent limitations required by §§ 301(b) and 306 of the CWA (33 USC § 1251 et seq.) as  
44 of 1987.

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

47 "Equivalent load" means 2,300 pounds per year of total nitrogen and 300 pounds per year of  
48 total phosphorus at a flow volume of 40,000 gallons per day; 5,700 pounds per year of total  
49 nitrogen and 760 pounds per year of total phosphorus at a flow volume of 100,000 gallons per  
50 day; and 28,500 pounds per year of total nitrogen and 3,800 pounds per year of total phosphorus  
51 at a flow volume of 500,000 gallons per day.

52 "Load or loading" means the introduction of an amount of matter or thermal energy into a  
53 receiving water. Loading may be either man-caused (pollutant loading) or natural (background  
54 loading).

55 "Load allocation (LA)" means the portion of a receiving water's loading capacity attributable  
56 either to one of its existing or future nonpoint sources of pollution or to natural background  
57 sources. Load allocations are best estimates of the loading, which may range from accurate  
58 estimates to gross allotments, depending on the availability of data and appropriate techniques  
59 for predicting the loading. Wherever possible, natural and nonpoint source loads should be  
60 distinguished.

61 "Nonpoint source" means a source of pollution, such as a farm or forest land runoff, urban  
62 storm water runoff, mine runoff, or salt water intrusion that is not collected or discharged as a  
63 point source.

64 "Point source" means any discernible, defined and discrete conveyance, including but not  
65 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock  
66 vessel or other floating craft, from which pollutants are or may be discharged. This term does not  
67 include return flows from irrigated agricultural land.

68 "Pollutant" means any substance, radioactive material, or heat that causes or contributes to,  
69 or may cause or contribute to, pollution. It does not mean:

- 70 1. Sewage from vessels; or
- 71 2. Water, gas, or other material that is injected into a well to facilitate production of oil, dry  
72 gas, or water derived in association with oil or gas production and disposed of in a well, if  
73 the well is used either to facilitate production or for disposal purposes if approved by the  
74 Department of Energy unless the ~~board~~ department determines that such injection or  
75 disposal will result in the degradation of ground or surface water resources.

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

88 "Publicly owned treatment works (POTW)" means any sewage treatment works that is owned  
89 by a state or municipality. Sewers, pipes, or other conveyances are included in this definition only  
90 if they convey wastewater to a POTW providing treatment.

91 "Significant discharger" means (i) a point source discharger to the Chesapeake Bay  
92 watershed with a design capacity of 0.5 million gallons per day or greater, or an equivalent load;

93 (ii) a point source discharger to the Chesapeake Bay watershed downstream of the fall line with  
94 a design capacity of 0.1 million gallons per day or greater, or an equivalent load; (iii) a planned or  
95 newly expanding point source discharger to the Chesapeake Bay watershed that is expected to  
96 be in operation by 2010 with a permitted design of 0.5 million gallons per day or greater, or an  
97 equivalent load; or (iv) a planned or newly expanding point source discharger to the Chesapeake  
98 Bay watershed downstream of the fall line with a design capacity of 0.1 million gallons per day or  
99 greater, or an equivalent load, that is expected to be in operation by 2010.

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

102 "Surface water" means all waters in the Commonwealth except ground waters as defined in  
103 § 62.1-255 of the Code of Virginia.

104 "Total maximum daily load (TMDL)" means the sum of the individual waste load allocations  
105 (WLAs) for point sources, load allocations (LAs) for nonpoint sources, natural background loading  
106 and usually a safety factor. TMDLs can be expressed in terms of either mass per time, toxicity, or  
107 other appropriate measure. The TMDL process provides for point versus nonpoint source trade-  
108 offs.

109 "Toxic pollutant" means any agent or material including, but not limited to, those listed under  
110 § 307(a) of the CWA (33 USC § 1251 et seq. as of 1987), which after discharge will, on the basis  
111 of available information, cause toxicity.

112 "Toxicity" means the inherent potential or capacity of a material to cause adverse effects in a  
113 living organism, including acute or chronic effects to aquatic life, detrimental effects on human  
114 health or other adverse environmental effects.

115 "Virginia Pollution Discharge Elimination System (VPDES) permit" means a document issued  
116 by the board or the department, pursuant to 9VAC25-31, authorizing, under prescribed conditions,  
117 the potential or actual discharge of pollutants from a point source to surface waters.

118 "Waste load allocation (WLA)" means the portion of a receiving water's loading or assimilative  
119 capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of  
120 water quality-based effluent limitation.

121 "Water quality limited segment (WQL)" means any stream segment where the water quality  
122 does not or will not meet applicable water quality standards, even after the application of  
123 technology-based effluent limitations required by §§ 301(b) and 306 of the CWA (33 USC § 1251  
124 et seq. as of 1987).

125 "Water quality management plan (WQMP)" means a state- or area-wide waste treatment  
126 management plan developed and updated in accordance with the provisions of §§ 205(j), 208  
127 and 303 of the CWA (33 USC § 1251 et seq. as of 1987).

128 "Water quality standards (WQS)" means narrative statements that describe water quality  
129 requirements in general terms, and of numeric limits for specific physical, chemical, biological or  
130 radiological characteristics of water. These narrative statements and numeric limits describe  
131 water quality necessary to meet and maintain reasonable and beneficial uses such as swimming  
132 and, other water based recreation, public water supply and the propagation and growth of aquatic  
133 life. The adoption of water quality standards under the State Water Control Law is one of the  
134 board's methods of accomplishing the law's purpose.

135 **9VAC25-720-40. Implementing Nitrogen and Phosphorus Waste Load Allocations in the**  
136 **Chesapeake Bay Watershed.**

137 A. Nitrogen and phosphorus waste load allocations assigned to individual significant  
138 dischargers in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C,  
139 and 9VAC25-720-120 C may be exchanged in accordance with the Chesapeake Bay Watershed  
140 Nutrient Credit Exchange Program established under Article 4.02 (§ 62.1-44.19:12 et seq.) of

141 Chapter 3.1 of Title 62.1 of the Code of Virginia. Exchanges must account for the delivery factor  
142 applicable to each discharge based upon its location within the river basin and calculated by the  
143 Chesapeake Bay Program watershed model.

144 B. The nitrogen and phosphorus waste load allocations assigned to individual significant  
145 dischargers in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C,  
146 and 9VAC25-720-120 C are considered to be bioavailable to aquatic life. On a case-by-case  
147 basis, a discharger may demonstrate to the satisfaction of the ~~board~~ department that a significant  
148 portion of the nutrients discharged by the facility is not bioavailable to aquatic life. In these cases,  
149 the ~~board~~ department may limit the permitted discharge to reflect only that portion of the assigned  
150 waste load allocation that is bioavailable. Such limits shall be consistent with the assumptions  
151 and methods used to derive the allocations through the Chesapeake Bay watershed and water  
152 quality models.

153 C. Unless otherwise noted, the nitrogen and phosphorus waste load allocations assigned to  
154 individual significant dischargers in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C,  
155 9VAC25-720-110 C, and 9VAC25-720-120 C are considered total loads including nutrients  
156 present in the intake water from the river, as applicable. On a case-by-case basis, an industrial  
157 discharger may demonstrate to the satisfaction of the ~~board~~ department that a significant portion  
158 of the nutrient load originates in its intake water. In these cases, the ~~board~~ department may limit  
159 the permitted discharge to reflect only the net nutrient load portion of the assigned waste load  
160 allocation. Such limits shall be consistent with the assumptions and methods used to derive the  
161 allocations through the Chesapeake Bay watershed and water quality models.

162 D. The board may amend this regulation to adjust individual nitrogen and phosphorus waste  
163 load allocations. Reasons for considering such an adjustment include, but are not limited to:

- 164 1. A discharger completes or does not complete a plant expansion as evidenced by  
165 issuance of a Certificate To Operate by December 31, 2010; or
- 166 2. A river basin nutrient load allocation is not achieved.

167 Any adjustment to an individual waste load allocation must ensure water quality standards are  
168 maintained.

169 **9VAC25-720-140. Delegation section. (Repealed.)**

170 ~~The director or his designee may perform any action contained in this regulation except those~~  
171 ~~prohibited by § 62.1-44.14 of the State Water Control Law.~~





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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-740
<b>VAC Chapter title(s)</b>	Water Reclamation and Reuse Regulation
<b>Action title</b>	Final Exempt CH 740 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 14, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-740) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits and provide procedures for public comment on pending controversial permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board” and the repeal of the delegation of authority provisions to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-740 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7282 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 740 changes in response to 2022 Board Bill**

4 **9VAC25-740-10. Definitions.**

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

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

15 "Biological nutrient removal" or "BNR" means treatment that achieves annual average  
16 concentrations less than or equal to 8.0 mg/l total nitrogen (N) and 1.0 mg/l total phosphorus (P).

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

20 "Bulk irrigation reuse" means reuse of reclaimed water for irrigation of an area greater than  
21 five acres on one contiguous property.

22 "Conjunctive system" means a system consisting of a wastewater treatment works and  
23 reclamation system having no or minimal separation of treatment processes between the  
24 treatment works and the reclamation system.

25 "Controlled use" means a use of reclaimed water authorized in accordance with this chapter.

26 "Corrective action threshold" or "CAT" means a bacterial, turbidity, or total residual chlorine  
27 standard for reclaimed water at which measures shall be implemented to correct operational  
28 problems of the reclamation system within a specified period, or divert flow from the reclamation  
29 treatment process in accordance with this chapter.

30 Department" means the Department of Environmental Quality.

31 "Design flow" means the capacity at which a treatment works is designed to reliably treat an  
32 average 24-hour influent flow rate, assessed over a period of a month for all months of operation  
33 within a year, including appropriate peak factors provided to meet applicable reliability and  
34 redundancy requirements. The average 24-hour influent flow rate shall be based on projected  
35 estimates of influent flow to be received by the treatment works.

36 "Designated design flow" means the design flow of a reclamation system that may be some  
37 percentage of or equal to the design flow of a treatment works providing source water to the  
38 reclamation system to produce reclaimed water.

39 "Direct beneficial use" means the use of reclaimed water in a manner protective of the  
40 environment and public health that involves transport of the reclaimed water from the point of  
41 reclamation treatment and production to the point of use without an intervening discharge to  
42 waters of the state.

43 "Direct injection" means the discharge of reclaimed water directly into groundwater.

44 "Direct potable reuse" means the discharge of reclaimed water directly into a drinking water  
45 treatment facility or into a drinking water distribution system. This includes storage facilities

Commented [MP1]: Missing " before department

Commented [VP2R1]: Agree.

46 associated with the drinking water treatment facility or drinking water distribution system that are  
47 not surface or ground waters of the state.

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

50 "Disinfection" means the destruction, inactivation, or removal of pathogenic microorganisms  
51 by chemical, physical, or biological means. Disinfection may be accomplished by chlorination,  
52 ozonation, or other chemical disinfectants; UV radiation; or other processes.

53 "Disposal" means the discharge of effluent to injection wells, effluent outfalls, subsurface drain  
54 fields, or other facilities utilized primarily for the release of effluents into the environment without  
55 deriving a direct beneficial use.

56 "Domestic sewage" means sewage derived from the normal family or household activities,  
57 including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets.

58 "Drip irrigation" means the slow and uniform above-ground application of water to individual  
59 plants and vegetated cover using tubing and drip devices or emitters. Drip irrigation may include  
60 below-ground applications of reclaimed water as specified in 9VAC25-740-90 B.

61 "Effluent," unless specifically stated otherwise, means treated wastewater that is not reused  
62 after flowing out of any treatment works.

63 "End user" means a person or entity that directly uses reclaimed water.

64 "Filtration" means the passing of wastewater through a conventional technology, such as  
65 sand, anthracite or cloth; or an advanced technology, such as microfiltration, ultrafiltration,  
66 nanofiltration or reverse osmosis membrane.

67 "Food crops commercially processed" means food crops that, prior to sale to the public or  
68 others, have undergone chemical or physical processing sufficient to remove or destroy  
69 pathogens.

70 "Food crops not commercially processed" means food crops that, prior to sale to the public or  
71 others, have not undergone chemical or physical processing sufficient to remove or destroy  
72 pathogens.

73 "Gray water" means untreated wastewater from bathtubs, showers, lavatory fixtures, wash  
74 basins, washing machines, and laundry tubs. It does not include wastewater from toilets, urinals,  
75 kitchen sinks, dishwashers, or laundry water from soiled diapers.

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

80 "Harvested rainwater" means rainwater that has been collected off of a rooftop through a  
81 system that concentrates the rooftop flow and conveys this to a storage device, container, or  
82 vessel with the intention of using this water before discharge to waterways via sanitary sewer  
83 systems, septic tank or other onsite treatment and disposal systems, or a land based discharge.

84 "Indirect nonpotable reuse" means the discharge of reclaimed water to a receiving surface  
85 water for the purpose of intentionally augmenting a water source, followed by withdrawal from the  
86 water source with or without mixing and transport to the withdrawal location, for reuse or  
87 distribution for reuse other than indirect potable reuse.

88 "Indirect potable reuse" or "IPR" means the discharge of reclaimed water to a receiving  
89 surface water for the purpose of intentionally augmenting a water supply source, with subsequent  
90 withdrawal after mixing with the ambient surface water and transport to the withdrawal location,  
91 followed by treatment and distribution for drinking water and other potable water purposes.

92 "Industrial wastewater" means wastewater resulting from any process of industry,  
93 manufacture, trade or business, or from the development of any natural resources.

94 "Irrigation" means the application of water to land for plant use at a rate that undesirable plant  
95 water stress does not occur.

96 "Landscape impoundment" means a body of water that contains reclaimed water, is not  
97 intended for public contact, and is used primarily for aesthetic enjoyment. Landscape  
98 impoundments include, but are not limited to, decorative pools, fountains, ponds and lagoons;  
99 located outdoors or indoors.

100 "Level 1" means a degree of treatment at which reclaimed water has received, at a minimum,  
101 secondary treatment with filtration and higher-level disinfection, and meets all other applicable  
102 standards specified in 9VAC25-740-70.

103 "Level 2" means a degree of treatment at which reclaimed water has received, at a minimum,  
104 secondary treatment and standard disinfection, and meets all other applicable standards specified  
105 in 9VAC25-740-70.

106 "Municipal wastewater" means sewage.

107 "Nonbulk irrigation reuse" means the reuse of reclaimed water for irrigation of individual areas  
108 less than or equal to five acres.

109 "Nonpotable water" means any water, including reclaimed water, not meeting the definition of  
110 potable water.

111 "Nonsystem storage" means storage for reclaimed water that is other than system storage  
112 and is used at a location downstream of the service connection to the reclaimed water distribution  
113 system to equalize flow to end users.

114 "Nutrient management plan" or "NMP" means a plan prepared by a nutrient management  
115 planner certified by the Department of Conservation and Recreation to manage the amount,  
116 placement, timing, and application of plant nutrients from liquid, solid or semisolid manures,  
117 fertilizers, biosolids, or other materials, for the purpose of producing crops and reducing nutrient  
118 loss to the environment.

119 "Owner" means the Commonwealth or any of its political subdivisions including, but not limited  
120 to, sanitation district commissions and authorities, and any public or private institution,  
121 corporation, association, firm or company organized or existing under the laws of this or any other  
122 state or country, or any officer or agency of the United States, or any person or group of persons  
123 acting individually or as a group that owns, operates, charters, rents, or otherwise exercises  
124 control over or is responsible for the production or distribution of reclaimed water, or any facility  
125 or operation that produces or distributes reclaimed water.

126 "Permit" means an authorization, certificate, license, or equivalent control document issued  
127 by the ~~board~~ department to implement the requirements of this chapter.

128 "Point of compliance" or "POC" means a point at which compliance with the standards of this  
129 chapter is required.

130 "Pollutants of concern" means any pollutants that might reasonably be expected to be  
131 discharged to a publicly or privately owned treatment works in sufficient amounts to pass through  
132 or interfere with the works, contaminate sludge generated by the works, cause problems in the  
133 collection system of the works, or jeopardize the health of employees at the works and the public.

134 "Potable water" means water fit for human consumption and domestic use that is sanitary and  
135 normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts  
136 for domestic usage in the area served and normally adequate in quantity and quality for the  
137 minimum health requirements of the persons served.

138 "Public access area" means an area that is intended to be accessible to the general public,  
139 such as golf courses, cemeteries, parks, athletic fields, school yards, and landscape areas. Public  
140 access areas include private property that is not open to the public at large, but is intended for  
141 frequent use by many persons. Presence of authorized farm personnel or other authorized  
142 treatment plant, utilities system, or reuse system personnel does not constitute public access.

143 "Reclaimed water" means water resulting from the treatment of domestic, municipal or  
144 industrial wastewater that is suitable for a water reuse that would not otherwise occur. Specifically  
145 excluded from this definition is "gray water." For the purposes of this chapter, "harvested  
146 rainwater" and "stormwater" are also excluded from this definition.

147 "Reclaimed water agent" means a person or entity that holds a permit to distribute reclaimed  
148 water to one or more end users.

149 "Reclaimed water distribution system" means a network of pipes, pumping facilities, storage  
150 facilities, and appurtenances designed to convey and distribute reclaimed water from one or more  
151 reclamation systems to end uses.

152 "Reclamation" means the treatment of domestic, municipal, or industrial wastewater or  
153 sewage to produce reclaimed water for a water reuse that would not otherwise occur.

154 "Reclamation system" means a treatment works that treats domestic, municipal, or industrial  
155 wastewater or sewage to produce reclaimed water for a water reuse that would not otherwise  
156 occur.

157 "Reject water storage" means storage for water diverted by a reclamation system or satellite  
158 reclamation system that does not meet applicable reclaimed water standards.

159 "Reliability Class I" means a measure of reliability that requires a treatment works design to  
160 provide continuous satisfactory operation during power failures, flooding, peak loads, equipment  
161 failure, and maintenance shut-down. This class includes design features, such as additional  
162 electrical power sources, additional flow storage capacity, and additional treatment units that  
163 provide operation in accordance with the issued certificate or permit requirements. The definition  
164 of Reliability Class I contained in this chapter is in addition to but does not supersede the definition  
165 of Reliability Class I contained in the Sewage Collection and Treatment Regulations (9VAC25-  
166 790).

167 "Reuse" or "water reuse" means the use of reclaimed water for a direct beneficial use, an  
168 indirect potable reuse, an indirect nonpotable reuse, or a controlled use in accordance with this  
169 chapter.

170 "Reuse system" means an installation or method of operation that uses reclaimed water for a  
171 water reuse in accordance with this chapter.

172 "Restricted access" means limited access by humans to areas where nonpotable water,  
173 including reclaimed water, is used, resulting in minimal or no potential for human contact.

174 "Satellite reclamation system" or "SRS" means a conjunctive system that operates within or  
175 parallel to a sewage collection system to treat a portion of the available wastewater flow in the  
176 collection system to produce reclaimed water for reuse. Satellite reclamation systems do not have  
177 a discharge to surface waters, but may return their treatment process wastewater and residuals  
178 to the sewage collection system.

179 "Secondary treatment" means a biological treatment process for wastewater that achieves the  
180 minimum level of effluent quality defined by the federal secondary treatment regulation in 40 CFR  
181 133.102 (2001).

182 "Service area" means a geographic area that receives reclaimed water from a reclaimed water  
183 distribution system or directly from a reclamation system for approved reuses within that area.

184 "Sewage" means the water-carried human wastes and nonwater-carried human excrement,  
185 kitchen, laundry, shower, bath or lavatory wastes, separately or together with such underground,  
186 surface, storm and other water and liquid industrial wastes as may be present from residences,  
187 buildings, vehicles, industrial establishments or other places.

188 "Significant industrial user" or "SIU" shall have the meaning set forth in the VPDES Permit  
189 Regulation (9VAC25-31-10).

190 "Source water" means untreated or partially treated wastewater supplied for reclamation.

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

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

196 "Stormwater" means precipitation that is discharged across the land surface or through  
197 conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff,  
198 and surface runoff and drainage.

199 "Supplemental irrigation" means irrigation, which in combination with rainfall, meets but does  
200 not exceed the water necessary to maximize production or optimize growth of the irrigated  
201 vegetation.

202 "Surface waters" means all waters in the Commonwealth, except groundwater as defined in  
203 § 62.1-255 of the Code of Virginia.

204 "System storage" means storage on or off the site and considered part of a reclamation  
205 system, SRS, or reclaimed water distribution system that is used to store reclaimed water  
206 produced by the reclamation system or SRS and to equalize flow to or within a reclaimed water  
207 distribution system.

208 "Total maximum daily load" or "TMDL" shall have the meaning set forth in the Water Quality  
209 Management Planning Regulation (9VAC25-720).

210 "Treatment works" means any devices and systems used for the storage, treatment, recycling  
211 or reclamation of sewage or liquid industrial waste, or other waste, or that are necessary to recycle  
212 or reuse water, including intercepting sewers, outfall sewers, sewage collection systems,  
213 individual systems, pumping, power and other equipment and their appurtenances, extensions,  
214 improvements, remodeling, additions, or alterations thereof; or any works, including land that will  
215 be an integral part of the treatment process or is used for ultimate disposal of residues resulting  
216 from such treatment; or any other method or system used for preventing, abating, reducing,  
217 storing, treating, separating, or disposing of municipal waste or industrial waste, including waste  
218 in combined sewer water and sanitary sewer systems.

219 "Underground aquifer" means an aquifer or portion of an aquifer that supplies any public water  
220 system or that contains a sufficient quantity of groundwater to supply a public water system, and  
221 currently supplies drinking water for human consumption, or that contains fewer than 10,000 mg/l  
222 total dissolved solids and is not an exempted aquifer.

223 "Unintentional reuse" means the unintentional or unplanned use of reclaimed water  
224 subsequent to discharge to surface waters of the state, including wetlands, pursuant to a VPDES  
225 permit.

226 "Unrestricted access" means unlimited or minimally limited access by humans to areas where  
227 nonpotable water, including reclaimed water, is used, resulting in a high potential for human  
228 contact.

229 "User" means end user.

230 "Virginia Pollution Abatement permit" or "VPA permit" means a document issued by the ~~board~~  
231 department, pursuant to the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32),  
232 authorizing pollutant management activities under prescribed conditions.

233 "Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a  
234 document issued by the ~~board~~ department, pursuant to the Virginia Pollutant Discharge  
235 Elimination System (VPDES) Permit Regulation (9VAC25-31), authorizing, under prescribed  
236 conditions the potential or actual discharge of pollutants from a point source to surface waters  
237 and the use or disposal of sewage sludge. Under the approved state program, a VPDES permit  
238 is equivalent to an NPDES permit.

239 "Wastewater" means untreated liquid and water-carried industrial wastes and domestic  
240 sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities  
241 and institutions.

242 "Water reclamation" means the reclamation of wastewater or treated effluent for reuse.

243 "Waterworks" means a system that serves piped water for drinking or domestic use to (i) the  
244 public, (ii) at least 15 connections, or (iii) an average of 25 individuals for at least 60 days out of  
245 the year. The term "waterworks" shall include all structures, equipment, and appurtenances used  
246 in the storage, collection, purification, treatment, and distribution of pure water, except the piping  
247 and fixtures inside the building where such water is delivered.

248 **9VAC25-740-15. Permit Rationale.**

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

256 **9VAC25-740-30. Applicability and transition.**

257 A. The requirements of this chapter shall apply to water reclamation systems, reclaimed water  
258 distribution systems, and water reuse unless specifically excluded under 9VAC25-740-50 A. The  
259 requirements shall apply to all new water reclamation systems, reclaimed water distribution  
260 systems and, as applicable, water reuses for which Virginia Pollution Abatement (VPA) or Virginia  
261 Pollutant Discharge Elimination System (VPDES) permit applications are received after October  
262 1, 2008. The requirements may also be applied to all existing permitted facilities producing,  
263 distributing or using reclaimed water through a permit modification or reissuance procedure and  
264 shall be applied when such facilities are to be modified or expanded unless specifically excluded  
265 under 9VAC25-740-50 A. The owners of existing water reclamation systems, reclaimed water  
266 distribution systems and, as applicable, water reuses that do not have a VPA or VPDES permit  
267 shall submit a complete VPA or VPDES permit application or other necessary information as  
268 prescribed under 9VAC25-740-40 within 180 days of being requested by the ~~board~~ department.

269 B. For the purposes of this chapter:

270 1. The incorporation of standards, monitoring requirements and special conditions for  
271 water reclamation and reuse into a VPA permit shall be considered a minor modification  
272 unless they alter other conditions of the permit specifically related to the pollutant  
273 management activity for which the permit was originally issued.

274 2. Standards, monitoring requirements and special conditions for water reclamation and  
275 reuse may be authorized for a VPDES permit through:

276 a. A modification of the permit where such standards, monitoring requirements, and  
277 special conditions would effectively alter other conditions of the permit specifically

**Commented [MP3]:** Section not needed here. No permits are issued through this regulation- they are add on requirements.



278 related to the effluent discharge for which the permit was originally issued, or where  
279 the diversion of source water from the VPDES permitted discharge to water  
280 reclamation and reuse has the potential to cause a significant adverse impact to other  
281 beneficial uses of the receiving state water, or both; or

282 b. An administrative authorization where such standards, monitoring requirements,  
283 and special conditions would not alter other conditions of the permit specifically related  
284 to the effluent discharge for which the permit was originally issued, and where the  
285 diversion of source water from the VPDES permitted discharge to water reclamation  
286 and reuse does not have the potential to cause a significant adverse impact to other  
287 beneficial uses of the receiving state water. The administrative authorization shall have  
288 the full effect of the VPDES permit until such time that it is incorporated into the VPDES  
289 permit through reissuance or modification.

290 3. Modification of a VPA or VPDES permit or the issuance of an administrative  
291 authorization associated with a VPDES permit described in subdivisions 1 and 2 of this  
292 subsection shall require an application in accordance with 9VAC25-740-100.

293 **9VAC25-740-40. Permitting requirements.**

294 A. The owner of the reclamation system and the owner of the reclaimed water distribution  
295 system or the reclaimed water agent shall obtain a VPDES or VPA permit to produce and  
296 distribute reclaimed water, unless otherwise excluded from the requirements of this chapter under  
297 9VAC25-740-50 A. Where both the reclamation system and the reclaimed water distribution  
298 system are under common ownership and management, one permit may be issued to the owner.  
299 Permit coverage may be provided through modification or reissuance of an existing VPA permit,  
300 or reissuance of or administrative authorization for an existing VPDES permit to include  
301 standards, monitoring requirements and special conditions that address water reclamation and  
302 reuse.

303 B. The owner of a satellite reclamation system (SRS) shall obtain a VPA permit. Alternatively  
304 and at the discretion of the ~~board~~ department, a SRS may be authorized under a VPA or VPDES  
305 permit issued to a wastewater treatment works that is under common ownership or management  
306 with the SRS and receives wastewater and residuals discharged by the SRS.

307 C. Each end user shall enter into a service agreement or contract with all reclaimed water  
308 agents from which the end user receives reclaimed water prior to receipt of such water. Monitoring  
309 and management of individual end users shall be by the reclaimed water agents with whom the  
310 end users have a service connection, and through the service agreements or contracts between  
311 the reclaimed water agents and the individual end users unless affected by a permit issued to an  
312 end user as described in subsection F of this section.

313 D. Where a reclamation system and a reclaimed water distribution system that receives  
314 reclaimed water from the reclamation system are under separate ownership and management,  
315 and the reclaimed water distribution system does not distribute reclaimed water to end users other  
316 than to the owner or management of that system, the reclaimed water distribution system may  
317 not require a permit provided a service agreement or contract is established between the  
318 reclamation system and the reclaimed water distribution system.

319 E. A separate permit may be required for end users receiving reclaimed water directly from  
320 more than one reclamation system, SRS, reclaimed water distribution system, or a combination  
321 thereof. An end user may be authorized under the permit issued to one of the reclamation  
322 systems, SRSs, or reclaimed water distribution systems that supply reclaimed water to the end  
323 user, provided the end user is under common ownership or management with the permitted  
324 system.

325 F. Property irrigated with reclaimed water from a reclamation system, SRS, or reclaimed water  
326 distribution system under common ownership or management with that property, shall be

327 regulated by the permit issued to the reclamation system, SRS, or reclaimed water distribution  
328 system providing reclaimed water to the irrigated property.

329 G. A reclamation system shall not discharge reclaimed or reject water to surface waters of the  
330 state in lieu of providing storage, discharging to another permitted reuse system, if applicable;  
331 returning reclaimed or reject water to a wastewater treatment works; or suspending production of  
332 reclaimed water; without authorization to discharge under a VPDES permit.

333 **9VAC25-740-45. Emergency authorization for the production, distribution, or reuse of**  
334 **reclaimed water.**

335 A. The ~~board~~ department may issue an emergency authorization for the production,  
336 distribution, or reuse of reclaimed water when it finds that due to drought there is an insufficient  
337 public water supply that may result in a substantial threat to public safety. The emergency  
338 authorization may be issued only after:

339 1. Conservation measures mandated by local or state authorities have failed to protect  
340 public safety, and

341 2. The Virginia Department of Health has been notified of the application to issue an  
342 emergency authorization and has been provided not less than 14 days to submit  
343 comments or recommendations to the ~~board~~ department on the application.

344 B. An emergency authorization may be issued in addition to an Emergency Virginia Water  
345 Protection Permit ( as provided in 9VAC25-210) for a new or increased public water supply  
346 withdrawal.

347 C. An emergency authorization may be issued to only existing VPDES or VPA permitted  
348 municipal treatment works that:

349 1. Are not currently authorized to produce, distribute, or reuse reclaimed water in  
350 accordance with 9VAC25-740-40;

351 2. Are currently capable of producing reclaimed water meeting minimum standard  
352 requirements of 9VAC25-740-90 for proposed reuses listed in the application for an  
353 emergency authorization; and

354 3. Do not have significant industrial users (SIUs), or do have SIUs and a pretreatment  
355 program developed, approved, and maintained in accordance with Part VII (9VAC25-31-  
356 730 et seq.) of the VPDES Permit Regulation.

357 D. An emergency authorization may be issued for only reuses of reclaimed water deemed  
358 necessary by the ~~board~~ department. In no case shall an emergency authorization be issued in  
359 lieu of a VPDES permit action for a reuse that involves a discharge of reclaimed water to surface  
360 waters.

361 E. An application for an emergency authorization issued pursuant to this section shall provide  
362 the information specified in 9VAC25-740-105. No later than 180 days after the issuance of an  
363 emergency authorization, the holder of the authorization shall apply for coverage under a VPDES  
364 or VPA permit in accordance with 9VAC25-740-40. Thereafter, the emergency authorization shall  
365 remain in effect until the ~~board~~ department acts upon the application for the VPDES or VPA permit  
366 in accordance with 9VAC25-740-30 B.

367 F. There shall be no public comment period for the issuance of an emergency authorization.

368 **9VAC25-740-50. Exclusions and prohibitions.**

369 A. Exclusions. Exclusion from the requirements of this chapter does not relieve any owner of  
370 the operations identified in this section of the responsibility to comply with any other applicable  
371 federal, state, or local statutes, regulations, or ordinances. The following are excluded from the  
372 requirements of this chapter:

- 373 1. Activities permitted by the Virginia Department of Health (VDH), such as, but not limited to,  
374 septic tank drainfield systems and other onsite sewage treatment and disposal  
375 systems, and water treatment plant recycle flows. This exclusion does not apply to  
376 alternative onsite sewage systems as defined in 12VAC5-613 (Regulations for Alternative  
377 Onsite Sewage Systems) with an average daily sewage flow in excess of 1,000 gallons  
378 per day that are concurrently permitted by the ~~board department~~ and VDH to allow sewage  
379 reclamation and reuse in addition to onsite sewage treatment and disposal.
- 380 2. Utilization of gray water, harvested rainwater, or stormwater.
- 381 3. Nonpotable water produced and utilized on-site by the same treatment works for  
382 facilities permitted through a VPDES or VPA permit. This includes the use of nonpotable  
383 water at the treatment works site for incidental landscape irrigation that is not identified as  
384 land treatment defined in the Sewage Collection and Treatment Regulations (9VAC25-  
385 790). The treatment works site shall include property that is either contiguous to or in the  
386 immediate vicinity of the parcel of land upon which the treatment works is located, provided  
387 such property is under common ownership or management with the treatment works. This  
388 exclusion does not apply to nonpotable water produced by treatment works authorized by  
389 the VPDES General Permit for Domestic Sewage Discharges Less Than or Equal to 1,000  
390 Gallons Per Day (9VAC25-110).
- 391 4. Recycle flows within a treatment works.
- 392 5. Industrial effluents or other industrial water streams created prior to final treatment and  
393 used for water re-circulation, recycle, or reuse systems located on the same property as  
394 the industrial facility, provided:
- 395 a. The water used in these systems does not contain or is not expected to contain  
396 pathogens or other constituents in sufficient quantities and with a potential for human  
397 contact as may be harmful to human health;
- 398 b. These systems are closed or isolated to prevent worker contact with the water of  
399 the systems; or
- 400 c. Other measures are in place, including but not limited to, applicable federal and  
401 state occupational safety and health standards and requirements, to adequately inform  
402 and protect employees from pathogens or other constituents that may be harmful to  
403 human health in the water to be re-circulated, recycled or reused at the facility.
- 404 6. Land treatment systems described in the Sewage Collection and Treatment Regulations  
405 (9VAC25-790). Such use of wastewater effluent, either existing or proposed, must be  
406 authorized by a VPA or VPDES permit and must be on land owned or under the direct  
407 long-term control of the permittee.
- 408 7. Unintentional reuse.
- 409 8. Existing indirect nonpotable reuse projects that as of January 29, 2014, are authorized  
410 by a VPDES permit to discharge to surface waters of the state.
- 411 9. Existing indirect potable reuse projects that upon October 1, 2008, are authorized by a  
412 VPDES permit to discharge to surface waters of the state, and future expansions of these  
413 projects.
- 414 10. Direct injection of reclaimed water into any underground aquifer authorized by EPA  
415 under the Safe Drinking Water Act, Underground Injection Control Program (UIC), 40 CFR  
416 Part 144; or other applicable federal and state laws and regulations.
- 417 B. Prohibitions. The following are prohibited under this chapter:
- 418 1. Direct potable reuse;

- 419 2. The reuse of reclaimed water distributed to one-family or two-family dwellings. This  
420 prohibition does not apply to reuses of reclaimed water outside of and on the same  
421 property as one-family or two-family dwellings where the reclaimed water is not distributed  
422 to such reuses by way of plumbing within the dwellings;
- 423 3. The reuse of reclaimed water to fill residential swimming pools, hot tubs or wading pools;
- 424 4. The reuse of reclaimed water for food preparation or incorporation as an ingredient into  
425 food or beverage for human consumption;
- 426 5. Bypass of untreated or partially treated wastewater from the reclamation system or any  
427 intermediate unit process to the point of reuse unless the bypass complies with standards  
428 and requirements specified in 9VAC25-740-70 and is for essential maintenance to assure  
429 efficient operation;
- 430 6. The return of reclaimed water to the reclaimed water distribution system after the  
431 reclaimed water has been delivered to an end user; and
- 432 7. Reduction of the discharge from a VPDES permitted treatment works due to diversion  
433 of source water flow for reclamation and reuse such that the physical, chemical, or  
434 biological properties of the receiving state waters are affected in a manner that would  
435 cause a significant adverse impact to other beneficial uses.

436 **9VAC25-740-55. Variances.**

437 A. The board department may grant a variance to this chapter for design, construction,  
438 operation, or maintenance requirements contained in the chapter by following the appropriate  
439 procedures set forth in this section.

440 B. Any person or entity wishing to initiate a project for the production, distribution, or reuse of  
441 reclaimed water that is not excluded from the provisions of this chapter by 9VAC25-740-50 may  
442 apply for a variance to the design, construction, operation, or maintenance requirements of this  
443 chapter where requiring the project to comply with such requirements would be contrary to the  
444 purpose of State Water Control Law, specifically § 62.1-44.2 of the Code of Virginia. The board  
445 department may grant a variance if it finds that the hardship imposed, which may be economic,  
446 outweighs the benefits of the project and that the granting of such variance would not adversely  
447 impact public health or the environment.

448 C. An application for a variance shall be made in writing and shall include the following:

- 449 1. A citation of the regulation from which a variance is requested;
- 450 2. The nature and duration of variance requested;
- 451 3. A statement of the hardship to the applicant and the anticipated impacts to public health  
452 and welfare or the environment if a variance were granted;
- 453 4. Suggested conditions that might be imposed on the granting of a variance that would  
454 limit any anticipated detrimental impacts on public health or the environment;
- 455 5. Other information, if any, believed to be pertinent by the applicant; and
- 456 6. Such other information as may be required to make the determination in accordance  
457 with subsection B of this section.

458 D. The board department shall act on any application for a variance submitted pursuant to this  
459 section within 60 days of application receipt. In the board's department's decision to grant or deny  
460 a variance for a project to produce, distribute, or reuse reclaimed water, the board department  
461 shall consider, at a minimum, the following:

- 462 1. The effect that such a variance would have on the adequate operation of the project,  
463 including operator safety (in accordance with the requirements of the Virginia Department  
464 of Labor and Industry, Occupation Safety and Health Administration);

- 465 2. The cost and other economic considerations imposed by the regulatory requirement for  
466 which the variance has been requested; and  
467 3. The effect that such a variance would have on the protection of public health or the  
468 environment.

469 E. Disposition of a variance request.

470 1. If the board department proposes to deny a variance request submitted pursuant to this  
471 section, the board department shall provide the applicant an opportunity to an informal  
472 fact-finding proceeding in accordance with § 2.2-4019 of the Code of Virginia. Thereafter,  
473 the board department may reject any application for a variance and shall notify the  
474 applicant in writing of this decision and the basis for the rejection. The board's  
475 department's notice, in this case, constitutes a case decision.

476 2. If the board department proposes to grant a variance request submitted pursuant to this  
477 section, the applicant shall be notified in writing of this decision. Such notice shall:

- 478 a. Identify the project for which the variance has been granted;  
479 b. Describe the variance;  
480 c. Specify the period of time for which the variance will be effective; and  
481 d. State that the variance shall be terminated when the project comes into compliance  
482 with the applicable design, construction, operation, or maintenance requirements of  
483 this chapter and may be terminated upon a finding by the board department that the  
484 project has failed to comply with any requirements or schedules issued in conjunction  
485 with the variance.

486 3. The effective date of a variance described in subdivision 2 of this subsection shall be  
487 15 days following the date of notice to the applicant.

488 F. All variances granted for the design, construction, operation, or maintenance of a project  
489 to produce, distribute, or reuse reclaimed water are nontransferable. Any requirements of the  
490 variance shall become part of the permit for the project subsequently issued, reissued, or modified  
491 by the board department.

492 G. Where this chapter references the Sewage Collection and Treatment Regulations  
493 (9VAC25-790) for design, construction, operation, or maintenance requirements affecting  
494 components of a project to produce, distribute, or reuse reclaimed water, an application for a  
495 variance to such requirements shall be in accordance with variance procedures described in  
496 9VAC25-790.

497 **9VAC25-740-60. Relationship to other board regulations.**

498 A. Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32). The VPA Permit  
499 Regulation delineates the procedures and requirements to be followed in connection with the VPA  
500 permits issued by the board department pursuant to the State Water Control Law. Any treatment  
501 works treating domestic, municipal or industrial wastewater that produces reclaimed water or a  
502 facility that distributes reclaimed water in a manner that does not result in a discharge to surface  
503 waters shall obtain a VPA permit. Design, operation, and maintenance standards prescribed by  
504 this chapter for water reclamation and reuse shall be incorporated into the VPA permit application  
505 and the VPA permit when applicable. Water reclamation and reuse requirements contained in a  
506 VPA permit shall be enforced through existing enforcement mechanisms of the permit.

507 B. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31).  
508 The VPDES Permit Regulation delineates the procedures and requirements to be followed in  
509 connection with VPDES permits issued by the board department pursuant to the Clean Water Act  
510 and the State Water Control Law. Any treatment works treating domestic, municipal, or industrial  
511 wastewater that produces reclaimed water and has a discharge to surface waters or a reclaimed

512 water distribution system that has a discharge to surface waters shall obtain a VPDES permit.  
 513 Design, operation, and maintenance standards for water reclamation and reuse shall be  
 514 incorporated into the VPDES permit application and the VPDES permit when applicable. Water  
 515 reclamation and reuse requirements contained in a VPDES permit shall be enforced through  
 516 existing enforcement mechanisms of the permit.

517 C. Sewage Collection and Treatment Regulations (9VAC25-790). The Sewage Collection and  
 518 Treatment Regulations establish standards for the operation, construction, or modification of a  
 519 sewerage system or treatment works, including land treatment systems. This chapter prescribes  
 520 design, operation and maintenance standards for water reclamation and reuse.

521 D. Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay  
 522 Watershed (9VAC25-40). Sections 62.1-44.19:12 through 62.1-44.19:19 of the Code of Virginia,  
 523 which establishes the Regulation for Nutrient Enriched Waters and Dischargers within the  
 524 Chesapeake Bay Watershed (9VAC25-40), allows for credit to be given for reductions in total  
 525 nitrogen and total phosphorus discharged loads through recycle or reuse of wastewater when  
 526 determining technology requirements associated with new or expanded discharges.

527 E. General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus  
 528 Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820).  
 529 The General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus  
 530 Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia regulates point  
 531 sources of nutrients and establishes a framework for nutrient credit trading and offsets. Water  
 532 reclamation and reuse provides an opportunity to reduce point source nutrient loads.

533 F. Local and Regional Water Supply Planning (9VAC25-780). The Local and Regional Water  
 534 Supply Planning regulation requires every county, city, and town to develop a water plan in  
 535 accordance with established planning criteria. Where appropriate, the plan may consider  
 536 nontraditional means of increasing supplies such as interconnection, desalination, recycling and  
 537 reuse.

538 G. Water Withdrawal Reporting (9VAC25-200). The Water Withdrawal Reporting regulation  
 539 requires industrial VPDES permittees to annually report to the ~~board~~ ~~department~~ ~~board~~ the  
 540 source and location of water withdrawals and the type of use information specified by 9VAC25-  
 541 200. Where the VPDES permitted discharge volume deviates by greater than ± 10% of the water  
 542 withdrawal volume, the permittee is required to report the deviation.

543 **9VAC25-740-70. Treatment and standards for reclaimed water.**

544 A. Treatment and standards for reclaimed water are provided in Table 70-A.

Table 70-A Treatment and Standards for Reclaimed Water	
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1. Level 1	
a. Treatment	Secondary treatment with filtration and higher-level disinfection.
b. Bacterial Standards	(1) Fecal coliform <sup>1</sup> : monthly geometric mean <sup>2</sup> less than or equal to 14 colonies/100ml; corrective action threshold at greater than 49 colonies/100 ml; or  (2) E. coli <sup>1</sup> : monthly geometric mean <sup>2</sup> less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 35 colonies/100 ml; or

**Commented [VP4]:** This should stay "board" because the statutory authority for Ch. 200 is Ch. 3.2 of Title 62.1, which was not changed by the Board Bill.

	(3) Enterococci <sup>1</sup> : monthly geometric mean <sup>2</sup> less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 24 colonies/100 ml.
c. Total Residual Chlorine (TRC) <sup>3</sup>	Corrective action threshold at less than 1.0 mg/l <sup>4</sup> after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow.
d. pH	6.0 – 9.0 standard units
e. Five-day Biochemical Oxygen Demand (BOD <sub>5</sub> )	(1) BOD <sub>5</sub> : monthly average less than or equal to 10 mg/l; or (2) Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> ) <sup>5</sup> : monthly average less than or equal to 8 mg/l.
f. Turbidity <sup>6</sup>	Daily average of discrete measurements recorded over a 24-hour period less than or equal to 2.0 nephelometric turbidity units (NTU); corrective action threshold at greater than 5.0 NTU.
2. Level 2	
a. Treatment	Secondary treatment and standard disinfection.
b. Bacterial Standards	(1) Fecal coliform <sup>1</sup> : monthly geometric mean <sup>2</sup> less than or equal to 200 colonies/100ml; corrective action threshold at greater than 800 colonies/100 ml; or  (2) E. coli <sup>1</sup> : monthly geometric mean <sup>2</sup> less than or equal to 126 colonies/100 ml; corrective action threshold at greater than 235 colonies/100 ml; or  (3) Enterococci <sup>1</sup> : monthly geometric mean <sup>2</sup> less than or equal to 35 colonies/100 ml; corrective action threshold at greater than 104 colonies/100 ml.
c. Total Residual Chlorine (TRC) <sup>3</sup>	Corrective action threshold at less than 1.0 mg/l <sup>4</sup> after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow.
d. pH	6.0 – 9.0 standard units
e. Five-day Biochemical Oxygen Demand (BOD <sub>5</sub> )	(1) BOD <sub>5</sub> : monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l; or (2) Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> ) <sup>5</sup> : monthly average less than or equal to 25 mg/l; maximum weekly average 40 mg/l.
f. Total Suspended Solids (TSS)	Monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l.

<sup>1</sup>After disinfection.

<sup>2</sup>For the purpose of calculating the geometric mean, bacterial analytical results below the detection level of the analytical method used shall be reported as values equal to the detection level.

<sup>3</sup>Applies only if chlorine is used for disinfection.

<sup>4</sup>TRC less than 1.0 mg/l may be authorized by the board department if demonstrated to provide comparable disinfection through a chlorine reduction program in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790).

<sup>5</sup>Applies only if CBOD<sub>5</sub> is used in lieu of BOD<sub>5</sub>.

<sup>6</sup>Where ultraviolet radiation will be used for disinfection of Level 1 reclaimed water, other turbidity standards may apply in accordance with 9VAC25-740-110 A 2 a.

545 B. Point of compliance (POC).

546 1. Reclaimed water produced by reclamation systems and SRSs for reuse shall meet all  
547 applicable standards in accordance with this chapter, excluding the turbidity standard for  
548 Level 1 treatment, at the POC. The POC for Level 1 and Level 2 treatment shall be after  
549 all reclaimed water treatment and prior to discharge to a reclaimed water distribution  
550 system. Where chlorination is used for disinfection of the reclaimed water, the POC for the  
551 TRC standard shall be the monitoring location specified in 9VAC25-740-80 A 2. The POC  
552 for the turbidity standard of Level 1 treatment shall be just upstream of disinfection.

553 2. Where the board department determines that reclaimed water monitoring is required for  
554 a system storage facility or a reclaimed water distribution system, the number and location  
555 of POCs for these facilities shall be determined on a case-by-case basis and shall be  
556 described in the following documents for approval by the board department:

557 a. For system storage facilities other than those considered part of reclaimed water  
558 distribution systems, in the operations and maintenance manual of the reclamation  
559 system or SRS where the storage facility is located; and

560 b. For reclaimed water distribution systems, including system storage facilities  
561 considered part of these systems, in the reclaimed water management plan pursuant  
562 to 9VAC25-740-100 C 1 h.

563 C. Reclaimed water that fails to comply with the standards shall be managed as follows:

564 1. Should reclaimed water reach the corrective action threshold (CAT) for turbidity in the  
565 standard for Level 1, or for TRC in the standards for Level 1 or 2, whichever applies, the  
566 operator of the reclamation system shall immediately initiate a review of treatment  
567 operations and data to identify the cause of the CAT monitoring results to bring the  
568 reclaimed water back into compliance with the standards. Resampling or diversion shall  
569 occur within one hour of first reaching the CAT. Procedures for resampling, operational  
570 review and diversion shall be as described in an approved operations and maintenance  
571 manual for the reclamation system. If subsequent monitoring results of the resamples  
572 collected within one hour of the first CAT monitoring results for turbidity or TRC continue  
573 to reach the CAT of the standards, the reclaimed water shall be considered substandard  
574 or reject water and shall be diverted to either storage for subsequent additional treatment  
575 or retreatment, or discharged to another permitted reuse system requiring a lower level of  
576 treatment not less than Level 2 or to a VPDES permitted effluent disposal system provided  
577 the reject water meets the effluent limits of the permit. If the reclamation system is  
578 unattended, the diversion of reject water shall be initiated and performed with automatic  
579 equipment. There shall be no automatic restarts of distribution to reuse until the treatment  
580 problem is corrected. Failure to divert the substandard or reject water after one hour of



581 CAT monitoring results shall be considered a violation of this chapter. Upon resuming  
582 discharge of reclaimed water to the reclaimed water distribution system for which the CAT  
583 was reached, resampling for turbidity or TRC shall occur within one hour to verify proper  
584 treatment.

585 2. Should reclaimed water reach the CAT for bacteria (i.e., fecal coliform, E. coli or  
586 enterococci) in the standards for Level 1 or 2, whichever applies, the operator of the  
587 reclamation system shall immediately initiate a review of treatment operations and data to  
588 identify the cause of the CAT monitoring results to bring the reclaimed water back into  
589 compliance with the standards. Procedures for operational review shall be as described  
590 in an approved operations and maintenance manual for the reclamation system. Two  
591 consecutive bacterial monitoring results that reach the CAT of the standards shall be  
592 considered a violation of this chapter.

593 3. Repeated, although temporary, failure to comply with all other standards by the  
594 reclamation system may be considered a violation of this chapter determined by the  
595 frequency and magnitude of the noncompliant monitoring results and other relevant  
596 factors. Failure to resample after determination that monitoring results are not in  
597 compliance with the standards, to make adjustments to the treatment process to bring the  
598 reclaimed water back into compliance with the standards, or to divert substandard or reject  
599 water in accordance with subdivision 1 of this subsection shall be considered a violation  
600 of this chapter.

601 D. Treatment or standards other than or in addition to the treatment and standards in  
602 subsection A of this section may be necessary based on the quality and character of the  
603 wastewater to be reclaimed or the intended reuse or reuses of the reclaimed water. Such  
604 alternative or additional treatment or standards may be exempt from this chapter unless required  
605 by the ~~board~~ department to protect public health and the environment.

606 E. Standards for the reclamation of industrial wastewater shall be determined on a case-by-  
607 case basis relative to the proposed reuse or reuses of the reclaimed water and for the purpose of  
608 protecting public health and the environment. Industrial wastewater may also be subject to  
609 disinfection requirements of Level 1 or Level 2 if the industrial wastewater contains sewage or is  
610 expected to contain organisms pathogenic to humans, such as, but not limited to, wastewater  
611 from the production and processing of livestock and poultry. The point of compliance for  
612 reclamation standards of industrial wastewater shall also be determined on a case-by-case basis.

613 **9VAC25-740-80. Reclaimed water monitoring requirements for reuse.**

614 A. The monitoring requirements for the standards provided under 9VAC25-740-70 A, are as  
615 follows:

616 1. Turbidity analysis:

617 a. Analysis shall be performed by a continuous, on-line turbidity meter equipped with  
618 an automated data logging or recording device and an alarm to notify the operator  
619 when the CAT for turbidity in the standard for Level 1 has been reached. Compliance  
620 with the average turbidity standard shall be determined daily, based on the arithmetic  
621 mean of hourly or more frequent discrete measurements recorded during a 24-hour  
622 period. Monitoring for the turbidity CAT shall be continuous.

623 b. Should the on-line turbidity meter go out of service for either planned or unplanned  
624 repair, the permittee shall be allowed to manually collect samples for turbidity analysis  
625 at four-hour intervals up to a maximum of five days. Following the five-day period of  
626 repair, continuous, on-line monitoring with a turbidity meter shall resume.

627 2. Sampling and analysis for residual concentrations of disinfectants, including total  
628 residual chlorine (TRC):

- 629 a. For Level 1:
- 630 (1) Shall be continuous on-line monitoring, equipped with an automated data logging
- 631 or recording device and an alarm to notify the operator when the CAT for the
- 632 disinfectant has been reached. For disinfectants other than chlorine, continuous on-
- 633 line monitoring shall be provided at the point of compliance monitoring. For TRC,
- 634 continuous on-line monitoring shall be provided at the end of the contact tank or
- 635 contact period. Monitoring for the TRC CAT shall be continuous.
- 636 (2) Should the on-line disinfectant monitoring equipment go out of service for either
- 637 planned or unplanned repair, the permittee shall be allowed to manually collect
- 638 samples for disinfectant analysis at four-hour intervals up to a maximum of five days.
- 639 Following the five-day period of repair, continuous, on-line disinfectant monitoring shall
- 640 resume.
- 641 b. For Level 2, shall be based on the designated design flow of the reclamation system
- 642 and be the same sampling type and frequency as specified for sewage treatment
- 643 works in the Sewage Collection and Treatment Regulations (9VAC25-790). For
- 644 chemical disinfectants other than TRC, monitoring shall be provided at the point of
- 645 compliance in accordance with 9VAC25-740-70 B. For TRC, monitoring shall be
- 646 provided at the end of the contact tank or contact period.
- 647 3. Sampling for TSS and BOD<sub>5</sub> or CBOD<sub>5</sub> shall be at least weekly or more frequently
- 648 based on the designated design flow of the reclamation system, and shall be the same
- 649 sampling type and frequency as specified for sewage treatment works in the Sewage
- 650 Collection and Treatment Regulations (9VAC25-790). Compliance with the monthly
- 651 average TSS and BOD<sub>5</sub> or CBOD<sub>5</sub> standards shall be determined monthly, based on the
- 652 arithmetic mean of all samples collected during the month. Compliance with the maximum
- 653 weekly average TSS and BOD<sub>5</sub> or CBOD<sub>5</sub> standards shall be determined monthly, using
- 654 the same procedures applied in the VPDES permit program for point source discharges.
- 655 4. Sampling for fecal coliform, E. coli or enterococci:
- 656 a. Shall for Level 1, be grab samples collected at a time when wastewater
- 657 characteristics are most representative of the treatment facilities and disinfection
- 658 processes for water reuse, and at the frequencies provided in Table 80-A. Compliance
- 659 with the geometric mean standards for fecal coliform, E. coli, or enterococci shall be
- 660 determined monthly, based on all bacteriological monitoring results for that month.
- 661 Monitoring of the CAT for fecal coliform, E. coli, or enterococci shall be based on the
- 662 bacteriological monitoring results determined for each day a sample is collected.

Table 80-A	
Reclamation System Designated Design Flow (MGD) <sup>(1)</sup>	Bacterial Sampling Frequency <sup>(2)</sup>
>0.500	Daily with the ability to reduce to no less than four days per week <sup>(3)</sup>
0.050 to 0.500	Four days per week with the ability to reduce to no less than three days per week <sup>(3)</sup>
<0.050	Three days per week with no reduction allowed

<sup>(1)</sup>MGD means million gallons per day.

<sup>(2)</sup>For reclamation systems treating municipal wastewater, bacterial samples shall be collected between 10 a.m. and 4 p.m. to coincide with peak flows to the reclamation system. An exception to this requirement may be approved upon demonstration to the board department that peak flows to the reclamation system occur outside this period.

<sup>(3)</sup>Monitoring frequency may be reduced after demonstrating compliance with bacterial standards for Level 1 and adequate correlation between bacterial monitoring results and measurements for surrogate disinfection parameters, such as TRC and turbidity.

663 b. Shall for Level 2, be based on the designated design flow of the reclamation system  
 664 and be the same sampling type and frequency as specified for sewage treatment  
 665 works in the Sewage Collection and Treatment Regulations (9VAC25-790).  
 666 Compliance with the geometric mean standard and monitoring of the CAT for fecal  
 667 coliform, E. coli or enterococci shall be in accordance with the same procedures  
 668 specified for Level 1 in subdivision 4 a of this subsection.

669 5. Samples for pH shall be grab samples collected at least daily. Compliance with the  
 670 range of the pH standard shall be determined daily based on the pH of the samples.

671 B. Samples collected for TSS, BOD<sub>5</sub> or CBOD<sub>5</sub>, and fecal coliform, E. coli or enterococci  
 672 analyses, shall be analyzed by laboratory methods accepted by the board department.

673 C. A reclamation system that produces reclaimed water intermittently or seasonally shall  
 674 monitor only when the reclamation system discharges to a reclaimed water distribution system, a  
 675 nonsystem storage facility, or directly to a reuse.

676 D. Monitoring of reclaimed water held in system storage for a period greater than 24 hours at  
 677 a reclamation system or SRS may be required by the board department where (i) the system  
 678 storage facility discharges to a reclaimed water distribution system, a nonsystem storage facility,  
 679 or directly to a reuse; and (ii) conditions exist at the facility to degrade the reclaimed water to a  
 680 quality failing to comply with applicable minimum reclaimed water standards for the intended  
 681 reuses of that water. When monitoring of reclaimed water in or from system storage is required,  
 682 monitoring parameters and frequencies shall be determined by the board department on a case-  
 683 by-case basis.

684 E. Monitoring other than or in addition to that described under subsection A of this section  
 685 may be required for treatment of reclaimed water that is provided pursuant to 9VAC25-740-70 D  
 686 and 9VAC25-740-70 E.

687 **9VAC25-740-90. Minimum standard requirements for reuses of reclaimed water.**

688 A. Minimum standard requirements for reclaimed water shall be determined, in part, by the  
 689 reuse or reuses of that water. For specific reuses, the minimum standard requirements of  
 690 reclaimed water are provided in Table 90-A.

Table 90-A  
 Minimum Standard Requirements for Reuses of Reclaimed Water

Reuse Category	Reuse	Minimum Standard Requirements <sup>a</sup>
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<p>1. Urban – Unrestricted Access</p>	<p>All types of landscape irrigation in public access areas (i.e., golf courses, cemeteries, public parks, school yards and athletic fields)</p> <p>Toilet flushing <sup>b</sup></p> <p>Firefighting or protection and fire suppression <sup>b</sup></p> <p>Outdoor reuse (i.e., lawn watering and noncommercial car washing) <sup>b</sup></p> <p>Commercial car washes</p> <p>Commercial air conditioning systems</p>	<p>Level 1</p>
<p>2. Irrigation – Unrestricted Access <sup>c</sup></p>	<p>Irrigation for any food crops not commercially processed, including crops eaten raw</p>	<p>Level 1</p>
<p>3. Irrigation – Restricted Access <sup>c, d, e</sup></p>	<p>Irrigation for any food crops commercially processed</p> <p>Irrigation for nonfood crops and turf, including fodder, fiber and seed crops; pasture for foraging livestock; sod farms; ornamental nurseries; and silviculture</p>	<p>Level 2</p>
<p>4. Landscape Impoundments <sup>f</sup></p>	<p>Potential for public access or contact</p> <p>No potential for public access or contact</p>	<p>Level 1</p> <p>Level 2</p>
<p>5. Construction <sup>e</sup></p>	<p>Soil compaction</p> <p>Dust control</p> <p>Washing aggregate</p> <p>Making concrete</p> <p>Irrigation to establish vegetative erosion control <sup>g</sup></p>	<p>Level 2</p>
<p>6. Industrial <sup>e</sup></p>	<p>Commercial laundries</p> <p>Ship ballast <sup>h</sup></p> <p>Livestock watering <sup>i</sup></p> <p>Aquaculture <sup>j</sup></p> <p>Stack scrubbing</p> <p>Street washing</p> <p>Boiler feed</p> <p>Once-through cooling <sup>k</sup></p> <p>Recirculating cooling towers <sup>k</sup></p>	<p>Level 1</p> <p>Level 2</p>

<sup>a</sup>For reclaimed industrial wastewater, minimum standards required shall be determined on a case-by-case basis relative to the proposed reuse or reuses.

<sup>b</sup>These reuses of reclaimed water are prohibited in accordance with 9VAC25-740-50 B 2 where they would involve the distribution of reclaimed water to a one-family or two-family dwelling in order to occur.

<sup>c</sup>Reclaimed water treated to Level 1 or 2 may be used for surface irrigation, including spray irrigation. Reclaimed water treated to Level 2 may be used for spray irrigation if the area to be irrigated restricts access to the public and has appropriate setbacks in accordance with 9VAC25-740-170. Reclaimed water treated to Level 1 or 2 may be used for irrigation of food crops eaten raw, excluding root crops, only when there will be no direct contact (or indirect contact via aerosol carry) between the reclaimed water and edible portions of the crop.

<sup>d</sup>For irrigation with reclaimed water treated to Level 2, the following shall be prohibited unless Level 1 disinfection is provided:

1. Grazing by milking animals on the irrigation reuse site for 15 days after irrigation with reclaimed water ceases, and
2. Harvesting, retail sale or allowing access by the general public to ornamental nursery stock or sod farms for 14 days after irrigation with reclaimed water ceases.

<sup>e</sup>Worker contact with reclaimed water treated to Level 2 shall be minimized. Level 1 disinfection shall be provided when worker contact with reclaimed water is likely.

<sup>f</sup>Landscape impoundments may also be used to store reclaimed water for other subsequent reuses of that reclaimed water, such as irrigation, if included in an inventory of reclaimed water storage facilities submitted to the ~~board~~ department pursuant to 9VAC25-740-110 C 15.

<sup>g</sup>Irrigation with reclaimed water to establish vegetative cover at a construction site shall be subject to requirements for irrigation reuse specified in 9VAC25-740-100 C. Continued irrigation of the same site following construction completion shall be subject to the minimum standard requirements of reuse category 1, 2, or 3 contained in this table, determined by the intended reuse of the irrigated site.

<sup>h</sup>Reuse of reclaimed water for ship ballast shall also comply with applicable federal regulations and standards governing the use and discharge of ship ballast.

<sup>i</sup>Level 1 disinfection shall be provided when the reclaimed water is consumed by milking livestock.

<sup>j</sup>Level 1 disinfection shall be provided for aquaculture production of fish to be consumed raw, such as sushi.

<sup>k</sup>Windblown spray generated by once-through cooling or recirculating cooling towers using reclaimed water treated to Level 2, shall not reach areas accessible to workers or the public unless Level 1 disinfection is provided. See also setback requirements in 9VAC25-740-170 for open cooling towers.

691 B. For any type of reuse not listed in subsection A of this section, including, but not limited to,  
692 indirect potable reuse and below-ground drip irrigation reuse that is newly proposed after October  
693 1, 2008, indirect nonpotable reuse that is newly proposed after January 29, 2014, or any reuse of  
694 reclaimed industrial water, including reuses listed in subsection A of this section, the ~~board~~  
695 department may prescribe specific reclaimed water standards and monitoring requirements  
696 needed to protect public health and the environment. When establishing these requirements for  
697 the proposed reuse, the ~~board~~ department shall consider the following factors:

698 1. The risk of the proposed reuse to public health with specific input from the Virginia  
699 Department of Health;

- 700 2. The degree of public access and human exposure to reclaimed water by the proposed
- 701 reuse;
- 702 3. The reclaimed water treatment necessary to prevent nuisance conditions by the
- 703 proposed reuse;
- 704 4. The reclaimed water treatment necessary for the proposed reuse to comply with this
- 705 and other applicable regulations of the ~~board~~ department ~~board~~;
- 706 5. The potential for improper or unintended use of the reclaimed water;
- 707 6. Other federal or state laws, regulations and guidelines that would apply to the proposed
- 708 reuse;
- 709 7. The similarity of the proposed reuse to reuses listed in this chapter with regard to
- 710 potential impact to public health and the environment;
- 711 8. Whether the proposed reuse may be excluded or prohibited by 9VAC25-740-50; and
- 712 9. For new indirect potable reuse proposals, residence or transport time, mixing ratios,
- 713 and other relevant information deemed necessary by the ~~board~~ department.

714 C. For any indirect potable reuse (IPR) project that is newly proposed after January 29, 2014,

715 the following are required:

- 716 1. A multiple barrier approach shall be used in the planning, design, and operation of the
- 717 project. Multiple barriers to be employed for the project shall be described in the
- 718 application for a permit in accordance with 9VAC25-740-100 D.
- 719 2. All reclaimed water generated by a reclamation system for IPR shall meet, at a
- 720 minimum, Level 1 reclaimed water standards, reclaimed water standards developed
- 721 pursuant to subsection B of this section, and any other standards that may apply, including
- 722 but not limited to, the Water Quality Standards (9VAC25-260) and total maximum daily
- 723 loads (TMDLs). Where there is more than one standard for the same pollutant, the more
- 724 stringent standard shall apply.
- 725 3. The public health risks of and the need to impose new or more stringent reclaimed water
- 726 standards for an IPR project shall be reevaluated with specific input from the Virginia
- 727 Department of Health upon each renewal of the permit issued to the reclamation system
- 728 that produces reclaimed water for the project. Factors to be considered in the reevaluation
- 729 shall include, at a minimum, applicable factors contained in subsection B of this section.
- 730 4. All reclamation systems identified as a component of an IPR project in accordance with
- 731 9VAC25-740-100 D 1, including pump stations that are part of the reclamation systems,
- 732 shall meet reliability requirements specified in 9VAC25-740-130 C.
- 733 5. VPDES permitted treatment works that have SIUs and provide source water for
- 734 reclamation and subsequent IPR shall, if required, have a pretreatment program or a
- 735 program equivalent to a pretreatment program in accordance with 9VAC25-740-150 E.

736 **9VAC25-740-100. Application for permit.**

737 A. The need for an owner to obtain a permit or modification or reissuance of an existing permit

738 from the ~~board~~ department for a proposed or an existing reclamation system, reclaimed water

739 distribution system, satellite reclamation system (SRS), or, as applicable, water reuse, shall be

740 determined in accordance with 9VAC25-740-30. Where required, permit coverage for these

741 systems or activities shall be provided in accordance with 9VAC25-740-40, contingent upon

742 receipt of a complete application from the owner. The application shall contain supporting

743 documentation and information required by subsections B and C of this section.

744 B. General information. For projects that involve water reclamation and the distribution of

745 reclaimed water, the following information shall be submitted with an application for a permit.

746 Information required for this subsection may be provided by referencing specific information

**Commented [VP5]:** This should stay "board" because it refers to the board's regulations.

747 previously submitted to the ~~board~~ department unless changes have occurred that require the  
748 submission of new or more current information. For projects that involve exclusively the  
749 distribution of reclaimed water, information for only subdivisions 1, 2, and 5 of this subsection  
750 shall be submitted with an application for a permit.

751 1. A description of the design and a site plan showing operations and unit processes of  
752 the proposed project, including and as applicable, treatment, storage, distribution, reuse  
753 and disposal facilities, and reliability features and controls. Treatment works, reclamation  
754 systems and reclaimed water distribution systems previously permitted need not be  
755 included, unless they are directly tied into the new units or are critical to the understanding  
756 of the complete project. Design approaches shall be consistent with accepted engineering  
757 practice and any applicable state regulations.

758 2. A general location map, showing orientation of the project with reference to at least two  
759 geographic features (e.g., numbered roads, named streams or rivers, etc.). A general  
760 location map for a reclaimed water distribution system may be included in the map of a  
761 service area required in accordance with subdivision C 1 a of this section.

762 3. Information regarding each wastewater treatment works that diverts or will divert source  
763 water to the reclamation system to be permitted, including:

764 a. All unit processes used for the treatment of wastewater at the facility prior to  
765 diversion to the reclamation system;

766 b. Any SIUs that indirectly discharge to the wastewater treatment works; and

767 c. Analyses of the source water to be diverted by the facility to the reclamation system.

768 4. Information regarding the sewage collection system that diverts or will divert sewage to  
769 the SRS to be permitted, including:

770 a. The name of the sewage collection system and the owner of that system;

771 b. Any SIUs that discharge directly or indirectly to the collection line from which sewage  
772 will be diverted to the SRS, excluding any downstream SIUs whose discharge has no  
773 potential to backflow to the SRS intake. This information shall include the location of  
774 the SIUs and distance between the SIUs and the SRS along the sewage collection  
775 line or lines; and

776 c. Characterization of the sewage to be diverted from the sewage collection system to  
777 the SRS at the point of diversion. Analysis of the sewage may be required where SIUs  
778 described in subdivision 4 b of this subsection discharge to the sewage collection  
779 system.

780 5. Information regarding each reclamation system or SRS to be permitted, including:

781 a. The standards specified in 9VAC25-740-70 A to be achieved;

782 b. Any other physical, chemical, and biological characteristics and constituent  
783 concentrations that may affect the intended reuse of the reclaimed water with respect  
784 to adverse impacts to public health or the environment; and

785 c. Designated design flow.

786 6. For the purpose of determining any significant adverse impacts to other beneficial uses,  
787 information regarding the VPDES permitted wastewater treatment works or the sewage  
788 collection system that will provide a new or increased diversion of source water to a  
789 reclamation system or SRS for the production of reclaimed water and information, as  
790 applicable, regarding the SRS that includes:

791 a. The latitude and longitude of the treatment works discharge location to a surface  
792 water or the SRS return discharge location in the sewage collection system;

- 793 b. The mean monthly discharge of the treatment works or return discharge of the SRS  
794 for each month during the most recent 60 or more consecutive months at the time of  
795 application, or where this information is not available, estimated values for the mean  
796 monthly discharge of the treatment works or return discharge of the SRS for each  
797 month during a period of 12 consecutive months;
- 798 c. The maximum monthly diversion of source water from the treatment works to a  
799 reclamation system or from the sewage collection system to a SRS for each month  
800 during a period of 12 consecutive months;
- 801 d. Pertaining only to sewage collection systems that provide source water, the name  
802 of the treatment works at the terminus of the sewage collection system; and
- 803 e. The information specified in subdivisions 6 a, b, and c of this subsection for each  
804 increase in source water diverted by the treatment works or the sewage collection  
805 system to a reclamation system or SRS, respectively, among multiple increases to  
806 occur in planned phases, and the anticipated dates of the phased increases.
- 807 7. Information describing measures to be immediately implemented for the management  
808 of wastewater and reclaimed water by a conjunctive system in the event that primary  
809 reuses of reclaimed water generated by the system cease or fail, and where the system:
- 810 a. Relies primarily or completely on water reclamation and reuse to eliminate  
811 wastewater;
- 812 b. Relies on:
- 813 (1) Irrigation as the primary or only reuse of reclaimed water, or
- 814 (2) One or more large end users, each consuming a significant volume of reclaimed  
815 water, such that the ability of the conjunctive system to manage wastewater would be  
816 adversely impacted if any such end user were to discontinue receiving reclaimed water  
817 from the conjunctive system; and
- 818 c. Does not have the ability to implement two or more of the options described in  
819 9VAC25-740-110 C 1.
- 820 8. Information required per subdivision 7 of this subsection shall be included in the  
821 reclaimed water management plan described in subsection C of this section where the  
822 conjunctive system is acting as a reclaimed water agent by directly distributing reclaimed  
823 water to an end user or end users, including an end user that is also the applicant or  
824 permittee.
- 825 9. Information, if applicable, regarding any type of proposed reuse not listed in this chapter,  
826 by which the ~~board~~ department can evaluate the need to prescribe specific reclaimed  
827 water treatment and monitoring requirements in accordance with 9VAC25-740-90 B.
- 828 C. Reclaimed water management (RWM) plan.
- 829 1. A RWM plan shall be submitted in support of a permit application for a new or expanded  
830 reclamation system, SRS, or reclaimed water distribution system acting as a reclaimed  
831 water agent by directly distributing reclaimed water to an end user or end users, including  
832 an end user that is also the applicant or permittee. A RWM plan shall not be required for  
833 a reclamation system that distributes reclaimed water exclusively for indirect potable  
834 reuse. The RWM plan shall contain the following:
- 835 a. A description and map of the expected service area to be covered by the RWM plan  
836 for the term of the permit for the project (i.e., five years for a VPDES or 10 years for a  
837 VPA permit). The map shall identify all reuses according to reuse categories shown in  
838 9VAC25-740-90 A or other categories for reuses that are or shall be authorized  
839 pursuant to 9VAC25-740-90 B, and their locations within the service area. The map



840 shall also identify and show the location of all public potable water supply wells and  
841 springs, and public water supply intakes, within the boundaries of the service area.  
842 The description and map of the service area shall be updated by the permittee with  
843 each permit renewal.

844 b. A current inventory of impoundments, ponds or tanks that are used for system  
845 storage of reclaimed water and, as applicable, reject water storage under the control  
846 of the permittee, and nonsystem storage located within the service area of the RWM  
847 plan in accordance with 9VAC25-740-110 C 15.

848 c. A water balance that accounts for the volumes of reclaimed water to be generated,  
849 stored, reused and discharged (i.e., through a VPDES permitted outfall, back to a  
850 sewage collection system, or otherwise disposed). The water balance shall include  
851 projected volumes of seasonal and annual reclaimed water demand for each reuse  
852 category.

853 d. An example of service agreements or contracts to be established by the applicant  
854 or permittee with end users regarding implementation of and compliance with the  
855 RWM plan. A service agreement or contract shall contain conditions and requirements  
856 specified in subdivisions 3 b and c of this subsection and in 9VAC25-740-170 that  
857 apply to the particular planned reuse of each end user. Terms of the agreement shall  
858 require property owners to report to the applicant or permittee all potable and  
859 nonpotable water supply wells on their property and to comply with appropriate  
860 setback distances for wells where reclaimed water will be used on the same property.  
861 Within the agreement or contract, the applicant or permittee shall also reserve the right  
862 to perform routine or periodic inspections of an end user's reclaimed water reuses and  
863 storage facilities, and to terminate the agreement or contract and withdraw service for  
864 any failure by the end user to comply with the terms and conditions of the agreement  
865 or contract if corrective action for such failure is not taken by the end user.

866 e. A description of monitoring of end users by the applicant or permittee to verify  
867 compliance with the terms of their agreements or contracts. Monitoring shall include,  
868 at a minimum, metering the volume of reclaimed water consumed by end users.

869 f. An education and notification program required in accordance with 9VAC25-740-170  
870 A.

871 g. A cross-connection and backflow prevention program that:

872 (1) Evaluates the potential for cross-connections of the reclaimed water distribution  
873 system to a potable water system and backflow to the reclaimed water distribution  
874 system from industrial end users;

875 (2) Evaluates the public health risks associated with possible backflow from industrial  
876 end users;

877 (3) Describes inspections to be performed by the applicant or permittee at the time  
878 end users connect to the reclaimed water distribution system and periodically  
879 thereafter to prevent cross-connections to a potable water system and backflow from  
880 industrial end users as determined necessary through the program evaluation;

881 (4) Insures that cross-connection and backflow prevention design criteria specified in  
882 9VAC25-740-110 B for reclaimed water distribution systems are implemented; and

883 (5) Requires a backflow prevention device on the reclaimed water service connection  
884 to an industrial end user, unless evaluation by the cross-connection and backflow  
885 prevention program determines that there is minimal risk to public health associated  
886 with possible backflow from the industrial end user or that there will be no backflow  
887 from the industrial end user capable of contaminating the reclaimed water supply.

888 h. A description of how the quality of reclaimed water in the reclaimed water distribution  
889 system shall be maintained to meet and, if determined necessary by the ~~board~~  
890 department, monitored to verify compliance with the minimum standard requirements  
891 specified in 9VAC25-740-90 for the intended reuse or reuses of the reclaimed water,  
892 excluding CAT standards. Where monitoring of reclaimed water in the distribution  
893 system is required, monitoring parameters and frequencies shall be determined by the  
894 ~~board~~ department on a case-by-case basis.

895 i. Information specified in subdivision B 7 of this section for conjunctive systems  
896 described in subdivision B 8 of this section.

897 j. Where the applicant or permittee is the provider of reclaimed water, the exclusive  
898 end user of that reclaimed water and is not otherwise excluded under 9VAC25-740-  
899 50 A, information for only subdivisions 1 a, b, and c of this subsection is required.

900 2. All irrigation reuses of reclaimed water shall be limited to supplemental irrigation.

901 3. Nutrient management requirements for irrigation reuse will be established in the RWM  
902 plan according to the concentration of total N and total P in the reclaimed water compared  
903 to biological nutrient removal (BNR) as defined in 9VAC25-740-10.

904 a. Except as specified in subdivision 4 of this subsection, a nutrient management plan  
905 (NMP) shall not be required for irrigation reuse of reclaimed water treated to achieve  
906 BNR or nutrient levels below BNR.

907 b. For bulk irrigation reuse of reclaimed water not treated to achieve BNR, a NMP shall  
908 be required of the end user.

909 (1) Where the applicant or permittee is the end user, the NMP shall be submitted with  
910 the RWM plan to the ~~board~~ department and shall be the responsibility of the applicant  
911 or permittee to properly implement.

912 (2) Where the end user is other than the applicant or permittee, the NMP shall be  
913 required as a condition of the service agreement or contract specified in subdivision 1  
914 d of this subsection between the applicant or permittee and the end user. The end  
915 user shall be responsible for obtaining, maintaining and following a current NMP;  
916 providing a copy of the most current NMP to the applicant or permittee prior to initiating  
917 bulk irrigation reuse of reclaimed water; and providing proof of compliance with the  
918 NMP at the request of the permittee.

919 c. For nonbulk irrigation reuse of reclaimed water not treated to achieve BNR, a NMP  
920 shall not be required. However, the RWM plan shall describe other measures to be  
921 implemented by the applicant or permittee to manage nutrient loads by nonbulk  
922 irrigation reuse of reclaimed water not treated to achieve BNR within the service area.  
923 These shall include, but are not limited to the following:

924 (1) The inclusion of language in the service agreement or contract specified in  
925 subdivision 1 d of this subsection, explaining proper use of the reclaimed water by the  
926 end user for the purpose of managing nutrients;

927 (2) Routine distribution of literature not less than annually, to individual nonbulk  
928 irrigation end users addressing the proper use of reclaimed water for irrigation in  
929 accordance with 9VAC25-740-170 A; and

930 (3) Monthly monitoring of N and P loads by nonbulk irrigation reuses to the service  
931 area of the RWM plan based on the total monthly metered nonbulk irrigation reuse of  
932 reclaimed water for the service area and the monthly average concentrations of total  
933 N and total P in the reclaimed water. Results of this monitoring shall be included in the  
934 annual report to the ~~board~~ department submitted in accordance with 9VAC25-740-200  
935 C.

- 936 4. Independent of the reclaimed water nutrient content, a NMP shall be required for a bulk  
937 irrigation reuse site where:
- 938 a. A wastewater treatment works, reclamation system, SRS, or reclaimed water  
939 distribution system and the irrigation reuse site or sites are under common ownership  
940 or management; and
- 941 b. In addition to irrigation reuse:
- 942 (1) There is no option to dispose of the reclaimed water through a VPDES permitted  
943 discharge, or
- 944 (2) There is an option to dispose of the reclaimed water through a VPDES permitted  
945 discharge, but the VPDES permit does not allow discharge of the full nutrient load  
946 under design flow (e.g., a treatment works with a VPDES permitted discharge  
947 implements water reclamation and reuse in lieu of providing treatment to meet nutrient  
948 effluent limits at design flow).
- 949 5. A NMP required per subdivision 4 of this subsection shall be approved by the  
950 Department of Conservation and Recreation (DCR) and submitted with the RWM plan to  
951 the ~~board~~ department. The applicant or permittee shall be responsible for proper  
952 implementation of the NMP.
- 953 6. If required for a specific irrigation reuse, the NMP shall be prepared by a nutrient  
954 management planner certified by DCR and shall be maintained current in accordance with  
955 the Nutrient Management Training and Certification Regulations, 4VAC5-15. A copy of the  
956 NMP for each irrigation reuse site shall be maintained at the site or at a location central to  
957 all sites covered by the plan. Another copy shall be provided to and retained by the  
958 applicant or permittee.
- 959 7. A site plan is required for each bulk irrigation reuse site and area of proposed expansion  
960 to an existing irrigation reuse site, displayed on the most current U.S. Geological Survey  
961 topographic maps (7.5 minutes series, where available) and showing the following:
- 962 a. The boundaries of the irrigation site;
- 963 b. The location of all potable and nonpotable water supply wells and springs, public  
964 water supply intakes, occupied dwellings, property lines, areas accessible to the  
965 public, outdoor eating, drinking and bathing facilities; surface waters, including  
966 wetlands; limestone rock outcrops and sinkholes within 250 feet of the irrigation site;  
967 and
- 968 c. Setbacks areas around the irrigation site in accordance with 9VAC25-740-170.
- 969 8. The site plan for a bulk irrigation reuse site shall be prepared by:
- 970 a. The applicant or permittee for submission with the RWM plan to the ~~board~~  
971 department when the irrigation site is under common ownership or management with  
972 a wastewater treatment works, a reclamation system, SRS, or reclaimed water  
973 distribution system from which it receives reclaimed water for irrigation; or
- 974 b. The bulk irrigation end user for submission with the service agreement or contract  
975 between the end user and the applicant or permittee when the irrigation site is not  
976 under common ownership or management with a wastewater treatment works, a  
977 reclamation system, SRS, or reclaimed water distribution system from which it  
978 receives reclaimed water for irrigation.
- 979 9. For the addition of new end users or new reuses not contained in the original RWM plan  
980 submitted with the application for a permit, the permittee shall submit to the ~~board~~  
981 department for approval an amendment to the RWM plan identifying the new end users  
982 or new reuses prior to connection and reclaimed water service to the new end users or

983 initiating the new reuses. For each new end user or new reuse, the permittee shall also  
984 provide all applicable information required by this subsection. Amendment of the RWM  
985 plan for the addition of new end users or new reuses after the issuance or reissuance of  
986 the permit shall not be considered a modification of the permit unless the new end users  
987 or new reuses will require the addition of different reclaimed water standards, monitoring  
988 requirements and conditions not contained in the permit.

989 D. Indirect potable reuse (IPR). For an application to permit an IPR project, the following  
990 additional information shall be submitted by the applicant or permittee to the board department:

991 1. Identification of the following components of an IPR project:

992 a. The reclamation system that will produce reclaimed water discharged to the water  
993 supply source (WSS).

994 b. The WSS to which the reclamation system identified in subdivision 1 a of this  
995 subsection will discharge reclaimed water.

996 c. The waterworks that will withdraw water from the WSS identified in subdivision 1 b  
997 of this subsection to produce potable water.

998 2. Identification of all uses in addition to IPR of the WSS identified in subdivision 1 of this  
999 subsection. Such uses shall be those deemed acceptable by the Virginia Department of  
1000 Health or the Waterworks Regulations (12VAC5-590).

1001 3. A description of multiple barriers to be implemented by the reclamation system or  
1002 waterworks, or both, to produce water of a quality suitable for IPR. Multiple barriers shall  
1003 include at a minimum:

1004 a. Source control and protection. This involves the control of contaminants with  
1005 potential to adversely impact public health by preventing or minimizing the entry of  
1006 these contaminants into the wastewater collection system prior to reclamation or the  
1007 WSS prior to withdrawal by the waterworks. Source control and protection shall, at a  
1008 minimum, address pretreatment requirements for SIUs in accordance with 9VAC25-  
1009 740-150 E and education requirements in accordance with 9VAC25-740-170 A 1, and  
1010 shall describe other measures to reduce the introduction of contaminants from  
1011 domestic sources that may include, but are not limited to, community collection  
1012 programs for hazardous wastes and unused pharmaceuticals.

1013 b. Effective and reliable treatment. This involves the use of treatment processes at  
1014 both the reclamation system and the waterworks that, in combination with any natural  
1015 attenuation provided by the environmental buffer to be described per subdivision 3 c  
1016 of this subsection, shall reliably achieve the water quality necessary for IPR. A  
1017 description of reclamation system treatment processes for IPR may be satisfied by  
1018 referencing application information submitted in accordance with subsection B of this  
1019 section.

1020 c. Environmental buffers and natural attenuation. This involves the use of an  
1021 environmental buffer, such as a surface water used as a WSS, to provide further  
1022 removal or degradation of certain contaminants when exposed to naturally occurring  
1023 physical, chemical, and biological processes in the environment over time.

1024 d. Monitoring programs. This involves monitoring at progressive stages of treatment  
1025 or barriers of the project to verify that they are working effectively and reliably to  
1026 achieve the necessary water quality for IPR.

1027 e. Responses to adverse conditions. To address those circumstances where the  
1028 reclamation system of the IPR project experiences a catastrophic treatment failure that  
1029 cannot be corrected by subsequent treatment or barriers, or fails to produce reclaimed

1030 water meeting the standards or limits at the point of discharge to the WSS, the  
1031 application for the IPR project shall contain:

1032 (1) A contingency plan that describes all alternatives to be implemented in lieu of  
1033 discharging the substandard reclaimed water to the WSS.

1034 (2) A notification program for the reclamation system of the IPR project as described  
1035 in 9VAC25-740-170 A 2.

1036 4. An evaluation of the combined effectiveness of all the barriers described in subdivision  
1037 3 of this subsection to achieve the water quality necessary for IPR.

1038 5. Any information deemed necessary by the ~~board~~ department to establish reclaimed  
1039 water standards and monitoring requirements for the IPR project in accordance with  
1040 9VAC25-740-90 B. This shall include, but is not limited to, residence or transport times,  
1041 mixing ratios, and other applicable modeling of the reclamation system discharge or  
1042 contaminants introduced by the discharge to the WSS.

1043 6. A water balance for the reclamation system that accounts for the volumes of reclaimed  
1044 water to be generated, stored, discharged to the WSS, and withdrawn for IPR.

1045 7. Any change by the reclamation system to provide reclaimed water for other reuses or  
1046 end users in addition to IPR shall require submission of a RWM plan in accordance with  
1047 subdivision C 1 of this section. The water balance for the RWM plan shall include the water  
1048 balance required per subdivision 6 of this subsection for the IPR project.

1049 8. A copy of the contractual agreement established between the reclamation system and  
1050 the waterworks of the IPR project, identifying the responsibilities of each party to  
1051 implement multiple barriers described in accordance with subdivision 3 of this subsection,  
1052 unless the reclamation system and waterworks are under common ownership or  
1053 management.

1054 **9VAC25-740-110. Design criteria.**

1055 A. Reclamation system.

1056 1. The design of systems for the reclamation of municipal wastewater or source water  
1057 derived from a municipal wastewater treatment works shall adhere to the standards of  
1058 design and construction specified in the Sewage Collection and Treatment Regulations  
1059 (9VAC25-790) and other applicable engineering standards and regulations. Design  
1060 standards for reclamation systems of industrial wastewater or source water derived from  
1061 an industrial wastewater treatment works shall be determined and evaluated on a case-  
1062 by-case basis.

1063 2. Ultraviolet (UV) disinfection for reclamation systems:

1064 a. For Level 1 reclaimed water:

1065 (1) Designs for UV disinfection shall be validated in accordance with NWRI Ultraviolet  
1066 Disinfection Guidelines for Drinking Water and Water Reuse, Second Edition (2003)  
1067 (guidelines) to meet a UV design dosage greater than or equal to 100,000 uWsec/cm<sup>2</sup>  
1068 (MS-2 dose) under peak flow and a minimum UV transmittance of 55% at 254 nm. A  
1069 lower UV disinfection dosage may be authorized by the ~~board~~ department if  
1070 demonstrated to meet at least one of the bacteria standards for Level 1 specified in  
1071 9VAC25-740-70 A, and where microbial testing is used to validate the efficacy of the  
1072 UV disinfection dose in accordance with the guidelines. For the lower disinfection  
1073 dose, the ~~board~~ department may develop reclaimed water turbidity standards and  
1074 minimum UV transmittance requirements that are unique to the UV disinfection  
1075 process of the reclamation system.

1076 (2) The UV disinfection system shall be designed to supply the minimum dose  
1077 specified in subdivision 2 a (1) of this subsection at all times. The system may be  
1078 automated to immediately adjust the UV disinfection dosage in response to changes  
1079 in the UV system influent reclaimed water flow and quality.

1080 b. UV disinfection for Level 2 reclaimed water shall be designed, constructed, and  
1081 operated in accordance with the Sewage Collection and Treatment Regulations  
1082 (9VAC25-790) for UV disinfection of secondary effluent.

1083 B. Reclaimed water distribution system.

1084 1. All reclaimed water distribution systems shall be designed and constructed in  
1085 accordance with this chapter and applicable sections of the Sewage Collection and  
1086 Treatment Regulations (9VAC25-790) pertaining to force mains, so that:

1087 a. Reclaimed water does not come into contact with or otherwise contaminate a  
1088 potable water system;

1089 b. The structural integrity of the system is provided and maintained; and

1090 c. The capability for inspection, maintenance, and testing is maintained.

1091 2. For a reclaimed water distribution system, the following shall be implemented as part of  
1092 the cross-connection and backflow prevention program submitted with the RWM plan:

1093 a. There shall be no direct cross-connections between the reclaimed water distribution  
1094 system and a potable water supply system.

1095 b. The reclaimed water distribution system shall be in compliance with the cross  
1096 connection control and backflow prevention requirements of Article 4 (12VAC5-590-  
1097 580 et seq.) of Part II of the Commonwealth of Virginia Waterworks Regulations and,  
1098 when applicable, the reclaimed water distribution system shall also be in compliance  
1099 with the Virginia Statewide Building Code (13VAC5-63).

1100 c. Potable water may be used to supplement reclaimed water for a reuse, provided  
1101 there is an air gap separation of at least eight inches between the potable water and  
1102 the reclaimed water or a reduced pressure principle backflow prevention device  
1103 installed at the potable water service connection to the reuse. The installation of the  
1104 reduced pressure principal backflow prevention device shall allow for proper  
1105 inspection and testing of the device.

1106 d. Reclaimed water shall not be returned to the reclaimed water distribution system  
1107 after the reclaimed water has been delivered to an end user.

1108 3. In-ground reclaimed water distribution pipelines shall be installed and maintained to  
1109 achieve minimum separation distance and configurations as follows:

1110 a. No reclaimed water distribution pipeline shall pass within 50 feet of a potable water  
1111 supply well, potable water supply spring or water supply intake that are part of a  
1112 regulated waterworks. The same separation distance shall be required between a  
1113 reclaimed water distribution pipeline and a nonpublic or private potable water supply  
1114 well or spring, but may be reduced to not less than 35 feet provided special  
1115 construction and pipe materials are used to obtain adequate protection of the potable  
1116 water supply.

1117 b. Reclaimed water distribution pipeline shall be separated horizontally by at least 10  
1118 feet from a water main. The distance shall be measured edge-to-edge. When local  
1119 conditions prohibit this horizontal separation, the reclaimed water distribution pipeline  
1120 may be laid closer provided that the water main is in a separate trench or an  
1121 undisturbed earth shelf located on one side of the reclaimed water distribution pipeline  
1122 and the bottom of the water main is at least 18 inches above the top of the reclaimed

1123 water distribution pipeline. Where this vertical separation cannot be obtained, the  
1124 reclaimed water distribution pipeline shall be constructed of water pipe material in  
1125 accordance with AWWA specifications and pressure tested in place without leakage  
1126 prior to backfilling. The hydrostatic test shall be conducted in accordance with the  
1127 AWWA standard (ANSI/AWWA C600-05, effective December 1, 2005) for the pipe  
1128 material, with a minimum test pressure of 30 psi.

1129 c. Distribution pipeline that conveys Level 1 reclaimed water shall be separated  
1130 horizontally by at least two feet from a sewer line. The distance shall be measured  
1131 edge-to-edge. When local conditions prohibit this horizontal separation, the reclaimed  
1132 water distribution pipeline may be laid closer provided that the sewer line is in a  
1133 separate trench or an undisturbed earth shelf located on one side of the reclaimed  
1134 water distribution pipeline and the bottom of the reclaimed water distribution pipeline  
1135 is at least 18 inches above the top of the sewer line. Where this vertical separation  
1136 cannot be obtained, either the reclaimed water distribution pipeline or the sewer line  
1137 shall be constructed of water pipe material in accordance with AWWA specifications  
1138 and pressure tested in place without leakage prior to backfilling. The hydrostatic test  
1139 shall be conducted in accordance with the AWWA standard (ANSI/AWWA C600-05,  
1140 effective December 1, 2005) for the pipe material, with a minimum test pressure of 30  
1141 psi.

1142 d. Reclaimed water distribution pipeline shall cross under water main such that the top  
1143 of the reclaimed water distribution pipeline is at least 18 inches below the bottom of  
1144 the water main. When local conditions prohibit this vertical separation, the reclaimed  
1145 water distribution pipeline shall be constructed of AWWA specified water pipe and  
1146 pressure tested in place without leakage prior to backfilling, in accordance with the  
1147 provisions of the Sewage Collection and Treatment Regulations (9VAC25-790).  
1148 Where reclaimed water distribution pipeline crosses over water main, the reclaimed  
1149 water distribution pipeline shall:

1150 (1) Be laid to provide a separation of at least 18 inches between the bottom of the  
1151 reclaimed water distribution pipeline and the top of the water main.

1152 (2) Be constructed of AWWA approved water pipe and pressure tested in place without  
1153 leakage prior to backfilling, in accordance with the provisions of the Sewage Collection  
1154 and Treatment Regulations (9VAC25-790).

1155 (3) Have adequate structural support to prevent damage to the water main.

1156 (4) Have joints placed equidistant and as far as possible from the water main joints.

1157 e. Sewer line shall cross under distribution pipeline that conveys Level 1 reclaimed  
1158 water such that the top of the sewer line is at least 18 inches below the bottom of the  
1159 reclaimed water distribution pipeline. When local conditions prohibit this vertical  
1160 separation, the sewer line shall be constructed of AWWA specified water pipe and  
1161 pressure tested in place without leakage prior to backfilling, in accordance with the  
1162 provisions of the Sewage Collection and Treatment Regulations (9VAC25-790).  
1163 Where sewer line crosses over distribution pipeline that conveys Level 1 reclaimed  
1164 water, the sewer line shall:

1165 (1) Be laid to provide a separation of at least 18 inches between the bottom of the  
1166 sewer line and the top of the reclaimed water distribution pipeline.

1167 (2) Be constructed of AWWA approved water pipe and pressure tested in place without  
1168 leakage prior to backfilling, in accordance with the provisions of the Sewage Collection  
1169 and Treatment Regulations (9VAC25-790).

- 1170 (3) Have adequate structural support to prevent damage to the reclaimed water  
1171 distribution pipeline.
- 1172 (4) Have joints placed equidistant and as far as possible from the reclaimed water  
1173 distribution pipeline joints.
- 1174 f. No reclaimed water distribution pipeline shall pass through or come into contact with  
1175 any part of a sewer manhole. Distribution pipeline that conveys Level 1 reclaimed  
1176 water shall be separated horizontally by at least two feet from a sewer manhole  
1177 whenever possible. The distance shall be measured from the edge of the pipe to the  
1178 edge of the manhole structure. When local conditions prohibit this horizontal  
1179 separation, the manhole shall be of watertight construction and tested in place.
- 1180 4. No setback distance is required to any nonpotable water supply well and no vertical or  
1181 horizontal separation distances are required between above-ground reclaimed water  
1182 pipelines and potable water, sewer or wastewater pipelines.
- 1183 5. All reclaimed water outlets shall be of a type, or secured in a manner, that permits  
1184 operation by authorized personnel. Public access to reclaimed water outlets shall be  
1185 controlled in areas where reclaimed water outlets are accessible to the public as follows:
- 1186 a. If quick connection couplers are used on above-ground portions of the reclaimed  
1187 water distribution system, they shall differ materially from those used on the potable  
1188 water supply.
- 1189 b. Use of above-ground hose bibs, spigots or other hand-operated connections that  
1190 are standard on local potable water distribution systems shall be prohibited for use on  
1191 the local reclaimed water distribution system. If above-ground hose bibs, spigots or  
1192 other hand-operated connections are used on the reclaimed water distribution system,  
1193 they must differ materially from those used on the local potable water distribution  
1194 system and must be clearly distinguishable as reclaimed water connections (i.e.,  
1195 painted purple, valve operation with a special tool) so as not to be mistaken for potable  
1196 water connections. Where below-grade vaults are used to house reclaimed water  
1197 connections, the connections in the vault may have standard potable water distribution  
1198 system thread and bib size services provided the bib valves can be operated only by  
1199 a special tool. The below-grade vaults shall also be labeled as being part of the  
1200 reclaimed water distribution system (i.e., painted purple, labeled).
- 1201 6. Existing potable water distribution systems, sewer and wastewater collection systems,  
1202 and irrigation distribution systems may be converted for use as reclaimed water  
1203 distribution systems. Not less than 90 days prior to such conversions, excluding the  
1204 conversion of irrigation distribution systems that are not under common ownership or  
1205 management with reclamation systems, SRSs, or reclaimed water distribution systems  
1206 providing reclaimed water to the irrigation distribution systems, the following shall be  
1207 submitted to the ~~board~~ department for approval:
- 1208 a. A system conversion plan that contains:
- 1209 (1) Information on the location and identification of the facilities to be converted;
- 1210 (2) Information on the location of all connections to the facilities to be converted;
- 1211 (3) A description of procedures to be used to ensure that all connections and cross-  
1212 connections shall be eliminated. This may include physical inspections, dye testing, or  
1213 other testing procedures;
- 1214 (4) A description of the physical and operational modifications necessary to convert  
1215 the existing system to a reclaimed water distribution system that shall comply with  
1216 applicable design criteria in subsections B and C of this section, and the operations  
1217 and maintenance requirements of 9VAC25-740-140 D 2;



- 1218 (5) A description of cleaning and disinfection procedures to be followed before the  
1219 converted facilities will be placed into operation for reclaimed water distribution. For  
1220 the conversion of existing sewer and wastewater collection systems, cleaning and  
1221 disinfection of the system shall be conducted in accordance with AWWA standards  
1222 (ANSI/AWWA C651-05, effective June 1, 2005). Procedures to dispose of flush water  
1223 from cleaning or disinfection shall be those described in the operations and  
1224 maintenance manual of the system for the disposal of flush water from maintenance  
1225 activities;
- 1226 (6) An assessment of the physical condition and integrity of facilities to be converted;  
1227 and
- 1228 (7) Reasonable assurance that cross-connections will not result, public health will be  
1229 protected, and the integrity of potable water, wastewater, and reclaimed water systems  
1230 will be maintained when the conversion is made.
- 1231 b. An operations and maintenance manual for the system converted to a reclaimed  
1232 water distribution system in accordance with 9VAC25-740-140 B, containing at a  
1233 minimum the items specified in 9VAC25-740-140 D.
- 1234 7. Tank trucks may be used to transport and distribute reclaimed water only if the following  
1235 requirements are met:
- 1236 a. The truck is not used to transport potable water that is used for drinking water or  
1237 food preparation;
- 1238 b. The truck is not used to transport waters or other fluids that do not meet the  
1239 requirements of this chapter, unless the tank has been evacuated and properly  
1240 cleaned prior to the addition of the reclaimed water;
- 1241 c. The truck is not filled through on-board piping or removable hoses that may  
1242 subsequently be used to fill tanks with water from a potable water supply; and
- 1243 d. The reclaimed water contents of the truck are clearly identified as nonpotable water  
1244 on the truck.
- 1245 8. Reclaimed water distribution systems shall have the following identification, notification  
1246 and signage:
- 1247 a. Reclaimed water piping with an outer diameter greater than or equal to one inch,  
1248 installed in-ground after January 29, 2014, or above-ground shall display the words  
1249 "CAUTION: RECLAIMED WATER - DO NOT DRINK" by one or more of the following  
1250 methods:
- 1251 (1) Stenciling or stamping the piping with two-inch to three-inch letters on opposite  
1252 sides of the piping, placed at intervals of three to four feet. For piping less than two  
1253 inches and greater than or equal to one inch outer diameter, lettering shall be at least  
1254 5/8 inch, placed on opposite sides of the piping and repeated at intervals of one foot.
- 1255 (2) Wrapping the piping with purple (Pantone 522) polyethylene vinyl wrap or adhesive  
1256 tape, placed longitudinally at three-foot intervals. The width of the wrap or tape shall  
1257 be at least three inches, and shall display the required caution statement in either white  
1258 or black lettering.
- 1259 (3) Permanently affixing purple (Pantone 522) vinyl adhesive tape on top of the piping,  
1260 parallel to the axis of the piping, fastened at least every 10 feet to each pipe section,  
1261 and continuously for the entire length of the piping. The width of the tape shall be at  
1262 least three inches, and shall display the required caution statement in either white or  
1263 black lettering.

- 1264 (4) Using an alternate method that assures the caution statement will be displayed to  
1265 provide an equivalent degree of public notification and protection if approved by the  
1266 board department.
- 1267 b. Additional methods, if provided, to identify reclaimed water piping with an outer  
1268 diameter greater than or equal to one inch (e.g., permanently color coding the piping  
1269 Pantone 522 purple), shall not obscure any portion of the caution statement required  
1270 pursuant to subdivision 8 a of this subsection.
- 1271 c. Reclaimed water piping with an outer diameter less than one inch shall require the  
1272 following:
- 1273 (1) Where installed in-ground after January 29, 2014, or above ground, the piping shall  
1274 be permanently color coded purple (Pantone 522). Longitudinal purple striping of the  
1275 piping may be allowed provided the cumulative width of the stripes is greater than or  
1276 equal to 25% of the outer pipe diameter.
- 1277 (2) Where installed within a building or structure, the piping shall have in addition to  
1278 color coding required per subdivision 8 c (1) of this subsection, the words "CAUTION:  
1279 RECLAIMED WATER – DO NOT DRINK" embossed, stenciled, stamped, or affixed  
1280 with adhesive tape on the piping, placed on opposite sides of the piping, and repeated  
1281 at intervals of one foot. Lettering of the caution statement shall be of a size easily read  
1282 by a person with normal vision at a distance of two feet.
- 1283 d. All other above-ground portions of the reclaimed water distribution system including  
1284 reclaimed water valves, outlets (including fire hydrants) and other appurtenances shall  
1285 be color coded, taped, labeled, tagged or otherwise marked to notify the public and  
1286 employees that the source of the water is reclaimed water, not intended for drinking or  
1287 food preparation. For reclaimed water treated to Level 2, such notification shall also  
1288 inform employees to practice good personal hygiene for incidental contact with  
1289 reclaimed water and the public to avoid contact with the reclaimed water.
- 1290 e. Each mechanical appurtenance of a reclaimed water distribution system shall be  
1291 colored purple and legibly marked "RECLAIMED WATER" to identify it as a part of the  
1292 reclaimed water distribution system and to distinguish it from mechanical  
1293 appurtenances of a potable water distribution system or a wastewater collection  
1294 system.
- 1295 f. Valve boxes for reclaimed water distribution systems shall be painted purple. Valve  
1296 covers for reclaimed water distribution lines shall not be interchangeable with potable  
1297 water supply valve covers.
- 1298 g. Existing potable water distribution systems, sewer or wastewater collection  
1299 systems, or irrigation distribution systems that are converted to reclaimed water  
1300 distribution systems in accordance with subdivision 6 of this subsection after January  
1301 29, 2014, shall be retrofitted to meet identification, notification, and signage  
1302 requirements of subdivision 8 of this subsection with the following exceptions:
- 1303 (1) For converted systems requiring the submission of a conversion plan and an  
1304 operations and maintenance manual in accordance with subdivision 6 of this  
1305 subsection, existing in-ground converted piping shall be retrofitted to a distance of not  
1306 less than 10 feet from locations where the piping crosses or is crossed by a potable  
1307 water supply line or sanitary sewer line.
- 1308 (2) For all other converted systems, identification, notification, and signage  
1309 requirements specified in subdivision 8 of this subsection for in-ground piping shall not  
1310 apply.

- 1311 9. All reclaimed water distribution systems shall be maintained to minimize losses and to  
1312 ensure safe and reliable conveyance of reclaimed water such that the reclaimed water will  
1313 not be degraded below the standards, excluding CAT standards, required for the intended  
1314 reuse or reuses in accordance with 9VAC25-740-90.
- 1315 C. Storage requirements.
- 1316 1. To ensure reliable reclamation system operation in accordance with the requirements  
1317 of this chapter, all reclamation systems shall have the ability to implement one or more of  
1318 the following options:
- 1319 a. Store reclaimed water;
  - 1320 b. Discharge reclaimed water to another permitted reuse system, if applicable;
  - 1321 c. Discharge reclaimed water to surface waters of the state under a VPDES permit;
  - 1322 d. Suspend all or a portion of water reclamation for planned periods; or
  - 1323 e. In the case of a satellite reclamation system, discharge reclaimed water into the  
1324 sewage collection system from which it received source water for reclamation.
- 1325 2. Storage for reclaimed water shall be required only when subdivision 1 b, c, or d of this  
1326 subsection or, as applicable, subdivision 1 e of this subsection are not available or  
1327 approved by the ~~board~~ department.
- 1328 3. Separate, off-line storage shall be provided for reject water of the reclamation system  
1329 unless the reject water can be diverted to another permitted reuse system, discharged to  
1330 surface waters of the state under a VPDES permit, returned directly to an appropriate  
1331 point of treatment in the reclamation system, or in the case of a satellite reclamation  
1332 system, sent to the sewage collection system from which the reclamation system received  
1333 water for reclamation. Where reject water is stored, provisions shall be incorporated into  
1334 the design of the reclamation system to distribute the reject water from storage to other  
1335 parts of the reclamation system for additional or repeated treatment.
- 1336 4. Storage for reject water may also be used for emergency storage to ensure Reliability  
1337 Class I of the reclamation system in accordance with 9VAC25-740-130.
- 1338 5. Reject water and reclaimed water may be stored in watertight tanks placed above-  
1339 ground or in-ground. Labeling of tanks used for reject water storage, system storage or  
1340 nonsystem storage shall be in accordance with 9VAC25-740-160 B, and shall, at a  
1341 minimum, identify the contents of each tank as either reject water or reclaimed water.
- 1342 6. For all impoundments or ponds that are used for reject water storage or system storage,  
1343 with the exception of impoundments and ponds specified in subdivision 7 of this  
1344 subsection, the following are required:
- 1345 a. A minimum two-foot freeboard shall be maintained at all times. Any emergency  
1346 discharge or overflow device and the disposition of the overflow discharge shall be  
1347 identified in the engineering report.
  - 1348 b. There shall be a minimum two-foot separation distance between the bottom of the  
1349 impoundment or pond and the seasonal high water table.
  - 1350 c. The impoundment or pond shall have a properly designed and installed synthetic  
1351 liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness.  
1352 Synthetic liners shall be installed in accordance with the manufacturer's specifications  
1353 and recommendations. The soil liner shall be composed of separate lifts not to exceed  
1354 six inches. The maximum coefficient of permeability for the synthetic and soil liners  
1355 shall not exceed  $1 \times 10^{-6}$  cm/sec and  $1 \times 10^{-7}$  cm/sec, respectively. A plan of quality  
1356 assurance and quality control which substantiates the adequacy of the liner and its  
1357 installation shall be included in or shall accompany the preliminary engineering report

- 1358 or supporting documentation for the CTC. Documentation of quality assurance and  
1359 quality control activities on liner installation along with permeability test results, shall  
1360 be submitted with the statement of construction completion to the ~~board~~ department.
- 1361 d. If the requirements of subdivision 6 b or c of this subsection cannot be met, the  
1362 ~~board~~ department may allow use of the impoundment or pond for storage provided  
1363 that a groundwater monitoring plan for the facility is submitted to the ~~board~~ department  
1364 for review and approval. The plan shall identify the direction of groundwater flow and  
1365 the proposed location and depth of groundwater monitoring wells at the location of the  
1366 impoundment or pond, parameters to be monitored, a monitoring schedule, and  
1367 procedures for proper sample collection and handling.
- 1368 e. The design of the impoundment or pond shall prevent the entry of surface water or  
1369 storm water runoff from outside the facility embankment or berm.
- 1370 f. Where the embankment of the impoundment or pond is composed of soil, the  
1371 embankment shall have:
- 1372 (1) A top width of at least five feet;
- 1373 (2) Interior and exterior slopes no steeper than one foot vertical to three feet horizontal  
1374 unless alternate methods of slope stabilization are used;
- 1375 (3) Shallow-rooted vegetative cover or other soil stabilization to prevent erosion; and  
1376 (4) Erosion stops and water seals installed on all piping that penetrates the  
1377 embankment.
- 1378 g. There shall be routine maintenance of the impoundment or pond liner,  
1379 embankments and access areas.
- 1380 h. Impoundments and ponds shall be sited to avoid areas of uneven subsidence,  
1381 sinkholes, or unstable soils unless provisions are made for their correction. Results  
1382 from field and laboratory tests from an adequate number of test borings and soil  
1383 samples shall be the basis for computations pertaining to permeability and stability  
1384 analyses.
- 1385 i. Impoundments or ponds shall not be located on a floodplain unless protected from  
1386 inundation or damage by a 100-year frequency flood event.
- 1387 j. There shall be a minimum setback distance measured horizontally from the  
1388 perimeter of the storage impoundment or pond to potable water supply wells and  
1389 springs, and public water supply intakes, of 100 feet for storage of Level 1 reclaimed  
1390 water and 200 feet for storage of Level 2 reclaimed water or reject water.
- 1391 7. Reject water storage and system storage impoundments or ponds that exist upon  
1392 October 1, 2008, shall be exempt from the design, construction, and operation  
1393 requirements specified in subdivision 6 of this subsection until such time these facilities  
1394 are modified or expanded, or unless they have failed to comply with other existing  
1395 regulatory or permitting requirements.
- 1396 8. The capacity of reject water storage and system storage facilities, including  
1397 impoundments, ponds or tanks, shall be as follows:
- 1398 a. For reject water, the capacity of the storage facility shall, at a minimum, be the  
1399 volume equal to the designated design flow of the reclamation system unless other  
1400 options exist for immediate disposal or retreatment of the reject water in addition to  
1401 storage.
- 1402 b. For reclaimed water, the capacity of the storage facility shall be determined by the  
1403 seasonal variability in demand, intended reuses with intermittent, variable demand,

- 1404 such as fire protection or fighting; and the availability of other options to generate or  
1405 manage reclaimed water as specified in subdivision 1 of this subsection.
- 1406 (1) Where there is no or minimal seasonal variability in demand and no other options  
1407 are available for alternative generation or management of all or a portion of the  
1408 reclaimed water, the capacity of the storage facility shall, at a minimum, be the volume  
1409 equal to three times that portion of the reclamation system designated design flow for  
1410 which no other options to generate or manage the reclaimed water from the  
1411 reclamation system are permitted.
- 1412 (2) Where there is seasonal variability in demand and no other options are available  
1413 for alternative generation or management of all or a portion of the reclaimed water  
1414 during periods of low seasonal demand, storage facilities shall have sufficient storage  
1415 capacity to assure the retention of the reclaimed water under conditions and  
1416 circumstances that preclude reuse. The methods, assumptions and calculations used  
1417 to determine the system storage requirements shall be provided and justified in the  
1418 preliminary engineering report or supporting documentation for the CTC. Analytical  
1419 means of determining system storage requirements, such as water balance  
1420 calculations or computer hydrological programs, shall be used and shall account for  
1421 all water inputs into the system. Analysis shall be based on site-specific data. Irrigation  
1422 efficiencies or rainfall efficiencies shall not be used in storage volume determinations.
- 1423 9. Requirements specified in subdivision 6 of this subsection shall not apply to  
1424 impoundments or ponds used for nonsystem storage with the exception of those specified  
1425 in subdivision 11 of this subsection.
- 1426 10. Landscape impoundments may also be used for nonsystem storage of reclaimed  
1427 water prior to another subsequent reuse, such as irrigation.
- 1428 11. Impoundments or ponds used for nonsystem storage of reclaimed water, including  
1429 landscape impoundments, for subsequent irrigation reuse on sites under common  
1430 ownership or management with the reclamation system or satellite reclamation system  
1431 that provides reclaimed water to the sites, shall comply with the design, construction and  
1432 operation requirements specified in subdivision 6 of this subsection.
- 1433 12. For impoundments or ponds used for nonsystem storage of reclaimed water, the  
1434 following setback distances shall apply:
- 1435 a. There shall be a 50-foot minimum setback distance measured horizontally from the  
1436 perimeter of the impoundment or pond to property lines.
- 1437 b. For an impoundment or pond with a liner meeting the requirements specified in  
1438 subdivision 6 c of this subsection, there shall be a minimum setback distance  
1439 measured horizontally from the perimeter of the storage impoundment or pond to  
1440 potable water supply wells and springs, and public water supply intakes, of 100 feet  
1441 for storage of Level 1 reclaimed water and 200 feet for storage of Level 2 reclaimed  
1442 water.
- 1443 c. For an unlined impoundment or pond, there shall be a minimum setback distance  
1444 measured horizontally from the perimeter of the storage impoundment or pond to  
1445 potable water supply wells and springs, and public water supply intakes, of 200 feet  
1446 for storage of Level 1 reclaimed water and 400 feet for storage of Level 2 reclaimed  
1447 water.
- 1448 13. Where more than one setback distance applies to storage for reclaimed water or reject  
1449 water, the greater setback distance shall govern.
- 1450 14. Reclaimed water system storage facilities shall be designed and operated to prevent  
1451 a discharge to surface waters of the state except in the event of a storm greater than the

1452 25-year, 24-hour storm. Reclaimed water nonsystem storage facilities, including  
 1453 landscape impoundments used for nonsystem storage, shall be designed and operated to  
 1454 prevent a discharge to surface waters of the state, except in the event of a storm greater  
 1455 than the 10-year, 24-hour storm.

1456 15. Permittees shall maintain current inventories of reject water storage, system storage  
 1457 and nonsystem storage facilities located within the service area of the RWM plan. An  
 1458 inventory or a revised inventory shall be submitted as part of the RWM plan in the permit  
 1459 application. For the addition of new storage facilities to an inventory after permit issuance,  
 1460 the permittee shall submit to the board department an amended inventory at least 30 days  
 1461 before reclaimed water will be introduced into the new storage facilities. An inventory of  
 1462 reject water storage, system storage and nonsystem storage facilities shall include the  
 1463 following:

- 1464 a. Name or identifier for each storage facility;
- 1465 b. Location of each storage facility (including latitude and longitude);
- 1466 c. Function of each storage facility (i.e., reject water storage, system storage or  
 1467 nonsystem storage);
- 1468 d. Type of each storage facility (i.e., covered tank, uncovered tank, lined pond, unlined  
 1469 pond, etc.); and
- 1470 e. Location (latitude and longitude) and distance of the nearest potable water supply  
 1471 well and spring, and public water supply intake, to each storage facility within 450 feet  
 1472 of that facility.

1473 16. Storage requirements as specified in this subsection shall not apply to reclaimed water  
 1474 storage facilities provided at the site of an industrial end user where such facilities are  
 1475 regulated by an existing water permit issued by the board department to the industrial end  
 1476 user, or the industrial end user is also the generator of reclaimed water stored in the  
 1477 facilities and is excluded under 9VAC25-740-50 A.

1478 **9VAC25-740-120. Construction requirements.**

1479 A. Preliminary engineering report and pilot study.

1480 1. A preliminary engineering report shall be submitted for new water reclamation projects  
 1481 and for modification or expansion of existing reclamation systems, SRSs, and reclaimed  
 1482 water distributions systems. At the request of the applicant or permittee, the board  
 1483 department may waive the need for a preliminary engineering report or portions of a  
 1484 preliminary engineering report for modification or expansion of an existing reclamation  
 1485 system, SRS, or reclaimed water distributions system based on the scope of the proposed  
 1486 project.

1487 2. A pilot study shall be required where treatment is proposed for a reclamation system of  
 1488 an IPR project.

- 1489 a. The pilot study shall demonstrate the ability of selected treatment processes to:
  - 1490 (1) Meet, at a minimum, the reclaimed water standards prescribed for the IPR project
  - 1491 in accordance with 9VAC25-740-90 C, and
  - 1492 (2) Generate a consistent and reliable supply of reclaimed water for the IPR project.
- 1493 b. The pilot study shall quantify and characterize the quality of source water provided  
 1494 for reclamation and reclaimed water generated by the treatment processes of the  
 1495 reclamation system for a period of not less than 365 days unless reduced by the board  
 1496 department in accordance with subdivision 2 c of this subsection.

1497 c. At the request of the applicant or permittee, the board department may reduce the  
1498 pilot study duration specified in subdivision 2 b of this subsection or the pilot study  
1499 scope where the following are met:

1500 (1) The applicant or permittee provides a detailed plan of study for the board's  
1501 department's review and approval before initiating the pilot study, and

1502 (2) The detailed plan of study justifies to the satisfaction of the board department's  
1503 department that a pilot study of shorter duration or reduced scope will be sufficient to  
1504 achieve the requirements of subdivision 2 a of this subsection. For the purpose of  
1505 reducing the duration or scope of a pilot study, results of previous pilot studies and  
1506 operating experiences of similar water reclamation and IPR projects may be used as  
1507 part of the demonstration required pursuant to subdivision 2 a of this subsection.

1508 d. Results of the pilot study shall be submitted to the board department for review.

1509 B. Certificate to construct and certificate to operate.

1510 1. No owner shall cause or allow the construction, expansion or modification of a  
1511 reclamation system or SRS except in compliance with a certificate to construct (CTC) from  
1512 the board department unless otherwise provided for by this chapter. Furthermore, no  
1513 owner shall cause or allow any reclamation system or SRS to be operated except in  
1514 compliance with a certificate to operate (CTO) issued by the board department, which  
1515 authorizes the operation of the reclamation system or SRS, unless otherwise provided for  
1516 by this chapter. The need for a CTC and CTO for modifications shall be determined by the  
1517 board department on a case-by-case basis. Conditions may be imposed on the issuance  
1518 of any CTC or CTO, and no reclamation system or SRS may be constructed, modified, or  
1519 operated in violation of these conditions.

1520 2. CTC.

1521 a. Upon approval of the proposed design by the board department, including any  
1522 submitted plans and specifications, if required, the board department will issue a CTC  
1523 to the owner of such approval to construct or modify his reclamation system or SRS in  
1524 accordance with the approved plans and specifications.

1525 b. Any deviations from the approved design or the submitted plans and specifications  
1526 significantly affecting hydraulic conditions (flow profile), unit operations capacity, the  
1527 functioning of the reclamation system or SRS, or the quality of the reclaimed water,  
1528 must be approved by the board department before any such changes are made.

1529 3. CTO.

1530 a. Upon completion of the construction or modification of the reclamation system or  
1531 SRS, the owner shall submit to the board department a Statement of Construction  
1532 Completion signed by a licensed professional engineer stating that the construction  
1533 work has been completed in accordance with the approved plans and specifications,  
1534 or revised only in accordance with subdivision 2 b of this subsection. This statement  
1535 shall be based upon inspections of the reclamation system or SRS during and after  
1536 construction or modifications that are adequate to ensure the truth of the statement.

1537 b. Upon receipt of the construction completion statement, the board department may  
1538 issue a final CTO. However, the board department may delay the granting of the CTO  
1539 pending inspection, or satisfactory evaluation of reclaimed water test results, to ensure  
1540 that the work has been satisfactorily completed.

1541 c. A conditional CTO may be issued specifying final approval conditions, with specific  
1542 time periods for completion of unfinished work, revisions to the operations and  
1543 maintenance manual, or other appropriate items. The board department may issue a  
1544 conditional CTO to owners of a reclamation system or SRS for which the required

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1545 information for completion of construction has not been received. Such CTOs will  
1546 contain appropriate conditions requiring the completion of any unfinished or  
1547 incomplete work including subsequent submission of the statement of completion of  
1548 construction.

1549 d. An interim CTO may be issued to individual unit operations of the treatment system  
1550 so as to allow utilization of these unit operations prior to completion of the total project.  
1551 A final CTO shall be issued upon verification that the requirements of this chapter have  
1552 been complied with.

1553 e. Within 30 days after placing a new or modified reclamation system or SRS into  
1554 operation, the board department may require reclaimed water produced by the system  
1555 to be sampled and tested in a manner sufficient to demonstrate compliance with  
1556 approved specifications and permit requirements. The board department shall be  
1557 notified of the time and place of the tests, and shall be sent the results of the tests for  
1558 evaluation as part of the final CTO.

1559 f. Within 90 days of placing the new or modified reclamation system or SRS into  
1560 operation, the owner shall submit a new or revised operations and maintenance  
1561 manual for the water reclamation system, SRS, or both, if covered by the same permit.  
1562 The manual shall contain information as specified in 9VAC25-740-140.

1563 g. The board department may amend or reissue a CTO where there is a change in the  
1564 manner of treatment or the source of water that is reclaimed at the permitted location,  
1565 or for any other cause incidental to the protection of the public health and welfare,  
1566 provided notice is given to the owner.

1567 **9VAC25-740-130. Operator requirements and system reliability.**

1568 A. Operator requirements. In accordance with the Virginia Board for Waterworks and  
1569 Wastewater Works Operators and Onsite Sewage System Professionals Regulations  
1570 (18VAC160-20), each reclamation system shall be assigned a classification based on the  
1571 treatment processes used to reclaim water and the design capacity of the facility. The  
1572 classification of both the reclamation system and the operator in responsible charge shall be the  
1573 same as that specified in the Sewage Collection and Treatment Regulations (9VAC25-790) for  
1574 sewage treatment works with similar treatment processes and design capacities. The reclamation  
1575 system shall be manned while in operation and under the supervision of the operator in  
1576 responsible charge unless the system is equipped with remote monitoring and, as applicable,  
1577 automated diversion of substandard or reject water in accordance with 9VAC25-740-70 C 1.

1578 B. Reliability Class I as defined in 9VAC25-740-10 is required for Level 1 reclamation systems,  
1579 satellite reclamation systems, and for pump stations considered part of these systems, unless  
1580 there is a permitted alternate treatment, discharge or disposal system available with sufficient  
1581 capacity to handle any reclaimed water flows that do not meet the reclaimed water standards of  
1582 this chapter or performance criteria established in the operations and maintenance manual.

1583 C. Reliability Class I, as defined in 9VAC25-740-10, is required for a reclamation system  
1584 identified as a component of an IPR project in accordance with 9VAC25-740-100 D 1, including  
1585 pump stations that are part of the reclamation system. No exception or variance shall be granted  
1586 for this requirement.

1587 D. For independent reclamation systems and systems consisting of an industrial wastewater  
1588 treatment works and reclamation system, the applicability of Reliability Class I requirements as  
1589 specified in the Sewage Collection and Treatment Regulations (9VAC25-790), shall be  
1590 determined by the board department for each proposed or existing system.

1591 E. The board department may approve alternative measures to achieve Reliability Class I  
1592 specified in the Sewage Collection and Treatment Regulations (9VAC25-790) and this chapter if



1593 the applicant or permittee can demonstrate in the engineering report, using accepted and  
1594 appropriate engineering principles and practices, that the alternative measures will achieve a level  
1595 of reliability equivalent to Reliability Class I.

1596 **9VAC25-740-140. Operations and maintenance.**

1597 A. The permittee shall develop and submit to the board department an operations and  
1598 maintenance manual in accordance with 9VAC25-740-120 B 3 f for each reclamation system,  
1599 SRS, or combination of these facilities covered by the same permit. The permittee shall maintain  
1600 the manual and any changes in the practices and procedures followed by the permittee shall be  
1601 documented and submitted to the board department within 90 days of the effective date of the  
1602 changes.

1603 B. For each reclaimed water distribution system, the permittee shall develop an operations  
1604 and maintenance manual to be made available at a location central to the system. The permittee  
1605 shall maintain the manual and include any changes in the practices and procedures followed by  
1606 the permittee in the manual. The operations and maintenance manual for a reclaimed water  
1607 distribution system may be included in the operations and maintenance manual described in  
1608 subsection A of this section where the reclaimed water distribution system and a reclamation  
1609 system or SRS, or all these facilities are covered by the same permit.

1610 C. For a reclamation system authorized under the permit of a wastewater treatment works  
1611 that provides flow to the reclamation system, the operations and maintenance manual of the  
1612 reclamation system may be made a part of the operations and maintenance manual for the  
1613 wastewater treatment works.

1614 D. The operations and maintenance manual is a set of detailed instructions developed to  
1615 facilitate the operator's understanding of operational constraints and maintenance requirements  
1616 for the reclamation system, SRS, or reclaimed water distribution system; and the monitoring and  
1617 reporting requirements specified in the permit issued for each system. The scope and content of  
1618 the manual will be determined by the complexity of the system or systems described by the  
1619 manual.

1620 1. For a reclamation system or SRS, the operations and maintenance manual shall, at a  
1621 minimum, contain the following:

1622 a. A description of unit treatment processes within the reclamation system or SRS and  
1623 step-by-step instructions for the operation of these processes;

1624 b. Routine maintenance and schedules of maintenance for each unit treatment  
1625 process in the system;

1626 c. The criteria used to make continuous determinations of the acceptability of the  
1627 reclaimed water being produced and shall include set points for parameters measured  
1628 by continuous on-line monitoring equipment;

1629 d. Descriptions of sampling and monitoring procedures and record keeping that  
1630 comply with the requirements of this chapter and any applicable permit conditions;

1631 e. The physical steps and procedures to be followed by the operator when substandard  
1632 water is being produced, including resampling and operational review in accordance  
1633 with 9VAC25-740-70 C;

1634 f. The physical steps and procedures to be followed by the operator when the  
1635 treatment works returns to normal operation and acceptable quality reclaimed water is  
1636 again being produced;

1637 g. Procedures to be followed during a period when an operator is not present at the  
1638 treatment works;

- 1639 h. Information necessary for the proper management of sludge or residuals from  
1640 reclamation treatment that is not specifically requested in the application for a VPDES  
1641 or VPA permit; and
- 1642 i. A contingency plan to eliminate or minimize the potential for untreated or  
1643 inadequately treated water to be delivered to reuse areas. The plan shall, as  
1644 applicable, reference and coordinate with the education and notification program  
1645 specified in 9VAC25-740-170 A for any release of untreated or inadequately treated  
1646 water to the reclaimed water distribution system.
- 1647 2. For a reclaimed water distribution system, the operations and maintenance manual  
1648 shall, at a minimum, contain the following:
- 1649 a. A map of the distribution system, a description of all components within the  
1650 distribution system, and step-by-step instructions for the operation of specific  
1651 mechanical components;
- 1652 b. Routine and unplanned inspection of the distribution system, including required  
1653 inspections for the cross-connection and backflow prevention program as specified in  
1654 9VAC25-740-100 C 1 g;
- 1655 c. Routine maintenance and schedules of maintenance for all components of the  
1656 distribution system. Maintenance shall include, but is not be limited to, initial and  
1657 routine flushing of the distribution system, measures to prevent or minimize corrosion,  
1658 fouling and clogging of distribution lines; and detection and repair of broken distribution  
1659 lines, flow meters or pumping equipment; and
- 1660 d. Procedures to:
- 1661 (1) Handle and dispose of any wastes generated by maintenance of the distribution  
1662 system in a manner protective of the environment;
- 1663 (2) Prevent the discharge of reclaimed or flush water from distribution system  
1664 maintenance activities to:
- 1665 (a) Storm drains;
- 1666 (b) State waters unless otherwise authorized by the ~~board~~ department; and
- 1667 (c) Sanitary sewers unless allowed under local sewer use ordinances and authorized  
1668 by the ~~board~~ department; and
- 1669 (3) Collect and, as applicable, retreat reclaimed water or treat flush water from  
1670 distribution system maintenance activities for a subsequent reuse or use approved by  
1671 the ~~board~~ department.
- 1672 E. The permittee shall review and revise the operations and maintenance manual, as needed  
1673 and appropriate, to ensure that the manual contains procedures and criteria addressing the  
1674 requirements of subsection D of this section for satisfactory system performance. Any revision to  
1675 the manual shall be reviewed and approved by the ~~board~~ department.
- 1676 F. The permittee of a reclamation system, SRS, or reclaimed water distribution system shall  
1677 be responsible for making the facility protective of the environment and public health at all times,  
1678 including periods of inactivation or closure. Included in the operations and maintenance manual  
1679 for the reclamation system, SRS, or reclaimed water distribution system, the permittee shall  
1680 submit a plan for inactivation or closure of the facility, specifying what steps will be taken to protect  
1681 the environment and public health.
- 1682 G. Where a bulk irrigation reuse site is under common ownership or management with a  
1683 reclamation system or SRS that generates reclaimed water applied to the site, the operations and  
1684 maintenance manual for the reclamation system or SRS shall include the following:

- 1685 1. Measurements and calculations used to determine supplemental irrigation rates of  
1686 reclaimed water for the irrigation reuse sites;  
1687 2. Operating procedures of the irrigation system;  
1688 3. Routine maintenance required for the continued design performance of the irrigation  
1689 system and reuse sites;  
1690 4. Identification and routine maintenance of reclaimed water storage facilities dedicated to  
1691 bulk irrigation reuse;  
1692 5. Schedules for harvesting and crop removal at the irrigation reuse sites;  
1693 6. An inventory of spare parts to be maintained for the irrigation system; and  
1694 7. Any other information essential to the operation of the irrigation system and reuse sites  
1695 in accordance with the requirements of this chapter.

1696 **9VAC25-740-150. Management of pollutants from significant industrial users.**

1697 A. A reclamation system that receives source water from a wastewater treatment works having  
1698 SIUs shall not be permitted to produce reclaimed water meeting Level 1 standards, unless:

- 1699 1. The wastewater treatment works providing source water to the reclamation system is a  
1700 publicly owned treatment works as defined in the VPDES Permit Regulation (9VAC25-31-  
1701 10), and has a pretreatment program required by and developed in accordance with  
1702 procedures described in Part VII of the VPDES Permit Regulation (9VAC25-31-730 et  
1703 seq.); or  
1704 2. The reclamation system has evaluated source water from the treatment works for  
1705 pollutants of concern discharged by SIUs to the treatment works, and has confirmed that  
1706 such pollutants shall not interfere with the ability of the wastewater treatment works to  
1707 produce source water suitable for the production of reclaimed water meeting Level 1  
1708 standards and any other standards required in accordance with 9VAC25-740-70 D. All  
1709 such evaluations by the reclamation system shall be submitted to the ~~board~~ department  
1710 for review and approval, and shall be repeated for each new SIU that proposes to  
1711 discharge to the treatment works prior to commencing such discharge. The reclamation  
1712 system shall maintain a current inventory of SIUs discharging to the treatment works.

1713 B. The permittee of a reclamation system authorized to produce reclaimed water treated to  
1714 Level 1 shall establish a contractual agreement with all treatment works providing source water  
1715 to the reclamation system unless the reclamation system and the treatment works are authorized  
1716 by the same permit. The contractual agreement shall, at a minimum, require the treatment works  
1717 to notify the reclamation system of all SIUs that discharge to the treatment works. Upon execution  
1718 of the contractual agreement, a copy of the agreement shall be provided to the ~~board~~ department.

1719 C. A satellite reclamation system (SRS) that receives municipal wastewater or sewage from  
1720 a sewage collection system pipeline with contributions from SIU discharges, excluding any SIUs  
1721 whose discharge has no potential to reach the SRS intake, shall not be permitted to produce  
1722 reclaimed water meeting Level 1 standards, unless the SRS has evaluated pollutants of concern  
1723 discharged by the SIUs and has confirmed that such pollutants shall not interfere with the ability  
1724 of the SRS to produce reclaimed water meeting Level 1 standards and any other standards  
1725 required in accordance with 9VAC25-740-70 D. All such evaluations by the SRS shall be  
1726 submitted to the ~~board~~ department for review and approval, and shall be repeated for each new  
1727 SIU that proposes to discharge to the sewage collection system and whose discharge has the  
1728 potential to reach the SRS intake prior to commencing such discharge. The SRS shall maintain a  
1729 current inventory of all SIUs that discharge pollutants of concern to the sewage collection system  
1730 capable of reaching the intake of the SRS.

1731 D. The permittee of a SRS authorized to produce reclaimed water treated to Level 1 shall  
1732 establish a contractual agreement with the sewage collection system providing sewage to the

1733 SRS. The contractual agreement shall, at a minimum, require the sewage collection system to  
1734 notify the SRS of all SIUs that discharge to the sewage collection system. Upon execution of the  
1735 contractual agreement, a copy of the agreement shall be provided to the ~~board~~ department.

1736 E. Any VPDES permitted treatment works with SIUs that provides source water for  
1737 reclamation and subsequent indirect potable reuse shall have the following:

1738 1. For publicly owned treatment works, a pretreatment program where required by the  
1739 VPDES Permit Regulation or deemed necessary by the ~~board~~ department, developed in  
1740 accordance with procedures described in Part VII (9VAC25-31-730 et seq.) of the VPDES  
1741 Permit Regulation.

1742 2. For all other treatment works, a program equivalent to a pretreatment program as  
1743 described in Part VII (9VAC25-31-730 et seq.) of the VPDES Permit Regulation, if deemed  
1744 necessary by the ~~board~~ department.

1745 **9VAC25-740-160. Access control and advisory signs.**

1746 A. There shall be no uncontrolled public access to reclamation systems, SRSs, and system  
1747 storage facilities. Access to any wastewater treatment works directly associated with a  
1748 reclamation system or SRS shall be controlled in accordance with the Sewage Collection and  
1749 Treatment Regulations (9VAC25-790). System storage ponds shall be enclosed with a fence or  
1750 otherwise designed with appropriate features to discourage the entry of animals and unauthorized  
1751 persons.

1752 B. Where advisory signs or placards are required as described in subsections C and D of this  
1753 section or 9VAC25-740-110 C 5 for above-ground storage facilities, each sign shall state, at a  
1754 minimum, "CAUTION: RECLAIMED WATER – DO NOT DRINK" and have the equivalent  
1755 standard international symbol for nonpotable water. The size of the sign and lettering used shall  
1756 be such that it can be easily read by a person with normal vision at a distance of 50 feet. Alternate  
1757 signage and wording that assures an equivalent degree of public notification and protection may  
1758 be accepted by the ~~board~~ department.

1759 C. For all reuses of reclaimed water treated to Level 2, fencing around the site boundary is  
1760 not required but public access shall be restricted. Advisory signs shall be posted around reuse  
1761 areas or reuse site boundaries, and shall additionally state the nature of the reuse and no  
1762 trespassing.

1763 D. For all reuses of reclaimed water treated to Level 1, advisory signs or placards shall be  
1764 posted within and at the boundaries of reuse areas. The advisory signs or placards shall  
1765 additionally state the nature of the reuse. Examples of some notification methods that may be  
1766 used by permittees include posting advisory signs at entrances to residential neighborhoods  
1767 where reclaimed water is used for landscape irrigation and posting advisory signs at the entrance  
1768 to a golf course and at the first and tenth tees.

1769 E. Advisory signs shall be posted adjacent to impoundments or ponds, including landscape  
1770 impoundments, used for nonsystem storage of reclaimed water.

1771 F. For industrial reuses, advisory signs shall be posted around those areas of the industrial  
1772 site where reclaimed water is used and at the main entrances to the industrial site to notify  
1773 employees and the visiting public of the reclaimed water reuse. Access control beyond what is  
1774 normally provided by the industry is not required.

1775 **9VAC25-740-170. Use area requirements.**

1776 A. Education and notification program. An education and notification program (program) shall  
1777 be developed and submitted with the RWM plan in accordance with 9VAC25-740-100 C 1 for  
1778 reuses that require Level 1 reclaimed water, will be in areas accessible to the public, or are likely  
1779 to have human contact. For indirect potable reuse (IPR) projects that do not require a RWM plan,

1780 the program shall be submitted with the application to permit the project in accordance with  
1781 9VAC25-740-100 D. The program shall be the responsibility of the permittee to implement.

1782 1. Education. The education component of the program shall:

1783 a. For end users and the public likely to have contact with reclaimed water, provide  
1784 information:

1785 (1) To ensure that they are informed of the origin, nature, and characteristics of the  
1786 reclaimed water; the manner in which the reclaimed water can be used safely; and  
1787 uses for which the reclaimed water is prohibited or limited;

1788 (2) To individual end users, at the time of their initial connection to the reclaimed water  
1789 distribution system, which may be provided in the service agreement or contract with  
1790 the permittee established in accordance with 9VAC25-740-100 C 1 d; and

1791 (3) To individual end users, annually or more often after the reclaimed water  
1792 distribution system is placed into operation for nonbulk irrigation reuse of reclaimed  
1793 water not treated to achieve biological nutrient removal (BNR).

1794 b. For IPR projects, provide information to generators of source water for reclamation  
1795 and IPR that are other than SIUs. This information shall describe methods and  
1796 practices to avoid or reduce the introduction of contaminants from domestic and  
1797 commercial sources into the wastewater collection system prior to reclamation and  
1798 shall be provided to individual generators annually or more often after the reclamation  
1799 system is placed into operation.

1800 c. Describe all modes of communication to be used to educate and inform, including,  
1801 but not limited to, meetings, distribution of written information, the news media (i.e.,  
1802 newspapers, radio, television, or the Internet), and advisory signs as described in  
1803 9VAC25-740-160.

1804 2. Notification. The notification component of the program shall contain procedures to  
1805 notify end users and the affected public of discharges of substandard reclaimed water to  
1806 reuse that can adversely impact human health, or the loss of reclaimed water service due  
1807 to planned or unplanned causes.

1808 a. Notifications required for discharge of substandard reclaimed water to reuse.

1809 (1) For reuses other than IPR. Where treatment of the reclaimed water fails more than  
1810 once during a seven-day period to comply with Level 1 disinfection or other standards  
1811 developed in accordance with 9VAC25-740-70 D or 9VAC25-740-70 E for the  
1812 protection of human health, and the noncompliant reclaimed water has been  
1813 discharged to a reclaimed water distribution system or directly to a reuse, the permittee  
1814 shall notify the end user of the treatment failures and advise the end user of  
1815 precautions to be taken to protect human health when using the reclaimed water in  
1816 areas accessible to the public or where human contact with the reclaimed water is  
1817 likely. These precautions shall be implemented for a period of seven days or greater  
1818 depending on the frequency and magnitude of the treatment failure.

1819 (2) For IPR. Where treatment of the reclaimed water fails at any time to comply with  
1820 standards specified in 9VAC25-740-90 C and is discharged to the water supply source  
1821 (WSS), the permittee shall notify the owner or management of the waterworks that  
1822 withdraws water from the affected WSS of the time, duration, volume, and pollutant  
1823 characteristics of the noncompliant discharge within a period of less than or equal to  
1824 half the shortest determined travel time between the reclamation system discharge  
1825 and the waterworks intake, but in no case greater than eight hours. Such notification  
1826 shall be implemented for a period of seven days or greater depending on the frequency  
1827 and magnitude of the noncompliant reclaimed water discharge and the ability of

1828 subsequent multiple barriers as described in the permit application of the IPR project  
1829 to mitigate the impact of the discharge on the WSS.

1830 b. Notifications required for loss of service.

1831 (1) For reuses other than IPR. Where reclaimed water service to end users will be  
1832 interrupted due to planned causes, such as scheduled maintenance or repairs, the  
1833 permittee shall provide advance notice to end users of the anticipated date and  
1834 duration of the interrupted service. Where reclaimed water service to end users is  
1835 disrupted by unplanned causes, such as an upset at the reclamation system, the  
1836 permittee shall notify end users and the affected public of the disrupted service if it  
1837 cannot or will not be restored within eight hours of discovery.

1838 (2) For IPR. Where the discharge of the reclamation system to the WSS will be  
1839 interrupted due to planned causes, such as scheduled maintenance or repairs, the  
1840 permittee shall provide advance notice to the owner or management of the waterworks  
1841 that withdraws water from the WSS of the anticipated date, duration, and cause for the  
1842 interrupted discharge. Where the discharge of the reclamation system is interrupted  
1843 by unplanned causes, such as an upset at the reclamation system, the permittee shall  
1844 notify the waterworks owner or management of the interrupted discharge if the  
1845 discharge cannot or will not be restored within eight hours of initial occurrence.

1846 c. The notification component of the program shall describe all modes of  
1847 communication that may be used to provide the notifications specified in subdivisions  
1848 2 a and b of this subsection. Modes of communication may include, but are not limited  
1849 to, those described in subdivision 1 c of this subsection for the education component  
1850 of the education and notification program.

1851 B. Reclaimed water shall be used in a manner that is consistent with this chapter and with the  
1852 conditions of the VPDES or VPA permit, such that public health and the environment shall be  
1853 protected.

1854 C. Reclaimed water delivered to end users shall comply with reclaimed water standards  
1855 required for the intended reuses at the point of delivery to end users.

1856 D. There shall be no nuisance conditions resulting from the distribution, use, or storage of  
1857 reclaimed water.

1858 E. For all irrigation reuses of reclaimed water, the following shall be required:

1859 1. There shall be no application of reclaimed water to the ground when it is saturated,  
1860 frozen or covered with ice or snow, and during periods of rainfall.

1861 2. The chosen method of irrigation shall minimize human contact with the reclaimed water.

1862 3. Reclaimed water shall be prevented from coming into contact with drinking fountains,  
1863 water coolers, or eating surfaces.

1864 F. For bulk irrigation reuse of reclaimed water, the following shall be required:

1865 1. Irrigation systems shall be designed, installed and adjusted to:

1866 a. Provide uniform distribution of the reclaimed water over the irrigation site;

1867 b. Prevent ponding or pooling of reclaimed water at the irrigation site;

1868 c. Facilitate maintenance and harvesting of irrigated areas and preclude damage to  
1869 the irrigation system from the use of maintenance or harvesting equipment;

1870 d. Prevent aerosol carry-over from the irrigation site to areas beyond the setback  
1871 distances described in subsection H of this section; and

1872 e. Prevent clogging from algae or suspended solids.

- 1873 2. All pipes, pumps, valve boxes and outlets of the irrigation system shall be designed,
- 1874 installed, and identified in accordance with 9VAC25-740-110 B.
- 1875 3. Any reclaimed water runoff shall be confined to the irrigation reuse site unless
- 1876 authorized by the ~~board~~ department.

1877 G. Overspray of surface waters, including wetlands, from irrigation or other reuses of  
 1878 reclaimed water is prohibited.

1879 H. Setback distances for irrigation reuses of reclaimed water.

- 1880 1. For sites irrigated with reclaimed water treated to Level 1, the setback distances
- 1881 provided in Table 170-H1 are required:

Table 170-H1 Setback Distances for Irrigation Reuses of Reclaimed Water Treated to Level 1	
Feature Requiring Setback	Setback Distance
a. Potable water supply wells and springs and public water supply intakes	100 feet
b. Nonpotable water supply wells	10 feet
c. Limestone rock outcrops and sinkholes	50 feet

- 1882 2. For sites irrigated with reclaimed water treated to Level 1, no setback distances are
- 1883 required from occupied dwellings and outdoor eating, drinking and bathing facilities.
- 1884 However, aerosol formation shall be minimized within 100 feet of occupied dwellings and
- 1885 outdoor eating, drinking and bathing facilities through the use of low trajectory nozzles for
- 1886 spray irrigation, above-ground drip irrigation, or other means.

- 1887 3. For sites irrigated with reclaimed water treated to Level 2, the setback distances
- 1888 provided in Table 170-H2 are required:

Table 170-H2 Setback Distances for Irrigation Reuses of Reclaimed Water Treated to Level 2	
Feature Requiring Setback	Setback Distance
a. Potable water supply wells and springs and public water supply intakes	200 feet
b. Nonpotable water supply wells	10 feet
c. Surface waters, including wetlands	50 feet
d. Occupied dwellings	200 feet
e. Property lines and areas accessible to the public	100 feet
f. Limestone rock outcrops and sinkholes	50 feet

- 1889 4. For sites irrigated with reclaimed water treated to Level 2, the setback distances may
- 1890 be reduced as follows:

- 1891 a. Up to but not exceeding 50% from occupied dwellings and areas accessible to the
- 1892 public if it can be demonstrated that alternative measures shall be implemented to

1893 provide an equivalent level of public health protection. Such measures shall include,  
1894 but are not limited to, disinfection of the reclaimed water equivalent to Level 1,  
1895 application of the reclaimed water by methods that minimize aerosol formation (e.g.,  
1896 low trajectory nozzles for spray irrigation, above-ground drip irrigation), installation of  
1897 permanent physical barriers to prevent migration of aerosols from the reclaimed water  
1898 irrigation site, or any combination thereof. Written consent of affected landowners is  
1899 required to reduce setback distances from occupied dwellings.

1900 b. Up to 100 % from property lines with written consent from adjacent landowners.

1901 c. To but not less than 100 feet from potable water supply wells and springs, or public  
1902 water supply intakes if it can be demonstrated that disinfection of the reclaimed water  
1903 is equivalent to Level 1 and there are no other constituents of the reclaimed water  
1904 present in quantities sufficient to be harmful to human health.

1905 d. To but not less than 25 feet from surface waters, including wetlands, where  
1906 reclaimed water shall be applied by methods that minimize aerosol formation (e.g., low  
1907 trajectory nozzles for spray irrigation, above-ground drip irrigation); or permanent  
1908 physical barriers are installed to prevent the migration of aerosols from the reclaimed  
1909 water irrigation site to surface waters.

1910 5. Application of reclaimed water shall not occur during winds of sufficient strength to  
1911 cause overspray or aerosol drift into or beyond the buffer zones or setbacks specified in  
1912 subdivisions 1 through 4 of this subsection.

1913 6. For irrigation reuses where more than one setback distance may apply, the greater  
1914 setback distance shall govern.

1915 7. Unless specifically stated otherwise, all setback distances shall be measured  
1916 horizontally.

1917 I. Minimum separation distances for in-ground reclaimed water distribution pipelines specified  
1918 in 9VAC25-740-110 B 3, shall apply to in-ground piping for irrigation systems of reclaimed water.

1919 J. A setback distance of 100 feet horizontally shall be maintained from indoor aesthetic  
1920 features (i.e., decorative waterfalls or fountains) that use reclaimed water treated to Level 1, to  
1921 adjacent indoor public eating and drinking facilities where the aesthetic features have the potential  
1922 to create aerosols and eating and drinking facilities are within the same room or building space.

1923 K. A setback distance of 300 feet horizontally shall be provided from an open cooling tower to  
1924 the site property line where reclaimed water treated to Level 2 is used in the tower. No setback  
1925 distance shall be required from an open cooling tower to the site property line where a drift or mist  
1926 eliminator is installed and properly operated or reclaimed water treated to Level 1 disinfection  
1927 standards is used in the tower. Treatment of the reclaimed water to Level 1 disinfection standards  
1928 may be provided by the industrial end user through the contract or agreement established by the  
1929 permittee in accordance with 9VAC25-740-100 C 1 d.

1930 **9VAC25-740-180. Operational flow requirements.**

1931 A. When the monthly average flow into a reclamation system or SRS reaches 95% of the  
1932 designated design flow authorized by the VPDES or VPA permit issued to that system for each  
1933 month of any three-month period, the permittee shall within 30 days notify the board department  
1934 in writing and within 90 days submit a plan of action for ensuring continued compliance with the  
1935 terms of the permit.

1936 B. The plan of action described in subsection A of this section shall include the necessary  
1937 steps and a prompt schedule of implementation for controlling any current problem, or any  
1938 problem that could be reasonably anticipated, resulting from high flows entering the reclamation  
1939 system or SRS.



1940 C. Upon receipt of the permittee's plan of action described in subsection A of this section, the  
1941 ~~board department~~ shall notify the owner whether the plan is approved or disapproved. If the plan  
1942 is disapproved, such notification shall state the reasons and specify the actions necessary to  
1943 obtain approval of the plan.

1944 D. Failure to timely submit an adequate plan of action in accordance with subsection A of this  
1945 section shall be deemed a violation of the permit.

1946 E. Nothing herein shall in any way impair the authority of the ~~board department~~ to take  
1947 enforcement action under § 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.

1948 **9VAC25-740-200. Reporting.**

1949 A. Permittees of water reclamation systems and SRSs shall submit a monthly monitoring  
1950 report to the ~~board department~~. The report shall include monitoring results for parameters  
1951 contained in the VPDES or VPA permit to demonstrate compliance with applicable reclaimed  
1952 water standards of this chapter.

1953 B. Interruption or loss of reclaimed water supply or discharge of any untreated or partially  
1954 treated water that fails to comply with standards specified in the VPDES or VPA permit to the  
1955 service area of intended reuse, shall be reported in accordance with procedures specified in the  
1956 permit. This report shall also contain a description of any notification provided in accordance with  
1957 9VAC25-740-170 A 2.

1958 C. Permittees of reclaimed water distribution systems shall submit an annual report to the  
1959 ~~board department~~ on or before February 10 of the following year. The annual report shall, at a  
1960 minimum:

1961 1. Estimate the volume of reclaimed water distributed to the service area of the RWM plan,  
1962 reported as monthly totals for a 12-month period from January 1 through December 31;

1963 2. Provide for reclaimed water not treated to achieve BNR that is used within the service  
1964 area of the RWM plan, the monthly average concentrations of total N and total P in the  
1965 reclaimed water, an estimate of the monthly total volume of reclaimed water used for  
1966 nonbulk irrigation and for bulk irrigation, the monthly total nutrient loads (N and P) to the  
1967 service area resulting from nonbulk irrigation reuse and from bulk irrigation reuse, and the  
1968 area in active reuse for nonbulk irrigation and for bulk irrigation within the service area, all  
1969 reported for a 12-month period from January 1 through December 31; and

1970 3. Provide a summary of ongoing education and notification program activities, including  
1971 copies of education materials, as required by 9VAC25-740-170 A.

1972 **9VAC25-740-210. Delegation of authority. (Repealed.)**

1973 ~~The director or the director's designee may perform any act of the board provided under this~~  
1974 ~~chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-770
<b>VAC Chapter title(s)</b>	Virginia Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects
<b>Action title</b>	Final Exempt CH 770 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 14, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-770) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate; a change in the definition of “Board”; and the repeal of the delegation of authority provisions to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-770 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7246 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 770 changes in response to 2022 Board Bill**

4 **9VAC25-770-10. Definitions.**

5 Unless a different meaning is required by the context, the following terms as used in this  
6 chapter shall have the following meanings:

7 "Applicant" means a person applying for a VWP individual or general permit.

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

11 "Compensation" or "compensatory mitigation" means actions taken that provide some form of  
12 substitute aquatic resource for the impacted aquatic resource.

13 "Compensatory mitigation plan" means the written plan describing the proposed  
14 compensatory mitigation activities required by 9VAC25-210-80 of the Virginia Water Protection  
15 Permit Program Regulation.

16 "Department" means the Department of Environmental Quality.

17 "Director" means the Director of the Department of Environmental Quality (DEQ) or an  
18 authorized representative.

19 "Dredging" means a form of excavation in which material is removed or relocated from  
20 beneath surface waters.

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

23 "General permit" means a permit authorizing a specified category of activities.

24 "In-lieu fee fund" means a monetary fund operated by a nonprofit organization or  
25 governmental agency that receives financial contributions from persons impacting wetlands or  
26 streams pursuant to an authorized permitted activity and that expends the moneys received to  
27 provide consolidated compensatory mitigation for permitted wetland or stream impacts.

28 "Law" means the State Water Control Law of Virginia.

29 "Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent  
30 practicable, and then compensating for remaining unavoidable impacts of a proposed action.

31 "Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is  
32 developed and approved in accordance with all applicable federal and state laws or regulations  
33 for the establishment, use and operation of mitigation banks, and is operating under a signed  
34 banking agreement.

35 "Permittee" means the person who holds a VWP individual or general permit.

36 "Person" means any firm, corporation, association, or partnership, one or more individuals, or  
37 any governmental unit or agency of it.

38 "Practicable" means available and capable of being done after taking into consideration cost,  
39 existing technology and logistics in light of overall project purposes.

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

42 "Surface water" means all state waters that are not ground water as defined in § 62.1-255 of  
43 the Code of Virginia.

44 "USACE" means the United States Army Corps of Engineers.

45 "VWP permit" means an individual ~~or general~~ permit issued by the ~~board~~ department or a  
46 general permit issued as a regulation adopted by the board under § 62.1-44.15:5 of the Code of  
47 Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or  
48 otherwise serves as the Commonwealth of Virginia's § 401 certification.

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

53 **9VAC25-770-30. Compliance date.**

54 An applicant for a VWP permit for completion of a dredging project in tidal waters must file  
55 proof of mitigation bank credit purchase or in-lieu fee fund donation or a financial responsibility  
56 mechanism with the ~~board~~ department at least 60 days prior to onset of any activity in permitted  
57 impact areas. The compensatory mitigation plan and financial responsibility documentation or  
58 proof of mitigation bank credit purchase or in-lieu fee fund donation shall be submitted by the  
59 permittee and approved by the ~~board~~ department prior to the onset of any dredging activities in  
60 permitted impact areas.

61 **9VAC25-770-60. Transfer of permit.**

62 The new permittee must submit proof of mitigation bank credit purchase or in-lieu fee fund  
63 donation or evidence of financial responsibility to the ~~board~~ department in accordance with this  
64 chapter within 60 days of the transfer of the permit from the existing permittee to the new  
65 permittee. If the old permittee has completed mitigation activities by filing proof of mitigation bank  
66 credit purchase or in-lieu fee fund donation before the transfer of the permit, the new permittee is  
67 not required to do so or to provide any additional evidence of financial responsibility. When a  
68 transfer of the permit occurs, the old permittee shall continue to comply with the requirements of  
69 this chapter until the new permittee has demonstrated that he is complying with the requirements  
70 of this chapter. The new permittee shall demonstrate compliance with this chapter within 60 days  
71 of the date of the transfer of the permit. Upon demonstration to the ~~board~~ department by the new  
72 permittee of compliance with this chapter, the ~~board~~ department shall notify the old permittee that  
73 he or she no longer needs to comply with this chapter as of the date of demonstration.

74 **9VAC25-770-70. Compensatory mitigation requirements.**

75 A. Compensatory mitigation for any project subject to a VWP permit must include measures  
76 to avoid and reduce impacts to surface waters to the maximum extent practicable, and where  
77 impacts cannot be avoided, the means by which compensation will be accomplished to achieve  
78 no net loss of wetland acreage and function.

79 B. The applicable compensatory mitigation standards are described in 9VAC25-210-80 and  
80 9VAC25-210-115 of the Virginia Water Protection Permit Program Regulation. All aspects of the  
81 compensatory mitigation plan, including documentation of financial responsibility or proof of  
82 mitigation bank credit purchase or in-lieu fee fund donation, shall be finalized, submitted and  
83 approved by the ~~board~~ department prior to the onset of any dredging activities in permitted impact  
84 areas.

85 **9VAC25-770-80. Cost estimates for in-lieu fee fund donations and mitigation bank credit**  
86 **purchases.**

87 A. Permittees with compensatory mitigation plans that provide for donations to in-lieu fee  
88 funds must submit to the ~~board~~ department as part of the final mitigation plan proof that the entity  
89 is willing to accept the contribution along with a detailed, written cost estimate.

90 B. Permittees with compensatory mitigation plans that provide for purchase of mitigation bank  
91 credits must provide to the ~~board~~ department as part of the final mitigation plan proof that the  
92 selected bank has available credits, along with a detailed, written cost estimate.

93 **9VAC25-770-90. Cost estimate for compensatory mitigation activities other than in-lieu fee**  
94 **fund donations or mitigation bank credit purchases.**

95 A. The permittee shall prepare for approval by the ~~board~~ department a detailed written  
96 estimate of the cost of implementing compensatory mitigation activities. The written cost estimate  
97 shall be submitted concurrently with the final compensatory mitigation plan.

98 1. The compensatory mitigation plan cost estimate shall equal the full cost of  
99 implementation of the plan.

100 2. The compensatory mitigation cost estimate shall be based on and include the costs to  
101 the permittee of hiring a third party to implement the compensatory mitigation plan. The  
102 third party may not be either a parent corporation or subsidiary of the permittee.

103 3. The compensatory mitigation cost estimate may not incorporate any salvage value that  
104 may be realized by the sale of materials, facility structures or equipment, land or other  
105 facility assets at the time of implementation of the plan.

106 B. If the length of the estimated project life exceeds one year, the permittee shall add to the  
107 total cost estimate an amount to represent an appropriate rate of inflation over the period covering  
108 the life of the project.

109 C. During the term of the VWP permit, the permittee shall revise the cost estimate concurrently  
110 with any revision made to the compensatory mitigation plan or at any time unforeseen  
111 circumstances occur which increase the implementation cost. The revised implementation cost  
112 estimate shall be adjusted for inflation as specified in subsection B of this section.

113 D. During the term of the VWP permit, the permittee may reduce the cost estimate and the  
114 amount of financial responsibility provided under this chapter, if it can be demonstrated that the  
115 cost estimate exceeds the cost of implementation of the compensatory mitigation plan. The  
116 permittee shall obtain the approval of the ~~board~~ department prior to reducing the amount of  
117 financial responsibility.

118 **9VAC25-770-100. Payment of in-lieu fee fund donations and mitigation bank credit**  
119 **purchases.**

120 A. Permittees with compensatory mitigation plans that provide for donations to in-lieu fee  
121 funds or mitigation bank credit purchases shall make the entire donation or purchase before the  
122 onset of activity in the permitted impact areas. Permittees shall submit documentation of the  
123 payment or donation to the ~~board~~ department for approval a minimum of 60 days prior to onset of  
124 activity in permitted areas.

125 B. A permittee may satisfy the requirements of this section, wholly or in part, by submitting a  
126 photocopy of the documentation submitted to the USACE pursuant to § 404 of the Clean Water  
127 Act (33 USC § 1251 et seq., as amended in 1987) documenting the donation or purchase for the  
128 current project along with a photocopy of the document issued by the USACE indicating approval  
129 of the documentation, if applicable. Any documentation of the in-lieu fee fund donation or  
130 mitigation banking credit purchase pursuant to this subsection must demonstrate clearly that the  
131 donation or purchase was made to provide compensatory mitigation for the project that is the  
132 subject of the VWP permit.

133 **9VAC25-770-110. Allowable financial mechanisms for compensatory mitigation activities**  
134 **other than in-lieu fee fund donations or mitigation bank credit purchases.**

135 A. If a permittee does not purchase mitigation bank credits or donate to an in-lieu fee fund as  
136 part of his compensatory mitigation plan, the permittee must demonstrate financial responsibility  
137 using one of the mechanisms specified in 9VAC25-770-120 through 9VAC25-770-150. The

138 mechanisms used to demonstrate evidence of financial responsibility shall ensure that the funds  
139 necessary to meet the costs of completing compensatory mitigation requirements for the  
140 permitted project as described in 9VAC25-770-70 will be available whenever they are needed.  
141 Financial responsibility mechanisms shall be in the amount equal to the cost estimate approved  
142 by the ~~board~~ department.

143 B. The permittee shall provide continuous coverage to implement the compensatory mitigation  
144 plan until released from financial responsibility requirements by the ~~board~~ department.

145 C. The director may reject the proposed evidence of financial responsibility if the mechanism  
146 submitted does not adequately assure that funds will be available to complete the necessary  
147 compensatory mitigation activities. The permittee shall be notified in writing within 60 days of  
148 receipt of a complete financial responsibility submission of the tentative decision to accept or  
149 reject the proposed evidence.

150 **9VAC25-770-120. Surety bond.**

151 A. A permittee may satisfy the requirements of this chapter by obtaining a surety bond that  
152 conforms to the requirements of this section and by submitting an originally signed duplicate of  
153 the bond to the ~~board~~ department. The surety company issuing the bond shall be licensed to  
154 operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable  
155 sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

156 B. Under the terms of the bond, the surety will become liable on the bond obligation when the  
157 permittee fails to perform as guaranteed by the bond.

158 C. The bond shall guarantee that the permittee or any other authorized person will:

159 1. Implement compensatory mitigation in accordance with the approved compensatory  
160 mitigation plan and other requirements in any VWP permit for the project;

161 2. Implement the compensatory mitigation plan following an order to do so issued by the  
162 ~~board~~ department or by a court.

163 D. The surety bond shall guarantee that the permittee shall provide alternate evidence of  
164 financial responsibility as specified in this article within 60 days after receipt by the ~~board~~  
165 department of a notice of cancellation of the bond from the surety.

166 E. If the approved cost estimate increases to an amount greater than the amount of the penal  
167 sum of the bond, the permittee shall, within 60 days after the increase, cause the penal sum of  
168 the bond to be increased to an amount at least equal to the new estimate and submit a revised  
169 mechanism to the ~~board~~ department. Whenever the cost estimate decreases, the penal sum may  
170 be reduced to the amount of the cost estimate following written approval by the ~~board~~ department.  
171 Notice of an increase or decrease in the penal sum shall be sent to the ~~board~~ department by  
172 certified mail within 60 days after the change.

173 F. The bond shall remain in force for its term unless the surety sends written notice of  
174 cancellation by certified mail to the permittee and to the ~~board~~ department. Cancellation cannot  
175 occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation  
176 by the ~~board~~ department as shown on the signed return receipt. The surety shall provide written  
177 notification to the ~~board~~ department by certified mail no less than 120 days prior to the expiration  
178 date of the bond, that the bond will expire and the date the bond will expire.

179 G. The ~~board~~ department shall cash the surety bond if it is not replaced 60 days prior to  
180 expiration with alternate evidence of financial responsibility acceptable to the ~~board~~ department  
181 or if the permittee fails to fulfill the conditions of the bond.

182 H. In regards to implementation of a compensatory mitigation plan either by the permittee, by  
183 an authorized third party, or by the surety, proper implementation of a compensatory mitigation  
184 plan shall be deemed to have occurred when the ~~board~~ department determines that  
185 compensatory mitigation has been completed. Such implementation shall be deemed to have

186 been completed when the provisions of the permittee's approved compensatory mitigation plan  
187 have been executed and the provisions of any other permit requirements or enforcement orders  
188 relative to the compensatory mitigation plan have been complied with.

189 I. The surety bond shall be worded as described in 9VAC25-770-190 A, except that  
190 instructions in brackets are to be replaced with the relevant information and the brackets deleted.

191 **9VAC25-770-130. Letter of credit.**

192 A. A permittee may satisfy the requirements of this chapter by obtaining an irrevocable  
193 standby letter of credit that conforms to the requirements of this section and by submitting an  
194 originally signed duplicate of the letter of credit to the ~~board~~ department. The issuing institution  
195 shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia  
196 and whose letter-of-credit operations are regulated and examined by a federal agency or the State  
197 Corporation Commission.

198 B. The letter of credit shall be irrevocable and issued for a period of at least one year in an  
199 amount at least equal to the current cost estimate for implementation of the compensatory  
200 mitigation plan. The letter of credit shall provide that the expiration date will be automatically  
201 extended for a period of at least one year. If the issuing institution decides not to extend the letter  
202 of credit beyond the current expiration date, it shall, at least 120 days before the expiration date,  
203 notify both the permittee and the ~~board~~ department by certified mail of that decision. The 120-day  
204 period will begin on the date of receipt by the ~~board~~ department as shown on the signed return  
205 receipt. If the letter of credit is canceled by the issuing institution, the permittee shall obtain  
206 alternate evidence of financial responsibility to be in effect prior to the expiration date of the letter  
207 of credit.

208 C. Whenever the approved cost estimate increases to an amount greater than the amount of  
209 credit, the permittee shall, within 60 days of the increase, cause the amount of credit to be  
210 increased to an amount at least equal to the new estimate and submit a revised mechanism to  
211 the ~~board~~ department. Whenever the cost estimate decreases, the letter of credit may be reduced  
212 to the amount of the new estimate following written approval by the ~~board~~ department.

213 D. The ~~board~~ department shall cash the letter of credit if it is not replaced 60 days prior to  
214 expiration with alternate evidence of financial responsibility acceptable to the ~~board~~ department  
215 or if the permittee has failed to implement compensatory mitigation in accordance with the  
216 approved plan or other permit or special order requirements.

217 E. In regards to implementation of a compensatory mitigation plan either by the permittee or  
218 by an authorized third party, proper implementation of a compensatory mitigation plan shall be  
219 deemed to have occurred when the ~~board~~ department determines that compensatory mitigation  
220 has been completed. Such implementation shall be deemed to have been completed when the  
221 provisions of the permittee's approved compensatory mitigation plan have been executed and the  
222 provisions of any other permit requirements or enforcement orders relative to the compensatory  
223 mitigation plan have been complied with.

224 F. The permittee may cancel the letter of credit only if alternate evidence of financial  
225 responsibility acceptable to the ~~board~~ department is substituted as specified in this chapter or if  
226 the permittee is released by the ~~board~~ department from the requirements of this regulation.

227 G. The ~~board~~ department shall return the original letter of credit to the issuing institution for  
228 termination when:

- 229 1. The permittee substitutes acceptable alternate evidence of financial responsibility for  
230 implementation of the compensatory mitigation plan as specified in this chapter; or
- 231 2. The ~~board~~ department notifies the permittee that he is no longer required by this chapter  
232 to maintain evidence of financial responsibility for implementation of the compensatory  
233 mitigation plan for the project.



234 H. The letter of credit shall be worded as described in 9VAC25-770-190 B, except that  
235 instructions in brackets are to be replaced with the relevant information and the brackets deleted.

236 **9VAC25-770-140. Certificate of deposit.**

237 A. A permittee may satisfy the requirements of this chapter, wholly or in part, by obtaining a  
238 certificate of deposit and assigning all rights, title and interest of the certificate of deposit to the  
239 ~~board~~ department, conditioned so that the permittee shall comply with the approved  
240 compensatory mitigation plan filed for the project. The issuing institution shall be an entity that  
241 has the authority to issue certificates of deposit in the Commonwealth of Virginia and whose  
242 operations are regulated and examined by a federal agency or the State Corporation Commission  
243 (Commonwealth of Virginia). The permittee must submit the originally signed assignment and the  
244 originally signed certificate of deposit, if applicable, to the ~~board~~ department.

245 B. The amount of the certificate of deposit shall be at least equal to the current compensatory  
246 mitigation cost estimate for the project for which the permit application has been filed or any part  
247 thereof not covered by other financial responsibility mechanisms. The permittee shall maintain  
248 the certificate of deposit and assignment until all activities required by the approved compensatory  
249 mitigation plan have been completed.

250 C. The permittee shall be entitled to demand, receive and recover the interest and income  
251 from the certificate of deposit as it becomes due and payable as long as the market value of the  
252 certificate of deposit used continues to at least equal the amount of the current cost estimate for  
253 compensatory mitigation activities.

254 D. The ~~board~~ department shall cash the certificate of deposit if the permittee has failed to  
255 implement compensatory mitigation in accordance with the approved plan or other permit or  
256 special order requirements.

257 E. In regards to implementation of a compensatory mitigation plan either by the permittee or  
258 by an authorized third party, proper implementation of a compensatory mitigation plan shall be  
259 deemed to have occurred when the ~~board~~ department determines that compensatory mitigation  
260 has been completed. Such implementation shall be deemed to have been completed when the  
261 provisions of the permittee's approved compensatory mitigation plan have been executed and the  
262 provisions of any other permit requirements or enforcement orders relative to the compensatory  
263 mitigation plan have been complied with.

264 F. Whenever the approved compensatory mitigation cost estimate increases to an amount  
265 greater than the amount of the certificate of deposit, the permittee shall, within 60 days of the  
266 increase, cause the amount of the certificate of deposit to be increased to an amount at least  
267 equal to the new estimate or obtain another certificate of deposit to cover the increase. Whenever  
268 the cost estimate decreases, the permittee may reduce the amount of the certificate of deposit to  
269 the new estimate following written approval by the ~~board~~ department.

270 G. The ~~board~~ department shall return the original assignment and certificate of deposit, if  
271 applicable, to the issuing institution for termination when:

- 272 1. The permittee substitutes acceptable alternate evidence of financial responsibility for  
273 implementation of the compensatory mitigation plan as specified in this chapter; or  
274 2. The ~~board~~ department notifies the permittee that he is no longer required by this chapter  
275 to maintain evidence of financial responsibility for implementation of the compensatory  
276 mitigation plan for the project.

277 H. The assignment shall be worded as described in 9VAC25-770-190 C, except that  
278 instructions in brackets shall be replaced with the relevant information and the brackets deleted.

279 **9VAC25-770-160. Release of permittee from the financial responsibility requirements.**

280 A. The permittee shall submit a notice that compensatory mitigation has been completed in  
281 accordance with the requirements of the approved compensatory mitigation plan, permit or other

282 order, within 60 days of completion of all compensatory mitigation requirements. Unless the ~~board~~  
283 department has reason to believe that the compensatory mitigation activities have not been  
284 implemented in accordance with the appropriate plan or other requirements, the ~~board~~  
285 department shall notify the permittee in writing that the permittee is no longer required to maintain  
286 evidence of financial responsibility for the project. Such notice shall release the permittee only  
287 from the requirements for financial responsibility for the project; it does not release the permittee  
288 from legal responsibility for meeting the compensatory mitigation requirements.

289 B. Where a VWP permit for the project is no longer required under law, the ~~board~~ department  
290 shall notify the permittee in writing that the permittee is no longer required to maintain evidence  
291 of financial responsibility for the project. Such notice shall release the permittee only from the  
292 requirements for financial responsibility for the project.

293 **9VAC25-770-180. Delegation of authority. (Repealed.)**

294 ~~The Director of the Department of Environmental Quality or a designee acting for him may~~  
295 ~~perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the~~  
296 ~~Code of Virginia.~~



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-780
<b>VAC Chapter title(s)</b>	Local and Regional Water Supply Planning
<b>Action title</b>	Final Exempt CH 780 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	July 20, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-780) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate to implement the new statutory requirements related to the issuance of permits.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-780 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7257 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 780 changes in response to 2022 Board Bill**

4 **9VAC25-780-70. Existing water source information.**

5 A. A water plan shall include current information on existing water sources.

6 B. A water plan shall include, for community water systems using ground water, the name and  
7 identification number of the well or wells, the well depth, the casing depth, the screen depth (top  
8 and bottom) or water zones, the well diameter, the design capacity for the average daily  
9 withdrawal and maximum daily withdrawal, the system capacity permitted by Department of  
10 Health, and the annual and monthly permitted amounts contained in ground water withdrawal  
11 permits for all wells located within ground water management areas.

12 C. A water plan shall include, for community water systems using surface water reservoirs,  
13 the name of the reservoirs, the sub-basins in which the reservoirs are located, the drainage area,  
14 the amount of on-stream storage available for water supply, the design capacity for average daily  
15 and maximum daily withdrawals from the reservoirs, the safe yield of the reservoirs, the capacity  
16 of any associated water treatment plant, the Department of Health permitted capacity of the  
17 systems, and any limitations on withdrawal established by permits issued by the ~~board~~  
18 department. For a community water system that operates a system of interconnected reservoirs,  
19 the reporting of the design capacity for withdrawals, designed average daily withdrawal, the  
20 designed maximum daily withdrawal and the safe yield may be for the entire system or may be  
21 reported as subsets of the system. The plan shall designate which reservoirs and which intakes  
22 constitute a system for the purposes of this paragraph. The plan must report the drainage area  
23 and amount of storage available for water supply from each reservoir independently.

24 D. A water plan shall include, for community water systems using stream intakes, the name  
25 of the stream or river, the drainage area of the intake, the sub-basin in which the intake is located,  
26 the design capacity for average daily and designed maximum daily withdrawal from the stream,  
27 the safe yield, the lowest daily flow of record, the design capacity of the pump station, the design  
28 capacity of the water treatment plant, the capacity of the system permitted by the Department of  
29 Health, and any limitation on withdrawals established by permits issued by the ~~board~~ department.

30 E. To the extent that information is available, a water plan shall include a list of all self-supplied  
31 users of more than 300,000 gallons per month of surface water for nonagricultural uses, the name  
32 of the water body utilized, the design capacity for the average daily and maximum daily  
33 withdrawal, and any limitation on withdrawals established by permits issued by the ~~board~~  
34 department, the Department of Health or any other agency.

35 F. To the extent that information is available, a water plan shall include, for all self-supplied  
36 users of more than 300,000 gallons per month of ground water for nonagricultural uses, the name  
37 and identification number of the well or wells, the well depth, the casing depth, the screen depth  
38 (top and bottom) or water zones, the well diameter, the design capacity for the average daily and  
39 maximum daily withdrawal and any limitation on withdrawal established by permits issued by the  
40 ~~board~~ department.

41 G. A water plan shall include the amount of ground or surface water to be purchased from  
42 water supply systems outside the geographic boundaries of the planning area on a maximum  
43 daily and average annual basis, any contractual limitations on the purchase of the water including  
44 but not limited to the term of any contract or agreement, the recipient(s) or areas served by the  
45 water purchased, and the name(s) of the supplier(s).

46 H. A plan shall include the amount of water available to be purchased outside the planning  
47 area from any source with the capacity to withdraw more than 300,000 gallons per month of  
48 surface and ground water, reported on a maximum daily and average annual basis and any  
49 contractual limitations on the purchase of the water including but not limited to the term of any  
50 contract or agreement, the geographic region(s) that receive the water purchased, and the  
51 name(s) of the supplier(s).

52 I. A water plan shall include, to the extent possible, a list of agricultural users who utilize more  
53 than 300,000 gallons per month, an estimate of total agricultural usage by source, whether the  
54 use is irrigation or nonirrigation, and whether the source is surface or ground water.

55 J. A water plan shall include an estimate of the number of residences and businesses that are  
56 self-supplied by individual wells withdrawing less than 300,000 gallons per month and an estimate  
57 of the population served by individual wells.

58 K. When available, a water plan shall include a summary of findings and recommendations  
59 from applicable source water assessment plans or wellhead protection programs.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-790
<b>VAC Chapter title(s)</b>	Sewage Collection and Treatment Regulations
<b>Action title</b>	Final Exempt CH 790 Changes in Response to 2022 Board Bill
<b>Final agency action date</b>	
<b>Date this document prepared</b>	June 21, 2022

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

### Brief Summary

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

This regulatory action changes the existing language of the regulation (9VAC25-790) to incorporate changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Revisions to the regulations include those necessary to address changes to the authority of the State Water Control Board to issue and enforce permits.

Changes to the regulations included changing designations from “board” to “department” where appropriate and a change in the definition of “Board” to implement the new statutory requirements.

Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

## Mandate and Impetus

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

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SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the 2022 Acts of Assembly) and these changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

## Statement of Final Agency Action

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

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The State Water Control Board adopted these regulatory amendments to 9VAC25-790 on August 25, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.



1 **Project 7276 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt CH 790 changes in response to 2022 Board Bill**

4 **9VAC25-790-10. Definitions.**

5 Article 1  
6 Definitions and Terms

7 Unless otherwise specified, for the purpose of this chapter the following words and terms shall  
8 have the following meanings unless the context clearly indicates otherwise:

9 "Area engineer" means the licensed professional engineer at the Department of  
10 Environmental Quality responsible for review and approval of construction plans and related  
11 materials who serves the area where a sewerage system or treatment works is located.

12 "Biosolids" means a sewage sludge that has received an established treatment for required  
13 pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and  
14 contains limited levels of pollutants, such that it is acceptable for use by land application,  
15 marketing or distribution in accordance with the Virginia Pollution Abatement Permit Regulation  
16 (9VAC25-32) and the Virginia Pollutant Discharge Elimination System Permit Regulation  
17 (9VAC25-31).

18 "Biosolids use facility" means a type of treatment works that specifically treats or stores  
19 biosolids.

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

23 "CTC" means a Certificate to Construct issued in accordance with the provisions of this  
24 chapter. This certificate will normally be in the form of a letter granting authorization for  
25 construction.

26 "CTO" means a Certificate to Operate issued in accordance with the provisions of this chapter.  
27 This certificate will normally be in the form of a letter granting authorization for operation.

28 "Critical areas/waters" means areas/waters in proximity to shellfish waters, a public water  
29 supply, recreation or other waters where health or water quality concerns are identified by the  
30 Virginia Department of Health or the State Water Control Board.

31 "Conventional design" means the designs for unit operations (treatment system component)  
32 or specific equipment that has been in satisfactory operation for a period of one year or more, for  
33 which adequate operational information has been submitted to the department to verify that the  
34 unit operation or equipment is designed in substantial compliance with this chapter. Equipment  
35 or processes not considered to be conventional may be deemed as alternative or  
36 nonconventional.

37 "Department" means the Virginia Department of Environmental Quality.

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

40 "Discharge" means (when used without qualification) discharge of a pollutant.

41 "Effluent limitations" means any restrictions imposed by the board or department on quantities,  
42 discharge rates, and concentrations of pollutants that are discharged from point sources into  
43 surface waters, the waters of the contiguous zone, or the ocean.

44 "Exceptional quality biosolids" means biosolids that have received an established level of  
45 treatment for pathogen control and vector attraction reduction and contain known levels of  
46 pollutants, such that they may be marketed or distributed for public use in accordance with this  
47 chapter.

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

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

51 "Land application" means the distribution of treated wastewater of acceptable quality, referred  
52 to as effluent, or supernatant from biosolids use facilities or stabilized sewage sludge of  
53 acceptable quality, referred to as biosolids, upon, or insertion into, the land with a uniform  
54 application rate for the purpose of assimilation, utilization, or pollutant removal. Bulk disposal of  
55 stabilized sludge in a confined area, such as in landfills, is not land application.

56 "Licensee" means an individual holding a valid license issued by the Board for Waterworks  
57 and Wastewater Works Operators.

58 "Licensed operator" means a licensee in the class of the treatment works who is an operator  
59 at the treatment works.

60 "Local review" means a program for obtaining advance approval by the director of an owner's  
61 general local plans and specifications for future connections to, or extensions of, existing  
62 sewerage systems and of a plan for implementing them, in lieu of obtaining a CTC and CTO for  
63 each project within the scope of the plan.

64 "Manual" and "Manual of Practice" means Part III (9VAC25-790-310 et seq.) of the Sewage  
65 Collection and Treatment Regulations.

66 "Operate" means the act of making a decision on one's own volition (i) to place into or take  
67 out of service a unit process or unit processes or (ii) to make or cause adjustments in the operation  
68 of a unit process or unit processes at a treatment works.

69 "Operating staff" means individuals employed or appointed by any owner to work at a  
70 treatment works. Included in this definition are licensees whether or not their license is appropriate  
71 for the classification and category of the treatment works.

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

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

87 "Permit" in the context of this chapter means a CTC or a CTO. Permits issued under 9VAC25-  
88 31 or 9VAC25-32 will be identified respectively as VPDES permits or VPA permits.

89 "Primary sludge" means sewage sludge removed from primary settling tanks designed in  
90 accordance with this chapter that is readily thickened by gravity thickeners designed in  
91 accordance with this chapter.

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

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

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

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

120 "Reliability" means a measure of the ability of a component or system to perform its  
121 designated function without failure or interruption of service.

122 "Responsible charge" means designation by the owner of any individual to have the duty and  
123 authority to operate a treatment works.

124 "Settled sewage" is effluent from a basin in which sewage is held or remains in quiescent  
125 conditions for 12 hours or more and the residual sewage sludge is not reintroduced to the effluent  
126 following the holding period. Sewage flows not in conformance with these conditions providing  
127 settled sewage shall be defined as nonsettled sewage.

128 "Sewage" means the water-carried and nonwater-carried human excrement, kitchen, laundry,  
129 shower, bath or lavatory wastes, separately or together with such underground, surface, storm  
130 and other water and liquid industrial wastes as may be present from residences, buildings,  
131 vehicles, industrial establishments or other places.

132 "Sewage sludge" or "sludge" means any solid, semisolid, or liquid residues which contain  
133 materials removed from municipal or domestic wastewater during treatment including primary and  
134 secondary residues. Other residuals or solid wastes consisting of materials collected and  
135 removed by sewage treatment, septage and portable toilet wastes are so included in this  
136 definition. Liquid sludge contains less than 15% dry residue by weight. Dewatered sludge contains  
137 15% or more dry residue by weight.

138 "Sewerage system" or "sewage collection system" means a sewage collection system  
139 consisting of pipelines or conduits, pumping stations and force mains and all other construction,

140 devices and appliances appurtenant thereto, used for the collection and conveyance of sewage  
141 to a treatment works or point of ultimate disposal.

142 "Shall" or "will" means a mandatory requirement.

143 "Should" means a recommendation.

144 "Sludge management" means the treatment, handling, transportation, use, distribution or  
145 disposal of sewage sludge.

146 "State waters" means all water, on the surface and under the ground, wholly or partially within,  
147 or bordering the state or within its jurisdiction.

148 "Substantial compliance" means designs that do not exactly conform to the guidelines set  
149 forth in Part III as contained in documents submitted pursuant to this chapter but whose  
150 construction will not substantially affect health considerations or performance of the sewerage  
151 system or treatment works.

152 "Subsurface disposal" means a sewerage system involving the controlled distribution of  
153 treated sewage effluent below the ground surface in a manner that may provide additional  
154 treatment and assimilation of the effluent within the soil so as not to create a point source  
155 discharge or result in pollution of surface waters.

156 "Surface waters" means all state waters that are not ground water as defined in § 62.1-255 of  
157 the Code of Virginia.

158 "Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) or, in the case of sludge  
159 use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the  
160 Clean Water Act.

161 "Treatment works" means any device or system used in the storage, treatment, disposal or  
162 reclamation of sewage, sewage sludge or combinations of sewage and industrial wastes,  
163 including but not limited to pumping, power and other equipment and their appurtenances, septic  
164 tanks and any works, including land, that are or will be (i) an integral part of the treatment process  
165 or (ii) used for ultimate disposal of residues or effluents resulting from such treatment. Treatment  
166 works does not mean land application of biosolids on private land, as permitted under the Virginia  
167 Pollution Abatement Permit Regulation (9VAC25-32) and the Virginia Pollutant Discharge  
168 Elimination System Permit Regulation (9VAC25-31).

169 "Virginia Pollution Abatement (VPA) permit" means a document issued by the ~~board~~  
170 department, pursuant to 9VAC25-32, or a general permit issued as a regulation adopted by the  
171 board in accordance with 9VAC25-32-260, authorizing pollutant management activities under  
172 prescribed conditions.

173 "Virginia Pollutant Discharge Elimination System (VPDES) Permit" means a document issued  
174 by the ~~board~~ department, pursuant to 9VAC25-31, or a general permit issued as a regulation  
175 adopted by the board in accordance with 9VAC25-31-170, authorizing, under prescribed  
176 conditions, the potential or actual discharge of pollutants from a point source to surface waters  
177 and the use or disposal of sewage sludge. Under the approved state program, a VPDES permit  
178 is equivalent to an NPDES permit.

179 "Water quality standards" means the narrative statements for general requirements and  
180 numeric limits for specific requirements, that describe the water quality necessary to meet and  
181 maintain reasonable and beneficial uses.

182 Such standards are established by the State Water Control Board under § 62.1-44.15(3a) of  
183 the Code of Virginia as the State Water Quality Standards (9VAC25-260).

#### 184 **9VAC25-790-30. Extent.**

185 A. Powers and procedures. The ~~board~~ department reserves the right to utilize any lawful  
186 procedure for the enforcement of this chapter and standards contained in this chapter.

187 B. Establishment. Authority for the regulations and standards contained in this chapter for the  
188 operation, construction, or modification of sewerage systems or treatment works are established,  
189 pursuant to § 62.1-44.19 of the Code of Virginia.

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

192 **9VAC25-790-50. CTCs and CTOs.**

193 A. No owner shall cause or allow the construction, expansion or modification (change of 25%  
194 or more in capacity or performance capability or 20% for a biosolids use facility) of a sewerage  
195 system or treatment works except in compliance with a CTC from the director unless as otherwise  
196 provided for by this chapter and standards contained in this chapter. Furthermore, no owner shall  
197 cause or allow any sewerage systems or treatment works to be operated except in compliance  
198 with a CTO issued by the director which authorizes the operation of the sewerage systems  
199 treatment works including biosolids use facilities unless otherwise provided for by this chapter  
200 and standards contained in this chapter. Conditions may be imposed on the issuance of any CTC  
201 or CTO, and no sewerage systems or treatment works may be constructed, modified, or operated  
202 in violation of these conditions.

203 B. Discharges of 1,000 gpd or less. On-site (located within owners property) residential  
204 sewage treatment works having a design capacity of 1,000 gallons per day or less may not be  
205 governed by this chapter and standards contained in this chapter if the performance reliability of  
206 such technology has been established by an approved testing program (9VAC25-790-210).  
207 These treatment works are regulated by other applicable regulations of the board (9VAC25-110)  
208 and of the Virginia Department of Health (12VAC5-610 and 12VAC5-640). Owners of such  
209 treatment works shall make application in accordance with and obtain the necessary permits from  
210 the board, department, or the Virginia Department of Health as appropriate via the application  
211 procedures established for such treatment works.

212 **9VAC25-790-110. Preliminary engineering proposal.**

213 A. Objective. The objective is to facilitate a determination by the department that the proposed  
214 design selected by the owner either requires, or does not require, submission of design  
215 documents for a formal technical evaluation to establish that the following standards will be  
216 reliably met by operation of the facility or system: (i) compliance with effluent limitations and  
217 treatment requirements established by the board or department; and (ii) conformance with  
218 applicable minimum requirements established by this chapter and standards contained in this  
219 chapter, in order that a CTC be issued.

220 B. Content. The preliminary engineering proposal when submitted for evaluation shall consist  
221 of an engineering report and preliminary plans which shall contain the necessary data to portray  
222 the sewerage system or treatment works problems and solutions. The requirement for a complete  
223 preliminary engineering proposal for small flow or minor projects (design flow less than one million  
224 gallons per day (mgd)) can be waived by the department in accordance with the letter from the  
225 owner's engineer summarizing the agreements reached at the preliminary engineering  
226 conference. For all proposals involving sewerage systems or treatment works, whether new or  
227 upgraded, the engineer shall make an evaluation of the 100-year flood elevation at the proposed  
228 site or sites, using available data and sound hydrologic principles. If a flood potential is indicated,  
229 the flood plain boundaries shall be delineated on a site map, showing its relation to the proposed  
230 facility or facilities and actions proposed to comply with this chapter shall be included in the  
231 preliminary engineering proposal or with the letter summarizing the agreements reached at the  
232 preliminary engineering conference. A conceptual plan for closure of the treatment works shall be  
233 discussed prior to final design to anticipate such an occurrence. On major projects (design flow  
234 of 1 mgd or more) excluding sewerage systems that are exempted from technical evaluation, the

235 preliminary engineering proposal can include as a minimum the following information as  
236 applicable:

- 237 1. Mapping of present site location and evaluation of site constraints.
- 238 2. Data supporting predicted service population.
- 239 3. Identification of specific service area for immediate consideration and possible  
240 extensions.
- 241 4. Data, including reliable measurements or predictions of design flow and analyses of  
242 sewage constituents as a basis of process design.
- 243 5. Description of treatment process and flow plans identifying the proposed arrangement  
244 of basins, piping and related equipment with unit operation design parameters and sizes.
- 245 6. Description of sludge management method.
- 246 7. Plan for imposed operations requirements, i.e., certain unit operations may be required  
247 to operate independently of others in accordance with the reliability classification, while  
248 achieving the treatment performance necessary to meet permit limits under average  
249 design conditions.
- 250 8. Demonstration of compliance with state and local laws and regulations.
- 251 9. Summary of findings, conclusions and recommendations.
- 252 10. Description of existing institutional constraints or other unresolved problems that  
253 influence selection of alternative solutions.
- 254 11. Estimate of capital and operating costs of all alternatives presented if available as  
255 public information.
- 256 12. For those projects for which a Virginia Revolving Loan will be requested, the ways in  
257 which the special requirements contained in Title II of P.L. 92-500 will be met (infiltration,  
258 cost effectiveness, etc.).
- 259 13. Staffing and operating requirements for facility.
- 260 14. Identification consistent with all applicable area wide plans, of drainage basin, service  
261 area, and metropolitan area plans.
- 262 15. Designation of owner's representative for design purposes.
- 263 16. For land application proposals, the information required by Part III (9VAC25-790-310  
264 et seq.) of this chapter, as appropriate.

265 The format for the Preliminary Engineering Proposal is listed in Part IV (9VAC25-790-940 et  
266 seq.) of this chapter.

267 C. Approval. The department will approve or disapprove the preliminary engineering proposal  
268 and notify the owner in accordance with 9VAC25-790-80 C.

269 **9VAC25-790-460. Standards.**

270 A. The minimum degree of treatment to be provided shall be adequate in design to produce  
271 an effluent in accordance with this chapter, that will comply with the provisions of the State Water  
272 Control Law and federal law, and any water quality standards ~~or adopted by the State Water~~  
273 Control Board or effluent limitations adopted by the State Water Control Board or Department of  
274 Environmental Quality or orders issued by the ~~State Water Control Board or~~ Department of  
275 Environmental Quality. The expected performance levels of conventional treatment processes  
276 are described in subsection F of this section.

277 B. Industrial flows. Treatment works receiving industrial wastewater flows at a rate or volume  
278 exceeding 90% of the combined average daily influent flow can be designed and operated through  
279 the applicable requirements imposed by the State Water Control Board  ~~/ or~~ or Department of  
280 Environmental Quality, provided that public health and welfare protection issues are resolved.

281 Otherwise, consideration shall be given to the character of industrial wastes in the design of the  
282 treatment works. In such cases, the treatability characteristics of the combined (sewage and  
283 industrial) wastewater shall be provided and addressed in the treatment process design. Pilot-  
284 scale testing as described in this chapter may be required to predict the full-scale treatment works  
285 operations.

286 C. Design loadings. Design loading refers to the established capacity of a unit operation or  
287 treatment process to reliably achieve a target performance level under projected operating  
288 conditions. Component parts and unit operations of the treatment works shall be arranged for  
289 greatest operating convenience, flexibility, economy, and to facilitate installation of future units.

290 1. Treatment works to serve existing sewerage systems shall be designed on the basis of  
291 established average sewage characteristics with sufficient capacity to process peak  
292 loadings. Excessive inflow/infiltration is an indication of deficiencies in the sewerage  
293 system and the design engineer shall provide an acceptable plan for eliminating or  
294 handling these excessive flows so that there will be no discharge of inadequately treated  
295 wastewaters or impairment of the treatment process.

296 2. A new treatment works must be designed in accordance with anticipated loadings.  
297 Table 3, found in this section, presents generally accepted minimum design flows and  
298 loadings. Deviations from Table 3 shall be based on sound engineering knowledge,  
299 experience and acceptable data substantiated in the design consultant's report. Numbers  
300 of persons per dwelling shall be based upon planning projections derived from an official  
301 source.

302 3. The design of treatment process unit operations or equipment shall be based on the  
303 average rate of sewage flow per 24 hours except where significant deviation from the  
304 normal daily or diurnal flow pattern is noted. The design flow for industrial wastewater flow  
305 contributions shall be determined from the observed rate of flow during periods of  
306 significant discharge or, in the case of proposed or new contributions, the industrial owner  
307 shall provide flow projections based on existing facilities of a similar nature. The following  
308 factors shall be included in determining design flows:

309 a. Peak rates of flow delivered through conduits as influent to the treatment process  
310 unit operations.

311 b. Data from similar municipalities, if applicable.

312 c. Wet weather flows.

313 4. The design organic loading should be based on the results of acceptable analytical  
314 testing of the wastewater or similar wastewater and shall be computed in the same manner  
315 used in determining design flow.

316 5. All piping and channels shall be designed to carry the maximum expected flow. If  
317 possible, the influent interceptor or sewer shall be designed for open channel flow at  
318 atmospheric pressure. If a force main is used to transmit the influent to the treatment  
319 works, a surge or equalization basin should be provided upstream of biological unit  
320 operations to provide a more uniform loading. Bottom corners of flow channels shall be  
321 filled and any recessed areas or corners where solids can accumulate shall be eliminated.  
322 Suitable gates and valves shall be placed in channels to seal off unused sections which  
323 might accumulate solids and to provide for maintenance.

324 D. Pilot plant studies. Pilot plants are defined as small scale performance models of full size  
325 equipment or unit operation design. The physical size of pilot plants varies from laboratory bench-  
326 scale reactors, with volumetric capacities of one or more liters up to several gallons, up to larger  
327 capacity arrangements of pumps, channels, pipes and tankage capable of processing thousands  
328 of gallons per day of wastewater.

329 Pilot scale studies are to include detailed monitoring of treatment performance under  
 330 operating conditions similar to design sizes, including the proper loading factors. A sampling and  
 331 analytical testing program is to be developed by the owner and evaluated by the department in  
 332 order that the results of pilot plant studies can be utilized to verify full size designs.

333 E. Grease management. An interceptor basin or basins shall be provided to separate oil and  
 334 grease from wastewater flows discharged to sewage collection systems whenever such  
 335 contributions will detrimentally affect the capacity of the collection system or treatment works such  
 336 that permit violations will actually or potentially occur, or such contributions will result in an actual  
 337 or a potential threat to the safety of the operational staff. Interceptor basins shall be located in  
 338 compliance with the Statewide Building Code as close to the source of oil and grease as practical.  
 339 Interceptor basins shall be sized in accordance with the applicable building codes and local  
 340 standards but shall be designed as a minimum to retain the volume of flow containing the oil or  
 341 grease for each continuous discharge occurrence. But interceptor basins shall also provide a  
 342 minimum volume in accordance with the following:

- 343 1. Provide two gallons of volume for each pound of grease received; or  
 344 2. Provide a minimum retention period of three hours for the average daily volume of flow  
 345 received.

346 Interceptor basins shall be routinely maintained, including the periodic, scheduled removal of  
 347 accumulations of oil and grease, within a portion of the basin volume as necessary, to prevent  
 348 detrimental effects on system operation. The oil and grease shall be handled and managed in  
 349 accordance with state and federal laws and regulations.

350 F. Expected performance. Conventionally designed sewage treatment unit operations and  
 351 processes should result in an expected performance level when processing design loadings in  
 352 accordance with this chapter (see Table 4 of this section). A conventional arrangement of unit  
 353 operations would include primary and secondary phases. The primary phase involves the use of  
 354 suspended solids setting basins called primary clarifiers. The secondary phase typically includes  
 355 a biological reactor and secondary clarifier to maintain a population of microorganisms (biomass)  
 356 capable of achieving a significant reduction of organic matter (Biochemical Oxygen Demand)  
 357 contained in the sewage. Advanced treatment processes will include primary, secondary and  
 358 tertiary phases, typically involving filtration unit operations. Conventional processes can be  
 359 modified to provide for reduced levels of nutrients in the treated effluent as described in Article 9  
 360 (9VAC25-790-870 et seq.) of this part. The use of nonconventional processes to achieve required  
 361 performance levels shall be considered in accordance with the provisions of Article 2 (9VAC25-  
 362 790-380 et seq.) of this part.

TABLE 2.  
 BUFFER ZONE REQUIREMENTS FOR PRIMARY AND SECONDARY  
 SEWAGE TREATMENT UNIT OPERATIONS\*.

A. Unit Operations That Are Totally Enclosed <sup>(1)</sup>	
DESIGN FLOW, gpd	BUFFER ZONE <sup>(4)</sup>
1. <1,000	None
2. >1,000 to <500,000	50 feet
3. Greater than 500,000	100 feet
B. Unit Operations Using Low Intensity Mixing or Quiescent System <sup>(2)</sup>	
DESIGN FLOW, gpd	BUFFER ZONE <sup>(4)</sup>



1. <40,000	200 feet
2. >40,000 to <500,000	300 feet
3. Greater than 500,000	400 feet
C. Unit Operations Using Turbulent High Intensity Aeration or Mixing <sup>(3)</sup>	
DESIGN FLOW, gpd	BUFFER ZONE <sup>(4)</sup>
1. <40,000	300 feet
2. >40,000 to <500,000	400 feet
3. Greater than 500,000	600 feet

363 \*Notes:

364 <sup>(1)</sup>For example, package plant with units totally enclosed as an integral part of its design and  
 365 manufacture. A package plant treatment works is defined by these regulations as a  
 366 preengineered and prefabricated structural arrangement of tankage and channels with all  
 367 necessary components for onsite assembly and installation. The design flow of package plants  
 368 should be less than 0.1 mgd. Also frequent agricultural use of Class I treated sludge.

369 <sup>(2)</sup>For example, covered basins, bottom tube aerated facultative lagoons or ponds, or surface  
 370 flow application of treated effluent. Also, frequent agricultural use of Class II treated sludge.

371 <sup>(3)</sup>For example, uncovered surface mixed basins or trajectory spray irrigation for land  
 372 application of treated effluent. Also frequent agricultural use of Class III treated sludge.

373 <sup>(4)</sup>Discharge locations shall be located no closer than 100 feet and up to 200 feet from any  
 374 private or public water supply source.

TABLE 3.  
 CONTRIBUTING SEWAGE FLOW ESTIMATES TO BE USED AS A DESIGN BASIS FOR  
 NEW SEWAGE WORKS.

Discharge facility <sup>(1)</sup>	Contributing Design Units	Flow gpd	BOD <sub>5</sub> #day <sup>(3)</sup>	S.S. #day	Flow duration, hours
Dwellings	Per person	100 <sup>(2)</sup>	0.2	0.2	24
Schools w/showers and cafeteria	Per person	16	0.04	0.04	8
Schools w/o showers w/cafeteria	Per person	10	0.025	0.025	8
Boarding Schools	Per person	75	0.2	0.2	16
Motels @ 65 gal. per person (rooms only)	Per room	130	0.26	0.26	24
Trailer courts @ 3 persons/trailer	Per trailer	300	0.6	0.6	24
Restaurants	Per seat	50	0.2	0.2	16

Interstate or through highway restaurants	Per seat	180	0.7	0.7	16
Interstate rest areas	Per person	5	0.01	0.01	24
Service Stations	Per vehicle serviced	10	0.01	0.01	16
Factories	Per person/per 8-hr. shift	15–35	0.03–0.07	0.03–0.07	Oper. Per.
Shopping centers	Per 1,000 square foot of ultimate floor space	200–300	0.1	0.1	12
Hospitals	Per bed	300	0.6	0.6	24
Nursing Homes	Per bed	200	0.3	0.3	24
Doctor's offices in medical centers	Per 1000 square foot	500	0.1	0.1	12
Laundromats, 9–12 machines	Per machine	500	0.3	0.3	16
Community colleges	Per student & faculty	15	0.03	0.03	12
Swimming pools	Per swimmer	10	0.001	0.001	12
Theaters (drive-in type)	Per car	5	0.01	0.01	4
Theaters (auditorium type)	Per seat	5	0.01	0.01	12
Picnic areas	Per person	5	0.01	0.01	12
Camps, resort day & night w/limited plumbing	Per camp site	50	0.05	0.05	24
Luxury camps w/flush toilets	Per camp site	100	0.1	0.1	24

375 Notes:

376 (1)Colleges, universities and boarding institutions of special nature to be determined in  
377 accordance with subdivision B 2 of this section.

378 (2)Includes minimal infiltrations/inflow (I/I) allowance and minor contributions from small  
379 commercial/industrial establishments.

380 (3)#/Day - Denotes pounds per day.

381 TABLE 4.  
 382 EXPECTED PERFORMANCE FOR VARIOUS CONVENTIONAL TREATMENT  
 383 PROCESSES.

384 Effluent Value Range<sup>(1)</sup> (mg/l)

385 A. Primary/secondary treatment process.

	BOD <sub>5</sub> <sup>(2)</sup>	TSS <sup>(2)</sup>
1. Primary	100–180	100–150
2. Facultative Aerated Lagoon	24–45	24–30
a. With Clarification		
b. Without Clarification		
3. Biological contactors	24–50	24–50
4. Activated Sludge	24–30	24–30
5. Biological Plus Filtration <sup>(3)</sup>	10–20	5–15
6. Primary plus constructed wetlands <sup>(4)</sup>	24–40	24–40
7. Primary plus Aquatic Ponds <sup>(5)</sup>	20–30	20–30

386 B. Advanced treatment process.

	BOD <sub>5</sub>	TSS	PO <sub>4</sub> -P	NH <sub>3</sub> -N
1. Physical chemical <sup>(6)</sup> and	45–95	20–70	1–10	20–30
a. F	20–70	1–20	1–10	20–30
b. F & AC	5–10	0.1–10	1–10	20–30
2. Biological <sup>(7)</sup> and				
a. C & S	12–20	12–24	0.5–10	5–30
b. C, S, & F	6–11	0.5–15	0.5–10	5–30
c. C, S, F & AC	1–5	0.1–5	0.1–10	5–30
d. Microscreening				
(1) 21 microns @ 5 GPM/sq. ft.	2–14	1–14	20–30	5–30
(2) 35 microns @ 8 GPM/sq. ft.	5–20	3–17	20–30	5–30
3. BNR <sup>(8)</sup>	20–30	20–30	2–4	1–3
4. Other biological and natural treatment processes evaluated on a case-by-case basis.				

387 NOTES:

388 <sup>(1)</sup>Ranges reflect normal expected upper and lower values for process, performance,  
 389 considering design and operations variability. Upper range value reflects performance  
 390 expected for conventional loadings.

391 (2)Effluent values for soluble phosphorus and ammonia nitrogen are not given for conventional  
 392 primary and biological processes since these are not designed as nutrient removal processes.  
 393 However, phosphorus is removed in biological sludge and ammonia is oxidized to nitrate in  
 394 biological effluents. Typical effluent values range from 4 to 5 mg/l of total phosphorus and from  
 395 nearly 0 to more than 30 mg/l ammonia, for fully nitrified to unnitrified effluent.

396 (3)Coagulant and polymer addition prior to filter to be provided.

397 (4)Subsurface flow microbial-plant filter system with a minimum detention of three days, or  
 398 surface flow system with a minimum retention of six days.

399 (5)Aquatic pond providing one acre of surface area (5-foot depth) per 200 population equivalent  
 400 or less.

401 (6)Physical - Chemical: means coagulation by aluminum, iron or other metal salts or,  
 402 precipitation by lime, followed by clarification and may include filtration. Unit processes  
 403 include, as a minimum, flash mix, flocculation, and sedimentation. Filtration operations will be  
 404 necessary to achieve effluent TSS levels of 15 mg/l or less.

405 (7)Biological: means any of the biological treatment processes including activated sludge and  
 406 its process variations, attached growth systems including various filters, and facultative and  
 407 fully aerated lagoons which are capable of producing a secondary effluent containing 30 mg/l  
 408 BOD<sub>5</sub> and TSS or less.

409 (8)Biological Nutrient Removal performance will be a function of influent levels of nutrients with  
 410 typical influent values of 4 to 6 mg/l of PO<sub>4</sub>-P and 20 to 40 mg/l of NH<sub>3</sub>-N. Additional  
 411 nitrification operations would be necessary to achieve TKN levels of less than 10 mg/l.  
 412 Denitrification may produce effluent total nitrogen levels of 5 to 10 mg/l.

413 LEGEND:

414 C = Coagulation S = Sedimentation F = Filtration and AC = Activated Carbon

415 BNR = Biological Nutrient Removal

416 **9VAC25-790-880. Land treatment.**

417 A. Site specific information shall be submitted with the preliminary proposal in accordance  
 418 with this chapter and standards contained in this chapter.

419 Land treatment systems shall have adequate land for pretreatment facilities, storage  
 420 reservoirs, administrative and laboratory buildings, and buffer zones, as well as the application  
 421 sites (field area). The availability of this land should be determined prior to any detailed site  
 422 evaluation. Site availability information should be obtained concerning:

- 423 1. Availability for acquisition or acceptable control.
- 424 2. Present and future land use.
- 425 3. Public acceptance.

426 B. Site design. Conformance to local land use zoning and planning should be resolved  
 427 between the local government and the owner. Adjacent owners should be contacted by the  
 428 applicant to establish whether significant opposition to the proposed location, or locations, exists.  
 429 Concerns of adjacent landowners will be considered in the evaluation of site suitability. Public  
 430 meetings may be scheduled either during or after the evaluation of final design documents so that  
 431 the department can discuss the technical issues concerning the system design through public  
 432 participation procedures. Public hearings may be held as part of the certificate/permit issuance  
 433 procedures.

- 434 1. The estimated established site size should be calculated using a typical maximum  
 435 annual loading depth of 36 inches for slow rate systems and a maximum depth of 72  
 436 inches per year for high rate systems to compute the field area size. In addition, the buffer  
 437 zone area should be estimated using a typical distance of 200 feet from the extremities of

438 the field areas to adjacent property lines. This total estimated site area should be available  
439 and permission obtained to gain access to the site for field investigations.

440 2. When investigating a potential site for application of wastewater, there are some limiting  
441 factors, including topography, soils, and vegetative growth (crop), which shall be evaluated  
442 early to determine site suitability for a land treatment system. This evaluation should be  
443 made in two phases: a preliminary phase and a field investigation phase.

444 3. The preliminary phase of site evaluations should include the identification of the  
445 proposed location of the land treatment system on a recent U.S.G.S. topographic map  
446 (7.5 minute quadrangle) or acceptable reproduction or facsimile thereof. A property line  
447 survey map should also be available for use in identifying the site location or locations.

448 4. The 100-year flood elevation should be identified and the proposed pretreatment unit  
449 processes should be roughly located in relation to elevation.

450 5. Preliminary soils information should include a soil site suitability map and include  
451 information to identify soil textures, grades, drainage, erosion potential, suitability for  
452 certain crops, etc. Information on soil characteristics may be available from either the  
453 National Resources Conservation Service (NRS) Office, the local Cooperative Extension  
454 Service Agent, or the Soil and Water Conservation Nutrient Management Specialist.

455 6. The field area available for effluent application may be estimated using typical criteria  
456 based on topography and soil characteristics. Field areas should be delineated on  
457 topographic maps of the proposed land treatment site.

458 7. The land treatment system design consultant should arrange a Preliminary Engineering  
459 Conference (PEC), as described in this chapter, as a final step in the preliminary phase of  
460 the site evaluation. The requirements for soil borings and backhoe pits as needed to study  
461 soils should be established at the PEC. A site visit should be scheduled at the PEC that  
462 involves the appropriate regulatory personnel and the owner and design consultant.

463 8. The land treatment system design consultant may not wish to conduct detailed field  
464 investigations of site topography, hydrology and soil characteristics prior to the site visit  
465 by regulatory personnel and their advisors. However, the proposed locations of field areas  
466 and pretreatment units should be established and identified during the site visit. The  
467 location of any existing soil borings, backhoe pits, springs, wells, etc., should also be  
468 identified during the site visit. Soil borings and backhoe pits may be excavated prior to,  
469 during and following the site visit as required. The requirements for soil permeability and  
470 hydraulic conductivity testing should be developed either during or shortly after the site  
471 visit.

472 9. Applicants for development of all land treatment systems shall be required to submit at  
473 least the minimum required information as required for the appropriate certificate/permit  
474 to be issued.

475 C. Site features. The soil at a potential site should be identified in terms of its absorption  
476 capacity and crop production classification, which is a function of physical and chemical  
477 characteristics. Important physical characteristics include texture, structure and soil depth.  
478 Chemical characteristics that may be important include pH, ion exchange capacity, nutrient levels,  
479 and organic fraction. The absorption capacity of a soil may be directly related to soil texture and  
480 structure. Soil color may provide an indication of the movement of moisture through soil. Hydraulic  
481 conductivity may be estimated from in-field tests using acceptable infiltrometer devices. In  
482 addition, the absorption characteristics of a soil may be related to its hydraulic conductivity as  
483 measured by both in situ and laboratory tests using acceptable procedures (Table 9). The  
484 conductivity tests should be conducted in the most restrictive layer within the depth affected by  
485 the land application system. Soil productivity and nutrient management characteristics are  
486 discussed in the Virginia Pollution Abatement Permit Regulation (9VAC25-32).

- 487 1. Soil evaluation for a land treatment system should follow a systematic approach of  
488 selecting proper locations for borings or excavations based on topographic position,  
489 slopes and drainage. The physical characteristics of site soils should then be verified by  
490 an acceptable number of recorded observations that include soil depth to horizon  
491 changes, restrictive layers and parent material, color, texture and structure, for borings or  
492 excavations to a minimum depth of five feet.
- 493 2. If the soil characteristics differ substantially between borings or excavations, without a  
494 logical technical reason for the variation, then additional boring and excavation locations  
495 should be studied to identify the nature and extent of the changes in soil patterns  
496 throughout the proposed site.
- 497 3. The soil characteristics of the proposed site should be described by a qualified technical  
498 specialist knowledgeable in the principles of soil science, agronomy, and nutrient  
499 management. The long-term impact of land application of the treated effluent on site soils  
500 and vegetation or crops must be evaluated by the land treatment system design  
501 consultant. Certain minimum soil depths are required for approval of a land application  
502 site. The minimum required depth for field areas will depend on the type of land application  
503 system as well as the soil characteristics.
- 504 4. Representative soil samples shall be collected for each major soil type identified by the  
505 field investigation and analyzed for certain parameters in accordance with this chapter.
- 506 5. Detailed information on the geologic conditions of the proposed site shall be provided  
507 by a geologist or other technical specialist, or specialists, knowledgeable in geohydrologic  
508 principles.
- 509 a. Detailed information on the site hydrology and groundwater shall be provided by a  
510 geologist, hydrologist or other technical specialist, or specialists, knowledgeable in  
511 hydrologic principles and ground water hydrology.
- 512 b. The depth to the permanent ground water table below the site shall be determined.  
513 The location, depth and extent of perched water tables as well as the estimated  
514 seasonal fluctuations shall be established. The effect of the permanent and seasonal  
515 water tables on performance of the particular land treatment system shall be evaluated  
516 by the design consultant.
- 517 c. The characteristics of ground water movement under the proposed site should be  
518 established and evaluated using piezometer installations or other acceptable methods.  
519 The potential impact of the land treatment system on aquifer hydraulics and water  
520 quality shall be predicted through the use of modeling and appropriate monitoring  
521 devices.
- 522 d. The present and planned uses of the aquifer(s) identified as affected by the land  
523 treatment system should be determined by the consultant.
- 524 D. Land treatment methods. The following methods, or combinations thereof, as regulated by  
525 the appropriate permit or certificate, are considered conventional technology in accordance with  
526 this chapter:
- 527 1. Irrigation - slow rate. Wastewater may be applied by spraying, flooding, or ridge and  
528 furrow methods. Irrigation methods are designed not to discharge to surface waters.
- 529 2. Rapid infiltration. Wastewater may be applied by spreading and spraying. The system  
530 shall be designed to meet all certificate/permit requirements and groundwater standards.
- 531 3. Overland flow. This method of wastewater renovation is best suited for soils with low  
532 permeability. Generally, a permit or certificate for a discharge to surface waters must be  
533 issued.

534 E. Other alternatives. Natural treatment systems such as aquatic ponds, constructed wetlands  
 535 and biological/plant filters and other aquatic plant systems are somewhat related to land treatment  
 536 technology. Natural treatment involves the use of plants in a constructed but relatively natural  
 537 environment for the purpose of achieving treatment objectives. The major difference between  
 538 nonconventional natural and conventional treatment systems is that conventional systems  
 539 typically use a highly managed and controlled environment for the rapid treatment of the  
 540 wastewater. In contrast, nonconventional natural systems use a comparatively unmanaged  
 541 environment in which treatment occurs at a slower rate.

542 1. The use of natural treatment as a part of a land treatment system may take several  
 543 forms including ponds called "Aquatic Processing Units" (APU). Floating plants such as  
 544 water hyacinths and duckweed are often used in APU treatment.

545 2. Constructed wetlands are defined as areas where the wastewater surface is controlled  
 546 near (subsurface flow) or above (free water surface) a soil or media surface for long  
 547 enough each year to maintain saturated conditions and the growth of related vegetation  
 548 such as cattails, rushes, and reeds.

549 3. Constructed wetlands must provide for groundwater protection and may be used to  
 550 provide additional treatment to primary, secondary, or highly treated effluents prior to final  
 551 discharge.

552 4. Natural (existing) wetlands are considered as state waters and any discharge to them  
 553 shall be regulated in accordance with an issued discharge permit or certificate.

554 F. Features. Biological treatment that will produce an effluent either with a maximum BOD<sub>5</sub> of  
 555 60 mg/l or less, or be of such quality that can be adequately disinfected, if necessary, shall be  
 556 provided prior to natural treatment, including use of conventional unit operations prior to the land  
 557 application of treated effluent and advanced treatment prior to reuse.

558 Disinfection may be required following or prior to land application and other natural treatment.  
 559 If spray irrigation equipment is utilized, adequate aerosol management including pre-disinfection  
 560 shall be provided.

561 Buffer zones around field areas shall be provided in accordance with the monitored maximum  
 562 microbiological content of the applied effluent as follows, with no reduction in required minimum  
 563 distances to water sources and channels:

Fecal Coliform Count <sup>(1)</sup> (No./100 mls)	Minimum Buffer Distance, Feet
200 or less	200 <sup>(2)</sup>
23 or less	50 <sup>(3)</sup>
2.2 or less	None, but no application during occupation of field area <sup>(3)</sup>
Notes:	
<sup>(1)</sup> Exceeded by no more than 10% or less of samples tested.	
<sup>(2)</sup> No public use of field areas.	
<sup>(3)</sup> Transient public use may occur after a three-hour drying period following application.	

564 1. The owner shall provide sufficient holding time to store all flow during periods either  
 565 when crop nutrient uptake is limited or nonexistent, the ground is frozen, surface saturation  
 566 occurs during wet weather, the ground is covered with snow, or the irrigation site or field

567 areas cannot otherwise be operated. The total volume of holding required shall be based  
568 on the storage necessary to provide for climatic conditions and the nutrient management  
569 requirements of the field area crop. Operational storage necessary for system  
570 maintenance shall be provided. Climatic holding periods shall be based on the most  
571 adverse conditions of freezing and precipitation, as taken from accurate recorded  
572 historical data that are available for the local area (in no case less than 25 years). The  
573 storage volume shall be sufficient to prevent any unpermitted discharges to state waters.

574 2. A minimum holding period of 120 days shall be required when climatic data is not  
575 available. System backup storage shall be determined by the complexity of the entire  
576 treatment system. An increase or reduction of minimum storage may be considered on a  
577 case-by-case basis based on adequate documentation of agronomic crop production and  
578 nutrient utilization.

579 3. The depth of the volume containment for total storage requirements shall be measured  
580 above any minimum depth requirements for maintenance.

581 4. The owner shall provide a minimum reserve area equivalent in size to 25% of the design  
582 field area. Additional reserve area may be required as evaluated by the division, if the  
583 general conditions of the field area are deemed marginal or in proximity of critical areas  
584 or waters. The reserve area shall be capable of being used as a functional area within 30  
585 days of notice.

586 5. Some allowance for a reduced reserve shall be allowed if additional storage is provided  
587 or if there is an alternate treatment mode (e.g., discharge) that can be utilized by the  
588 facility.

589 6. Design criteria for treatment or storage ponds shall be in accordance with this chapter  
590 and standards contained in this chapter. In addition, the following requirements shall be  
591 met:

592 a. A minimum operational water depth shall be maintained.

593 b. Provisions shall be made to allow complete drainage of the pond for maintenance.

594 c. Duplicate pumps shall be provided if necessary to transport pond flows, with the  
595 capacity of each pump sized to handle the maximum rate of flow plus an allowance to  
596 deplete stored volumes.

597 d. Disinfection may be provided either upstream from ponds, or the pond effluent may  
598 require disinfection.

599 e. When chlorination is utilized to disinfect pumped flows, the detention time of the  
600 holding pond chlorination facilities shall provide a minimum of 30 minutes of contact  
601 time, based on the maximum design pumping rate in accordance with this chapter and  
602 standards contained in this chapter.

603 G. Design loadings. Loading rates shall be based on the most critical value as determined by  
604 the liquid and nutrient application rates, or total application amounts for other constituents (such  
605 as boron, salts, pH-alkalinity, copper or sodium, etc.), present in such concentrations as could  
606 produce pollution of either the soil, cover crop, or water quality. Total weekly application  
607 (precipitation plus liquid loading rate) shall not exceed two times the design loading rate. This  
608 higher than conventional loading rate shall be used only to balance seasonal water deficits, and  
609 groundwater quality standards shall not be exceeded unless a variance to the violated standard  
610 has been approved by the ~~State Water Control Board~~ department.

611 1. An overall water balance shall be investigated in accordance with one of the following  
612 equations based on design criteria:

613 a. Irrigation or infiltration



- 614 design precipitation + effluent applied = evapotranspiration + hydraulic conductivity.  
 615 b. Overland flow  
 616 design precipitation + effluent applied = evapotranspiration + hydraulic conductivity +  
 617 runoff.
- 618 2. Design precipitation shall be the wettest year for a 10-year period (return frequency of  
 619 one year in 10). Minimum time period for this analysis should be 25 years. Average  
 620 monthly distribution (average percentage of the total annual precipitation that occurs in  
 621 each month) shall be assumed.
- 622 3. Design evapotranspiration (monthly) shall be 75% of average monthly pan evaporation  
 623 values collected at official weather stations within or contiguous to the Commonwealth of  
 624 Virginia and should be representative (similar geographically and climatological) of the  
 625 proposed site.
- 626 4. Design hydraulic conductivity shall be a given percentage (see Table 9) of respective  
 627 laboratory and field measurements that yield the rate at which water passes through the  
 628 soil under presoaked conditions.
- 629 The test methodology should be in accordance with current published procedures made  
 630 available to the department.

TABLE 9.  
 DESIGN HYDRAULIC CONDUCTIVITY

Type of Test	Percent of minimum measured value to be used in design
i. Saturated Vertical Hydraulic Conductivity	7
ii. Basin Infiltration	12.5
iii. Cylinder Infiltrimeters	3
iv. Air Entry Permeameter	3
v. (Other--to be evaluated by the department)	

- 631 5. During periods of application, the applied nitrogen shall be accounted for through (i)  
 632 crop uptake and harvest; (ii) denitrification; (iii) addition to surface water and ground water,  
 633 or storage in soil. In winter, site loadings for slow rate systems shall not exceed the  
 634 hydraulic design for those particular months. Winter application of treated effluent may be  
 635 provided only (i) to cool season grasses (ii) following three consecutive days of minimum  
 636 daily temperatures in excess of 25°F and maximum in excess of 40°F.
- 637 6. The annual liquid loading depth for plant nitrogen requirements shall be determined by  
 638 the following equation:  
 639 
$$L = N/2.7C$$
  
 640 Where:  
 641 N = Crop nitrogen uptake, lb/acre/yr.  
 642 C = Total nitrogen concentration, mg/l  
 643 C = TKN + NO<sub>2</sub>-N + NO<sub>3</sub>-N  
 644 L = Annual liquid loadings depth, ft/yr.  
 645 TKN = Total KJELDAHL nitrogen = organic N + NH<sub>3</sub> - N
- 646 7. The monthly nitrogen loading rate design should be distributed over the growth cycle of  
 647 the particular crop, as much as practicable.

648 8. If other nutrients, organics, or trace elements are present in concentrations critical to  
 649 either crops, soil, or water quality, then a total mass balance similar to that for nitrogen  
 650 shall be investigated for each critical element or compound.

651 9. The land application design average rate shall be determined by the climatic conditions,  
 652 selected crops, and soil characteristics. However, the maximum application rates in terms  
 653 of depth of effluent applied to the field area shall be as follows:

654 a. One-fourth inch per hour.

655 b. One inch per day.

656 c. Two inches per week (one inch per week in forest field areas used for year round  
 657 application).

658 H. Field area design. Field area is defined as the area of land where renovation of wastewater  
 659 takes place (area under actual spray or distribution pattern). The field area shall be designed to  
 660 satisfy the most critical loading parameter (i.e., annual liquid loading depth) according to the  
 661 following equation:

662 
$$\text{Field Area (acres)} = Q/D * 365 / (365 - S)$$

663 Where:

664 Q = Wastewater flow in (acre-inches/week)

665 D = Applied depth in inches/week

666 S = Minimum required storage capacity + annual resting periods during the application  
 667 season when no waste can be land applied.

668 1. The minimum storage capacity shall be the average design volume of flow accumulated  
 669 over a period of 60 days, unless other storage periods are justified by climatic data. It  
 670 should be noted that the field area equation does not take into consideration the area  
 671 needed for reserve capacity or future expansion (no less than 25% of design field area).

672 2. The field area shall be divided into smaller sections for application to allow for rotational  
 673 use of these sections. Rotational operation shall be designed to provide the maximum  
 674 resting periods for field areas. The distribution system shall be designed to meet the  
 675 requirement for alternating application to the field area sections. Minimum resting periods  
 676 shall be two days, one day and two weeks for irrigation, overland flow and infiltration-  
 677 percolation, respectively. Maximum wetting period shall not exceed five days, one week,  
 678 and one day respectively for irrigation, infiltration-percolation, and overland flow,  
 679 respectively. Resting and wetting periods depend on soil types, climatic conditions,  
 680 harvesting requirements, etc.

681 3. The field area or areas shall be adequately enclosed with suitable fencing to prevent  
 682 access to livestock and the public where necessary. Signs shall be posted at sufficient  
 683 intervals (100 to 300 feet) around the entire perimeter of field areas to identify the land  
 684 treatment operation and specify access precautions.

685 4. A groundwater monitoring system shall be provided in accordance with the permit or  
 686 certificate requirements. A minimum of one upgradient and two downgradient monitoring  
 687 wells shall be provided. The well locations, along with typical well construction  
 688 specifications, shall be submitted with the proposal. Upon installation, the driller's log shall  
 689 be submitted. Additional monitoring well locations may be required if deemed necessary  
 690 upon evaluation of monitoring data. The results of any required sampling and testing of  
 691 groundwater shall be submitted to the department for evaluation in accordance with the  
 692 operating permit.

693 5. Representative agriculturally related soil tests are required on crop dependent systems  
 694 to ensure adequate vegetative cover. The growing and maintaining of a vegetative cover

695 on application sites is a very integral part of the system. The plants prevent soil erosion  
696 and utilize nutrients and water. The system design should provide for a proper balance  
697 between applied amounts of water and nutrients. The designer may wish to consult with  
698 both agronomic and nutrient management specialists on these matters. The design shall  
699 address crop and nutrient management.

700 6. The wastewater application schedule should be worked around the plans for harvesting.  
701 A minimum of 30 days shall be required between the last day of application and utilization  
702 of all crops. Crops that will be consumed raw by man shall not be grown in land application  
703 field areas.

704 7. Information on the proposed crops and their intended use may be forwarded to the  
705 Virginia Department of Agriculture and Consumer Services for evaluation.

706 I. Low intensity design. The low intensity application or irrigation field area should be as flat  
707 as possible with maximum slopes of 5.0% or less. The design of low intensity irrigation of treated  
708 effluent shall provide for nutrient management control. When it is necessary to locate field areas  
709 on slopes of eight to 12%, special precautions shall be taken to prevent seepage or runoff of  
710 sewage effluent to nearby streams. Dikes or terraces can be provided for field areas, together  
711 with runoff collection and return pumping equipment. The maximum field area slope should be  
712 12%. The irrigation field area shall be located a minimum distance of 50 feet from all surface  
713 waters.

714 1. Five feet of well-drained loamy soils are preferred. The minimum soil depth to  
715 unconsolidated rock should be three feet. The hydraulic conductivity should be between  
716 0.2-6 inches/hour.

717 2. The minimum depth to the permanent water table should be five feet. The minimum  
718 depth to the seasonal water table should be three feet. Where the permanent water table  
719 is less than five feet and the seasonal water table is less than three feet, the field area  
720 application rate shall be designed to prevent surface saturation. In addition, underdrain  
721 and groundwater pumping equipment may be required.

722 3. The method of applying the liquid to the field shall be designed to best suit prevailing  
723 topographic, climatic, and soil conditions. Two methods of application are:

724 a. Sprinkler systems with low trajectory nozzles or sprinkler heads to uniformly  
725 distribute the applied effluent across a specified portion of the field area. Application  
726 is to be restricted in high winds that adversely affect the efficiency of distribution and  
727 spread aerosol mists beyond the field areas.

728 b. Ditch irrigation systems that utilize gravity flow of effluent through ditches or furrows,  
729 from which effluent percolates into the soil. For uniformity of distribution, the slope of  
730 the field area is to be uniform and constant.

731 4. The height of spray nozzles, pressure at the spray nozzles and spacing of the laterals  
732 shall be adequate to provide uniform distribution of the effluent over the field area. The  
733 design height and pressure of the spray nozzles shall avoid damage to vegetation and  
734 soil.

735 5. Adequate provisions shall be made to prevent freezing and corrosion of spray nozzles  
736 and distribution lines when the system or a section of the system is not in operation.

737 6. Appropriate vegetation shall be maintained uniformly on all field areas. Usually water  
738 tolerant grasses with high nitrogen uptakes are used. Over seeding with cool season  
739 grasses may be necessary during the fall season, prior to October 15 of each year.  
740 Silviculture sites and reuse irrigation sites may also be used with this type of land  
741 treatment.

742 J. Rapid infiltration. This form of treatment requires the least amount of land. Renovation is  
 743 achieved by natural, physical, chemical, and biological processes as the applied effluent moves  
 744 through the soil. Effluent is allowed to infiltrate the soil at a relatively high rate, requiring a field  
 745 area with coarse grained soils. This system is designed for three main purposes (i) ground water  
 746 recharge; (ii) recovery of renovated water using wells or underdrains with subsequent reuse, or  
 747 (iii) discharge and recharge of surface streams by interception of ground water.

748 1. Five feet of sand or loamy sand is preferred. Soil grain size should be greater than .05  
 749 mm in size. The hydraulic conductivity should be greater than two inches/hour.

750 2. The permanent ground water table shall be a minimum of 15 feet below the land surface.  
 751 With this method, a recharge mound is not uncommon and shall be properly evaluated by  
 752 the consultant. A minimum distance of 10 feet should be maintained between the land  
 753 surface and the apex of the recharge mound (during a worse-case situation). Lesser  
 754 depths may be acceptable where under drainage is provided.

755 3. Spreading and spraying are the two main application techniques that are suitable for  
 756 infiltration-percolation.

757 4. Design application rates will vary according to the site area, soil, geology, and hydrology  
 758 characteristics.

759 5. The buffer distances from extremities of field areas to private wells should be at least  
 760 400 feet.

761 K. Overland flow. Renovation of wastewater is accomplished by physical, chemical, and  
 762 biological means as applied effluent flows through vegetation on a relatively impermeable sloped  
 763 surface. Wastewater is sprayed or flooded over the upper reaches of the slope and a percentage  
 764 of the treated water is collected as runoff at the bottom of the slope, with the remainder lost to  
 765 evapotranspiration and percolation. Overland systems should be capable of producing effluent at  
 766 or below secondary level; however, additional treatment units may be needed to achieve the  
 767 permitted effluent limitations.

768 1. Soils should have minimal infiltration capacity, such as heavy clays, clay loams or soils  
 769 underlain by impermeable lenses. The restrictive layers in the soil should be between one  
 770 to two feet from the surface to maintain adequate vegetation. The hydraulic conductivity  
 771 should be less than 0.2 inches/hour. Field area slopes shall be less than 8.0%. Monitoring  
 772 wells shall be provided.

773 2. Renovated water shall be collected at the toe of the slope in cut off ditches or by similar  
 774 means and channeled to a monitoring point and disinfected as required.

775 3. The effluent application method should achieve a sheet flow pattern that will produce  
 776 maximum contact between the applied wastewater and the soil medium. This can be  
 777 accomplished by lateral distribution methods, low pressure sprays and moderate to high  
 778 pressure impact sprinklers discharging onto porous pads or aprons designed to distribute  
 779 the applied flow while preventing erosion. Maximum application rates in terms of depth of  
 780 effluent should be less than 10 inches per week.

781 4. Perennial field area vegetation shall be required. Hydrophilic or water tolerant grasses  
 782 are usually grown with this type of system.

783 L. Alternative design. Information submitted for approval of other natural treatment systems  
 784 and reuse alternatives shall include performance data obtained from either full-scale systems  
 785 similar to the proposed design, or pilot studies conducted over a testing period exceeding one  
 786 year, to a period of two years, based on test results.

787 Special consideration should be given to the following factors in planning and design of natural  
 788 systems:

- 789 1. Many aquatic plants are sensitive to cold temperatures and may require the use of a  
 790 protected environment or operation on a seasonal basis. Some plants may be considered  
 791 unacceptable for use and their growth must be controlled.
- 792 2. Control of insects, particularly mosquitoes, is normally required for constructed wetlands  
 793 and aquatic plant systems. The use of mosquito-eating fish and water depth adjustments  
 794 are recommended.
- 795 3. Some constituents which may be present in wastewaters, particularly those having high  
 796 industrial loads, are toxic to many aquatic plants. Therefore, tests should be conducted to  
 797 identify possible toxics prior to selection of the aquatic plant species.
- 798 4. Natural systems utilize a higher life form of less diversity than found in more  
 799 conventional biological treatment systems. This lack of biological diversity may reduce  
 800 treatment performance. Constructed wetland and aquatic plant systems could be more  
 801 susceptible to long term process upsets. Therefore, the effects of fluctuations in climate  
 802 and wastewater characteristics is extremely important in the design of natural systems.
- 803 5. Some aquatic plant and animal species have the potential to create a nuisance  
 804 condition if inadvertently released to natural waterways. Federal, state and local  
 805 restrictions on the use of certain aquatic plants and animals shall be considered.
- 806 6. Harvesting and the use or disposal of aquatic plants should result in removal of  
 807 organics, solids and nutrients such as nitrogen and phosphorous from the APU effluent.  
 808 Management of residual matter shall be in accordance with this chapter and standards  
 809 contained in this chapter.

810 **9VAC25-790-950. Contents for an operation and maintenance manual.**

- 811 A. General. This section contains suggested and required contents for an Operations and  
 812 Maintenance Manual. Items followed by an asterisk (\*) should be submitted for treatment works  
 813 or sewerage systems with design flows greater than or equal to 1.0 mgd.
- 814 1. Title page. The manual shall have a cover page that gives the title of the manual, the  
 815 date the manual was prepared in final form, and the names of the authors of the manual.
- 816 2. Table of contents. The manual shall contain a table of contents that lists chapters and  
 817 provides sufficient subsections in each chapter to permit easy identification of topics.
- 818 3. Introduction. The manual shall contain an introduction that briefly describes the  
 819 organization and purpose of the manual. The introduction shall emphasize that the manual  
 820 is operational in scope and will be updated so that it is not a static compilation of facts.
- 821 4. Definitions and terminology. Terms such as "BOD<sub>5</sub>" and "Suspended Solids" shall be  
 822 defined in this section of the manual.
- 823 B. Permit requirements.
- 824 1. CTO. The manual shall give the number of the CTO for the particular treatment works  
 825 or sewerage system. The permit requirements shall be listed and discussed. This  
 826 discussion should include, but is not limited to the following:
- 827 a. The manner, nature, volume, and frequency of the discharge permitted.
- 828 b. Procedures for and frequency of any domestic or industrial waste monitoring. This  
 829 may be referenced to the laboratory testing section, but should include a brief table of  
 830 testing procedures and sampling frequencies.
- 831 c. Requirements for the operators concerned with particular treatment works or  
 832 sewerage systems as outlined by the State Board for Certification of Operators of  
 833 Water and Wastewater Works and these regulations.
- 834 d. Legal penalties under state and federal law applicable to the operator for improper  
 835 operations, records, or reports.

836 e. Any additional conditions or special restrictions specified by the State Water Control  
837 Board (SWCB), Department of Environmental Quality (DEQ), or any other concerned  
838 regulatory agency.

839 f. Any changes in treatment works or sewerage system classification due to future  
840 upgrading or expansion that may have been included in the original construction plans.

841 g. Time period for which permit is valid (expiration date) and any required upgrading  
842 that may have to be accomplished by the time for renewal.

843 A copy of the certificate and permit issued shall be included in this section with proper  
844 reference made to the appropriate regulations of the SWCB and DEQ.

845 2. Spill reporting. This section shall include a discussion of the federal/state laws and the  
846 SWCB/DEQ regulations and policies requiring reporting of a bypass/spill condition. This  
847 discussion should include, but is not limited to, the following:

848 a. The owner's responsibilities and liabilities;

849 b. Penalties for violations;

850 c. Reporting procedures and requirements;

851 d. Telephone numbers for immediate reporting to regulatory agencies and potentially  
852 affected downstream users; and

853 e. Sample reporting forms and instructions for completing them.

854 C. Process descriptions.

855 1. A flow diagram of the treatment works or sewerage system that shows all important  
856 components of the system.

857 2. Main line, recirculated, effluent, and sludge flows, etc., and design average/peak values  
858 of such flows.

859 3. A clear and concise description of each system component and its purpose, function,  
860 and type of treatment.

861 4. The expected influent/effluent concentrations and design efficiencies for unit operations  
862 and the treatment process.

863 5. This section may be combined with the "Operation and Control" section.

864 D. Operation and control.

865 1. Unit operation process description. The manual shall provide a general operational  
866 description of each unit operation. The descriptions should be brief with appropriate  
867 references to more detailed discussions of the unit operations. The description should  
868 physically trace the sewage flow through the unit operation and contain information on  
869 design efficiency. Pipeline and control schematics, valve location diagrams and operation  
870 keys, hydraulic/organic loadings, etc., should be included. Supplementary photographs  
871 and/or schematic diagrams should be included.

872 2. Relationship to adjacent unit operations. The function of unit operations located  
873 upstream, downstream or off-line from other unit operations should be described as they  
874 relate to other unit operations in the treatment process being considered.

875 3. Classification and control. Classification of each unit operation as conventional, I/A, etc.,  
876 shall be included. The manual shall list and discuss the specific operational information  
877 and control techniques available for each major unit operation in the treatment process.  
878 This section shall be closely correlated with the specific treatment works or sewerage  
879 system operation. Process control variables such as recirculation ratios, valve/gate  
880 positions, pump controls, chemical feed rates should be included.

881 4. Common operating problems. Each major unit operation within the treatment works or  
882 sewerage system shall be analyzed and potential common operating problems defined.  
883 Potential problems that are peculiar to the treatment works or sewerage system under  
884 consideration shall be discussed. General problems that are adequately described in other  
885 sources shall be listed and properly referenced. Control of operating problems shall  
886 address the specific treatment works or sewerage system operation.

887 5. Laboratory controls. The manual shall list the laboratory tests that furnish information  
888 to evaluate and control the performance of the unit operation under consideration.  
889 Minimum testing requirements may be included in the operations permit. Expected ranges  
890 for the results of these tests shall also be given.

891 6. Start-up. The manual shall outline the steps for start-up of the unit operation. Information  
892 shall be provided on the special monitoring and controlling of the unit operation where  
893 treatment objectives are to be met.

894 7. Specific treatment works or sewerage system operation. The manual shall discuss (i)  
895 the normal operation, or the designed conventional loading conditions, of each unit  
896 operation, and (ii) alternate operation for unusual conditions for each unit operation.  
897 Information provided in this section shall enable the operator to operate the treatment  
898 works or sewerage system when it is not in the "normal operation" mode and shall be  
899 checked by the designer. It shall include methods and procedures with which to return the  
900 treatment works or sewerage system to "normal operation" following the proposed range  
901 of alternate operation conditions that may be encountered. It shall also include procedures  
902 and a logical decision-making process outline for the modifications of the original design  
903 "normal operation" and establishment of alternative operation conditions.

904 8. Emergency operation and failsafe features. The manual shall list and discuss the  
905 emergency operating procedures for the normally expected range of emergencies and  
906 failsafe features, particularly flood events, for each sewage treatment unit operation.

907 9. Process chemicals. A list of process chemicals shall be provided indicating minimum  
908 quantities to keep on hand and methods and precautions for storage.

909 E. Personnel responsibilities.

910 1. Operational and managerial responsibility. The responsibilities of both the operational  
911 personnel and the management personnel shall be clearly defined.

912 2. Staffing requirements and qualifications. This section is to reflect the personnel  
913 qualifications/certification and numbers for the treatment works or sewerage system. This  
914 should be formulated considering recommendations from the design engineer and the  
915 concerned regulatory agencies. The staffing plans for administration, supervision,  
916 operation, and maintenance shall be included. Certain positions in the staffing pattern that  
917 require certification by the state law shall be indicated in this section. Attendance  
918 requirements and routine work schedules with general responsibilities shall be presented.  
919 A delineation of training needs for administration and operational personnel shall be  
920 outlined in this section.

921 F. Laboratory testing.

922 1. Purpose and discussion. This section of the manual should explain the role of the  
923 laboratory in process control in providing an operating record for the treatment works and  
924 in analyzing problems within a unit operation.

925 The tests to be performed should be listed or charted, or both as appropriate, for permit  
926 required tests, such as discharge monitoring reports and process control tests. Sampling  
927 locations, frequency, etc., and a brief description of the analytical test and purpose should  
928 also be given. The detailed discussion of how each type test can be used in controlling or

929 monitoring a specific unit operation shall be given in the "Operation and Control" sections.  
930 This portion of the manual should be tailored according to the laboratory staff capabilities  
931 of the treatment works under consideration. The following information shall be provided in  
932 this chapter.

933 2. Sampling program. This section of the manual shall include:

934 a. Sampling methods.

935 (1) Specific methods for obtaining grab and composite samples.

936 (2) Locations of all sampling points.

937 (3) Sampling procedures, including where samples are to be collected, and any special  
938 techniques, such as how to make up a composite sample or how to operate automatic  
939 samplers if applicable.

940 (4) Preservation of samples prior to analytical measurements.

941 (5) Sampling equipment and safety precautions (requirements).

942 (6) Projected range of test results on influent and effluent samples.

943 b. Equipment and chemicals.

944 (1) Lists of necessary laboratory equipment and proper usage noting importance of  
945 quality control.

946 (2) List of laboratory chemicals with common names, chemical names and formulas.

947 (3) List of suppliers' names, quantities used and shelf lives.

948 (4) Discussion of laboratory inspection.\*

949 c. Operator/laboratory references. All essential references should be provided for  
950 proper laboratory operation. The detailed procedures for performing each test do not  
951 have to be included but should be properly referenced to one or more of the laboratory  
952 references provided.

953 d. Interpretation of laboratory tests.

954 (1) Expected ranges of typical results shall be included with explanation of typical  
955 transient differences from typical values.

956 (2) Detailed discussion in "Operation and Control" chapters.

957 e. Laboratory records. A brief discussion of the purposes for laboratory records  
958 recommended for use by the treatment works should be included.

959 G. Records and reports.

960 1. Daily operating log. This section of the manual shall delineate the requirement that  
961 operator's worksheets and daily operating logs be maintained. A sample log shall be  
962 included in the appendix.

963 2. Operational parameters. The daily log should outline the routine operational parameters  
964 for each unit operation, which shall include the minimum operational control tests required.  
965 These shall be adequate to enable proper operation of the units.

966 3. General information. This section of the manual should explain the operating conditions  
967 that should be recorded daily, such as:

968 a. Unusual conditions (operational and maintenance).

969 b. Accidents to personnel.

970 c. Complaints (odor, etc.).

971 d. Power consumption.

972 e. Plant visitors.



- 973 f. Personnel on duty/call.
- 974 4. Laboratory records. An example record sheet shall be included in the appendix.  
975 Information on the laboratory record sheet should include the following:
- 976 a. All lab tests to be performed with provisions for listing test results and summaries.  
977 b. Wastewater flow and surrounding weather conditions at the time of sampling.  
978 c. Chemicals used.  
979 d. Analyst's name or initials.  
980 e. Laboratory worksheets.
- 981 5. Monthly report to state agencies and federal government. The records section of the  
982 manual shall explain the responsibilities of the operator to report data to the appropriate  
983 agency, the reporting deadlines and how the monthly reports apply to the permit  
984 requirements. Sample forms of the monthly operation report, discharge monitoring report,  
985 etc., shall be provided in the manual's appendix.
- 986 6. Industrial and septage contributors. An inventory of significant industrial waste  
987 contributors shall be maintained. All sewage handlers that deposit septage at the  
988 treatment works shall be identified with pertinent information recorded, such as name of  
989 hauling company, volume deposited, date deposited, and description of the source of the  
990 septage.
- 991 7. Annual report.
- 992 a. This section of the manual shall discuss annual reports and who should prepare the  
993 report.\*
- 994 b. The annual report should include management data relative to cost of operation.  
995 c. Operating data included in the annual report should include average daily flow and  
996 average influent and effluent BOD and suspended solids for each month.  
997 d. The annual report should include a graph showing at least 10 years of record (if  
998 available); personnel data; and budget data. An example annual report format shall be  
999 included in the appendix as applicable.
- 1000 8. Additional records. The manual shall include specific information where records are  
1001 available for reference and shall include:\*
- 1002 a. As-built engineering drawings.  
1003 b. Copy of construction specifications.  
1004 c. Equipment suppliers' manuals.  
1005 d. Data cards on all serviceable equipment.  
1006 e. Construction photographs.
- 1007 9. Operating costs and record keeping. The manual shall provide a suggested operating  
1008 cost breakdown for the treatment works or sewerage system.\*  
1009 A record system for monitoring the cost shall be recommended.\*
- 1010 10. A personnel records procedure should be recommended that would include training.\*
- 1011 11. A record of emergency conditions affecting the treatment works or sewerage system  
1012 shall be maintained. A system for maintaining these records shall be recommended.\*
- 1013 H. Maintenance.
- 1014 1. Equipment record system. The maintenance chapter of the manual shall recommend  
1015 an equipment record system. The equipment record system shall contain information on  
1016 each item of operating equipment, such as common name, process function, date of  
1017 purchase, manufacturer, serial number, availability of spare parts and previous

- 1018 maintenance. Sample equipment record forms and provision that the forms be made a  
1019 supplemental index to the manual shall be included.
- 1020 2. Equipment numbering system. A numbering system to identify each item of equipment  
1021 requiring maintenance shall be provided for easy identification and to help ensure that all  
1022 equipment receives proper attention.
- 1023 3. Equipment catalog. A catalog system shall be prepared that lists equipment  
1024 descriptions, locations and equipment numbers. The catalog shall contain the following  
1025 data for all major items of equipment. The data shall include, but not be limited to, the  
1026 following information:
- 1027 a. Equipment name;
  - 1028 b. Vendor;
  - 1029 c. Model Number;
  - 1030 d. Serial Number;
  - 1031 e. Make or Type;
  - 1032 f. Pertinent mechanical/electrical data; and
  - 1033 g. Source of Supply.
- 1034 4. Planning and scheduling. The manual shall make recommendations on planning and  
1035 scheduling maintenance tasks. Documentation showing the lubrication and other  
1036 preventive maintenance task schedules shall be provided. The manual shall recommend  
1037 that maintenance records be kept so that a preventive maintenance schedule can be  
1038 established. The maintenance records shall provide for inclusion of maintenance problems  
1039 and curative procedures. A work order system could be established to initiate all corrective  
1040 maintenance tasks.
- 1041 5. Storeroom and inventory system. The manual shall make recommendations for  
1042 establishing a storeroom and inventory system. The manual shall contain the spare parts  
1043 inventory established in accordance with these regulations. The inventory shall list the  
1044 minimum and maximum quantities of the spare parts, the equipment in which they are  
1045 used, their storage location, replacement procedures and schedules, reference to  
1046 addresses of suppliers, and other pertinent information.
- 1047 6. Costs and budgets for maintenance operations. The section shall provide guidelines for  
1048 the determination of maintenance cost and the development of maintenance budgets.
- 1049 7. Housekeeping. The manual shall recommend housekeeping activities to be performed.
- 1050 8. Special tools and equipment. The manual should provide recommendations or  
1051 appropriate references on tool room procedures, the use of tool boards and maintenance  
1052 required for all special tools, where appropriate.
- 1053 9. Lubrication. The lubrication section of the manual shall appropriately reference each  
1054 equipment's lubrication specification. An alternate lubricants chart shall be provided in this  
1055 section. The information required by the above section should be assembled into a  
1056 lubrication guidebook and be included as an appendix to the manual.
- 1057 10. Electrical equipment information. The manual shall list each major item of electrical  
1058 equipment not listed in the equipment catalog.
- 1059 11. Warranty provision. The manual should provide a listing of all equipment warranties  
1060 and pertinent features of each replacement guarantee. Copies of the warranties shall be  
1061 included in the manual's appendix.
- 1062 12. Service contracts. The manual shall include a listing of all prearranged outside  
1063 contracts for service and repair work.

- 1064 13. Equipment reference handbook list. A list of equipment handbooks for reference  
1065 should be included.
- 1066 I. Emergency operation and response program.
- 1067 1. Objectives. The objectives of an Emergency Operating and Response Program include:
- 1068 a. Eliminating or minimizing adverse effects from emergency situations affecting the  
1069 treatment works or sewerage system and/or employee welfare.
- 1070 b. Developing procedures for properly responding to emergencies.
- 1071 c. Providing instruction for personnel.
- 1072 d. Providing inventories of available emergency equipment and outlining existing  
1073 mutual aid agreements and contracts with outside organizations for specialized  
1074 assistance.
- 1075 2. Vulnerability analysis\*. A vulnerability analysis shall be conducted and reported in the  
1076 manual. A vulnerability analysis is an estimation of the degree to which the treatment  
1077 works or sewerage system is adversely affected, in relation to the function it must perform  
1078 by an emergency condition. Expected natural disasters such as flooding must be  
1079 investigated and the effects of these disasters must be studied in order to estimate the  
1080 treatment works' or sewerage system's performance.
- 1081 3. Methods to reduce vulnerability. Priorities for repair of the treatment works or sewerage  
1082 system and alternate equipment provisions in case of light or severe damage are to be  
1083 indicated. To reduce vulnerability, training procedures for emergencies for regular and  
1084 auxiliary personnel should be included.
- 1085 4. Emergency equipment inventory. The manual shall require that, using the spare parts  
1086 inventory and the results of the vulnerability analysis, any additional equipment and  
1087 supplies needed for emergencies be stockpiled or be available through mutual aid  
1088 agreements or contracts. These arrangements must be delineated.
- 1089 5. Preserving system records. The manual shall contain procedures for keeping  
1090 documents containing pertinent information about the treatment works or sewerage  
1091 system safe from potential disasters.
- 1092 6. Auxiliary personnel requirements. Procedures for obtaining trained auxiliary personnel  
1093 in cases of emergency shall be included in the manual. Procedures for alerting these  
1094 personnel should be outlined and periodically updated.
- 1095 7. Emergency equipment testing. A schedule for testing of back-up systems such as  
1096 standby power should be included.
- 1097 J. Safety.
- 1098 1. Requirements. The manual shall inform personnel of the known hazards, preventive  
1099 measures, and emergency procedures applicable to, but not limited to, the following safety  
1100 items:
- 1101 a. Electrical hazards;
- 1102 b. Mechanical equipment hazards;
- 1103 c. Explosion and fire hazards;
- 1104 d. Biohazards, i.e., bacterial type infection;
- 1105 e. Chlorine hazards;
- 1106 f. Oxygen deficiency and toxic gases;
- 1107 g. Laboratory hazards;
- 1108 h. Safety equipment; and

- 1109 i. Process chemical handling and storage.
- 1110 2. Safety references. The manual shall contain a list of safety references of interest to
- 1111 operating personnel. The manual shall provide a list of all emergency telephone numbers.
- 1112 The manual should provide a discussion of the importance of good housekeeping
- 1113 practices in relation to safety, a list of available safety equipment for process units, a list
- 1114 of number and location of first aid kits and manuals, a list of safety rules for process and
- 1115 laboratory equipment, and a key to system piping paint color coding.
- 1116 K. Utilities\*.
- 1117 1. Requirements. This section shall list the utilities being used, the sizes and capacities of
- 1118 the lines serving the treatment works or sewerage system, emergency cutoff procedures,
- 1119 and the personnel to contact within each utility company to ensure proper response to
- 1120 routine and emergency situations.
- 1121 2. Electrical. This section shall contain a brief statement on the reliability of electrical
- 1122 service. This statement should be based on studies of past performance and discussions
- 1123 with utility personnel. The discussion should include clearly defined breakpoints in
- 1124 responsibility for service facilities between the utility company and the treatment works or
- 1125 sewerage system owner.
- 1126 3. Telephone. The telephone system, if used as an alarm system, should be described
- 1127 and a statement made as to "failsafe" capabilities.
- 1128 4. Natural gas. The natural gas utility company should be named and a description of the
- 1129 service given. A statement of reliability should be made.
- 1130 5. Water. The water system should be described, and a statement of reliability should be
- 1131 made.
- 1132 6. Fuel oil. The manual should list the sources for fuel, the capacities of storage facilities
- 1133 and procedures for ensuring adequate supplies year round.
- 1134 L. Appendices.
- 1135 1. Requirements. This section of the manual shall include any additional or supplemental
- 1136 material not suitable for inclusion in the text. As stated in 9VAC25-790-950 A, items
- 1137 followed by an asterisk (\*) are required only for treatment works or sewerage systems with
- 1138 design flows greater than or equal to 1.0 mgd. The appendix shall begin with an index.
- 1139 The following do not have to be duplicated in the appendices if included elsewhere in the
- 1140 manual.
- 1141 a. VPDES permit. A copy of any applicable permit shall be included here if not already
- 1142 included elsewhere in the manual.
- 1143 b. Example forms. An example of all forms, including state and federal reporting forms,
- 1144 laboratory record forms, etc., to be used shall be included. Instructions for completing
- 1145 each form shall be given.
- 1146 c. Equipment record example. The equipment record example with location and
- 1147 responsible personnel shall be included.
- 1148 d. Personnel. Names, addresses and telephone numbers of personnel should be
- 1149 included.
- 1150 2. Schematics. Any basic flow diagrams, process flow sheets, bypass piping diagrams
- 1151 and hydraulic profiles that are not included in the engineering drawings or manual text
- 1152 shall be placed in an appendix.
- 1153 3. Valve Indices.\* Valve indices shall be included in an appendix. Valve indices shall be
- 1154 one, or a combination, of the following:

- 1155 a. A complete tabulation of principal valves, each separately numbered and identified  
1156 as to type, location, and function.
- 1157 b. A coding system for each type of valve, together with a prefix or suffix identifying its  
1158 liquid content or process function, and location of each valve coded on the construction  
1159 drawings.
- 1160 c. Diagrams for principal valves, clusters of valves, and adjacent piping that are buried.
- 1161 d. Location through at least two measurements to nearby permanent above-ground  
1162 objects.
- 1163 4. Any chemicals used and suppliers shall be listed.
- 1164 a. Storage considerations shall be discussed.
- 1165 b. Capacities of dry chemical storage areas and liquid storage tanks shall be  
1166 described.
- 1167 5. A list of the lab chemicals by common name, chemical name and the chemical formula  
1168 shall be provided. Suppliers' names, quantities normally needed, and shelf life of each  
1169 shall be given. Storage considerations shall be discussed.
- 1170 6. An appendix shall give the design criteria for all unit operations and processes.\*
- 1171 7. The manual furnished with each piece of equipment shall be bound separately, and the  
1172 index for these shall be included in an appendix.
- 1173 8. A list of potential sources for the types of repairs and equipment parts required shall be  
1174 made and listed in appendix.\*
- 1175 9. A complete and accurate set of as-built engineering drawings with included shop  
1176 drawings shall be furnished immediately following testing and start-up.\*
- 1177 10. A complete set of engineering drawings shall be furnished sufficiently in advance of  
1178 start-up to permit proper training of operating and maintenance personnel.\*
- 1179 11. Construction photos shall be taken throughout the construction phase and shall be  
1180 included or indexed in an appendix. All pictures shall be labeled and dated.\*
- 1181 12. Copies of warranties and performance bonds shall be placed in an appendix.\*
- 1182 13. If there is an existing infiltration ordinance, a copy shall be included.\*
- 1183 14. If there is an existing industrial waste ordinance, a copy shall be included in an  
1184 appendix.\*
- 1185 15. The coding system selected for use shall be outlined.\*
- 1186 16. The various types of coatings to be used are to be listed with a suggested painting  
1187 schedule. The manufacturer's trade name and coating number and color shall be  
1188 specified.\*
- 1189 17. A list of essential references recommended for immediate procurement and a second  
1190 list giving references that may be obtained at a later date for use in operation and  
1191 maintenance shall be provided.\*
- 1192 18. The Lubrication Guidebook shall be included.\*



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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Thomas A. Faha  
Regional Director

July 14, 2022

**MEMORANDUM**

**TO:** State Water Control Board Members

**FROM:** Alison Thompson, Water Permits Technical Reviewer, DEQ-NRO

**SUBJECT:** VPDES General Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests (VAG 83); Amendments to 9VAC25-120 and Reissuance of General Permit

The current VPDES General Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests will expire on February 25, 2023, and the regulation establishing this general permit is being amended to reissue this general permit for another five-year term. The staff is bringing this regulation before the Board to request adoption of the amendments to the VPDES General Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests. The staff will also recommend that the Board affirm that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the Administrative Process Act.

The regulation took into consideration the recommendations of a technical advisory committee (TAC) formed for this regulatory action. The technical advisory committee consisted of representatives of consultants and professionals that support projects and permitting, local government and DEQ staff. A list of the TAC membership is attached.

With this reissuance of the general permit, DEQ staff proposes to expand the general permit to include other sources of contamination not identified as petroleum or chlorinated hydrocarbon solvents. The types of sites eligible for coverage under this activity category may be a result of remediation activities related to groundwater pump and treat systems, dewatering systems or other activities where non-petroleum-related sources are a known source of contaminant of concern, including sites where metals are present.

Adding these limited additional activities and pollutants to the scope of activities authorized under this general permit is needed to better serve the regulated community, to better coordinate across DEQ programs and to save staff time and resources.

The Notice of Public Comment and Hearing was approved by the Board on March 25, 2022, the comment period was April 25 to June 24, 2022 with a public hearing held on June 2, 2022. There were six comments received during the Notice of Public Comment and Hearing. No substantive changes were made in this final draft. Substantive changes presented during the proposed stage were:

**Title** – Staff proposes to change the title of the regulation to Groundwater Remediation of Contaminated Sites, Dewatering Activities of Contaminated Sites, and Hydrostatic Tests General Permit

**Section 10 – Definitions.** Revised the following definition: "Board" means the State Water Control Board. However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, "Board" means the "Department of Environmental Quality". This conforms to recently enacted legislation (SB 657). In the balance of the general permit/ regulation, changed “board” to “department” where the reference was to a permit action.

**Section 15 – Applicability of incorporated references based on the dates that they became effective.** A statement was revised to update all Title 40 Code of Federal Regulations within the document to be those published as of July 1, 2021. This is a recommendation from the DEQ Office of Policy.

**Section 20 – Purpose.** The purpose of the general permit was expanded to include remediation of groundwater from metals contamination and ongoing dewatering projects from contaminated sites.

**Section 50 – Effective date of the permit.** The effective date and expiration date of the general permit were updated to March 1, 2023 and February 29, 2028 respectively.

**Section 60 – Authorization to discharge.** The wording for the Continuation of Permit Coverage was updated for clarification. Clarify that ongoing dewatering projects may require additional coordination, permitting and/or reporting for permittees in accordance with 9VAC25-200 and 9VAC25-610.

**Section 70 – Registration Statement.** The activities covered under this general permit were updated to reflect the addition of metals contamination and dewatering activities. For existing facilities covered by an individual permit and seeking general permit coverage, changed registration submittal from 210 to 240 days prior to expiration of the individual permit in order to be consistent with other general permits. A section was added for the owner to provide information if the facility is enrolled in the Voluntary Remediation Program (VRP) if applicable for the project. The location was changed to latitude and longitude in decimal degrees (six digits - ten-thousandths place) so that the outfall location can be clearly identified. A requirement was added for the owner to provide the State Corporation Commission entity identification number if the facility is required to obtain one by law. A statement about notification was added for clarification. The registration statement can be emailed to the regional office. Staff added that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this industry and 3 months’ notice is given, registration statements shall be submitted electronically.

**Section 80 – General Permit.** The following modification and additions were made to the "Effluent Limitations and Monitoring Requirements" section (9VAC25-120-80) Part I A 2: A revision was made to the approved methodology for Total Petroleum Hydrocarbons. The limit for Total Petroleum Hydrocarbons was revised to two significant figures.

The following modification and additions were made to the "Effluent Limitations and Monitoring Requirements" section (9VAC25-120-80) Part I A 3: Revised the Benzene effluent limit to reflect the changes to the Virginia Water Quality Standard Human Health criteria for Public Water Supplies, Removed the decimal place for the Ethanol effluent limitation because the detection limit for this compound using

Method 8260B is 200 ug/l. To carry this to the required significant figure would likely require secondary ion mass spec analysis – a big cost burden for no apparent value. Added “Total” for Hardness monitoring since this is how hardness is reported. Limitations for Toluene, Total Xylenes, MTBE, and Ethylene Dibromide in freshwater PWS, were revised to two significant figures. Total Recoverable Lead is now expressed as a numeric limitation to eliminate confusion with reporting and determining compliance.

The following modification and additions were made to the "Effluent Limitations and Monitoring Requirements" section (9VAC25-120-80) Part I A 4: Revised the Benzene effluent limit to reflect the changes to the Virginia Water Quality Standard Human Health criteria for Public Water Supplies. A revision was made to the approved methodology for Total Petroleum Hydrocarbons. The limitations for Total Petroleum Hydrocarbons and MTBE were revised to two significant figures.

The following modification and additions were made to the "Effluent Limitations and Monitoring Requirements" section (9VAC25-120-80) Part I A 5: The Chloroform effluent limitation was revised to reflect the changes to the Virginia Water Quality Standards and is now expressed as two significant figures. The limitations for cis-1,2 Dichloroethylene, trans-1,2 Dichloroethylene, 1,1,1 Trichloroethane, and 1,2 Dichlorobenzene were revised to two significant figures.

The following addition was added to 9VAC25-120-80: section Part I A 6 was added to address metals contamination from groundwater remediation or post-construction dewatering activities. Limitations for pH, Total Recoverable Arsenic, Total Recoverable Cadmium, Total Recoverable Chromium, Total Recoverable Copper, Total Recoverable Lead, Total Recoverable Nickel, Total Recoverable Selenium, Total Recoverable Silver, Total Recoverable Thallium, and Total Recoverable Zinc were included. Monitoring for Flow and Total Hardness were also added.

In Part II C, staff added that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this industry and 3 months’ notice is given, discharge monitoring reports shall be submitted electronically. In Part II I, the link for reporting pollution incidents was updated.

Draft amendments showing changes to the current regulation, the Agency Final Town Hall background document and the Fact Sheet are attached.

The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

Attachments: TAC Membership, General Permit Regulation Amendments, Agency Background Document (Town Hall), Fact Sheet



Members of the Technical Advisory Committee:

James Thornhill	Wire Gill LLP
Gavin Pellitteri	Transportation & Env. Services, City of Alexandria
John Diehl, CPG, LRS	ECC Inc.
Christopher Elliott	Env. Senior Project Mgr., ECS MID ATLANTIC
David Bookbinder, CPG	ECS MID ATLANTIC
Allan Brockenbrough	DEQ CO VPDES Permits
Alison Thompson	Water Permits Technical Reviewer, DEQ-NRO

DEQ Staff Technical Liaisons

Elleanore Daub	CO VPDES Permits
Frank Bowman	BRRO VPDES Permits
Bryant Thomas	NRO WPM
Ann Zimmerman	NRO VPDES Permits
Troy Nipper	CO Compliance
Jeanne Puricelli	PRO VPDES Permits
Heather Weimer	PRO Water Compliance
James Barnett	CO Remediation
Zachery Pauley	CO Remediation



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-120
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges From Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests
<b>Action title</b>	Amend and Reissue the Existing General Permit Regulation
<b>Final agency action date</b>	8/25/2022
<b>Date this document prepared</b>	7/8/2022

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

### Brief Summary

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

This action addresses the proposed reissuance of the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges From Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests. The existing general permit contains effluent limitations, monitoring requirements and special conditions for discharges of sites contaminated by petroleum products, chlorinated hydrocarbon solvents, the hydrostatic testing of natural gas storage tanks and pipelines, the hydrostatic testing and dewatering of petroleum storage tank systems and associated distribution equipment, and the hydrostatic testing of water storage tanks and pipelines. The proposed changes would amend the scope to also include non-petroleum contaminated sites, groundwater remediation discharges, and dewatering activities. Two limits have been revised based on updated standards, and 11 metal limits have been added to address dewatering activities with contamination by metals. In addition, hardness-dependent metal limits have been specified in place of the existing formula. The proposed changes to the regulation are being made to reissue this general permit and in response to Technical

Advisory Committee suggestions, public inquiries for expanded coverage, and staff suggestions to revise, update and clarify the permit conditions.

## Mandate and Impetus

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

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This regulation (9VAC25-120) constitutes a VPDES general permit administered by Virginia DEQ, a U.S. EPA authorized permitting authority under CWA § 402(b). Under CWA § 402(b)(1)(B) and 9VAC25-31-240, VPDES permits must be for fixed terms not to exceed five years. The existing general permit expires on February 25, 2023 and must be reissued for another term to remain available to permittees. If this permit is not re-issued in a timely manner, no new coverage is available to any new facility owner or operator and such owners or operators would be required to obtain individual VPDES permits, which require more time to develop and issue, and impose significantly greater burden and costs on permittees and increased administrative burden on DEQ. In addition, internal staff review and TAC meeting input have identified areas where the general permit could be updated and potentially improved. Such improvements are expected to expand the scope of this general permit to identified current commercial activities that at present have no option for obtaining general permit coverage.

## Acronyms and Definitions

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

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- APA: Administrative Process Act
- CFR: Code of Federal Regulations
- DEQ: Department of Environmental Quality
- DMR: Discharge monitoring report
- EPA: (U.S. EPA): United States Environmental Protection Agency
- MTBE: methyl tert-butyl ether
- NPDES: National Pollutant Discharge Elimination System
- PWS: Public water supply
- TAC: Technical Advisory Committee
- TPH: Total Petroleum Hydrocarbon
- USC: United States Code
- VAC: Virginia Administrative Code
- VPDES: Virginia Pollutant Discharge Elimination System
- VRP: Voluntary Remediation Program

## Statement of Final Agency Action

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

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On August 25, 2022 the State Water Control Board adopted 9VAC25-120 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges From Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests.

### Legal Basis

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

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The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, §62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

### Purpose

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

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This proposed regulatory action is needed in order to amend and reissue the existing VPDES General Permit Regulation for Discharges From Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests, which expires on February 25, 2023. The goal of the proposed regulation is to continue to make available the general permit, which establishes standard language for control of these point source discharges through effluent limitations, monitoring requirements and special conditions to ensure protection of the environment and public health, safety and welfare.

### Substance

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

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Proposed changes to the general permit regulation include:

- Revising the title to reflect the adjusted scope.
- Amending the purpose to address wastewaters from petroleum contaminated sites, non-petroleum contaminated sites, groundwater remediation discharges, dewatering activities, the hydrostatic testing of natural gas storage tanks and pipelines, the hydrostatic testing and dewatering of petroleum storage tank systems and associated distribution equipment, and the hydrostatic testing of water storage tanks and pipelines.
- Revising the term of the general permit to March 1, 2023 through February 29, 2028.

- Making certain language more generic so dates do not have to be changed each reissuance.
- Under registration statement information requirements, replaced location with latitude and longitude of the discharge point.
- Adding VRP information to the registration statement.
- Adding State Corporation Commission entity identification data requirement to the registration statement.
- Adding conditional requirements for the electronic submission of registration statements.
- Adding conditional requirements for the electronic submission of DMRs.
- Amending the benzene limit based on revisions to the state water quality standard.
- Amending the chloroform limit based on revisions to the state water quality standard.
- Adding limits for 12 (total recoverable) metals (Antimony, Arsenic, Cadmium, Chromium, Copper, Lead, Mercury, Nickel, Selenium, Silver, Thallium, and Zinc) to address dewatering activity discharges contaminated with metals.
- Removing the hardness based formula for metals and replacing them with numeric limit values.
- Specifying that hardness monitoring is total hardness.
- Amending several limits to express them as two significant figures, consistent with existing guidance.
- Updating certain noncompliance report language to reflect updated DEQ website.

**Issues**

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

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The advantages to the public, permittees and the agency of reissuing this general permit are that a VPDES general permit will continue to be available to facilities with eligible discharges enabling them to discharge to surface waters in a manner that is protective of those waters. In addition, the continued availability of this general permit avoids the increased cost and more complicated application process for permittees associated with issuing an individual permit, and makes permit administration more reasonable for DEQ. There are no known disadvantages.

Expanding the scope of this VPDES general permit offers some projects potential permit coverage as an alternative to seeking costly disposal/ treatment alternatives or seeking an individual VPDES permit, which is much more costly and requires more time to implement.

The advantage of (eventual) electronic submission of registration statements or combined applications and DMRs is that this approach complies with U.S. EPA program requirements for e-reporting. Once in place, this system will also allow for greater efficiency in the submittal, management, and transfer of program data.

**Requirements More Restrictive than Federal**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

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There are no requirements that exceed applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

Other State Agencies Particularly Affected:

There are no state agencies, localities or other entities particularly affected by the proposed regulation as the regulation applies statewide.

Localities Particularly Affected:

See above.

Other Entities Particularly Affected:

See above.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. Ensure to include all comments submitted: including any received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.*

Commenter	Comment	Agency response
Jennifer Fulton, Acting Chief, Clean Water Branch US EPA Mid-Atlantic Region	The draft permit allows for automatic transfer of coverage to a new permittee if the current permittee notifies the department within 30 days of the transfer of the title to the facility or property. This permit condition appears to be inconsistent with 40 CFR 122.61(b)(1) which requires the permittee to notify the Director at least 30 days in advance of the proposed transfer date. EPA recommends VADEQ revisit the automatic transfer of coverage condition in the permit to ensure its consistency with the regulations.	DEQ reviewed the differences between the Federal regulation at 40 CFR 122.61(b)(1), the VPDES regulation, and the draft language proposed in 9VAC25-120. DEQ intends to retain the language as drafted to ease the burden of administering the general permit on staff.
David Sligh on behalf of Wild Virginia	A Single General Permit is Inappropriate to Cover the Range of Activities Addressed.  The fact sheet (FS) prepared in support of the draft permit states that	This proposed general permit addresses several categories and subcategories of discharges, which is permissible under 9VAC25-31-170. That regulation provides that a VPDES general permit can be written to cover "one or more categories or

	<p>the permit is to cover "point source discharges from petroleum and non-petroleum contaminated sites, groundwater remediation, dewatering activities, and hydrostatic tests to surface waters of the Commonwealth of Virginia." FS at 1. It goes on to say that "the category of discharges is appropriately controlled under a general permit," apparently based on the assertion that "[t]he category of discharges to be included involves facilities with the same or similar types of operations and the facilities discharge the same or similar types of wastes." Id.</p> <p>The assertion that all of the different activities DEQ proposes to cover under this single permit qualify as the same or similar is simply not supportable. A number of the criteria for inclusion of classes of activities in a general discharge permit, as defined in state and federal regulations, are clearly not met here. Alison Thompson, Virginia DEQ June 24, 2022 2 State regulations define the circumstances under which the Board may issue general Virginia Pollutant Discharge Elimination (VPDES) permits, at 9 VAC 25-31-170.1 That section of the administrative code states that a general permit may include one or more categories or subcategories of point sources if all covered sources: (1) Involve the same or substantially similar types of operations; (2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices; (3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal; (4) Require the same or similar monitoring; and (5) In the opinion of the board, are more appropriately controlled under a general permit than under individual permits. 9 VAC 25-31-170.A.2.</p> <p>This draft permit fails to conform to conditions (1) - (4).</p> <p>Operations described in the draft permit are very different for different types of activities covered. For example, in performing hydrostatic</p>	<p>subcategories of discharges" ... within a geographic area (9VAC25-31-170 A 1 and 2). Subsection 2 b provides that "one or more categories or subcategories of point sources other than stormwater point sources" may be regulated "if the sources ... within each category or subcategory all: (1) Involve the same or substantially similar types of operations; (2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices; (3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal; (4) Require the same or similar monitoring; and (5) In the opinion of the board, are more appropriately controlled under a general permit than under individual permits." (Emphasis added).</p> <p>This general permit addresses two categories of discharges, contaminated sites and hydrostatic testing. It further addresses several subcategories of contaminated sites, including certain short-term projects, hydrostatic tests, gasoline contamination, contamination by petroleum products other than gasoline, contamination by chlorinated hydrocarbon solvents and, under the currently proposed general permit, dewatering with contamination by metals. Consistent with subsection 170 A 2 b, the sources within each of these respective categories or subcategories involve "substantially similar types of operations; [d]ischarge the same types of wastes...; [r]equire same effluent limitations..." and "[r]equire the same or similar monitoring". The current general permit reflects these similar categories and subcategories in distinct sets of effluent limits and monitoring requirements that are appropriate and applicable to each respective category and subcategory given the nature of the activity and discharge. If a discharge includes pollutants from more than one category, all applicable limits will apply. Under the current general permit (VAG83, 2018), the board has found that these sources are appropriately controlled under a general permit (see, 170 A 2 b 5). In addition, EPA has not objected to the scope of the permit. The proposed general permit that is subject to comment here, adds limits and monitoring requirements for discharges associated with dewatering with contamination by metals. These discharge are also sufficiently similar to meet the applicable general permit criteria.</p>
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	<p>testing of "new or repaired petroleum or natural gas pipelines, petroleum storage tanks, or water storage tanks and pipelines," as addressed in Part I.A.2., parties acquire either potable or non-potable water, which is presumably not known to be contaminated, feed that water into the units to be tested, and place the system under pressure. The water is then released from the units and discharged. The units being tested are to be "substantially free of debris, raw material, product, or other residual materials," FS at 19. Discharges in this category are "generally one-time occurrences of less than 48 hours." Id.</p> <p>In sharp contrast, operations covered under Parts I.A.3., I.A.4, I.A.5., and I.A.6. are designed to gather water polluted by spills, leaks, or dumping of waste and treat it to meet numerous effluent limitations for pollutants expected to be present because of the nature of the cleanup site being addressed. Clearly the handling and treatment for polluted water at these types of sites requires personnel and systems adequate to protect humans and the environment from these activities themselves and to ensure that treatment systems are properly designed, operated, and maintained. These discharges may last for extended periods of at least weeks or months.</p> <p>As noted above, the types of wastes vary greatly between sites merely handling hydrostatic test water and those involved in pollution cleanup. Further, the wastes from one subcategory of cleanup site to another vary drastically. The great differences in the types of wastes, from one category to another, is reflected in wholly different and distinct sets of effluent limitations. To illustrate this fact, we note that water accumulated and treated at sites contaminated by chlorinated hydrocarbon solvents, under Part I.A.5., may contain measurable levels of eight pollutants that are "known or suspected carcinogen[s]."2 Water from sites 1 Virginia's regulation is essentially identical in substance to federal</p>	<p>With regard to monitoring, state general permit regulations require the sources within each category or subcategory be subject to the same or similar monitoring. As noted, this general permit includes monitoring requirements that are appropriate for each category and subcategory of discharges addressed and the corresponding discharge limits applicable to the category or subcategory. As for monitoring short term projects, these projects do not encompass what is considered a full monitoring period under the VPDES program. These projects end before DEQ would have time to review a DMR and take compliance action if such was warranted (often a letter or notice of violation for a first DMR exceedance). The approach in the general permit, requiring monitoring and recordkeeping, with DEQ able to access those records as deemed necessary, maintains monitoring of the discharge but simplifies the administration of the general permit for what is not an ongoing activity. Short term discharges normally pose less environmental risk than long term or continuous discharges. In the unusual case where a short term project poses a significant problem, the required monitoring records can be used to support an enforcement action.</p>
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	<p>regulations at 40 C.F.R. § 122.28. 2 As designated for each of these pollutants in the table at 9 VAC 25-260-140.B. Alison Thompson, Virginia DEQ June 24, 2022 3 contaminated by metals, covered under Part I.A.6., has no identified carcinogens but does include twelve separate metals in the "total recoverable" form. Some of these metals are present naturally in the areas addressed, some are not. The toxicity of these pollutants, which may cause both acute and chronic effects, is affected by the hardness of the water containing them. Clearly, it is not credible to assert that either the types of wastes or the effluent limitations for these different types of discharging operations are "the same."</p> <p>Finally, the monitoring methods and requirements are significantly different from one subcategory of discharge addressed in the draft permit to another. The collection of samples for metals, volatile organic compounds, and other types of pollutants require different methods, containers, preservation techniques, and holding times. The analytical tests are different and require different types of training and levels of expertise.</p> <p>It is also notable that the permit requires that monitoring results be recorded by the dischargers for "short term projects" at Part I.A.1. and "dischargers of hydrostatic test waters" at Part I.A.2., but these dischargers are not required to submit the results to DEQ. All other categories addressed in the permit require monthly reporting to DEQ. This difference in requirements implies that DEQ places a higher level of importance on the monitoring efforts and results for some operations than for others.</p>	
<p>David Sligh on behalf of Wild Virginia</p>	<p>Activities Covered Under the Draft Permit Are Likely to Violate the Antidegradation Policy.</p> <p>The state may not issue a VPDES permit if there is a reasonable potential that discharges made in accordance</p>	<p>This permit authorizes discharges of (1) treated groundwater from petroleum and hydrocarbon contaminated sites, (2) groundwater collected in building sumps, and (3) water used for hydrostatic testing of pipelines and tanks. Discharges under the</p>

	<p>with the permit's requirements will cause or contribute to violations of the water quality standards (WQS). This applies to all parts of the WQS, including narrative and numeric criteria and the antidegradation policy.</p> <p>We assert that discharges allowed under the conditions of the permit and the implementation procedures defined by DEQ will almost certainly violate the antidegradation policy in some cases, particularly where water quality currently exceeds the minimum levels required under the numeric criteria in the WQS. Therefore, we believe the permit must be re-drafted to prevent this potential.</p> <p>The regulation governing the application of this general permit states that a party proposing a discharge which "violates or would violate the antidegradation policy in the Water Quality Standards at VAC25-260-30" will be notified that the discharge is not eligible for coverage under general permit number VAG83. 9 VAC 25-194-50.B.3.</p> <p>The section of Virginia's water quality standards regulation that deals with high quality or so-called "Tier 2" waters states, in part:</p> <p style="padding-left: 40px;">Where the quality of the waters exceed water quality standards, that quality shall be maintained and protected unless the board finds, after full</p>	<p>first category involve remediation of groundwater contaminated from leaking underground storage tanks (USTs). In some cases the groundwater being remediated is already reaching the receiving stream. These sites are most often in developed areas where stream quality has already been adversely impacted due to development and the nearest receiving stream is considered to be a Tier I waterbody. The permit protects that waterbody by allowing for the remediation and ensuring that the discharge meets applicable water quality criteria. Discharges under the second category are new to this permit and are being incorporated in response to a growing number of development sites that must dewater the groundwater from deep structures such as underground parking garages. These sites are often Brownfield sites that were contaminated from previous activities and have completed a voluntary remediation program. Because of the potential for some remaining contamination of the groundwater, a permit for the discharge is required and the permit again protects water quality by requiring that the discharge meets applicable water quality criteria. The third category of discharges under this general permit is applicable water used to hydrostatic test pipelines and tanks. Discharges under this category are expected to contain only trace amounts of pollutants and are temporary in nature. Water quality is protected by requiring that the discharge meet applicable water quality criteria end-of-pipe. The general permit also requires that hydrostatic test water be managed to control the volume and velocity of the discharge to minimize erosion at the outlet and any downstream channels and stream banks.</p> <p>The general permit protects water quality (including antidegradation) by ensuring that the discharge meets all applicable water</p>
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	<p>satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.</p> <p>...</p> <p>According to a communication from DEQ staff: "In the event that a discharge is proposed to a Tier II stream, staff is instructed to evaluate whether the effluent limits are protective of the antidegradation policy using the methodology outlined in Guidance Memo No. 00-2011."<sup>3</sup></p> <p>The guidance document referenced varies from the plain wording of the regulation, which mandates that high quality conditions "shall be maintained and protected," in that the guidance arbitrarily defines levels water quality reductions the agency deems significant. That threshold of significance is, according to the agency memorandum, based on "a consensus of agency opinion."<sup>4</sup> That document provides no scientific or technical sources or analyses that support this "consensus of agency opinion." The record for this permit</p>	<p>quality criteria end-of-pipe prior to discharge to Tier I waters. In the event that a discharge is proposed to Tier II waters under the general permit, an evaluation is performed to ensure that the Board's antidegradation policy is met. This evaluation is performed using a theoretical combination of conservative assumptions including maximum discharge rate, maximum effluent concentration and critical streamflow conditions as identified in 9VAC25-260-140. Allowing the use of only 25% of the stream's assimilative capacity (10% for human health criteria) under an evaluation that assumes the theoretical, simultaneous occurrence of a number of conservative assumptions ensures that high water quality is maintained and protected. Under actual conditions, impacts are not expected to be detectable or measurable. The determination of whether or not the applicant is eligible to discharge to a Tier II stream under the general permit is made on a case-by-case and is dependent on the proposed discharge rate and the size of the receiving stream. Proposed discharges that would violate the Board's antidegradation policy at the pollutant concentrations included in the general permit are not eligible for coverage and must apply for an individual permit so that more protective effluent limits may be applied.</p> <p>DEQ maintains and protects high quality waters through the procedures established in Guidance Memorandum No. 00-2011, <i>Guidance on Preparing VPDES Permit Limits</i>. The Water Quality Standards establish that aquatic life criteria should not be exceed more than once every 3 years on average. Return intervals for exceedance of human health criteria are not established but these criteria are established to prevent impacts due to long term exposures. DEQ's guidance ensures protection of high quality waters by allowing only a minimal impact</p>
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	<p>action does not include any such analyses or support.</p> <p>Most pertinent to our concerns regarding pollutants to be discharges under this permit are the assertions in the guidance that "there will be no significant lowering of water quality if the permit limits is [sic] based on the following restrictions . . .</p> <ul style="list-style-type: none"> <li>• No more than 25% of the unused assimilative capacity is allocated for toxic criteria for the protection of aquatic life.</li> <li>• No more than 10% of the unused assimilative capacity is allocated for criteria for the protection of the human health.</li> </ul> <p>Id.</p> <p>As explained below, we assert the application of the agency guidance for this permit action is unsupportable for five reasons.</p> <p>First, the plain language of the regulation is unambiguous and the agency is not authorized to weaken or change that regulatory provision based on a "consensus of agency opinion." The State Water Control Board (Board) bears the sole authority to adopt water quality standards. The Board has allowed for the agency to make findings of significance in other parts of the WQS regulations<sup>5</sup> but did not do so in this</p>	<p>under a combination of conservative conditions (10-year drought stream flow, maximum discharge rate, maximum discharge concentration) that would be expected to occur simultaneously much less frequently than the once in 3 year return interval established for aquatic life criteria. Likewise, the human health impact from a discharge meeting human health criteria end-of-pipe is expected to be negligible. The approach used to apply the Board's antidegradation policy is similar to that used in numerous states and is fully protective of water quality. The procedures in Guidance Memorandum No. 00-2011 have been accepted by the Board and USEPA in the issuance of numerous VPDES permits.</p> <p>Human health criteria established in the Boards Water Quality Standards are established at levels that are meant to prevent any impact to human health. These criteria are established using similarly conservative assumptions on fish and drinking water consumption rates, exposure times, etc. By requiring that all water quality criteria are met end-of-pipe without the benefit of any dilution, DEQ has ensured that there is virtually no threat to human health from discharges permitted under the general permit. Even considering the synergistic impacts of multiple carcinogens, it is highly unlikely that any person would have sufficient exposure (drinking, eating fishing, swimming, etc.) to the discharge from a temporary pump and treat remediation system to pose a hazard.</p>
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	<p>instance. We may not assume that they intended to allow this latitude for agency judgement here.</p> <p>Email message from Alison Thompson, DEQ to David Sligh, Wild Virginia, RE: <i>General Permit VAG83</i>, June 24, 2022.</p> <p>4 Virginia DEQ, Memorandum from Larry G. Lawson, Guidance Memo No. 00-2011; <i>Guidance on Preparing VPDES Permit Limits</i>, August 24, 2000, p. 9.</p> <p><sup>5</sup> 9 VAC 25-260-40 prohibits "significant changes to naturally occurring dissolved oxygen and pH fluctuations in [Class VII trout] waters;" 9 VAC 25-260-275.E. allows for findings of "significant adverse social and economic impacts to beneficial uses and to the locality and its citizens" as a factor in decision-making related to protection of clam and oyster waters; 9 VAC 25-260-370.B. allows for judgements as to whether populations of trout or warmwater gamefish exist in a stream.</p> <p>Second, while EPA has allowed states to apply significance or de minimis concepts in regard to antidegradation, there is no support for those actions in the Clean Water Act (CWA) or regulations. The EPA's primary justification for allowing de minimis amounts of degradation is that this procedure "allows States and Tribes to focus limited resources where they may result in the greatest environmental protection"<sup>6</sup> but, by this reasoning, the EPA seems willing to replace the judgement of Congress with ad hoc and relatively unbounded value judgements by State agencies.</p>	
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	<p>At the same time, the EPA acknowledges that “States or Tribes that define a high threshold of significance may be unduly restricting the number of proposed activities that are subject to a full antidegradation review”<sup>7</sup> but the Agency has failed to define what it considers an appropriate “threshold.”</p> <p>The Supreme Court addressed this issue in <i>Arkansas v. Oklahoma</i>, 503 U.S. 91 (1992). In that case a new sewage treatment plant in Arkansas, which was to discharge effluent that would flow downstream through a series of three creeks for 17 miles, enter the Illinois River, and then flow another 22 miles before crossing the border into Oklahoma. The State of Oklahoma’s WQS required that “no degradation” of the upper Illinois River could be permitted.<sup>8</sup></p> <p>An Administrative Law Judge had first upheld the permit, finding that there would not be an “undue impact” from the new discharge to a portion of the River in Oklahoma that was already impaired; that there would be no more than “a mere de minimis impact” on the downstream State’s waters.<sup>9</sup> The EPA’s Chief Judicial Officer also upheld the permit but ruled that a proper interpretation of the federal regulation required a more protective standard; that where the prediction of an impact was merely theoretical but was “not expected to be actually detectable or measurable,”<sup>10</sup> the permit should not be denied on that basis. The Supreme Court ruled that EPA’s interpretation of the CWA and the regulation was not arbitrary and capricious and upheld the permit.</p>	
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	<p>The levels of degradation in quality allowed in DEQ guidance and apparently applied in implementing this permit will certainly result in detectable negative impacts on receiving waters. Therefore, we believe they cannot be justified under federal law, even if the state's regulation is held to allow this interpretation.</p> <p>Third, even if it is held that DEQ has the latitude to interpret the regulation to allow an insignificant or de minimis lowering of water quality, DEQ has done so in an arbitrary and unlawful manner through the guidance document. As stated above, no evidence of any technical reasoning or support has been offered in this proceeding or at the time the guidance was issued to justify the raising of pollutant levels as specified and noted above. DEQ must</p> <p><sup>6</sup> Water Quality Standards Regulation, Advance notice of proposed rulemaking, 63 Fed. Reg. 36742, 36783 (July 7, 1998). <sup>7</sup> Id. <sup>8</sup> Arkansas v. Oklahoma, 503 U.S. 91, 94 (1992). <sup>9</sup> Id. at 96. <sup>10</sup> Id. at 97.</p> <p>not be allowed to base important regulatory decisions on vague bases, such as unexplained "consensus of agency opinion."</p> <p>Fourth, in regard to some of the specific types of pollutants addressed in permit number VAG83, any addition will increase risks and cannot</p>	
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	<p>be easily dismissed as insignificant. As discussed above in this letter, there are numerous substances deemed to be known or suspected cancer-causing agents that are allowable in measurable amounts in discharges. This is particularly significant because, unlike many other pollutants, there are no "safe" levels of carcinogens in the environment. By contrast, for many substances smaller amounts are considered harmless to humans and wildlife but above defined thresholds they are thought to cause acute or chronic toxicity effects.</p> <p>Fifth, even if we could determine that increases in any one carcinogenic pollutant and the greater risk it presents are acceptable, this would not account for the fact that discharges allowed under this permit may contain a soup of multiple carcinogenic and non-carcinogenic substances and we have no idea how these combinations of pollutants affect risk of death or impairment to humans or wildlife. As explained above, the permit could allow increases in levels of up to eight carcinogens in the form of chlorinated hydrocarbon solvents along with other pollutants. We simply have no idea how these mixtures affect the risk levels humans would face if exposed to them and it highly irresponsible to allow these increases without that understanding. We do know that combinations of pollutants may have synergistic reactions, such that the impacts to two or three or eight may cause orders of magnitude greater harm than would each individual chemical.</p>	
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<p>David Sligh on behalf of Wild Virginia</p>	<p>Activities Covered Under the Draft Permit May Violate Narrative Criteria</p> <p>The Board's WQS regulation includes general or narrative criteria that prohibit discharges that cause or contribute to conditions in state waters that "interfere directly or indirectly with designated uses of such waters or are inimical or harmful to human, animal, plant, or aquatic life." 9 VAC 25-260-20.A. All state water are designated for "recreational uses" and "the propagation and growth of a balanced, indigenous population of aquatic life." 9 VAC 25-26010.</p> <p>Any water user wishing to use a stream that receives discharges such as those allowed in the draft permit from contaminated sites, particularly those containing a mix of cancer-causing chemicals, even if those pollutants are individually found in small concentrations, would understandably have their uses interfered with. This would constitute a violation of the narrative criteria and must not be allowed under the permit.</p> <p>As support for this contention, we cite the Virginia Appeals Court descision in <i>State Water Control Board v. Captains Cove Utility Company, Inc.</i><sup>11</sup> In that case, the Board had denied a discharge permit to a sewage treatment facility based on the fact that the potential for bacterial contamination in receiving waters would cause a perception of risk for recreation and shellfishing. The court was clear that the narrative WQS prohibition on direct or indirect interference with uses, including recreation, could justify denial</p>	<p>The effluent limitations contained in the general permit meet all water quality criteria including the narrative criteria. In the case cited, any potential disruption in treatment could result in bacterial contamination that could have an immediate and severe impact on individuals harvesting and consuming shellfish. No such nexus exists in this case as the parameters of concern all cause health concerns due to long term exposures. Again, it is very unlikely that there is any long term exposure to discharges from the temporary pump and treat remediation systems covered under this general permit.</p>
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	<p>of a permit. The discharge need not contravene established numeric criteria. As here, it is possible that every one of the chemicals in one of these discharges could be below the numerical concentrations allowed under our WQS but still reasonably be deemed an interference with recreational uses.</p>	
<p>Kimberly Larkin, Dewberry</p>	<p>The registration statement does not specify this [hydrostatic testing] type of work as a subject under #7 for public utility lines such as drinking water lines and blow offs, or cooling tower flushing discharges. This could lead to confusion for public utility companies as to their duty to file.</p>	<p>The fact sheet does detail that it covers: hydrostatic tests of (1) natural gas and (2) petroleum storage tanks, pipelines, and associated distribution equipment; and (3) hydrostatic tests of water storage tanks, pipelines, and associated distribution equipment. The registration statement only itemizes (1) and (2) on the list of activities. This is because the distribution equipment coverage was added on from the initial hydrostatic testing coverage during the last reissuance.</p> <p>Cooling tower flushing discharges are not authorized under this regulation. The fact sheet and guidance document will be updated to clarify this prohibition.</p>
<p>Kimberly Larkin, Dewberry</p>	<p>Excavation Dewatering should be clarified to include "construction" excavation dewatering.</p>	<p>The Construction GP (VAR10), does cover the following non-stormwater discharges:          Authorized Nonstormwater Discharges The following nonstormwater discharges from construction activities are also covered by this general permit (1) discharges from firefighting activities; (2) fire hydrant flushings; (3) water used to wash vehicles or equipment where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge; (4) water used to control dust that has been filtered, settled, or similarly treated prior to discharge; (5) potable water sources, including uncontaminated waterline flushings, managed in a manner to avoid an instream impact; (6) routine external building wash down where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge; (7) pavement wash water where spills or leaks of toxic or hazardous materials have not occurred (or where all spilled or leaked material has been removed prior to washing); where soaps, solvents, or detergents have not been used; and where</p>

		<p>the wash water has been filtered, settled, or similarly treated prior to discharge; (8) uncontaminated air conditioning or compressor condensate; (9) uncontaminated groundwater or spring water; (10) foundation or footing drains where flows are not contaminated with process materials such as solvents; (11) <b><u>uncontaminated, excavation dewatering, including dewatering of trenches and excavations that have been filtered, settled, or similarly treated prior to discharge</u></b>; and (12) landscape irrigations.</p> <p>Staff will address this in the guidance document.</p>
<p>Kimberly Larkin, Dewberry</p>	<p>The regulation should include an explanation of VPDES permit overlap with the Construction General permit.</p>	<p>Staff will address the overlap with other general permits in the guidance document.</p>

**Detail of Changes Made Since the Previous Stage**

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

No significant changes were made since the draft stage.

**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \*Please put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
Title		VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT REGULATION FOR DISCHARGES FROM PETROLEUM CONTAMINATED SITES, GROUNDWATER REMEDIATION, AND HYDROSTATIC TESTS	<p>VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT REGULATION FOR DISCHARGES FROM GROUNDWATER REMEDIATION OF CONTAMINATED SITES, DEWATERING ACTIVITIES OF CONTAMINATED SITES, AND HYDROSTATIC TESTS</p> <p><i>Struck “petroleum” and added “dewatering activities.” Seeking to accommodate common activities that lack general permit coverage now.</i></p>
9VAC25-120-10 Definitions		Definition exists for the term “Board.”	<p><i>Revised the definition:</i> “Board” means the State Water Control Board. However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, “Board” means the “Department of Environmental Quality”.</p> <p><i>This conforms to recently enacted legislation (SB 657). In the balance of the general permit/ regulation, changed “board” to “department” where the reference was to a permit action.</i></p>
9VAC25-120-20 Purpose		This general permit regulation governs the discharge of wastewaters from sites contaminated by petroleum products, chlorinated hydrocarbon solvents, the hydrostatic testing of natural gas storage tanks and pipelines, the hydrostatic testing and dewatering of petroleum storage tank systems and associated distribution equipment, and the hydrostatic testing of water storage tanks and pipelines.	<p>This general permit regulation governs the discharge of wastewaters from petroleum contaminated sites, non-petroleum contaminated sites, groundwater remediation discharges, dewatering activities, the hydrostatic testing of natural gas storage tanks and pipelines, the hydrostatic testing and dewatering of petroleum storage tank systems and associated distribution equipment, and the hydrostatic testing of water storage tanks and pipelines.</p> <p><i>Replaced “site contaminated with petroleum products” with “petroleum contaminated sites”, struck “chlorinated hydrocarbon solvents”, and added “non-</i></p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p><i>petroleum contaminated sites, groundwater remediation discharges, dewatering activities.”</i></p> <p><i>In description of wastewaters that may be discharged, added discharges resulting from “metals or other contaminated site” cleanup. Also struck “approved by the board” since VRP cleanups are approved by the director.</i></p> <p><i>Expanding scope to address dewatering and certain cleanups beyond petroleum based on requests for GP coverage.</i></p>
<p>9VAC25-120-50. Effective date of the permit</p>		<p>This general permit will become effective on February 26, 2018. This general permit will expire on February 25, 2023.</p>	<p>This general permit will become effective on March 1, 2023. This general permit will expire on February 29, 2028.</p> <p><i>Amended dates to reflect new 5-year term. Started term at the beginning of the month consistent with DEQ VPDES monitoring policy.</i></p>
<p>9VAC25-120-60. Authorization to discharge</p>		<p>C. Compliance with this general permit constitutes compliance, for purposes of enforcement, with §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the federal Clean Water Act and the State Water Control Law with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.</p>	<p><i>Added the phrase, “including compliance with the water withdrawal reporting, 9VAC25-200, and the groundwater permitting program 9VAC25-610,” at the end of the final sentence.</i></p> <p><i>This was added to clarify to registrants that they may need a water withdrawal permit and/or to report groundwater withdrawn to DEQ.</i></p>
<p>9VAC25-120-60. Authorization to discharge</p>		<p>D.1. Permit coverage shall expire at the end of its term....</p>	<p>D.1. Permit coverage shall expire at the end of the applicable permit term....</p> <p><i>Replaced “its” with “the applicable permit”.</i></p>
<p>9VAC25-120-70.</p>		<p>A. Any owner seeking coverage .... shall submit a complete VPDES general</p>	<p><i>Replaced “general VPDES permit” with “VPDES general permit”, which is a wording correction</i></p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
Registration statement		permit registration statement ....which shall serve as a notice of intent for coverage under the general VPDES permit .....	<i>being made to all general permits, and revised text to reflect new title of the general permit.</i>  <i>This "VPDES general permit" wording was also revised in other locations in the general permit.</i>
9VAC25-120-70. Registration statement		Under B, short term projects "are authorized to discharge under this permit immediately upon the permit's effective date of February 26, 2018."	<i>Under B, revised the permit's effective date to be March 1, 2023.</i>
9VAC25-120-70. Registration statement		Under C.1, new facilities must submit a complete registration statement 30 days prior to commencing operation.	<i>Under C.1, added "or a later submittal date established by the board", which is consistent with other general permits and provides flexibility to address submittals later than 30 days prior to operation.</i>
9VAC25-120-70. Registration statement		C.2.a. Any owner covered by an individual VPDES permit who is proposing to be covered by this general permit shall submit a complete registration statement at least 210 days prior to the expiration date of the individual VPDES permit	<i>Changed "210 days" to "240 days" to be consistent with other general permits.</i>
9VAC25-120-70. Registration statement		C.2.b. Any owner that was authorized to discharge under the petroleum contaminated sites.... general VPDES permit ....and that intends to continue coverage ....shall submit a complete registration statement to the board at least 30 days prior to the expiration date of the existing permit or a later submittal established by the board.	<i>Inserted "expiring" prior to "petroleum contaminated sites...". VPDES general permit.</i>
9VAC25-120-70. Registration statement		E.9. Requires the location of the discharge point, or all proposed discharge points for linear project.	<i>Replaced "location" with "latitude and longitude in decimal degrees (six digits - ten-thousandths place)." This information is required by EPA for electronic reporting (e-reporting).</i>
9VAC25-120-70. Registration statement		E.19. The registration statement must include any pollution complaint number associated with the project.	<i>After "number" added "or Voluntary Remediation Program (VRP) information." Many of the projects seeking permit coverage are VRP</i>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<i>projects, and this information characterizes the nature of the project and the discharge.</i>
9VAC25-120-70. Registration statement		None.	<i>Added (in place of existing 21) a requirement that registration statements include State Corporation Commission entity identification number if a facility is required to obtain an entity identification number by law. This provision is being added to all general permits. It ensures the facility is able to conduct business in Virginia and aides potential enforcement.</i>
9VAC25-120-70. Registration statement	E.22.	E.21. Certification statement.	<i>Re-numbered existing certification statement (E.21) as new subsection E.22.</i>
9VAC25-120-70. Registration statement		G. The registration statement shall be delivered by either postal or electronic mail to the DEQ regional office serving the area where the facility is located.	<p>Added the following contingent e-reporting language:                      "Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements), as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms must be submitted electronically."</p> <p><i>E-reporting is required by federal regulation (see 80 FR 64064; 10/22/2015 and 85 FR 69189; 11/2/2020) and state regulation (9VAC25-31-1020).</i></p>
9VAC25-120-80. General permit		Effective and expiration dates, and title.	<i>Revised as indicated above.</i>
9VAC25-120-80. General permit. Part I A 2		TPH limit – 15.0 mg/l.	<p>TPH limit – 15 mg/l.</p> <p><i>Limit expressed as two significant figures in accordance with agency guidance.</i></p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
Discharges of hydrostatic test waters			
<p>9VAC25-120-80. General permit. Part I A 3</p> <p>Gasoline contamination</p>		<p>Limits:</p> <p>Benzene – 12.0 ug/l.</p> <p>Toluene – 43.0 ug/l.</p> <p>Total Xylenes – 33.0 ug/l.</p> <p>MTBE (freshwater not PWS and saltwater) – 440.0 ug/l.</p> <p>MTBE (freshwater listed as PWS) – 15.0 ug/l.</p> <p>Lead (total recoverable) – Hardness-based formula.</p> <p>Ethylene Dibromide (freshwater listed as PWS) – 0.161 ug/l.</p> <p>Ethanol – 4100.0 ug/l.</p> <p>Monitoring Only:</p> <p>Hardness (mg/l CaCO3)</p>	<p>Limits:</p> <p>Benzene limit – 5.8 ug/l. <i>Based on revised WQS.</i></p> <p>Toluene – 43 ug/l.</p> <p>Total Xylenes – 33 ug/l.</p> <p>MTBE (freshwater not PWS and saltwater) – 440 ug/l.</p> <p>MTBE (freshwater listed as PWS) – 15 ug/l.</p> <p>Lead (total recoverable) – 7.2 ug/l.</p> <p>Ethylene Dibromide (freshwater listed as PWS) – 0.16 ug/l.</p> <p>Ethanol – 4100 ug/l.</p> <p><i>Limits expressed in two significant figures per agency guidance memorandum GM06-2016.</i></p> <p><i>For lead, the existing hardness-based formula in the general permit has been complex for permittees to understand and implement and has resulted in poor discharge monitoring reporting and unclear compliance. DEQ has replaced the formula with numeric metals limits calculated based on the 10<sup>th</sup> percentile of hardness as indicated in available state data. The new metals limits in I A 6 have been calculated in the same manner.</i></p> <p><i>Specified that hardness (monitoring only) is total.</i></p> <p><i>In footnote 2, deleted “The minimum hardness concentration that will be used to determine the lead effluent limit is 25 mg/l” since the hardness-based formula was removed.</i></p>
<p>9VAC25-120-80. General permit. Part I A 4</p> <p>Contamination by petroleum</p>		<p>Limits:</p> <p>Benzene 12.0 ug/l.</p> <p>TPH – 15.0 mg/l.</p> <p>MTBE – 15.0 ug/l.</p>	<p>Limits:</p> <p>Benzene limit – 5.8 ug/l. <i>Based on revised WQS</i></p> <p>TPH – 15 mg/l.</p> <p>MTBE – 15 ug/l.</p>



Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
products other than gasoline			<i>Limits expressed in two significant figures per agency guidance memorandum GM06-2016.</i>
9VAC25-120-80. General permit. Part I A 5.  Contamination by chlorinated hydrocarbon solvents		Limits:  Chloroform – 80.0 ug/l.  cis-1,2 Dichloroethylene – 70.0 ug/l. trans 1,2 Dichloroethylene – 100.0 ug/l. 1,1,1 Trichloroethane – 54.0 ug/l. 1,2 Dichlorobenzene – 15.8 ug/l.	Limits:  Chloroform – 60.0 ug/l. <i>Based on revised WQS.</i>  cis-1,2 Dichloroethylene – 70 ug/l. trans 1,2 Dichloroethylene – 100 ug/l. 1,1,1 Trichloroethane – 54 ug/l. 1,2 Dichlorobenzene – 16 ug/l. <i>Limits expressed in two significant figures per agency guidance memorandum GM06-2016.</i>
	9VAC25-120-80. General permit. Part I A 6 Dewatering activities with contamination by metals	None.  (A lead limit is included in I A 3 as a hardness based formula).	Limits: (metals are all total recoverable)  Antimony – 5.6 ug/l. Arsenic – 10 ug/l. Cadmium – 0.55 ug/l. Chromium – 11 ug/l. Copper – 6.6 ug/l. Lead – 7.2 ug/l. Mercury – 0/77 ug/l. Nickel – 15 ug/l. Selenium – 5.0 ug/l. Silver – 1.9 ug/l. Thallium – 0.24 ug/l. Zinc – 87 ug/l. pH – 6.0 to 9.0 standard units.  Monitoring only:  Flow. Total Hardness (as CaCO3 in mg/l).  <i>Metals are being added to address dewatering projects that are not sufficiently covered by the existing general permit, and thereby provide a more efficient general permit option for such projects.</i>
	9VAC25-120-80. General permit. Part I A 6 Dewatering activities with contamination by metals.		(1) Metals analyzed per 40 CFR 136. (2) Collect total hardness concurrent with the metals. (3) Monitoring frequency 1/ month for discharges into freshwaters not listed as PWS and into saltwaters. The frequency is 2/ month for

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
	Footnotes.		freshwaters listed as PWS (if compliance in the first 12 months of coverage the permittee can request a frequency of 1/ month [1/quarter for ethanol]. Frequency reverts if warning letter, NOV or enforcement action).
9VAC25-120-80. General permit. Part II C Reporting and Monitoring Results		2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.	<p>Added the following contingent e-reporting language:</p> <p>“Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months’ notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.”</p> <p><i>E-reporting is required by federal regulation (see 80 FR 64064; 10/22/2015 and 85 FR 69189; 11/2/2020) and state regulation (9VAC25-31-1020).</i></p>
9VAC25-120-80. General permit. Part II D Duty to Provide Information		The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit.	<p>Struck “modifying, revoking and reissuing”.</p> <p><i>General permits are issued as regulations and are not modified, revoked and reissued. Global edit for all general permits.</i></p> <p><i>Also replaced “his discharge” with “the permittee’s discharge” in the second sentence.</i></p>
9VAC25-120-80. General permit. Part II G Reports of Unauthorized Discharges		Reports of unauthorized discharges.	With regard to immediate notification of the department, added reference to Part II I 3. <i>Facilitates the use of online reporting.</i>
9VAC25-120-80. General permit. Part II H		Reports of unusual or extraordinary discharges.	Struck “in no case later than 24 hours” and “by telephone” and added reference to Part II I 3.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
Reports of Unusual or Extraordinary Discharges			<i>Facilitates the use of online reporting.</i>
9VAC25-120-80. General permit. Part II I Reports of Noncompliance		<p>3. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.</p> <p>NOTE: The immediate (within 24 hours) reports required in Part II G, H and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at <a href="http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/PollutionReportingForm.aspx">http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/PollutionReportingForm.aspx</a>.</p>	<p><i>Existing 3 renumbered to be new 4.</i></p> <p><i>Renumbered the existing "NOTE" to be item 3. Also updated reporting link to be: <a href="https://www.deq.virginia.gov/get-involved/pollution-response">https://www.deq.virginia.gov/get-involved/pollution-response</a></i></p>
9VAC25-120-80. General permit. Part II L Duty to Comply		Duty to comply.	<p>Struck "or standards for sewage sludge use or disposal." <i>This general permit does not address sewage sludge.</i></p>

### Regulatory Flexibility Analysis

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

This general permit does not predominantly apply to small businesses, rather, it applies to discharges from petroleum contaminated sites, groundwater remediation, and hydrostatic tests. Nevertheless, the reissuance of this VPDES general permit accomplishes the objectives of applicable law and minimizes the application burden and permit implementations costs to affected small business owners. Without the

general permit, a small business owner would be required to obtain an individual permit, which would increase the complexity of a permit application, implementation and compliance costs.

### Family Impact

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

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This general permit applies to discharges from petroleum contaminated sites, groundwater remediation, and hydrostatic tests. It is being revised to address dewatering from contaminated sites. Its availability allows for these discharges and associated cleanups to be conducted efficiently while protecting surface waters in a manner consistent with state law. This permit does not directly impact families, however, facilitating cleanups and development could promote economic interests generally, and indirectly support families and contribute to economic self-sufficiency. This general permit has been designed to minimize burden while achieving a level of water quality protection consistent with state and federal requirements.

1 **Project 6517 - Exempt Final**

2 **State Water Control Board**

3 **Amend and Reissue the Existing General Permit Regulation**

4 Chapter 120

5 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for  
6 Discharges from ~~Petroleum Contaminated Sites~~, Groundwater Remediation of Contaminated  
7 Sites, Dewatering Activities of Contaminated Sites, and Hydrostatic Tests

8 **9VAC25-120-10. Definitions.**

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

12 ~~"Board" means the State Water Control Board.~~ [ "Board" means the State Water Control  
13 Board. However, when used outside the context of the promulgation of regulations, including  
14 regulations to establish general permits, "board" means the Department of Environmental Quality.  
15 ]

16 "Central wastewater treatment facilities" means any facility that treats (for disposal, recycling,  
17 or recovery of materials) or recycles hazardous or nonhazardous waste, hazardous or  
18 nonhazardous industrial wastewater, or used material from off-site. This includes both a facility  
19 that treats waste received from off-site exclusively, and a facility that treats waste generated on-  
20 site as well as waste received from off-site.

21 "Chlorinated hydrocarbon solvents" means solvents containing carbon, hydrogen, and  
22 chlorine atoms and the constituents resulting from the degradation of chlorinated hydrocarbon  
23 solvents.

24 [ "Department" or "DEQ" means the Virginia Department of Environmental Quality. ]

25 "Director" means the Director of the Virginia Department of Environmental Quality, or an  
26 authorized representative.

27 "Petroleum products" means petroleum-based substances comprised of a complex blend of  
28 hydrocarbons derived from crude oil such as motor fuels, jet fuels, distillate fuel oils, residual fuel  
29 oils, lubricants, petroleum solvents, and used oils. "Petroleum products" does not include  
30 hazardous waste as defined by the Virginia Hazardous Waste Management Regulations  
31 (9VAC20-60).

32 "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a  
33 pollutant that a waterbody can receive and still meet water quality standards and an allocation of  
34 that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point  
35 source discharges, and load allocations (LAs) for nonpoint sources or natural background or both,  
36 and must include a margin of safety (MOS) and account for seasonal variations.

37 **9VAC25-120-15. Applicability of incorporated references based on the dates that they**  
38 **became effective.**

39 Except as noted, when a regulation of the U.S. Environmental Protection Agency (EPA) set  
40 forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and  
41 incorporated by reference, that regulation shall be as it exists and has been published as of [ July  
42 4, ] 2017 [ 2024 July 1, 2022 ] .

43 **9VAC25-120-20. Purpose.**

44 This general permit regulation governs the discharge of wastewaters from petroleum  
45 contaminated sites contaminated by petroleum products, chlorinated hydrocarbon solvents, non-  
46 petroleum contaminated sites, groundwater remediation discharges, dewatering activities, the  
47 hydrostatic testing of natural gas storage tanks and pipelines, the hydrostatic testing and  
48 dewatering of petroleum storage tank systems and associated distribution equipment, and the  
49 hydrostatic testing of water storage tanks and pipelines. These wastewaters may be discharged  
50 from the following activities: excavation dewatering, conducting aquifer tests to characterize site  
51 conditions, pumping contaminated groundwater to remove free product, discharges resulting from  
52 another petroleum product or, chlorinated hydrocarbon solvent, metals or other contaminated site  
53 cleanup activity approved by the board, hydrostatic tests of natural gas and petroleum storage  
54 tanks or pipelines, hydrostatic tests and dewatering of storage tanks and associated distribution  
55 equipment, and hydrostatic tests of water storage tank systems or pipelines. Discharges not  
56 associated with petroleum-contaminated water, water contaminated by chlorinated hydrocarbon  
57 solvents, or hydrostatic tests are not covered under this general permit.

58 **9VAC25-120-50. Effective date of the permit.**

59 This general permit will become effective on ~~February 26, 2018~~ March 1, 2023. This general  
60 permit will expire on February ~~25 29, 2023 2028~~. This general permit is effective as to any covered  
61 owner upon compliance with all the provisions of 9VAC25-120-60.

62 **9VAC25-120-60. Authorization to discharge.**

63 A. Any owner governed by this general permit is hereby authorized to discharge to surface  
64 waters within the Commonwealth of Virginia provided that:

- 65 1. The owner submits a registration statement, if required to do so, in accordance with  
66 9VAC25-120-70, and that registration statement is accepted by the [ ~~board~~ department ] ;
- 67 2. The owner complies with the applicable effluent limitations and other requirements of  
68 9VAC25-120-80; and
- 69 3. The [ ~~board~~ department ] has not notified the owner that the discharge is not eligible for  
70 coverage in accordance with subsection B of this section.

71 B. The [ ~~board~~ department ] will notify an owner that the discharge is not eligible for coverage  
72 under this general permit in the event of any of the following:

- 73 1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170  
74 B of the VPDES Permit Regulation;
- 75 2. The owner is proposing to discharge within five miles upstream of a public water supply  
76 intake or to state waters specifically named in other board regulations which prohibit such  
77 discharges;
- 78 3. The owner is proposing to discharge to surface waters where there are permitted central  
79 wastewater treatment facilities reasonably available, as determined by the [ ~~board~~  
80 department ] ;
- 81 4. The discharge violates or would violate the antidegradation policy in the Water Quality  
82 Standards at 9VAC25-260-30; or
- 83 5. The discharge is not consistent with the assumptions and requirements of an approved  
84 TMDL.

85 C. Compliance with this general permit constitutes compliance, for purposes of enforcement,  
86 with §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the federal Clean Water Act and  
87 the State Water Control Law with the exceptions stated in 9VAC25-31-60 of the VPDES Permit  
88 Regulation. Approval for coverage under this general permit does not relieve any owner of the  
89 responsibility to comply with any other applicable federal, state, or local statute, ordinance, or

90 regulation, including compliance with the Water Withdrawal Reporting (9VAC25-200) and the  
91 Groundwater Withdrawal Regulations (9VAC25-610).

92 D. Continuation of permit coverage.

93 1. Permit coverage shall expire at the end of ~~its~~ the applicable permit term. However,  
94 expiring permit coverages are automatically continued if the owner has submitted a  
95 complete registration statement at least 60 days prior to the expiration date of the permit,  
96 or a later submittal date established by the [ ~~board~~ department ], which cannot extend  
97 beyond the expiration date of the original permit. The permittee is authorized to continue  
98 to discharge until such time as the [ ~~board~~ department ] either:

99 a. Issues coverage to the owner under this general permit; or

100 b. Notifies the owner that the discharge is not eligible for coverage under this general  
101 permit.

102 2. When the owner that was covered under the expiring or expired general permit has  
103 violated or is violating the conditions of that permit, the [ ~~board~~ department ] may choose  
104 to do any or all of the following:

105 a. Initiate enforcement action based upon the general permit coverage that has been  
106 continued;

107 b. Issue a notice of intent to deny coverage under the amended general permit. If the  
108 general permit coverage is denied, the owner would then be required to cease the  
109 discharges authorized by the continued general permit coverage or be subject to  
110 enforcement action for discharging without a permit;

111 c. Issue an individual permit with appropriate conditions; or

112 d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

113 **9VAC25-120-70. Registration statement.**

114 A. Any owner seeking coverage under this general permit that is required to submit a  
115 registration statement shall submit a complete VPDES general permit registration statement in  
116 accordance with this section, which shall serve as a notice of intent for coverage under the ~~general~~  
117 VPDES general permit for discharges from ~~petroleum contaminated sites~~, groundwater  
118 remediation of contaminated sites, dewatering activities of contaminated sites, and hydrostatic  
119 tests.

120 B. Owners of the following types of proposed or existing discharges are not required to submit  
121 a registration statement to apply for coverage under this general permit:

122 1. Short term projects (14 consecutive calendar days or less in duration) including:

123 a. Emergency repairs;

124 b. Dewatering projects;

125 c. Utility work and repairs in areas of known contamination;

126 d. Tank placement or removal in areas of known contamination;

127 e. Pilot studies or pilot tests, including aquifer tests; and

128 f. New well construction discharges of groundwater;

129 2. Hydrostatic testing of petroleum and natural gas storage tanks, pipelines, or distribution  
130 system components; and

131 3. Hydrostatic testing of water storage tanks, pipelines, or distribution system components.

132 Owners of these types of discharges are authorized to discharge under this permit  
133 immediately upon the permit's effective date of ~~February 26, 2018~~ March 1, 2023.

134 Owners shall notify the department's regional office in writing within 14 days of the completion  
135 of the discharge. The notification shall include the owner's name and address, the type of  
136 discharge that occurred, the physical location of the discharge work, and the receiving stream. If  
137 the discharge is to a municipal separate storm sewer system (MS4), the owner shall also notify  
138 the MS4 owner within 14 days of the completion of the discharge.

139 Owners of these types of discharges are not required to submit a notice of termination of  
140 permit coverage at the completion of the discharge.

141 C. Deadlines for submitting registration statements.

142 1. New facilities. Any owner proposing a new discharge shall submit a complete  
143 registration statement at least 30 days prior to the date planned for commencing operation  
144 of the new discharge or a later submittal date established by the [ board department ],  
145 unless exempted by subsection B of this section.

146 2. Existing facilities.

147 a. Any owner covered by an individual VPDES permit who is proposing to be covered  
148 by this general permit shall submit a complete registration statement at least ~~210~~ 240  
149 days prior to the expiration date of the individual VPDES permit.

150 b. Any owner that was authorized to discharge under the expiring petroleum  
151 contaminated sites, groundwater remediation, and hydrostatic tests ~~general~~ VPDES  
152 general permit that is not exempted under subsection B of this section and that intends  
153 to continue coverage under this general permit shall submit a complete registration  
154 statement to the [ ~~board~~ department ] at least 30 days prior to the expiration date of  
155 the existing permit or a later submittal established by the [ ~~board~~ department ].

156 D. Late registration statements. Registration statements will be accepted after the expiration  
157 date of the permit, but authorization to discharge will not be retroactive.

158 E. The required registration statement shall contain the following information:

159 1. Facility name and mailing address, owner name and mailing address, telephone  
160 number, and email address (if available);

161 2. Facility street address (if different from mailing address) or location (if the facility location  
162 does not have a mailing address);

163 3. Facility operator (local contact) name, address, telephone number, and email address  
164 (if available) if different than owner;

165 4. Nature of business conducted at the facility;

166 5. Type of petroleum or natural gas products, or chlorinated hydrocarbon solvents causing  
167 or that caused the contamination;

168 6. Identification of activities that will result in a point source discharge from the site;

169 7. Whether a site characterization report for the site has been submitted to the Department  
170 of Environmental Quality;

171 8. Characterization or description of the wastewater or nature of contamination including  
172 all related analytical data;

173 9. The ~~location~~ latitude and longitude in decimal degrees (six digits - ten-thousandths  
174 place) of the discharge point and identification of the waterbody into which the discharge  
175 will occur. For linear projects, the ~~location~~ latitude and longitude in decimal degrees (six  
176 digits - ten-thousandths place) of all the proposed discharge points along the project length  
177 and the associated waterbody for each discharge point;

178 10. The frequency with which the discharge will occur (i.e., daily, monthly, continuously);

179 11. An estimate of how long each discharge will last;



- 180 12. An estimate of the total volume of wastewater to be discharged;
- 181 13. An estimate of the average and maximum flow rate of the discharge;
- 182 14. A diagram of the proposed wastewater treatment system identifying the individual  
183 treatment units;
- 184 15. A USGS 7.5 minute topographic map or equivalent computer generated map that  
185 indicates the receiving waterbody name ~~or names~~, the discharge point ~~or points~~, the  
186 property boundaries, as well as springs, other surface waterbodies, drinking water wells,  
187 and public water supplies that are identified in the public record or are otherwise known to  
188 the applicant within a 1/2 mile radius of the proposed discharge or discharges;
- 189 16. A determination of whether the facility will discharge to an MS4. If the facility  
190 discharges to an MS4, the facility owner must notify the owner of the MS4 of the existence  
191 of the discharge information at the time of registration under this permit and include that  
192 notification with the registration statement. The notice shall include the following  
193 information: the name of the facility, a contact person and telephone number, the location  
194 of the discharge, the nature of the discharge, and the facility's VPDES general permit  
195 number;
- 196 17. Whether central wastewater facilities are available to the site, and if so, whether the  
197 option of discharging to the central wastewater facility has been evaluated and the results  
198 of that evaluation;
- 199 18. Whether the facility currently has any permit issued by the [ ~~board~~ department or  
200 general permit issued as a regulation by the board ], and if so, the permit number;
- 201 19. Any pollution complaint number or Voluntary Remediation Program (VRP) information  
202 associated with the project;
- 203 20. A statement as to whether the material being treated or to be discharged is certified  
204 as a hazardous waste under the Virginia Hazardous Waste Management Regulations  
205 (9VAC20-60); ~~and~~
- 206 21. State Corporation Commission entity identification number if the facility is required to  
207 obtain an entity identification number by law; and
- 208 22. The following certification:
- 209 "I certify under penalty of law that this document and all attachments were prepared under  
210 my direction or supervision in accordance with a system designed to assure that qualified  
211 personnel properly gather and evaluate the information submitted. Based on my inquiry of  
212 the person or persons who manage the system or those persons directly responsible for  
213 gathering the information, the information submitted is to the best of my knowledge and  
214 belief true, accurate, and complete. I am aware that there are significant penalties for  
215 submitting false information including the possibility of fine and imprisonment for knowing  
216 violations. I do also hereby grant duly authorized agents of the Department of  
217 Environmental Quality, upon presentation of credentials, permission to enter the property  
218 for the purpose of determining the suitability of the general permit."
- 219 F. The registration statement shall be signed in accordance with 9VAC25-31-110.
- 220 G. The registration statement shall be delivered by either postal or electronic mail to the DEQ  
221 regional office serving the area where the facility is located. Following notification from the  
222 department of the start date for the required electronic submission of Notices of Intent to discharge  
223 forms (i.e., registration statements), as provided for in 9VAC25-31-1020, such forms submitted  
224 after that date shall be electronically submitted to the department in compliance with this section  
225 and 9VAC25-31-1020. There shall be at least a three-month notice provided between the  
226 notification from the department and the date after which such forms must be submitted  
227 electronically.

228 **9VAC25-120-80. General permit.**

229 Any owner whose registration statement is accepted by the [ ~~board~~ department ], or that is  
230 automatically authorized to discharge under this permit, shall comply with the requirements of the  
231 general permit and be subject to all requirements of 9VAC25-31-170 B of the VPDES Permit  
232 Regulation. Not all of Part I A of the general permit will apply to every permittee. The determination  
233 of which provisions apply will be based on the type of contamination at the individual site and the  
234 nature of the waters receiving the discharge. Part I B and all of Part II apply to all permittees.

235 General Permit No.: VAG83  
236 Effective Date: ~~February 26~~ March 1, 2018 2023  
237 Expiration Date: February ~~25 29, 2023~~ 2028

238 VPDES GENERAL PERMIT FOR DISCHARGES FROM ~~PETROLEUM CONTAMINATED~~  
239 ~~SITES~~, GROUNDWATER REMEDIATION OF CONTAMINATED SITES, DEWATERING  
240 ACTIVITIES OF CONTAMINATED SITES, AND HYDROSTATIC TESTS

241 AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE  
242 ELIMINATION SYSTEM PERMIT PROGRAM AND THE VIRGINIA STATE WATER  
243 CONTROL LAW

244 In compliance with the provisions of the Clean Water Act, as amended, the State Water  
245 Control Law and regulations adopted pursuant thereto, the owner is authorized to discharge to  
246 surface waters within the boundaries of the Commonwealth of Virginia, except to designated  
247 public water supplies or waters specifically named in other board regulations which prohibit such  
248 discharges.

249 The authorized discharge shall be in accordance with the information submitted with the  
250 registration statement, this cover page, Part I - Effluent Limitations and Monitoring Requirements,  
251 and Part II - Conditions Applicable to All VPDES Permits, as set forth in this general permit.

252 If there is any conflict between the requirements of a [ ~~board~~ department ] approved cleanup  
253 plan and this permit, the requirements of this permit shall govern.

254 Part I

255 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

256 1. SHORT TERM PROJECTS.

257 The following types of short term projects (14 consecutive calendar days or less in  
258 duration) are authorized under this permit:

- 259 a. Emergency repairs;
- 260 b. Dewatering projects. Dewatering projects shall be managed to control the volume  
261 and velocity of the discharge, including peak flow rates and total volume, to minimize  
262 erosion at outlets and to minimize downstream channel and stream bank erosion;
- 263 c. Utility work and repairs in areas of known contamination;
- 264 d. Tank placement or removal in areas of known contamination;
- 265 e. Pilot studies or pilot tests, including aquifer tests; and
- 266 f. New well construction discharges of groundwater.

267 Effluent limits for short term projects correspond to the type of contamination at the project  
 268 site and are given in Tables A 3 through A 5 6 below. The sampling frequency for these  
 269 projects shall be once per discharge. Discharge monitoring reports for these projects are  
 270 not required to be submitted to the department, but shall be retained by the owner for a  
 271 period of at least three years from the completion date of the project.

272 Owners shall notify the department's regional office in writing within 14 days of the  
 273 completion of the project discharge. The notification shall include the owner's name and  
 274 address, the type of discharge that occurred, the physical location of the project work, and  
 275 the receiving stream. If the discharge is to a municipal separate storm sewer system  
 276 (MS4), the owner shall also notify the MS4 owner within 14 days of the completion of the  
 277 discharge.

278 Part I

279 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

280 2. DISCHARGES OF HYDROSTATIC TEST WATERS -- ALL RECEIVING WATERS.

281 During the period beginning with the permittee's coverage under this general permit and  
 282 lasting until the permit's expiration date, the permittee is authorized to discharge from  
 283 outfall serial number xxxx. Samples taken in compliance with the monitoring requirements  
 284 specified below shall be taken at the following location: outfall from the final treatment unit  
 285 prior to mixing with any other waters.

286 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS <sup>(2)</sup>	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	1/discharge	Estimate
pH (standard units)	6.0	9.0	1/discharge	Grab
Total Petroleum Hydrocarbons (TPH, mg/l) <sup>(1)</sup>	NA	45.0 <u>15</u>	1/discharge	Grab
Total Organic Carbon (TOC, mg/l)	NA	NL	1/discharge	Grab
Total Residual Chlorine (TRC, mg/l) <sup>(3)</sup>	NA	0.011 <sup>(3)</sup>	1/discharge	Grab
Total Suspended Solids (TSS)	NA	NL	1/discharge	Grab

NL = No limitation, monitoring required

NA = Not applicable

The equipment being tested shall be substantially free of debris, raw material, product, or other residual materials.

The discharge flow shall be managed to control the volume and velocity of the discharge, including peak flow rates and total volume, to minimize erosion at outlets, and to minimize downstream channel and stream bank erosion.

(1)TPH is the sum of individual gasoline range organics and diesel range organics or TPH-GRO and TPH-DRO to be measured by EPA SW 846 Method 8015C (2000) or EPA SW 846 Method 8015C (2007) for gasoline and diesel range organics, or by EPA SW 846 Methods 8260B (1996) and 8270D (2014) or 8270E (2018).

(2)Discharge monitoring reports for hydrostatic test discharges are not required to be submitted to the department but shall be retained by the owner for a period of at least three years from the completion date of the hydrostatic test.

Owners shall notify the department's regional office in writing within 14 days of the completion of the hydrostatic test discharge. The notification shall include the owner's name and address, the type of hydrostatic test that occurred, the physical location of the test work, and the receiving stream.

(3)Total residual chlorine limitation of 0.011 mg/l and chlorine monitoring only apply to discharges of test water that have been chlorinated or come from a chlorinated water supply. All data below the quantification level (QL) of 0.1 mg/L shall be reported as "<QL."

287 Part I

288 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

289 3. GASOLINE CONTAMINATION -- ALL RECEIVING WATERS.

290 During the period beginning with the permittee's coverage under this general permit and  
291 lasting until the permit's expiration date, the permittee is authorized to discharge from  
292 outfall serial number xxxx. Samples taken in compliance with the monitoring requirements  
293 specified below shall be taken at the following location: outfall from the final treatment unit  
294 prior to mixing with any other waters.

295 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	(4)	Estimate
Benzene (µg/l) <sup>(1)</sup>	NA	<del>12.0</del> <u>5.8</u>	(4)	Grab
Toluene (µg/l) <sup>(1)</sup>	NA	<del>43.0</del> <u>43</u>	(4)	Grab
Ethylbenzene (µg/l) <sup>(1)</sup>	NA	4.3	(4)	Grab

Total Xylenes (µg/l) <sup>(1)</sup>	NA	<del>33.0</del> <u>33</u>	(4)	Grab
MTBE (methyl tert-butyl ether) (µg/l) <sup>(1)</sup>				
Freshwaters not listed as public water supplies and saltwater	NA	<del>440.0</del> <u>440</u>	1/Month <sup>(4)</sup>	Grab
Freshwaters listed as public water supply	NA	<del>15.0</del> <u>15</u>	2/Month <sup>(4)</sup>	Grab
pH (standard units)	6.0	9.0	(4)	Grab
Total Recoverable Lead (µg/l) <sup>(2)</sup>	<u>NA</u>	<u>7.2</u>	(4)	<u>Grab</u>
<del>Freshwaters not listed as public water supplies and saltwater</del>	NA	<del>e<sup>(1.273(ln hardness))</sup> - 3.259</del>	(4)	<del>Grab</del>
<del>Freshwaters listed as public water supply</del>	NA	<del>Lower of e<sup>(1.273(ln hardness))</sup> - 3.259 or 15</del>	(4)	<del>Grab</del>
<u>Total</u> Hardness (mg/l CaCO <sub>3</sub> ) <sup>(2)</sup>	NL	NA	(4)	Grab
Ethylene Dibromide (µg/l) <sup>(2)</sup>				
Freshwaters not listed as public water supplies and saltwater	NA	1.9	1/Month <sup>(4)</sup>	Grab
Freshwaters listed as public water supply	NA	0.16 4	2/Month <sup>(4)</sup>	Grab
1,2 Dichloroethane (µg/l) <sup>(2)</sup>	NA	3.8	(4)	Grab
Ethanol (µg/l) <sup>(3)</sup>	NA	<del>4100.0</del> <u>4100</u>	(4)	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR Part 136) or EPA SW 846 Method 8021B (2014).

(2)Monitoring for this parameter is required only when contamination results from leaded fuel. Lead shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR Part 136). ~~The minimum hardness concentration that will be used to determine the lead effluent limit is 25 mg/l.~~ 1,2 dichloroethane and ethylene dibromide (EDB) shall be analyzed by a current and appropriate EPA SW 846 Method or EPA Wastewater Method from 40 CFR Part 136. EDB in wastewaters discharged to public water supplies shall be analyzed using EPA SW 846 Method 8011 (1992) or EPA Drinking Water Method 504.1 (1995).

(3)Monitoring for ethanol is only required for discharges of water contaminated by gasoline containing greater than 10% ethanol. Ethanol shall be analyzed according to EPA SW 846 Method 8015C (2000) or EPA SW 846 Method 8015C (2007) or EPA SW 846 Method 8260B (1996).

(4)The monitoring frequency for discharges into freshwaters not listed as public water supplies and saltwater shall be once per month. If the first 12 months of permit coverage results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency for ethanol be reduced from monthly to 1/quarter. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, monitoring frequency may be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation or be the subject of an active enforcement action, monitoring frequency for ethanol shall revert to 1/month upon issuance of the letter or notice or execution of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January in each year of permit coverage.

The monitoring frequency for discharges into freshwaters listed as public water supplies shall be twice per month for all constituents or parameters. If the first 12 months of permit coverage results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency for ethanol be reduced to 1/quarter and the other parameters to 1/month. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, the monitoring frequency for ethanol may be reduced to 1/quarter and the other parameters to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month upon issuance of the letter or notice or execution of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January in each year of permit coverage.

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## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

#### 4. CONTAMINATION BY PETROLEUM PRODUCTS OTHER THAN GASOLINE -- ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	(4)	Estimate
Naphthalene (µg/l) <sup>(1)</sup>	NA	8.9	(4)	Grab
Total Petroleum Hydrocarbons (mg/l) <sup>(2)</sup>	NA	<del>15.0</del> <u>15</u>	(4)	Grab
pH (standard units)	6.0	9.0	(4)	Grab
Benzene (µg/l) <sup>(3)</sup>	NA	<del>12.0</del> <u>5.8</u>	2/Month <sup>(4)</sup>	Grab
MTBE (methyl tert-butyl ether) (µg/l) <sup>(3)</sup>	NA	<del>15.0</del> <u>15</u>	2/Month <sup>(4)</sup>	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>Naphthalene shall be analyzed by a current and appropriate EPA Wastewater Method from 40 CFR Part 136 or a current and appropriate EPA SW 846 Method.

<sup>(2)</sup>TPH shall be analyzed using EPA SW 846 Method 8015C (2000) or EPA SW 846 Method 8015C (2007) for diesel range organics, or by EPA SW 846 Method 8270D (2014) or 8270E (2018).

<sup>(3)</sup>Monitoring for benzene and MTBE is only required for discharges into freshwaters listed as public water supplies. Benzene and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR Part 136) or EPA SW 846 Method.

<sup>(4)</sup>The monitoring frequency for discharges into freshwaters not listed as public water supplies and saltwater shall be once per month.

The monitoring frequency for discharges into freshwaters listed as public water supplies shall be twice per month for all constituents or parameters. If the first 12 months of permit coverage results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced to once per month. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, the monitoring frequency for ethanol may be reduced to 1/quarter or the other parameters to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month upon issuance of the letter or notice or execution of the enforcement action and remain in effect until the permit's expiration date.

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Part I

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A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

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5. CONTAMINATION BY CHLORINATED HYDROCARBON SOLVENTS -- ALL RECEIVING WATERS.

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During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements

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313 specified below shall be taken at the following location: outfall from the final treatment unit  
 314 prior to mixing with any other waters.

315 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	1/Month	Estimate
			2/Month if public water supply <sup>(2)</sup>	Estimate
Chloroform (CAS # 67663), (µg/l) <sup>(1)</sup>	NA	<del>80.0</del> <u>60</u>	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
1,1 Dichloroethane (CAS # 75343) (µg/l) <sup>(1)</sup>	NA	2.4	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
1,2 Dichloroethane (CAS # 107062) (µg/l) <sup>(1)</sup>	NA	3.8	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
1,1 Dichloroethylene (CAS # 75354) (µg/l) <sup>(1)</sup>	NA	7.0	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
cis-1,2 Dichloroethylene (CAS # 159592) (µg/l) <sup>(1)</sup>	NA	<del>70.0</del> <u>70</u>	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
trans 1,2 Dichloroethylene (CAS # 156605) (µg/l) <sup>(1)</sup>	NA	<del>400.0</del> <u>100</u>	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
Methylene Chloride (CAS # 75092) (µg/l) <sup>(1)</sup>	NA	5.0	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab



Tetrachloroethylene (CAS # 127184) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	5.0	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
1,1,1 Trichloroethane (CAS # 71556) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	<del>54.0</del> <u>54</u>	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
1,1,2 Trichloroethane (CAS # 79005) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	5.0	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
Trichloroethylene (CAS # 79016) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	5.0	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
Vinyl Chloride (CAS # 75014) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	2.0	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
Carbon Tetrachloride (CAS # 56235) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	2.3	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
1,2 Dichlorobenzene (CAS # 95501) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	<del>15.8</del> <u>16</u>	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
Chlorobenzene (CAS # 108907) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	3.4	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
Trichlorofluoromethane (CAS # 75694) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	5.0	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab
	NA	3.6	1/Month	Grab

Chloroethane (CAS # 75003) (µg/l) <sup>(1)</sup>			2/Month if public water supply <sup>(2)</sup>	Grab
pH (standard units)	6.0	9.0	1/Month	Grab
			2/Month if public water supply <sup>(2)</sup>	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>This constituent shall be analyzed by a current and appropriate gas chromatograph/mass spectroscopy method from EPA SW 846 or the EPA Wastewater Method series from 40 CFR Part 136.

<sup>(2)</sup>Monitoring frequency for discharges into surface waters listed as public water supplies shall be 2/month for the first year of permit coverage. If the first 12 months of permit coverage results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from 2/month to 1/month. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, monitoring frequency may be reduced to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation, or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month upon issuance of the letter or notice or execution of the enforcement action and remain in effect until the permit's expiration date.

316

Part I

317

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

318

6. DEWATERING ACTIVITIES WITH CONTAMINATION BY METALS -- ALL RECEIVING WATERS.

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During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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Such discharges shall be limited and monitored by the permittee as specified below:

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>		<u>MONITORING REQUIREMENTS</u>	
	<u>Instantaneous Minimum</u>	<u>Instantaneous Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
<u>Flow (GPD)</u>	<u>NA</u>	<u>NL</u>	<u>1/Month</u>	<u>Estimate</u>
			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Estimate</u>

<u>Total Hardness (as CaCO<sub>3</sub> in mg/l)<sup>(2)</sup></u>	<u>NA</u>	<u>NL</u>	<u>1/Month</u>	<u>Grab</u>
			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Grab</u>
<u>Total Recoverable Antimony (µg/l)<sup>(1)</sup></u>	<u>NA</u>	<u>5.6</u>	<u>1/Month</u>	<u>Grab</u>
			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Grab</u>
<u>Total Recoverable Arsenic (µg/l)<sup>(1)</sup></u>	<u>NA</u>	<u>10</u>	<u>1/Month</u>	<u>Grab</u>
			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Grab</u>
<u>Total Recoverable Cadmium (µg/l)<sup>(1)</sup></u>	<u>NA</u>	<u>0.55</u>	<u>1/Month</u>	<u>Grab</u>
			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Grab</u>
<u>Total Recoverable Chromium (µg/l)<sup>(1)</sup></u>	<u>NA</u>	<u>11</u>	<u>1/Month</u>	<u>Grab</u>
			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Grab</u>
<u>Total Recoverable Copper (µg/l)<sup>(1)</sup></u>	<u>NA</u>	<u>6.6</u>	<u>1/Month</u>	<u>Grab</u>
			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Grab</u>
<u>Total Recoverable Lead (µg/l)<sup>(1)</sup></u>	<u>NA</u>	<u>7.2</u>	<u>1/Month</u>	<u>Grab</u>

			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Grab</u>
<u>Total Recoverable Mercury (µg/l)<sup>(1)</sup></u>	<u>NA</u>	<u>0.77</u>	<u>1/Month</u>	<u>Grab</u>
			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Grab</u>
<u>Total Recoverable Nickel (µg/l)<sup>(1)</sup></u>	<u>NA</u>	<u>15</u>	<u>1/Month</u>	<u>Grab</u>
			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Grab</u>
<u>Total Recoverable Selenium (µg/l)<sup>(1)</sup></u>	<u>NA</u>	<u>5.0</u>	<u>1/Month</u>	<u>Grab</u>
			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Grab</u>
<u>Total Recoverable Silver (µg/l)<sup>(1)</sup></u>	<u>NA</u>	<u>1.9</u>	<u>1/Month</u>	<u>Grab</u>
			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Grab</u>
<u>Total Recoverable Thallium (µg/l)<sup>(1)</sup></u>	<u>NA</u>	<u>0.24</u>	<u>1/Month</u>	<u>Grab</u>
			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Grab</u>
<u>Total Recoverable Zinc (µg/l)<sup>(1)</sup></u>	<u>NA</u>	<u>87</u>	<u>1/Month</u>	<u>Grab</u>
			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Grab</u>

<u>pH (standard units)</u>	<u>6.0</u>	<u>9.0</u>	<u>1/Month</u>	<u>Grab</u>
			<u>2/Month if public water supply<sup>(3)</sup></u>	<u>Grab</u>

NL = No limitation, monitoring required  
NA = Not applicable  
(1)Metals shall be analyzed by a current and appropriate EPA Wastewater Method from 40 CFR Part 136.  
(2)Total Hardness shall be collected concurrently with the metals.  
(3)The monitoring frequency for discharges into freshwaters not listed as public water supplies and saltwater shall be once per month.  
The monitoring frequency for discharges into freshwaters listed as public water supplies shall be twice per month for all constituents or parameters. If the first 12 months of permit coverage results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced to once per month. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, the monitoring frequency for ethanol may be reduced to 1/quarter or the other parameters to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month upon issuance of the letter or notice or execution of the enforcement action and remain in effect until the permit's expiration date.

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Part I

B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.
2. The permittee shall sample each permitted outfall each calendar month in which a discharge occurs. When no discharge occurs from an outfall during a calendar month, the discharge monitoring report for that outfall shall be submitted indicating "No Discharge."
3. Operation and maintenance (O&M) manual. If the permitted discharge is through a treatment works, within 30 days of coverage under this general permit, the permittee shall develop and maintain on-site, an O&M manual for the treatment works permitted in this general permit. This manual shall detail practices and procedures that will be followed to ensure compliance with the requirements of this permit. The permittee shall operate the treatment works in accordance with the O&M manual. The manual shall be made available to the department upon request.
4. Operation schedule. The permittee shall construct, install and begin operating the treatment works described in the registration statement prior to discharging to surface waters. The permittee shall notify the department's regional office within five days after the completion of installation and commencement of operation.
5. Materials storage. Except as expressly authorized by this permit or another permit issued by the [ ~~board~~ department or general permit adopted by the board ], no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.

349 6. If the permittee discharges to surface waters through an MS4, the permittee shall, within  
350 30 days of coverage under this general permit, notify the owner of the municipal separate  
351 storm sewer system in writing of the existence of the discharge and provide the following  
352 information: the name of the facility, a contact person, and telephone number, the location  
353 of the discharge, the nature of the discharge, and the facility's VPDES general permit  
354 number. A copy of such notification shall be provided to the department. Discharge  
355 Monitoring Reports (DMRs) required to be submitted under this permit shall be submitted  
356 to both the department and the owner of the municipal separate storm sewer system.

357 7. Monitoring results shall be reported using the same number of significant digits as listed  
358 in the permit. Regardless of the rounding convention used by the permittee (e.g., five  
359 always rounding up or to the nearest even number), the permittee shall use the convention  
360 consistently and shall ensure that consulting laboratories employed by the permittee use  
361 the same convention.

362 8. The discharges authorized by this permit shall be controlled as necessary to meet  
363 applicable water quality standards.

364 9. Approval for coverage under this general permit does not relieve any owner of the  
365 responsibility to comply with any other federal, state, or local statute, ordinance, or  
366 regulation.

367 10. Discharges to waters with an approved TMDL. Owners of facilities that are a source  
368 of the specified pollutant of concern to waters where an approved TMDL has been  
369 established shall implement measures and controls that are consistent with the  
370 assumptions and requirements of the TMDL.

371 11. Termination of coverage. Provided that the [ ~~board~~ department ] agrees that the  
372 discharge covered under this general permit is no longer needed, the permittee may  
373 request termination of coverage under the general permit, for the entire facility or for  
374 specific outfalls, by submitting a request for termination of coverage. This request for  
375 termination of coverage shall be sent to the department's regional office with appropriate  
376 documentation or references to documentation already in the department's possession.  
377 Upon the permittee's receipt of the regional director's approval, coverage under this  
378 general permit will be terminated. Termination of coverage under this general permit does  
379 not relieve the permittee of responsibilities under other board regulations or [ department  
380 ] directives.

381 12. The permittee shall notify the department as soon as the permittee knows or has  
382 reason to believe:

383 a. That any activity has occurred or will occur that would result in the discharge, on a  
384 routine or frequent basis, of any toxic pollutant that is not limited in this permit if that  
385 discharge will exceed the highest of the following notification levels:

386 (1) One hundred micrograms per liter;

387 (2) Two hundred micrograms per liter for acrolein and acrylonitrile; five hundred  
388 micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one  
389 milligram per liter for antimony;

390 (3) Five times the maximum concentration value reported for that pollutant in the  
391 general permit registration statement; or

392 (4) The level established by the board.

393 b. That any activity has occurred or will occur that would result in any discharge, on a  
394 nonroutine or infrequent basis, of a toxic pollutant that is not limited in this permit if that  
395 discharge will exceed the highest of the following notification levels:

396 (1) Five hundred micrograms per liter;

- 397 (2) One milligram per liter for antimony;  
398 (3) Ten times the maximum concentration value reported for that pollutant in the  
399 general permit registration statement; or  
400 (4) The level established by the board.

401 Part II  
402 Conditions Applicable to All VPDES Permits

403 A. Monitoring.

- 404 1. Samples and measurements taken as required by this permit shall be representative of  
405 the monitored activity.  
406 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part  
407 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless  
408 other procedures have been specified in this permit.  
409 3. The permittee shall periodically calibrate and perform maintenance procedures on all  
410 monitoring and analytical instrumentation at intervals that will ensure accuracy of  
411 measurements.  
412 4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-  
413 45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46,  
414 Accreditation for Commercial Environmental Laboratories.

415 B. Records.

- 416 1. Records of monitoring information shall include:  
417 a. The date, exact place, and time of sampling or measurements;  
418 b. The individuals who performed the sampling or measurements;  
419 c. The dates and times analyses were performed;  
420 d. The individual ~~or individuals~~ who performed the analyses;  
421 e. The analytical techniques or methods used; and  
422 f. The results of such analyses.  
423 2. Except for records of monitoring information required by this permit related to the  
424 permittee's sewage sludge use and disposal activities, which shall be retained for a period  
425 of at least five years, the permittee shall retain records of all monitoring information,  
426 including all calibration and maintenance records and all original strip chart recordings for  
427 continuous monitoring instrumentation; copies of all reports required by this permit; and  
428 records of all data used to complete the registration statement for this permit for a period  
429 of at least three years from the date of the sample, measurement, report, or request for  
430 coverage. This period of retention shall be extended automatically during the course of  
431 any unresolved litigation regarding the regulated activity or regarding control standards  
432 applicable to the permittee, or as requested by the [ ~~board~~ department ].

433 C. Reporting monitoring results.

- 434 1. The permittee shall submit the results of the monitoring required by this permit not later  
435 than the 10th day of the month after monitoring takes place unless another reporting  
436 schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the  
437 department's regional office.  
438 2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on  
439 forms provided, approved or specified by the department. Following notification from the  
440 department of the start date for the required electronic submission of monitoring reports,  
441 as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall

442 be electronically submitted to the department in compliance with this section and 9VAC25-  
443 31-1020. There shall be at least a three-month notice provided between the notification  
444 from the department and the date after which such forms and reports must be submitted  
445 electronically.

446 3. If the permittee monitors any pollutant specifically addressed by this permit more  
447 frequently than required by this permit using test procedures approved under 40 CFR Part  
448 136 or using other test procedures approved by the U.S. Environmental Protection Agency  
449 or using procedures specified in this permit, the results of this monitoring shall be included  
450 in the calculation and reporting of the data submitted in the DMR or reporting form  
451 specified by the department.

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

454 D. Duty to provide information. The permittee shall furnish to the department, within a  
455 reasonable time, any information which the [ ~~board~~ department ] may request to determine  
456 whether cause exists for ~~modifying, revoking and reissuing, or~~ terminating this permit or to  
457 determine compliance with this permit. The [ ~~board~~ department ] may require the permittee to  
458 furnish, upon request, such plans, specifications, and other pertinent information as may be  
459 necessary to determine the effect of the wastes from ~~his~~ the permittee's discharge on the quality  
460 of state waters or such other information as may be necessary to accomplish the purposes of the  
461 State Water Control Law. The permittee shall also furnish to the department upon request copies  
462 of records required to be kept by this permit.

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

466 F. Unauthorized discharges. Except in compliance with this permit or another permit issued  
467 by the [ ~~board~~ department or general permit adopted by the board ], it shall be unlawful for any  
468 person to:

469 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or  
470 deleterious substances; or

471 2. Otherwise alter the physical, chemical, or biological properties of such state waters and  
472 make them detrimental to the public health, to animal or aquatic life, to the use of such  
473 waters for domestic or industrial consumption, for recreation, or for other uses.

474 G. Reports of unauthorized discharges. Any permittee that discharges or causes or allows a  
475 discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into  
476 or upon state waters in violation of Part II F or that discharges or causes or allows a discharge  
477 that may reasonably be expected to enter state waters in violation of Part II F shall notify the  
478 department of the discharge immediately (see Part II I 3) upon discovery of the discharge, but in  
479 no case later than 24 hours after the discovery. A written report of the unauthorized discharge  
480 shall be submitted to the department within five days of discovery of the discharge. The written  
481 report shall contain:

482 1. A description of the nature and location of the discharge;

483 2. The cause of the discharge;

484 3. The date on which the discharge occurred;

485 4. The length of time that the discharge continued;

486 5. The volume of the discharge;

487 6. If the discharge is continuing, how long it is expected to continue;



488 7. If the discharge is continuing, what the expected total volume of the discharge will be;  
489 and

490 8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the  
491 present discharge or any future discharges not authorized by this permit.

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

494 H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge  
495 including a bypass or upset should occur from a treatment works and the discharge enters or  
496 could be expected to enter state waters, the permittee shall promptly notify, ~~in no case later than~~  
497 ~~24 hours, (see Part II I 3)~~ the department ~~by telephone~~ after the discovery of the discharge. This  
498 notification shall provide all available details of the incident, including any adverse effects on  
499 aquatic life and the known number of fish killed. The permittee shall reduce the report to writing  
500 and shall submit the report to the department within five days of discovery of the discharge in  
501 accordance with Part II I 1 b. Unusual and extraordinary discharges include any discharge  
502 resulting from:

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

507 I. Reports of noncompliance.

508 1. The permittee shall report any noncompliance that may adversely affect state waters or  
509 may endanger public health.

510 a. An oral report shall be provided within 24 hours from the time the permittee becomes  
511 aware of the circumstances. The following shall be included as information, which shall  
512 be reported within 24 hours under this subsection:

- 513 (1) Any unanticipated bypass; and
- 514 (2) Any upset which causes a discharge to surface waters.

515 b. A written report shall be submitted within five days and shall contain:

- 516 (1) A description of the noncompliance and its cause;
- 517 (2) The period of noncompliance including exact dates and times and, if the  
518 noncompliance has not been corrected, the anticipated time it is expected to continue;  
519 and
- 520 (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the  
521 noncompliance.

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

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

528 NOTE: 3. The immediate (within 24 hours) reports required in Part II G, H and I may ~~shall~~  
529 be made to the department's regional office. Reports may be made by telephone, FAX, or  
530 online at  
531 ~~http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/PollutionReporti~~  
532 ~~ngForm.aspx.~~ <https://www.deq.virginia.gov/get-involved/pollution-response> (online  
533 reporting preferred). For reports outside normal working hours, ~~leave a message and this~~

534 shall fulfill the immediate reporting requirement the online portal shall be used. For  
535 emergencies, call the Virginia Department of Emergency Services maintains a 24-hour  
536 telephone service Management's Emergency Operations Center (24-hours) at 1-800-468-  
537 8892.

538 3. 4. Where the permittee becomes aware that it failed to submit any relevant facts in a  
539 permit registration statement or submitted incorrect information in a permit registration  
540 statement or in any report to the department, it shall promptly submit such facts or  
541 information.

542 J. Notice of planned changes.

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

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

548 (1) After promulgation of standards of performance under § 306 of the Clean Water  
549 Act which ~~that~~ are applicable to such source; or

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

553 b. The alteration or addition could significantly change the nature or increase the  
554 quantity of pollutants discharged. This notification applies to pollutants that are subject  
555 neither to effluent limitations nor to notification requirements under Part I B 12; or

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

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

564 K. Signatory requirements.

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

566 a. For a corporation: by a responsible corporate officer. For the purpose of this section,  
567 a responsible corporate officer means (i) a president, secretary, treasurer, or vice-  
568 president of the corporation in charge of a principal business function, or any other  
569 person who performs similar policy-making or decision-making functions for the  
570 corporation or (ii) the manager of one or more manufacturing, production, or operating  
571 facilities, provided the manager is authorized to make management decisions that  
572 govern the operation of the regulated facility including having the explicit or implicit  
573 duty of making major capital investment recommendations, and initiating and directing  
574 other comprehensive measures to assure long-term environmental compliance with  
575 environmental laws and regulations; the manager can ensure that the necessary  
576 systems are established or actions taken to gather complete and accurate information  
577 for permit application requirements; and where authority to sign documents has been  
578 assigned or delegated to the manager in accordance with corporate procedures;

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

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

586 2. Reports. All reports required by permits, and other information requested by the [ ~~board~~  
587 department ] shall be signed by a person described in Part II K 1, or by a duly authorized  
588 representative of that person. A person is a duly authorized representative only if:

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

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

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

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

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

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

612 L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit  
613 noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act,  
614 except that noncompliance with certain provisions of this permit may constitute a violation of the  
615 State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for  
616 enforcement action; for permit coverage termination or denial of permit coverage renewal.

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

622 M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after  
623 the expiration date of this permit, the permittee shall submit a new registration statement at least  
624 ~~30~~ 60 days before the expiration date of the existing permit, unless permission for a later date has  
625 been granted by the [ ~~board~~ department ]. The [ ~~board~~ department ] shall not grant permission for  
626 registration statements to be submitted later than the expiration date of the existing permit.

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

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

636 P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude  
637 the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or  
638 penalties to which the permittee is or may be subject under Article 11 (§ 62.1-44.34:14 et seq.) of  
639 the State Water Control Law.

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

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

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

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

657 U. Bypass.

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

662 2. Notice.

663 a. Anticipated bypass. If the permittee knows in advance of the need for a bypass,  
664 prior notice shall be submitted, if possible, at least 10 days before the date of the  
665 bypass.

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

668 3. Prohibition of bypass.

669 a. Bypass is prohibited, and the [ ~~board~~ department ] may take enforcement action  
670 against a permittee for bypass, unless:

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

673 (2) There were no feasible alternatives to the bypass, such as the use of auxiliary  
674 treatment facilities, retention of untreated wastes, or maintenance during normal  
675 periods of equipment downtime. This condition is not satisfied if adequate back-up  
676 equipment should have been installed in the exercise of reasonable engineering  
677 judgment to prevent a bypass ~~which~~ that occurred during normal periods of equipment  
678 downtime or preventive maintenance; and  
679 (3) The permittee submitted notices as required under Part II U 2.  
680 b. The [ ~~board~~ department ] may approve an anticipated bypass, after considering its  
681 adverse effects, if the [ ~~board~~ department ] determines that it will meet the three  
682 conditions listed in Part II U 3 a.

683 V. Upset.

684 1. An upset constitutes an affirmative defense to an action brought for noncompliance with  
685 technology-based permit effluent limitations if the requirements of Part II V 2 are met. A  
686 determination made during administrative review of claims that noncompliance was  
687 caused by upset and before an action for noncompliance is not a final administrative action  
688 subject to judicial review.  
689 2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate  
690 through properly signed, contemporaneous operating logs or other relevant evidence that:  
691 a. An upset occurred and that the permittee can identify the cause or causes of the  
692 upset;  
693 b. The permitted facility was at the time being properly operated;  
694 c. The permittee submitted notice of the upset as required in Part II I; and  
695 d. The permittee complied with any remedial measures required under Part II S.  
696 3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an  
697 upset has the burden of proof.

698 W. Inspection and entry. The permittee shall allow the director or an authorized representative,  
699 including an authorized contractor acting as a representative of the administrator, upon  
700 presentation of credentials and other documents as may be required by law, to:

701 1. Enter upon the permittee's premises where a regulated facility or activity is located or  
702 conducted or where records must be kept under the conditions of this permit;  
703 2. Have access to and copy, at reasonable times, any records that must be kept under the  
704 conditions of this permit;  
705 3. Inspect at reasonable times any facilities, equipment (including monitoring and control  
706 equipment), practices, or operations regulated or required under this permit; and  
707 4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance  
708 or as otherwise authorized by the Clean Water Act and the State Water Control Law any  
709 substances or parameters at any location.

710 For purposes of this section, the time for inspection shall be deemed reasonable during  
711 regular business hours or whenever the facility is discharging. Nothing contained in this general  
712 permit shall make an inspection unreasonable during an emergency.

713 X. Permit actions. Permit coverage may be terminated for cause. The filing of a request by  
714 the permittee for permit coverage termination or a notification of planned changes or anticipated  
715 noncompliance does not stay any permit condition.

716 Y. Transfer of permit coverage.

717 1. Permit coverage is not transferable to any person except after notice to the department.  
718 2. Coverage under this permit may be automatically transferred to a new permittee if:

719 a. The current permittee notifies the department within 30 days of the transfer of the  
720 title to the facility or property;

721 b. The notice includes a written agreement between the existing and new permittees  
722 containing a specific date for transfer of permit responsibility, coverage, and liability  
723 between them; and

724 c. The [ ~~board~~ department ] does not notify the existing permittee and the proposed  
725 new permittee of its intent to deny permit coverage. If this notice is not received, the  
726 transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

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

**FACT SHEET**  
**REISSUANCE OF VPDES GENERAL PERMIT FOR DISCHARGES FROM GROUNDWATER  
REMEDICATION OF CONTAMINATED SITES, DEWATERING ACTIVITIES OF  
CONTAMINATED SITES, AND HYDROSTATIC TESTS**

The Virginia State Water Control Board has under consideration the reissuance of a VPDES general permit for point source discharges from petroleum and non-petroleum contaminated sites, groundwater remediation, dewatering activities, and hydrostatic tests to surface waters of the Commonwealth of Virginia. This general permit will replace VAG83 (petroleum and metals contaminated sites, groundwater remediation, groundwater dewatering, and hydrostatic tests general permit) which expires February 25, 2023. Owners covered under the expiring general permit who wish to continue to discharge under a general permit must register for coverage under the new general permit.

Permit Number: VAG83

Name of Permittee: Any owner of a qualifying facility in the Commonwealth of Virginia agreeing to be regulated under the terms of this general permit.

Facility Location: Commonwealth of Virginia

Receiving Waters: Surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in Board regulations which prohibit such discharges.

On the basis of preliminary review and application of lawful standards and regulations, the State Water Control Board proposes to issue the general VPDES permit subject to certain conditions and has prepared a draft permit. The Board has determined that this category of discharges is appropriately controlled under a general permit. The category of discharges to be included involves facilities with the same or similar types of operations and the facilities discharge the same or similar types of wastes. The draft general permit requires that all covered facilities meet standard effluent limitations, special conditions, monitoring requirements and Water Quality Standards (9VAC25-260).

Persons may comment in writing on the proposed issuance of the general permit within 60 days from the start of the public comment period. Comments should be addressed to the contact person listed below. Comments shall include the name, address, and telephone number of the writer, and shall contain a complete, concise statement of the factual basis for comments. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Only those comments received within the comment period will be considered by the Board.

All pertinent information is on file and may be inspected, and arrangements made for copying by contacting:

Alison Thompson  
Virginia Department of Environmental Quality-Northern Regional Office  
13901 Crown Court  
Woodbridge, Virginia 22193  
(571) 866-6083  
[alison.thompson@deq.virginia.gov](mailto:alison.thompson@deq.virginia.gov)

A public hearing will be held on this draft permit. Notice of the public hearing will be published in newspapers, on the Virginia Regulatory Town Hall web site at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), and in the Virginia Register. Following the public comment period, the Board will make its determinations regarding the proposed issuance.

### **1.0 Activities Covered By This General Permit**

Petroleum contamination can occur as a result of leaks from above ground or underground storage tanks, pipeline leaks, surface oil spills and poor housekeeping at facilities that handle petroleum products. When

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<sup>1</sup> Note: Pursuant to SB 657 (2022), the following definition in this general permit has been revised: "Board" means the State Water Control Board. However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the "Department of Environmental Quality"

the structural integrity of storage tanks or pipelines is tested with water pressure, the water may become contaminated with petroleum products. Metals may be released into the environment via industrial processes and handling and disposal of spent or waste materials. Chlorinated hydrocarbon solvents may be released into the environment via leakage from tanks, lines, process-related equipment, and the handling and disposal of spent or waste materials. For the purposes of this general permit, "petroleum products" means petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils. Petroleum products do not include hazardous waste as defined by the Virginia Hazardous Waste Regulations, 9VAC20-60. "Chlorinated hydrocarbon solvents" means solvents containing carbon, hydrogen, and chlorine atoms and the constituents resulting from the degradation of these chlorinated hydrocarbon solvents.

Contaminants may be introduced into surface waters when potable, or non-potable waters are used to hydrostatically test new or repaired petroleum or natural gas pipelines, petroleum storage tanks, or water storage tanks and pipelines. These tests are commonly done in the pipeline industry and even though the events are usually sporadic in nature, they may produce a discharge significant in volume. Therefore, a general permit would adequately govern this type of activity.

This general permit will cover point source discharges of wastewaters from sites contaminated by petroleum products, metals, and chlorinated hydrocarbon solvents and also the point source discharges of hydrostatic test wastewaters resulting from the testing of petroleum and natural gas storage tanks and pipelines, and water storage tanks and pipelines. These wastewaters may be discharged from the following activities: excavation dewatering; post-construction dewatering activities, conducting aquifer tests to characterize site conditions; pumping contaminated groundwater to remove free product from the ground; discharges resulting from another petroleum product or chlorinated hydrocarbon solvent remediation activity approved by the Board; hydrostatic tests of natural gas and petroleum storage tanks, pipelines, and associated distribution equipment; and hydrostatic tests of water storage tanks, pipelines, and associated distribution equipment. This general permit shall not cover discharges from cooling tower flushing.

The effluent limits in the proposed general permit are established according to the type of petroleum product, chlorinated hydrocarbon solvent, or metals causing the contamination.

## **2.0 Substantive Revisions to the Expiring VPDES General Permit Regulation for Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests**

The title of the regulation was changed to "Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation For Discharges From Contaminated Sites, Groundwater Remediation, Dewatering Activities and Hydrostatic Tests" to better represent the activities covered under this general permit and to be consistent with other VPDES General Permit regulation titles.

The "Applicability of incorporated references based on the date that they became effective" section (9VAC25-120-15) was simplified to be consistent with other VPDES general permits and the date referenced was changed to July 1, 2021.

The "Purpose" section (9VAC25-120-20) was modified to address the discharge of wastewaters from "petroleum contaminated" sites, "non-petroleum contaminated sites, groundwater remediation discharges" and "dewatering activities." The general permit continues to address the hydrostatic testing of natural gas storage tanks and pipelines, the hydrostatic testing and dewatering of petroleum storage tank systems and associated distribution equipment, and the hydrostatic testing of water storage tanks and pipelines.

The "Effective date of the permit" section (9VAC25-120-50) was revised to provide updated dates for the regulation (effective March 1, 2023; expires February 29, 2028). It should be noted that these dates were updated through the other sections of the regulation.

The following addition was made in section (9VAC25-120-60C): Added the phrase, "including compliance with the water withdrawal reporting, 9VAC25-200, and the groundwater permitting program 9VAC25-



610.” This is to clarify that compliance these requirements as applicable is a separate and independent of obligation from compliance with this general permit.

The following modification and additions were made to the "Registration Statement" section (9VAC25-120-70): in subdivision E.19 a section was added for the owner to provide information if the facility is enrolled in the Voluntary Remediation Program (VRP) if applicable for the project; subdivision E.9 the location was changed to latitude and longitude; in subdivision E.21 a requirement was added for the owner to provide the State Corporation Commission entity identification number if the facility is required to obtain one by law; and in subdivision G a contingent provision (requiring notification and a three-month period) requiring electronic submission of registration statement was added to meet EPA and State electronic reporting requirement.

The following modification and additions were made to the "Effluent Limitations and Monitoring Requirements" section (9VAC25-120-80) Part I A 2: A revision was made to the approved methodology for Total Petroleum Hydrocarbons. The limit for Total Petroleum Hydrocarbons was revised to two significant figures consistent with VPDES program policy.

The following modification and additions were made to the "Effluent Limitations and Monitoring Requirements" section (9VAC25-120-80) Part I A 3: Revised the Benzene effluent limit to reflect the changes to the Virginia Water Quality Standard Human Health criteria for Public Water Supplies, Removed the decimal place for the Ethanol effluent limitation because the detection limit for this compound using Method 8260B is 200 ug/l. To carry this to the required significant figure would likely require secondary ion mass spec analysis – a big cost burden for no apparent value. Added “Total” for Hardness monitoring since this is how hardness is reported. Limitations for Toluene, Total Xylenes, MTBE, and Ethylene Dibromide in freshwater PWS, were revised to two significant figures. Total Recoverable Lead is now expressed as a numeric limitation to eliminate confusion with reporting and determining compliance.

The following modification and additions were made to the "Effluent Limitations and Monitoring Requirements" section (9VAC25-120-80) Part I A 4: Revised the Benzene effluent limit to reflect the changes to the Virginia Water Quality Standard Human Health criteria for Public Water Supplies. A revision was made to the approved methodology for Total Petroleum Hydrocarbons. The limitations for Total Petroleum Hydrocarbons and MTBE were revised to two significant figures.

The following modification and additions were made to the "Effluent Limitations and Monitoring Requirements" section (9VAC25-120-80) Part I A 5: The Chloroform effluent limitation was revised to reflect the changes to the Virginia Water Quality Standards and is now expressed as two significant figures. The limitations for cis-1,2 Dichloroethylene, trans-1,2 Dichloroethylene, 1,1,1 Trichloroethane, and 1,2 Dichlorobenzene were revised to two significant figures.

The following addition was added to 9VAC25-120-80: section Part I A 6 was added to address metals contamination from groundwater remediation or post-construction dewatering activities. Limitations for pH, Total Recoverable Arsenic, Total Recoverable Cadmium, Total Recoverable Chromium, Total Recoverable Copper, Total Recoverable Lead, Total Recoverable Nickel, Total Recoverable Selenium, Total Recoverable Silver, Total Recoverable Thallium, and Total Recoverable Zinc were included. Monitoring for Flow and Total Hardness were also added. The limits identified in Part I A 1, for Short Term Projects, now also include those in A 6 as applicable under the terms of A 1.

### **3.0 Effluent Limitations and Monitoring Requirements**

#### **3.1 Discharges of Water Contaminated with Gasoline - All Receiving Waters (subsection I A 3)**

<u>Parameter</u>	<u>Limitation</u>
Flow	No limit, monitoring required
Benzene	5.8 µg/l instantaneous maximum
Toluene	43 µg/l instantaneous maximum
Ethylbenzene	4.3 µg/l instantaneous maximum
Total Xylenes	33 µg/l instantaneous maximum

Total Recoverable Lead <sup>(1)</sup>	7.2 µg/l instantaneous maximum
Total Hardness (as CaCO <sub>3</sub> ) <sup>(1)</sup>	mg/l, No limit, monitoring required
Ethylene Dibromide (EDB) <sup>(1)</sup>	1.9 µg/l instantaneous maximum (freshwaters not listed as public water supplies and saltwater)
	0.16 µg/l / instantaneous maximum (freshwater listed as public water supply)
1,2 Dichloroethane (1,2 DCA) <sup>(1)</sup>	3.8 µg/l instantaneous maximum
pH	6.0 instantaneous minimum- 9.0 instantaneous maximum
MTBE	440 µg/l instantaneous maximum (freshwaters not listed as public water supplies and saltwater)
	15 µg/l instantaneous maximum (freshwater listed as public water supply)
Ethanol <sup>(2)</sup>	4,100 µg/l instantaneous maximum

<sup>(1)</sup> Monitoring this parameter is required only when contamination results from leaded fuel.

<sup>(2)</sup> Monitoring for ethanol is only required for discharges of water contaminated by gasoline containing greater than 10% ethanol.

The monitoring frequency for discharges into freshwaters not listed as public water supplies and saltwater is once per month. The permittee may request in writing that the monitoring frequency for ethanol be reduced to once per quarter if monitoring results from the first year of permit coverage demonstrate full compliance with the effluent limits.

The monitoring frequency for discharges into freshwaters listed as public water supplies is twice per month for all constituents or parameters. If the first year's results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency for ethanol be reduced to once per quarter and the other parameters to once per month.

### 3.2 Discharges of Water Contaminated with Petroleum Products Other than Gasoline - All Receiving Waters (I A 4)

<u>Parameter</u>	<u>Limitation</u>
Flow	No limit, monitoring required
Naphthalene	8.9 µg/l instantaneous maximum
Total Petroleum Hydrocarbons	15 mg/l instantaneous maximum
pH	6.0 instantaneous minimum- 9.0 instantaneous maximum
Benzene	5.8 µg/l instantaneous maximum (public water supplies only)
MTBE	15 µg/l instantaneous maximum (public water supplies only)

The monitoring frequency for discharges into freshwaters not listed as public water supplies and saltwater is once per month.

The monitoring frequency for discharges into freshwaters listed as public water supplies is twice per month for all constituents or parameters. If the first year's results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency to once per month.

### 3.3 Discharges of Water from Hydrostatic Tests - All Receiving Waters (I A 2)

<u>Parameter</u>	<u>Limitation</u>
Flow	No limit, monitoring required
pH	6.0 instantaneous minimum- 9.0 instantaneous maximum
Total Petroleum Hydrocarbons (TPH)	15 mg/l instantaneous maximum
Total Organic Carbon (TOC)	No limit, monitoring required
Total Suspended Solids (TSS)	No limit, monitoring required
Total Residual Chlorine (TRC)	0.011 mg/l instantaneous maximum

The monitoring frequency for all parameters is once per discharge.

### 3.4 Discharges of Water Contaminated by Chlorinated Hydrocarbon Solvents - All Receiving Waters (I A 5)

<u>Parameter</u>	<u>Limitation</u>
Flow	No limit, monitoring required
Chloroform	60 µg/l instantaneous maximum
1,1 dichloroethane	2.4 µg/l instantaneous maximum
1,2 dichloroethane	3.8 µg/l instantaneous maximum
1,1 dichloroethylene	7.0 µg/l instantaneous maximum
cis 1,2 dichloroethylene	70 µg/l instantaneous maximum
trans 1,2 dichloroethylene	100 µg/l instantaneous maximum
Methylene chloride	5.0 µg/l instantaneous maximum
Tetrachloroethylene	5.0 µg/l instantaneous maximum
1,1,1 trichloroethane	54 µg/l instantaneous maximum
1,1,2 trichloroethane	5.0 µg/l instantaneous maximum
Trichloroethylene	5.0 µg/l instantaneous maximum
Vinyl chloride	2.0 µg/l instantaneous maximum
Carbon tetrachloride	2.3 µg/l instantaneous maximum
1,2 dichlorobenzene	16 µg/l instantaneous maximum
Chlorobenzene	3.4 µg/l instantaneous maximum
Trichlorofluoromethane	5.0 µg/l instantaneous maximum
Chloroethane	3.6 µg/l instantaneous maximum
pH	6.0 instantaneous minimum- 9.0 instantaneous maximum

The monitoring frequency for discharges into surface waters not listed as public water supplies is once per month.

The monitoring frequency for discharges into surface waters listed as public water supplies is twice per month for the first year of permit coverage. If the permittee is in complete compliance with all effluent limitations, they may request that the monitoring frequency be reduced to once per month.

### 3.5 Discharges of Water Contaminated by Metals- All Receiving Waters (I A 6)

<u>Parameter</u>	<u>Limitation</u>
Flow	No limit, monitoring required
Total Hardness (as CaCO <sub>3</sub> )	mg/l, No limit, monitoring required
Total Recoverable Antimony	5.6 µg/l instantaneous maximum
Total Recoverable Arsenic	10 µg/l instantaneous maximum
Total Recoverable Cadmium	0.55 µg/l instantaneous maximum
Total Recoverable Chromium	11 µg/l instantaneous maximum
Total Recoverable Copper	6.6 µg/l instantaneous maximum
Total Recoverable Lead	7.2 µg/l instantaneous maximum
Total Recoverable Mercury	0.77 µg/l instantaneous maximum
Total Recoverable Nickel	15 µg/l instantaneous maximum
Total Recoverable Selenium	5.0 µg/l instantaneous maximum
Total Recoverable Silver	1.9 µg/l instantaneous maximum
Total Recoverable Thallium	0.24 µg/l instantaneous maximum
Total Recoverable Zinc	87 µg/l instantaneous maximum
pH	6.0 instantaneous minimum- 9.0 instantaneous maximum

The monitoring frequency for discharges into surface waters not listed as public water supplies is once per month.

The monitoring frequency for discharges into surface waters listed as public water supplies is twice per month for the first year of permit coverage. If the permittee is in complete compliance with all effluent limitations, they may request that the monitoring frequency be reduced to once per month.

#### **4.0 Permit Special Conditions**

1. The general permit prohibits discharge of floating solids or visible foam in other than trace amounts. This is a standard requirement for all permits per the VPDES Permit Manual (2014) and conforms to the general water quality criteria at 9VAC25-260-20.
2. This special condition clarifies the requirement for reporting of effluent monitoring results. Discharge monitoring is required each month in which a discharge occurs. For months when no discharge occurs, the permittee must submit a DMR indicating “No Discharge”. This system will allow DEQ to verify that either the effluent met the permit limits or that there was no discharge during the month.
3. Permittees that discharge treated wastewater are required to develop an Operations and Maintenance manual for the treatment works. This requirement is imposed to assure proper operation and maintenance of facilities discharging under the general permit.
4. In order to assure that the proposed cleanup is conducted according to the methods outlined by the permittee in the approved Registration Statement, the permittee must construct treatment works prior to discharging and the permittee must notify DEQ within 5 days of commencement of operation.
5. The general permit contains a condition designed to prevent pollution from materials stored on the site, which are not otherwise controlled by the effluent limitations.
6. If the proposed discharge is to surface waters via a municipal storm sewer system, the general permit requires the permittee to notify the owner of the storm sewer system in writing, and include the name of the facility, a contact person and telephone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number. This is required in order to facilitate the municipality's efforts to control dry weather flows from the storm sewer. A copy of the notice must be provided to DEQ, and DMRs required to be submitted must be sent to DEQ and the owner of the municipal storm sewer system.
7. The general permit requires that any monitoring results be reported using the same number of significant digits as listed in the permit.
8. Discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards.
9. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation. This special condition repeats the requirement in 9VAC25-120-60 C (Authorization to Discharge).
10. Owners of facilities that are a source of the specified pollutant of concern to waters where an approved “total maximum daily load” (TMDL) has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL. The condition was developed since general permit discharges are considered insignificant to the overall TMDL waste load allocation. This special condition allows staff more flexibility to allow permit coverage for discharges without requiring immediate modification of the TMDL. DEQ will track all the general permit discharges and once they become significant for purposes of the TMDL, the TMDL will be modified to include the load.
11. A request for termination of coverage under the permit is required to provide documentation for the permittee and the DEQ that the activities covered under the general permit have been concluded and coverage is no longer necessary.
12. DEQ must be notified when the permittee knows or has reason to believe that any activity has occurred

or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in this permit if that discharge will exceed the highest of the notification levels specified in 9VAC25-31-200 A 1. DEQ must be notified when the permittee knows or has reason to believe that any activity has occurred or will occur that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that is not limited in this permit if that discharge will exceed the highest of the notification levels specified in 9VAC25-31-200 A 2.

## **5.0 Discharges to Public Water Supplies**

This permit may be used to authorize discharges to public water supplies. The Virginia Department of Health, Office of Water Supply Programs generally requires a minimum of 5 miles separation between a discharge and a downstream public water supply intake (12VAC5-590-200). This general permit will use the same separation distance. Discharges into a surface water designated as a public water supply will not be allowed under this permit if the discharge location is less than 5 miles upstream of the public water supply intake.

## **6.0 Basis for Effluent Limitations**

### **6.1 Discharges of Gasoline Contaminated Water**

This general permit contains both technology-based and water quality-based effluent limits. Where both types of limits were available, the more stringent of the two was chosen. The U.S. EPA has developed a model NPDES permit for discharges from gasoline contaminated underground storage tank sites. The model permit provides technology-based effluent limitations for surface water discharges. The technology basis for those limitations is free product removal followed by air stripping. The limits are set for benzene and the sum of benzene, toluene, ethylbenzene, and xylenes (BTEX). These parameters are used as indicators of the compounds most likely to be found in gasoline. Benzene is considered a good indicator of the removal of volatile organic gasoline constituents via air stripping because of its relatively high water solubility and low volatility compared to other gasoline components.

The EPA model permit states that air strippers have the potential to operate at 99.5% efficiency and it uses this as the basis for limitations on benzene and BTEX. However, it also states that one cannot assume optimal operational conditions at all times and that permit limitations must be achievable with existing technology at reasonable cost. The model permit then establishes optional limitations based on 95% removal efficiency. The 95 percent efficiency rating accounts for operational difficulties which may be encountered during periods of low temperature and/or high humidity when air strippers may not be expected to perform at the 99.5% peak efficiency level. The EPA Treatability Database (RREL Version 5.0) contains information on treatment of the BTEX compounds at various concentrations by air stripping and granular activated carbon. The average removal efficiencies in contaminated ground water are as follows: benzene 97%, toluene 97.4%, ethylbenzene 87% and xylene 88%. The 95% removal efficiency also provides the possibility for considerable cost savings for the tank owners/operators involved in remediating underground storage tank (UST) sites, many of whom are small businesses without the resources to install state-of-the-art equipment. The number of sites remediated under the Virginia Petroleum Storage Tank Fund would also potentially increase if the cost per site were less.

The technology-based benzene limit of 50 µg/l in the EPA model permit is derived by assuming a concentration of 1 mg/l benzene in the influent to the treatment system and 95% removal.

The water quality-based effluent limitations in this general permit are established pursuant to the VPDES Permit Regulation, 9VAC25-31-220 D, and the Virginia Water Quality Standards, 9VAC25-260-140 B. The limits are set at what are believed to be safe concentrations for the protection of beneficial uses including the growth and propagation of aquatic organisms inhabiting surface waters which receive the discharge. They assume zero dilution of the effluent by the receiving waters so that they can be applied without regard to effluent or receiving water flows. They are based on information provided in EPA criteria documents for priority pollutants, EPA toxicity databases, and conservative application factors.

The aggregate parameter BTEX is used in the EPA model NPDES permit previously discussed to limit 4

parameters. It sets an effluent limitation for BTEX at 750 µg/l based on an assumed influent BTEX concentration of 15 mg/l and the 95% air stripper removal efficiency. The model permit documentation states that the composition of gasoline is highly variable and any one of the four BTEX components may be the primary constituent. The discussion of water quality-based limits which follows identifies cases where the 750 µg/l technology-based limitation on BTEX would not protect aquatic life from adverse effects.

In some circumstances, if a specific BTEX component were to dominate the mixture the resulting effluent could be toxic at, or below 750 µg/l. For instance, Thomas and Delfino (1991) found that toluene comprises about 50% of the total BTEX in gasoline when analyzed by EPA Methods 610 and 602. If the BTEX limit were set at 750 µg/l then this could allow up to 375 µg/l of toluene in an effluent. The discussion on water quality-based limits which follows sets a limit of 43 µg/l for toluene in discharges to freshwater. The same researchers found that xylenes made up about 30% of the total BTEX in gasoline. When applied to the 750 µg/l BTEX limit in the EPA model permit this results in a possible xylene discharge level of 225 µg/l. Based on available information, total xylenes should not exceed 33 µg/l in freshwater. Without limits on individual parameters, ethylbenzene in discharges to saltwater could still be chronically toxic at the 100 µg/l BTEX technology-based limit given in the model permit using 99.5% removal efficiency.

Based on this discussion, the general permit does not contain a technology-based BTEX limit. Instead, it establishes water quality-based limits on the individual components (benzene, toluene, ethylbenzene and total xylenes), which result in lower total BTEX levels in the discharge.

### **6.1.1 Benzene**

#### **Freshwater**

The EPA criteria document for benzene (EPA 440/5-80-018, EPA 1980a) states that benzene may be acutely toxic to freshwater organisms at concentrations as low as 5,300 µg/l. This concentration represents an LC50 value for rainbow trout (*Oncorhynchus mykiss*). The document also states that acute toxicity would occur at lower concentrations among more sensitive species. No data were available concerning the chronic toxicity of benzene to sensitive freshwater organisms. The derivation of a protective level for benzene was based on the 5,300 µg/l LC50. *(This value was divided by 10 in order to approximate a level which would not be expected to cause acute toxicity. The use of an application factor of 10 was recommended by the National Academy of Sciences in the EPA's publication "Water Quality Criteria, 1972" (EPA/R3/73-033). This use of application factors when setting water quality criteria is still considered valid in situations where data are not sufficient to develop criteria according to more recent guidance.)* The resulting "non-lethal" concentration of 530 µg/l was divided by an assumed acute to chronic ratio of 10 to arrive at the water quality-based permit limitation of 53 µg/l.

The Virginia Water Quality Standard Regulation (9 VAC 25-260-10 et seq.) contains a human health standard of 160 µg/l for benzene in surface waters that are not public water supplies. This concentration is above the aquatic toxicity concentration of 53 µg/l and the technology-based concentration of 50 µg/l.

#### **Saltwater**

The limited data for benzene and saltwater organisms in the EPA criteria document indicates that stress and survival effects occur at concentrations as low as 700 µg/l when fish are exposed for long periods. Based on the application of a 0.10 safety factor to this chronic effect concentration, the water quality-based limit for discharges to saltwater would be 70 µg/l.

#### **Public Water Supplies**

The Virginia Water Quality Standard Regulation (9 VAC 25-260-10 et seq.) contains a human health standard of 5.8 µg/l for benzene in public water supplies. This concentration is below the aquatic toxicity concentration of 53 µg/l and the technology-based concentration of 50 µg/l. Previously, the human health standard for benzene in public water supplies was 12 µg/l and this was the effluent limit for benzene in waters listed as public water supplies.

#### **Discharge Monitoring Report Data Reported for Benzene**

DEQ staff reviewed Discharge Monitoring Report (DMR) data submitted by permittees during the current permit term (April 2018 through December 2021). The data were reviewed to evaluate compliance with existing effluent limits and see the effluent concentrations that are being achieved by permittees. The DMR data indicates that the treatment systems being used by permittees typically reduce benzene concentrations in the effluent to below quantifiable levels.

### **Recommended Effluent Limit for Benzene**

EPA lists a technology-based limit of 50 µg/l for benzene in wastewater from leaking underground storage tank sites. The DMR data indicates that benzene in the effluent typically is below quantifiable levels and that few permittees would have trouble meeting the benzene effluent limit of 5.8 µg/l. DEQ staff recommend an effluent limit of 5.8 µg/l for benzene.

### **6.1.2 Ethylbenzene**

#### **Freshwater**

The EPA criteria document for ethylbenzene (EPA 440/5-80-048, EPA 1980b) gives an acute effects concentration of 32,000 µg/l. This is an LC50 for bluegill sunfish (*Lepomis macrochirus*). EPA noted that acute toxicity may occur at lower concentrations if more sensitive species were tested. Brooke (1987) evaluated the effects of ethylbenzene on scuds (*Gammarus pseudolimnaeus*) and found exposure to ethylbenzene at a concentration of 1,940 µg/l was lethal to 50% of the scuds tested. No definitive data are available on the chronic toxicity of ethylbenzene to freshwater organisms. In order to derive an acceptable level of ethylbenzene for the protection of freshwater organisms the acute value of 1,940 µg/l was divided by 100, using the same assumptions employed above for benzene. The resulting value of 19.4 µg/l is a calculated chronic toxicity concentration for ethylbenzene.

The human health water quality standard for ethylbenzene in surface waters that are not public water supplies is 130 µg/l. The chronic toxicity concentration of 19.4 µg/l is below the human health standard.

#### **Saltwater**

According to the criteria document, ethylbenzene is acutely toxic to certain saltwater organisms at concentrations as low as 430 µg/l and may be acutely toxic at lower concentrations if more sensitive organisms are tested. Dividing this number by the 100 application factor yields the proposed effluent limit of 4.3 µg/l for discharges to saltwater receiving waters.

#### **Public Water Supplies**

The Virginia human-health water quality standard for ethylbenzene in public water supplies is 68 µg/l. The freshwater effluent limit based on aquatic toxicity is more stringent than human-health based standard for public water supplies and should be protective of human health concerns.

### **Discharge Monitoring Report Data Reported for Ethylbenzene**

DEQ staff reviewed Discharge Monitoring Report (DMR) data submitted by permittees during the current permit term (April 2018 through December 2021). The data were reviewed to evaluate compliance with existing effluent limits and see the effluent concentrations that are being achieved by permittees. The DMR data indicates that the treatment systems being used by permittees typically reduce ethylbenzene concentrations in the effluent to below quantifiable levels.

### **Recommended Effluent Limit for Ethylbenzene**

The DMR data indicates that ethylbenzene in the effluent typically is below quantifiable levels and that few permittees would have trouble meeting an ethylbenzene effluent limit of 4.3 µg/l. DEQ staff recommend an effluent limit of 4.3 µg/l for ethylbenzene for all receiving waters.

### **6.1.3 Toluene**

The EPA criteria document for toluene (EPA 440/5-80-075, EPA 1980c) states that acute toxicity to freshwater organisms occurs at 17,500 µg/l and would occur at lower concentrations if more sensitive

organisms were tested. Marchini and associates (1983) found that exposure to toluene at a concentration of 9,000 µg/l was lethal to 50% of the water fleas (*Ceriodaphnia dubia*) tested. No data are available on the chronic toxicity of toluene to freshwater species. Based on the available data for acute toxicity and dividing by the application factor of 100, an effluent limit for toluene discharged to freshwater would be 90 µg/l.

The EPA criteria document for toluene (EPA 440/5-80-075, EPA 1980c) indicates that toluene is chronically toxic to certain saltwater organisms at concentrations as low as 5,000 µg/l. Dividing this chronic effects level by 10 results in a potential saltwater discharge effluent limit of 500 µg/l. Benville and Korn (1977) found that during a one day test, half of the bay shrimp (*Crangon franciscorum*) died from exposure to toluene at a concentration of 12,000 µg/l. The four day LC50 concentration for exposure to toluene was found to be 4300 µg/l (Benville and Korn 1977). Dividing this acute effects level by 100 results in an effluent limit of 43 µg/l.

The Virginia human health standards for toluene in drinking and non-drinking water streams are 57 µg/l and 520 µg/l, respectively. The proposed effluent limits based on aquatic toxicity are more stringent than human health based standards and should be protective of human health.

### **Discharge Monitoring Report Data Reported for Toluene**

DEQ staff reviewed Discharge Monitoring Report (DMR) data submitted by permittees during the current permit term (April 2018 through December 2021). The data were reviewed to evaluate compliance with existing effluent limits and see the effluent concentrations that are being achieved by permittees. The DMR data indicates that the treatment systems being used by permittees typically reduce toluene concentrations in the effluent to below quantifiable levels.

### **Recommended Effluent Limit for Toluene**

The DMR data indicates that toluene in the effluent typically is below quantifiable levels and that few permittees would have trouble meeting a toluene effluent limit of 43 µg/l. DEQ staff recommend an aquatic toxicity-based effluent limit of 43 µg/l for toluene.

The Part I.A.3 Table contains a limit of 43.0 µg/l for toluene. Agency guidance GM06-2016 notes that “effluent limitations should generally be written using two significant figures,” so with this reissuance, staff has updated the limit from 43.0 µg/L to 43 ug/L in Part I.A.3.

### **6.1.4 Xylenes**

Xylene is not a 307(a) priority pollutant, therefore no criteria document exists for this compound. There are three isomers of xylene (*ortho*, *meta*, and *para*) and the general permit limits are established so that the sum of all xylenes is considered in evaluating compliance. The proposed effluent limits are based on a search of the EPA's ECOTOX data base. According to ECOTOX, the lowest freshwater LC50 for xylenes is 3,300 µg/l reported for rainbow trout (Mayer and Ellersieck 1986). Based on the rationale presented earlier for other compounds, this acutely toxic concentration was divided by 10 to account for species that were not tested but which may be more sensitive than rainbow trout. Then, in order to find a concentration that is expected to be safe over chronic exposures, an additional safety factor of 10 was applied to arrive at the proposed effluent limitation of 33 µg/l total xylenes.

The LC50 of 7,400 µg/l for grass shrimp (Neff et al. 1979) is the lowest saltwater value in the ECOTOX database. This LC50 concentration was divided by 100 to derive the effluent limit of 74 µg/l total xylenes.

There is no Virginia human health water quality standard for xylenes. The Maximum Contaminant Level and Maximum Contaminant Level Goal for xylenes in the EPA Safe Drinking Water Regulation, 40 CFR Part 141, are both set at 10 mg/l (10,000 µg/l). The proposed permit limits based upon aquatic toxicity are more stringent than drinking water standards for xylenes and are expected to be protective of human health.

### **Discharge Monitoring Report Data Reported for Xylenes**

DEQ staff reviewed Discharge Monitoring Report (DMR) data submitted by permittees during the current permit term (April 2018 through December 2021). The data were reviewed to evaluate compliance with



existing effluent limits and see the effluent concentrations that are being achieved by permittees. The DMR data indicates that the treatment systems being used by permittees typically reduce xylenes concentrations in the effluent to below quantifiable levels.

### **Recommended Effluent Limit for Xylene**

The DMR data indicates that xylene in the effluent typically is below quantifiable levels and that few permittees would have trouble meeting the xylene effluent limit of 33 µg/l that DEQ has used in the past for discharges into freshwater. DEQ staff recommend an effluent limit of 33 µg/l for xylene.

The Part I.A.3 Table contains a limit of 33.0 µg/l for Total Xylenes. Agency guidance GM06-2016 notes that “effluent limitations should generally be written using two significant figures,” so with this reissuance, staff has updated the limit from 33.0 µg/L to 33 ug/L in Part I.A.3.

### **6.1.5 Lead**

The EPA permit model for discharges of petroleum contaminated water does not contain a recommended effluent limit for lead. It is recognized that tetraethyl and tetramethyl lead may be present in gasoline at leaking storage tank sites. These organic lead compounds, if present, are expected to be removed via air stripping along with other volatile organics.

The proposed effluent limits for lead are based upon the Virginia Water Quality Standards for the protection of fresh and saltwater organisms to chronic exposure to lead. The effluent limit for lead in wastewater discharged into streams listed as public water supplies also must meet the water quality standard for lead in public water supplies. While the water quality standards require analysis for dissolved metals, this permit requires that samples be analyzed for Total Recoverable Lead as required by the Virginia Pollutant Discharge Elimination System (VPDES) Permit regulation 9VAC25-31-230C. The chronic standard for lead in saltwater when the general permit regulation was initially adopted was 8.5 µg/l. Less stringent water quality criteria were adopted by the Board on September 25, 1997.

Virginia's freshwater lead standard for the chronic exposure of organisms to this constituent is based upon the hardness of the water in the waste stream. In the current general permit, the water quality criteria equation for lead (from the Virginia Water Quality Standard Regulation dated January 2011) was included in the permit and a limit was to be determined for each facility. The permit also included hardness monitoring since hardness is used in the equation to determine the criteria. Staff determined that in many cases, the permittee did not report lead (included NR – Not Required) on the Discharge Monitoring Report. Also, it is unclear if DEQ determined the compliance status of the permittee if lead was reported.

For this proposed reissuance, it is staff's professional judgement that a numeric limit should be included as is done in individual permits and in other general permits adopted in Virginia. Staff utilized the Total Hardness data collected during the current permit term and determined that the 10<sup>th</sup> percentile Total Hardness value is 70 mg/l as CaCO<sub>3</sub>. Utilizing this hardness value, the criteria are calculated to be 63 µg/l acute and 7.2 µg/l chronic. The Human Health water quality standard for lead in public water supplies is 15 µg/l. When wastewater is discharged to a public water supply, the effluent will be the lower of 15 µg/l or the calculated aquatic toxicity based limit. Staff proposes a Total Recoverable Lead limit of 7.2 µg/l for the upcoming reissuance.

### **6.1.6 Ethylene Dibromide (EDB)**

Ethylene dibromide (a.k.a. 1,2 dibromoethane, CAS Number: 106-93-4) is a compound added to leaded gasolines to remove lead from the combustion chamber and prevent lead oxide and lead sulfide deposits from forming within an internal combustion engine. Lead scavengers such as ethylene dibromide (EDB) are persistent in ground water and, in combination with the BTEX constituents can be indicators of a leaded gasoline release.

EPA has no criteria documents for EDB nor are there existing water quality standards for this constituent. According to the ECOTOX database, the lowest freshwater LC50 concentration for this constituent is

15,000 µg/l for largemouth bass (Davis and Hardcastle 1959). Dividing this LC50 value by 100 leads to a concentration of 150 µg/l. In saltwater, the lowest LC50 is 4800 µg/l for the sheepshead minnow (Landau and Tucker 1984). Dividing this LC50 value by 100 leads to a saltwater aquatic toxicity value of 48 µg/l.

The procedure used by Virginia for calculating water quality standards for human health involves using risk factors, average adult body weight, intake of water and fish (public water supplies) and fish only, and a bioconcentration factor for the constituent. Ethylene dibromide is considered a human carcinogen and equation 3 listed below is used by Virginia to derive human-health based water quality criteria for waters that are not public water supplies. Based upon an excess lifetime cancer risk of one in one hundred thousand and an oral carcinogenic potency slope factor of 2 mg/kg/day (EPA IRIS database, EPA 2007c), a human health concentration of 1.94 µg/l (round to 1.9 µg/l) was derived for EDB in surface waters that are not public water supplies. This human health concentration is much more stringent than the fresh or saltwater toxicity values and it is the recommended effluent limit for EDB in waters that are not listed as public water supplies.

The federal drinking water standard for EDB is 0.05 µg/l. Equation 4 shown below is used by Virginia to develop human health based water quality criteria for surface waters listed as public water supplies. Based upon an excess lifetime cancer risk of one in one hundred thousand and an oral carcinogenic potency slope factor of 2 mg/kg/day (EPA IRIS database, EPA 2007c), a human health concentration of 0.161 µg/l was derived for EDB in surface waters that are public water supplies. This human health concentration is the recommended effluent limit for EDB in surface waters listed as public water supplies.

Equation to derive human health criteria for surface waters that are not public water supplies

$$(3) \text{ WQS} = \frac{\text{risk} * \text{adult body weight}}{\text{SFo} * \text{FI} * \text{BCF}}$$

Equation to derive human health criteria for public water supplies

$$(4) \text{ WQS} = \frac{\text{risk} * \text{adult body weight}}{\text{SFo} * [\text{water intake} + (\text{FI} * \text{BCF})]}$$

Risk = excess lifetime cancer risk. The Water Quality Standards are based on an excess lifetime cancer risk of one in one hundred thousand risk level or 10<sup>-5</sup>

Adult body weight = 70 kg

SFo = carcinogenic slope factor, oral exposure route (mg/kg-day)

Water intake = typical daily water intake for an adult, 2 l/day

FI = fish intake. The Water Quality Standards are based on a fish intake of 0.0175 kg/day

BCF = bioconcentration factor (l/kg)

Derivation of Human Health concentration for EDB in surface waters that are not public water supplies

$$\text{WQS} = \frac{1 \times 10^{-5} * 70 \text{ kg}}{2 \text{ mg/kg-day} * 0.0175 \text{ kg/day} * 10.2 \text{ l/kg}}$$

WQS = 1.94 x 10<sup>-3</sup> mg/l or 1.94 µg/l

According to EXTTOXNET DATABASE (1996), the bioaccumulation factor for EDB is 10.2 l/kg. The carcinogenic slope factor, oral exposure route for EDB is 2 mg/kg/day (EPA IRIS database, EPA 2007c).

Derivation of Human Health concentration for EDB in surface waters that are Public Water Supplies

$$1 \times 10^{-5} * 70 \text{ kg}$$

$$\text{WQS} = \frac{2 \text{ mg/kg-day} * [2 \text{ l/day} + (0.0175 \text{ kg/day} * 10.2 \text{ l/kg})]}{\text{-----}}$$

$$\text{WQS} = 1.61 \times 10^{-4} \text{ mg/l} \quad \text{or} \quad 0.161 \text{ } \mu\text{g/l}$$

The Part I.A.3 Table contains a limit of 0.161  $\mu\text{g/l}$  for Ethylene Dibromide in freshwaters designated at public water supplies. Agency guidance GM06-2016 notes that “effluent limitations should generally be written using two significant figures,” so with this reissuance, staff has updated the limit from 0.161  $\mu\text{g/L}$  to 0.16  $\mu\text{g/L}$  in Part I.A.3.

### 6.1.7 1,2-Dichloroethane (1,2 DCA)

Another compound commonly added to leaded gasoline as a lead scavenger is 1,2-Dichloroethane (1,2 DCA, CAS Number: 107-06-20). The EPA criteria document for chlorinated ethanes (EPA 440/5-80-029, EPA 1980d) states that acute toxicity to freshwater organisms exposed to 1,2 DCA occurs at 118,000  $\mu\text{g/l}$  and would occur at lower concentrations if more sensitive organisms were tested. According to the ECOTOX database, the lowest reported LC50 concentration for 1,2 DCA was 130,000 for sheepshead minnows (*Cyprinodon variegates*, Heitmuller and associates 1981). No data are available in the ECOTOX database related to the chronic toxicity of 1,2 DCA to freshwater species. Based on the lowest available data for acute toxicity and dividing by the application factor of 100, an aquatic toxicity limit for 1,2 DCA in freshwater is 1,180  $\mu\text{g/l}$ .

The available data indicate that 1,2 DCA is acutely toxic to certain saltwater organisms at concentrations as low as 113,000  $\mu\text{g/l}$ . Based on the available data for acute toxicity and dividing by the application factor of 100, the aquatic toxicity limit for 1,2 DCA in saltwater is 1,130  $\mu\text{g/l}$ .

The Virginia human health standards for 1,2 DCA in surface waters that are public water supplies and surface waters that are not public water supplies are 99  $\mu\text{g/l}$  and 6,500  $\mu\text{g/l}$ , respectively. The human health criteria are more stringent than the aquatic toxicity criteria. Analysis of the DMR data submitted to DEQ indicates that in all cases, the DCA concentration was below detectable or quantifiable levels.

Due to anti-backsliding, staff recommends retaining the former human health standard of 3.8  $\mu\text{g/l}$  as the effluent limit for 1,2 Dichloroethane in public water supplies.

### 6.1.8 Methyl Tertiary Butyl Ether

Methyl-tertiary-butyl ether (MTBE) is a common additive in "reformulated" automotive gasolines. If MTBE is used, it can be present in gasoline at up to 15% of the volume of the fuel. MTBE is an extremely hydrophilic compound. The presence of MTBE in gasoline can increase the solubility of the fuel mixture in groundwater. MTBE may be removed from contaminated ground water by air stripping treatment technologies. However, due to its hydrophilic nature, a higher air/water ratio is required to remove this constituent via air stripping than is required for BTEX removal. According to the EPA Treatability Database (RREL Version 5.0), MTBE removal efficiency via air stripping ranges from approximately 63 percent to 79 percent. If the MTBE concentration in the system influent is 10  $\text{mg/l}$  and removal efficiency of 75 percent is achieved, air stripping should be capable of reducing the MTBE concentration to 2.5  $\text{mg/l}$ .

Neither EPA nor the DEQ has established water quality criteria for MTBE for protection of aquatic life or human health. Literature searches indicated several studies that evaluated the effects of MTBE on aquatic organisms. According to BenKinney et al. (1994), MTBE was acutely toxic (LC50) to green algae (*Selenastrum capricornutum*) at a concentration of 184,000  $\mu\text{g/l}$ . Geiger and associates (1988) found that MTBE was acutely toxic to the fathead minnow (*Pimephales promelas*) at a concentration of 672  $\text{mg/l}$  (672,000  $\mu\text{g/l}$ ). Application of the customary safety factor of 100 to the LC50 concentration for green algae results in a concentration of 1,840  $\mu\text{g/l}$ . This concentration is recommended as the discharge limit for MTBE into freshwater.

The literature search revealed several studies performed on the toxicity of MTBE to marine organisms. BenKinney et al. (1994) found that MTBE was acutely toxic to the inland silverside (*Menidia beryllinia*) at a concentration of 574  $\text{mg/l}$ . According to Boeri and associates (1994), MTBE was acutely toxic to mysid

shrimp (*Mysidopsis bahia*) at 44 mg/l (44,000 µg/l). Application of the customary safety factor of 100 to the LC50 for the mysid shrimp results in a concentration of 440 µg/l. A concentration of 440 µg/l is recommended as the effluent limit for MTBE discharged into saltwater.

According to Fujiwara et al. (1984) and the European Fuel Oxygenates Association, bioaccumulation factors for MTBE in fish tissue are 1.5 l/kg and 1.6 l/kg, respectively. Moreover, Fujiwara found that discontinued exposure of the fish to MTBE caused fish to quickly excrete the MTBE remaining in their tissues.

Derivation of Human Health concentration for MTBE in surface waters that are not public water supplies

$$\text{WQS} = \frac{1 \times 10^{-5} * 70 \text{ kg}}{1.8 \times 10^{-3} \text{ mg/kg-day} * 0.0175 \text{ kg/day} * 1.6 \text{ l/kg}}$$
$$\text{WQS} = 13.80 \text{ mg/l} \quad \text{or} \quad 13,820 \text{ µg/l}$$

NOTE: The Carcinogenic Slope Factor, oral exposure route of  $1.8 \times 10^{-3}$  mg/kg-day is a value from the EPA Region III June 2011 Risk Based Concentration Table (EPA Region III 2011).

Derivation of Human Health concentration for MTBE in surface waters that are public water supplies

$$\text{WQS} = \frac{1 \times 10^{-5} * 70 \text{ kg}}{1.8 \times 10^{-3} \text{ mg/kg-day} * [2 \text{ l/day} + (0.0175 \text{ kg/day} * 10.2 \text{ l/kg])]}$$
$$\text{WQS} = 0.175 \text{ mg/l} \quad \text{or} \quad 175 \text{ µg/l}$$

The Virginia Department of Health, Office of Water Programs has established a trigger level of 15 µg/l for MTBE in public drinking water. The U.S. EPA has established a drinking water health advisory for MTBE of 20 – 40 µg/l based upon taste and odor effects. These levels are lower than the lowest concentration that caused observable effects in animals. For waters designated as public water supplies, an effluent limit of 15 µg/l for MTBE is recommended.

### **Discharge Monitoring Report Data Reported for MTBE**

DEQ staff reviewed Discharge Monitoring Report (DMR) data submitted by permittees during the current permit term (April 2018 through December 2021). The data were reviewed to evaluate compliance with existing effluent limits and see the effluent concentrations that are being achieved by permittees. The DMR data indicates that the treatment systems being used by permittees typically reduce MTBE concentrations in the effluent to below quantifiable levels.

### **Recommended Effluent Limit for MTBE**

The DMR data indicates that MTBE is commonly found in effluent thus suggesting that treatment technologies employed at many sites are not nearly as effective at removing MTBE as they are at removing other petroleum constituents. Staff recommend two effluent limits for MTBE. An aquatic toxicity based effluent limit of 440 µg/l is recommended for discharges to both saltwater and freshwater. An effluent limit of 15 µg/l, based upon the Health Department's trigger level, is recommended for discharges into public water supplies.

The Part I.A.3 Table contains a limit of 15.0 µg/l for MTBE. Agency guidance GM06-2016 notes that “effluent limitations should generally be written using two significant figures,” so with this reissuance, staff has updated the limit from 15.0 µg/L to 15 ug/L in Part I.A.4.

### **6.1.9 Ethanol**

Ethanol has been used in U.S. automotive gasolines for over thirty years. During the oil embargo of 1973, ethanol was used as a gasoline extender to counteract rising fuel prices and increase the nation's gasoline supply (Texas State Energy Conservation Office, 2007a). As lead was phased out of gasoline, ethanol and MTBE were used as octane enhancers in lieu of tetraethyl lead. Later, MTBE and ethanol

were the primary products used to meet the standards for the Wintertime Oxygenated Fuels Program (1992) and Phase 1 and Phase 2 of the Reformulated Gasoline Program (RFG, 1995 and 2000). Ethanol was used primarily in gasoline sold in the Midwest and MTBE was used in gasoline sold in most of the rest of the U.S.

The federal Energy Policy Act of 2005 removed the oxygenate mandate for RFG and established a national renewable fuel standard (RFS; Meyers 2006). Consequently, suppliers requested major pipelines to remove MTBE from RFG. In February 2006, Colonial Pipeline, which serves Virginia, announced that it would discontinue shipping RFG with MTBE (O'Connor 2006). In the Spring of 2006, many RFG marketers in Virginia began being supplied with gasoline containing up to 10% ethanol (E10) in order to replace the MTBE.

The fate and transport of ethanol in ground water is controlled primarily by biodegradation (Ulrich 1999). Based on the chemical behavior of ethanol, it is expected that ethanol in subsurface releases of oxygenated gasolines will rapidly partition into ground water and will become the dominant dissolved contaminant immediately downgradient of the release. It is believed that mechanisms for attenuating subsurface contaminants, such as sorption, volatilization, and abiotic degradation, will not substantially contribute to the decreased mobility or loss of ethanol in subsurface aquifers.

According to EPA (2000), ethanol is not expected to persist in the groundwater because it biodegrades readily nor does ethanol appear to pose as great a danger to groundwater supplies as does MTBE. Ethanol is considerably less volatile than MTBE in surface waters because it has a lower Henry's law constant (Layton and Daniels 1999). Though ethanol's volatilization-loss rate from water is much less than that of MTBE, ethanol will not persist in water because it undergoes fairly rapid biodegradation. Thus, ethanol is a short-lived compound in surface waters and subsurface aquifers.

Under the Clean Water Act, the EPA promulgated effluent limitations and standards controlling discharges from the production of organic chemicals, plastics, and synthetic fibers (EPA 2005 and 2007a), and from pharmaceutical facilities with operations in fermentation; extraction; chemical synthesis; mixing, compounding, and formulating; and research (EPA 1999 and 2007b). For certain pharmaceutical facilities directly discharging ethanol, the maximum daily discharge limit for ethanol is 10.0 mg/L, and the average monthly discharge must not exceed 4.1 mg/L.

Jack Hwang of EPA Region 3 performed initial research on discharge limits and extra parameters for monitoring blended fuel releases in response to inquiries from the State of Maryland and the Commonwealth of Virginia (Hwang 2007). Based discussions with an EPA regional toxicologist and with Dr. John Wilson, one of EPA's microbiologists, Mr. Hwang indicates that:

"There is no concern for human health risk - the limit would be very high. There is no significant concern for ECOTOX - a study reported that the ethanol-polluted water with a BOD (Biological Oxygen Demand) of can recover 65% of its theoretical OD (Oxygen Demand) in 10 days. If there is a need for setting ethanol limit, the most likely reason would be due to the consideration of "oxygen depletion" in surface water. However, the limit could be site specific depending on the characteristics of the receiving water body and the allowable dilution ratio."

Ethanol is a short-lived compound in the environment due to the ubiquity of microorganisms capable of metabolizing ethanol and to the rapid rates of ethanol biodegradation (Ulrich 1999). Since ethanol is rapidly metabolized, it is unlikely that ethanol will travel a substantial distance once released into the subsurface or that it will persist in the subsurface or surface waters. It should be noted, however, for E85 (ethanol comprises 85% of the gasoline) releases or neat ethanol releases into surface waters microorganisms involved with breaking down the ethanol could scavenge the available oxygen thereby creating anaerobic conditions and causing a fish kill (Kuhn 2007). The same would likely hold true for large E10 releases into surface waters.

Neither the DEQ nor EPA has promulgated acute and chronic water quality criteria for ethanol in surface waters. Acute and chronic water quality benchmarks for ethanol were developed using toxicity information available for aquatic invertebrates (*Daphnia* species), rainbow trout, and the fathead minnow

from EPA's ECOTOX database (Iott 2001). Based on the available data and using Tier II procedures outlined in the for EPA's Final Water Quality Guidance for the Great Lakes System, an acute water quality benchmark for ethanol in surface water is 564 mg/L, and a chronic water quality benchmark for ethanol is 63 mg/L. The values indicate that an ethanol concentration of 564 mg/L in the water column is likely to cause acute toxicity to freshwater aquatic life and that an ethanol concentration of 64 mg/L in the water column is likely to cause chronic toxicity to freshwater life. The chronic and acute water quality benchmarks developed for ethanol (EPA 2006) are lower than draft water quality criteria developed by the EPA.

The DEQ has limited experience in dealing with ethanol in discharges to surface water. The DEQ Valley Regional Office has reissued a permit to Merck & Co. to discharge treated production and sanitary wastewater generated at a pharmaceutical manufacturing facility, non-contact cooling water, and storm water generated in the area around the facility (Aschenbach 2007). Revisions were made to the previous effluent limits, in part, so that new effluent monitoring and limitations matched the requirements of the Federal Effluent Guidelines for the Pharmaceutical Manufacturing Category. Though Virginia does not have Water Quality Standard for ethanol, Outfall 101 of the permit follows the EPA Guideline of 10 mg/L for a daily maximum limit (DML) and 4.1 mg/L for a monthly average limit (MAL) in terms of ethanol concentration or 45 kg/d for a DML and 19 kg/d for MAL in terms of ethanol loading. The surface water that receives the discharge from the facility is designated as a Tier 1 water body which means that the existing uses of the water body and water quality to protect such uses must be maintained in accordance with the State Water Control Board's antidegradation policy.

Ethanol does not bioaccumulate or bioconcentrate in the tissue of living organisms due to ethanol's chemical properties and to the ability of most organisms to metabolize ethanol (Iott 2001). Human health risks from exposure to ethanol appear to be minimal, especially when compared with the risks posed by other gasoline constituents. Likewise, aquatic toxicity levels for ethanol are quite high. Ethanol also appears to degrade rapidly in both surface and subsurface environments. Based upon these factors, the DEQ does not believe that effluent limits for ethanol are needed for discharge of waters associated with petroleum products containing up to 10% ethanol.

Ethanol concentrations in discharges of petroleum products containing greater than 10% ethanol may pose risks to aquatic organisms. For discharge of petroleum products containing greater than 10% ethanol into surface water bodies not designated as a PWS, a maximum discharge limit of 4.1 mg/L is proposed. This same limit also is proposed for saltwater receiving bodies. With this reissuance, the limit shall be revised from 4100.0 to 4100 µg/l, since the added precision associated with five significant figures requires additional testing capability that is not necessary to demonstrate compliance.

#### **6.1.10 pH**

The pH limits in this general permit are based on the Virginia Water Quality Standards and range from a low of six (6.0) standard units to nine (9.0) standard units.

### **6.2 Basis for Effluent Limitations - Discharges of Petroleum Products other than Gasoline**

The EPA model permit for UST remediation sites only addresses gasoline contaminated sites. This general permit is also designed to be used at sites which are contaminated by petroleum products other than gasoline (non-gasoline motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils). In addition to containing small amounts of the volatile organic compounds such as benzene, these products contain more of the polynuclear aromatic hydrocarbons (PAHs) than are found in gasoline. PAHs are less soluble in water than the volatile compounds and they are less amenable to air stripping. It is possible that a treatment system that is capable of removing the volatile compounds like benzene to acceptable levels may not effectively remove the PAHs. Based upon the types and relative proportions of the constituents present in the non-gasoline petroleum products, benzene and the BTEX constituents are not good indicator parameters to use in evaluating the quality of effluents from sites contaminated with this category of petroleum.

#### **6.2.1 Naphthalene**

The effluent limitation for naphthalene proposed in this general permit is a water quality-based limit. It is to be applied at sites where contamination is from diesel or other fuels that are not classified as gasoline. Naphthalene is a component of gasoline and non-gasoline petroleum products, but its relative concentration is higher in products such as diesel and kerosene than in gasoline (Thomas & Delfino, 1991). It is less soluble in water than benzene (solubility 30 mg/l vs 1,780 mg/l) and is less amenable to air stripping (Henry's Law Constant  $4.83 \times 10^{-4}$  vs  $5.55 \times 10^{-3}$  @ 25°C). These characteristics make the treatability of naphthalene more similar to that of the heavier PAH components than the BTEX compounds.

PAHs in general are relatively insoluble in water. For instance, the solubilities of the typical petroleum PAHs anthracene, phenanthrene and fluorene are 1.29 mg/l, 0.8 mg/l and 1.9 mg/l, respectively. These compounds are more likely to be found in free product or adsorbed onto soils at a petroleum contaminated site rather than dissolved in ground water. As a moderately soluble compound, naphthalene is more likely to dissolve in ground water and migrate from the source of contamination. Therefore, it occupies an intermediate position between the volatile BTEX compounds and the less soluble PAHs. By selecting naphthalene as the indicator parameter for this category of contaminated sites, the general permit relies on the assumption that if naphthalene has been removed to acceptable levels, then the heavier PAHs associated with the contamination should have either remained in the soils at the source or been reduced to an acceptable level with the treatment for naphthalene.

The limited data available in the EPA Treatability Database indicate that treatment with granular activated carbon (GAC) filtration is more effective in removing naphthalene and other PAHs than is air stripping. Although this general permit does not mandate a treatment technology, the low solubility of PAHs makes them amenable to treatment by GAC filtration of the contaminated ground water.

The EPA criteria document for naphthalene (EPA 440/5-80-059) gives a chronic effect concentration of 620 µg/l with fathead minnows, but it states that effects would occur at lower concentrations if more sensitive freshwater organisms were tested. According to the ECOTOX DATABASE, naphthalene at a concentration of 1,000 µg/l was lethal to 50% of the water fleas (*Daphnia pulex*) tested (Truco et al. 1983). DeGaere and associates (1982) tested the effects of naphthalene on Rainbow Trout and reported an LC50 concentration of 1600 µg/l. Based upon these more recent studies, it is recommended that the effluent limit for naphthalene in freshwater be set at 10 µg/l.

The lowest observed LC50 value in the EPA criteria document for naphthalene (EPA 1980e) reportedly was 2,350 µg/l, in a test with grass shrimp. Korn and associates (1979) tested the effects of naphthalene on humpy shrimp (*Pandalus goniurus*) and found that a naphthalene concentration of 1020 µg/l was lethal to 50% of the shrimp tested. Pink salmon (*Oncorhynchus gorbuscha*) were exposed to naphthalene and Rice and Thomas (1989) found that a concentration of 890 µg/l was lethal to 50% of the fish tested. Dividing this LC50 by 100 results in the proposed saltwater effluent limit of 8.9 µg/l.

There is no Virginia human health water quality standard for naphthalene. Equation 5 below is used by DEQ staff to derive human health based water quality standards for discharges of non-carcinogens to public water supplies. The human health derived value is much greater than the freshwater aquatic toxicity value of 10 µg/l. The saltwater aquatic toxicity value of 8.9 µg/l is both achievable and a little more protective than the freshwater aquatic toxicity limit and is recommended as the naphthalene effluent limit in public water supplies.

$$(5) \text{ WQS} = \frac{\text{RfD} * \text{adult body weight}}{\text{water intake} + (\text{FI} * \text{BCF})}$$

RfD = Reference Dose (mg/kg-day).

Adult body weight = 70 kg

Water intake = typical daily water intake for an adult, 2 l/day

FI = fish intake. The Water Quality Standards are based on a fish intake of 0.0175 kg/day

BCF = bioaccumulation factor (l/kg), a value of 10.5 l/kg was used for Naphthalene (EPA 2002)

$$\text{WQS} = \frac{2 \times 10^{-2} \text{ mg/kg-day} * 70 \text{ kg}}{2 \text{ l/day} + (0.0175 \text{ kg/day} * 10.5 \text{ l/kg})}$$

$$\text{WQS} = 0.641 \text{ mg/l} = 641 \text{ } \mu\text{g/l}$$

Note: The reference dose is from the EPA IRIS database (EPA 2007c) and the bioaccumulation factor is from EPA (2002).

### **Discharge Monitoring Report Data Reported for Naphthalene**

DEQ staff reviewed Discharge Monitoring Report (DMR) data submitted by permittees during the current permit term (April 2018 through December 2021). The data were reviewed to evaluate compliance with existing effluent limits and see the effluent concentrations that are being achieved by permittees. The DMR data indicates that the treatment systems being used by permittees typically reduce Naphthalene concentrations in the effluent to below quantifiable levels.

### **Recommended Effluent Limit for Naphthalene**

The DMR data indicates that naphthalene in the effluent typically is below quantifiable levels and that few permittees would have trouble meeting the naphthalene effluent limit of 8.9  $\mu\text{g/l}$  that DEQ has used in the past for discharges into saltwater. DEQ staff recommend an effluent limit of 8.9  $\mu\text{g/l}$  for naphthalene for all discharges covered by this permit regulation.

### **6.2.2 Benzene and MTBE (discharges to Public Water Supplies only)**

Benzene and MTBE are not found in high concentrations in petroleum products other than gasoline. MTBE is a gasoline additive and not intentionally placed in petroleum products other than gasoline. Benzene has a relatively low boiling point and most of the benzene in crude oil feedstocks will remain with the gasoline fraction hydrocarbons during the petroleum refining process.

After refining, petroleum products are transported via a common transportation network (pipelines, tanker trucks) and there is some unintentional mixing of products that occurs. While middle distillates (kerosene, diesel, #2 fuel oil) contain only very small amounts of benzene and MTBE is not intentionally placed in them, DEQ staff have found that MTBE and benzene are the most commonly found petroleum constituents in drinking water supplies contaminated by middle distillates. Due the presence of these constituents in water contaminated by petroleum products other than gasoline, it is recommended that all discharges of petroleum-contaminated wastewater to public water supplies contain effluent limits for benzene and MTBE. Limits proposed for these constituents are 5.8  $\mu\text{g/l}$  for benzene and 15  $\mu\text{g/l}$  for MTBE.

### **6.2.3 Total Petroleum Hydrocarbons**

The general permit proposes a technology-based limit of 15 mg/l for the parameter Total Petroleum Hydrocarbons (TPH). This limit is applicable for discharges where the contamination is from petroleum products other than gasoline. It is based on the ability of simple oil/water separator technology to recover free product from water. Wastewater that is discharged without a visible sheen is generally expected to meet this effluent limitation. DEQ has utilized an effluent limitation of 15 mg/l oil & grease for many years in individual permits for potential sources of petroleum hydrocarbons. DEQ determined that the oil & grease analytical method is better suited for detection of animal and vegetable fats rather than petroleum. Therefore, the parameter TPH is being limited in the general permit rather than oil & grease.

The term "used oils" is used in the general permit to refer to those petroleum products that have served their useful purpose and have been collected for recycling or disposal. Tanks that store used oils are found at industrial sites and at automotive service stations. These tanks have the potential to leak into surrounding soils and contaminate ground water. The materials in used oil storage tanks can be a mixture of motor oils and other petroleum products, as well as solvents or other organic chemicals. Used oils also may contain dissolved metals derived from the machinery from which the oil was recovered. These mixtures pose



potential environmental impacts that may not be adequately addressed by the pollutant parameters established to control discharges from the sites contaminated by products other than gasoline. Therefore, the general permit proposes to require that when the contamination is from used oils, addition monitoring shall be conducted to scan the wastewater for a wide range of organic compounds and metals. In no case will the general permit allow a discharge of wastewaters if the contamination is from used oils that are classified as hazardous materials according to the Virginia Hazardous Waste Regulation, 9VAC20-60-10 et seq.

In the current permit, the TPH limit appears as 15.0 mg/L. Agency guidance GM06-2016 notes that “effluent limitations should generally be written using two significant figures,” so with this reissuance, staff has updated the limit from 15.0 mg/L to 15 mg/L.

### **6.3 Discharges from Hydrostatic Testing of Tanks and Pipelines**

When this permit was reissued in 1998, hydrostatic test waters from petroleum facilities were included so that a VPDES permit could properly govern them. The permit regulation was further expanded in 2003 to include coverage of discharges from hydrostatic testing of natural gas pipelines.

Natural gas, like other petroleum products, is not constant in its composition or the relative proportions of individual constituents within that product. According to Technocarb (2002), methane typically makes up approximately 95 percent of natural gas by volume. Ethane and propane generally make up approximately two and one percent of the gas, respectively. Other constituents that typically make up the remaining two percent of the mixture include butane, carbon dioxide, and nitrogen. There is no aquatic or human toxicity data for these compounds.

Permit coverage includes hydrostatic test discharges from water storage tanks, pipelines, and associated distribution equipment. Discharges from these tests are similar to those from petroleum and natural gas storage tanks and pipelines.

Discharges from hydrostatically testing pipelines are generally one-time occurrences of less than 48 hours. Such frequencies and durations preclude the necessity for application of toxic parameters except for total residual chlorine (TRC). TRC is potentially present in high concentrations when treated potable water is used as the source water for testing. Discussion of the recommended effluent limits for discharges of hydrostatic test water from natural gas pipelines is presented below. In addition to the effluent limits, the following requirements will also apply to hydrostatic discharges from natural gas pipelines:

1. The equipment being tested shall be substantially free of debris, raw material, product, or other residual materials.
2. The discharge flow shall be managed to control the volume and velocity of the discharge, including peak flow rates and total volume, to minimize erosion at outlets and to minimize downstream channel and streambank erosion.

#### **6.3.1 Total Petroleum Hydrocarbons (TPH)**

The limit of 15 mg/l for TPH is based on the ability of simple oil-water separator technology to recover petroleum from water. Wastewater that is discharged without a visible sheen is generally expected to meet this effluent limitation. DEQ has used this limitation for many individual permits for many years and monitoring data has demonstrated that it is readily achievable. Mass limits are not applicable to this type of pollutant and discharge and are not required.

#### **6.3.2 Total Organic Carbon (TOC)**

Total organic carbon (TOC) is monitored to assure that the effluent is not contaminated with non-petroleum organic substances. Staff members generally believe that TOC concentrations in this type of discharge are low. However, should sampling data indicate high levels of TOC; the permit may be modified at a later time to include such a limit.

#### **6.3.3 Total Suspended Solids (TSS)**

Total suspended solids (TSS) are monitored to assure that the effluent is not contaminated with excessive amounts of solids that might be flushed out of pipes along with the test waters. If significant concentrations of suspended solids are detected, the permit may be modified at a later time to include a limit.

#### **6.3.4 Total Residual Chlorine (TRC)**

Total residual chlorine (TRC) is necessary for those hydrostatic tests that use chlorinated potable drinking water as the source water for testing. The limit of .011 mg/l is based on the chronic aquatic life criterion in Virginia's water quality standards.

#### **6.3.5 pH**

The pH limits in this general permit are based on the Virginia Water Quality Standards and range from six (6.0) standard units to nine (9.0) standard units.

### **6.4 Discharges of Water Contaminated by Chlorinated Hydrocarbon Solvents**

Many different chlorinated hydrocarbons are, or have been, used as solvents. Controlling these materials when they have been released into the environment is further complicated by the fact that they often break down into other chlorinated hydrocarbon compounds; many of which also are solvents. Therefore, although only one type of chlorinated hydrocarbon may have been released at a site, subsequent cleanup efforts may have to deal with multiple chlorinated hydrocarbons. Figures 1 and 2 present the degradation products that are or can be created by the breakdown of 1,1,1 trichloroethane, tetrachloroethane, and carbon tetrachloride.

Effluent limits recommended for chlorinated hydrocarbon solvent constituents were based upon both the toxicity of the material as well as treatment technology. Some of the toxicity-based limits that were considered include promulgated water quality standards; drinking water maximum contaminant levels (MCLS), aquatic toxicity data from the EPA ECOTOX database, and tap water risk –based concentrations from EPA Region III. Staff also considered effluent limits that had been placed in VPDES individual permits.

Staff recommended one set of effluent limits for these chlorinated hydrocarbon solvents and set the limits to protect both aquatic life and human health. The effluent limits were based upon the assumption of a discharge into a public water supply and the limits had to meet criteria for public water supplies. Table 1 summarizes the pertinent regulatory values that exist for chlorinated hydrocarbon solvent compounds and the effluent limits that have been proposed for these constituents.

Figure 1. Reductive Dehalogenation of 1,1,1 TCA and Tetrachloroethylene (from Dragun 1988)

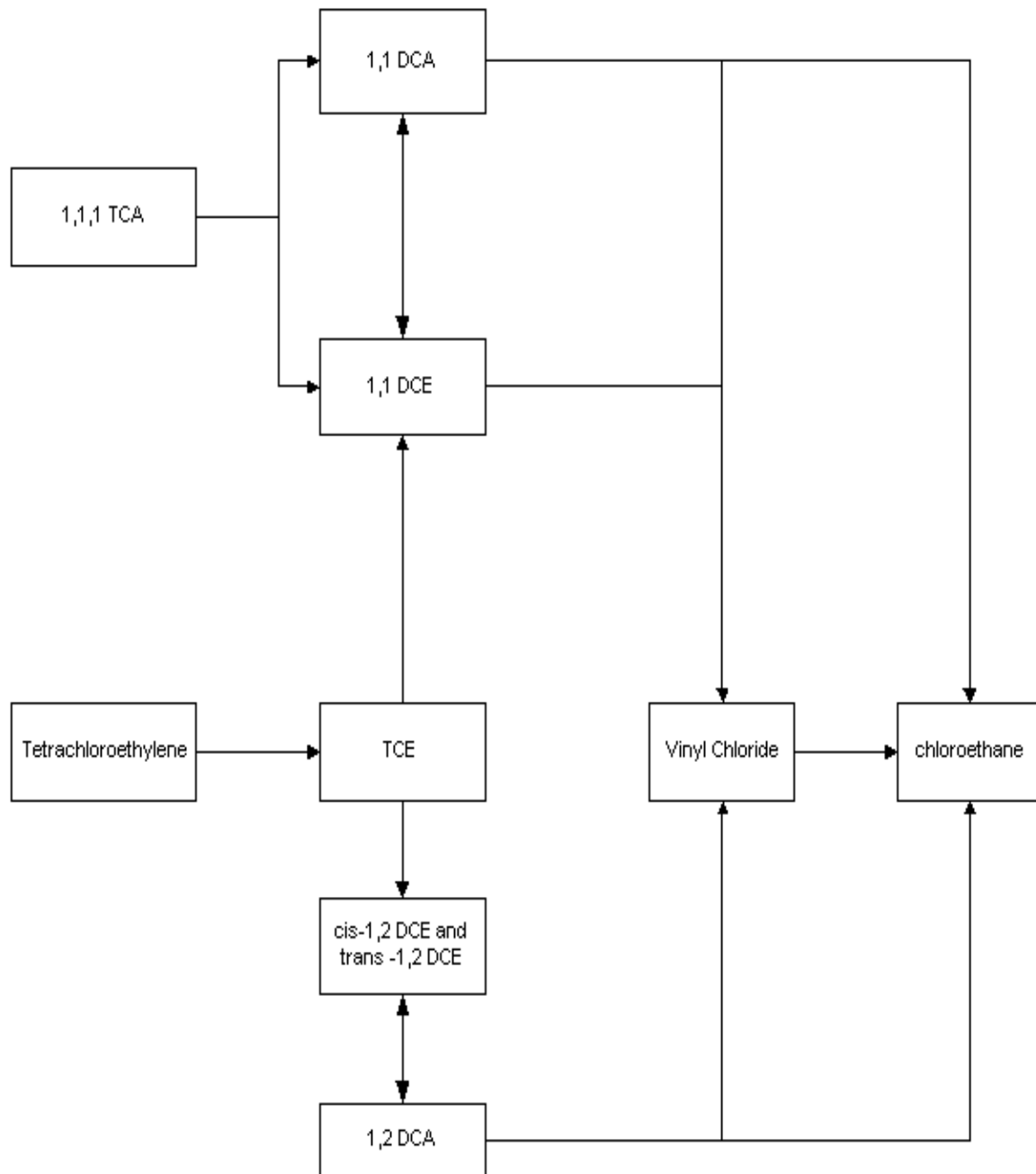
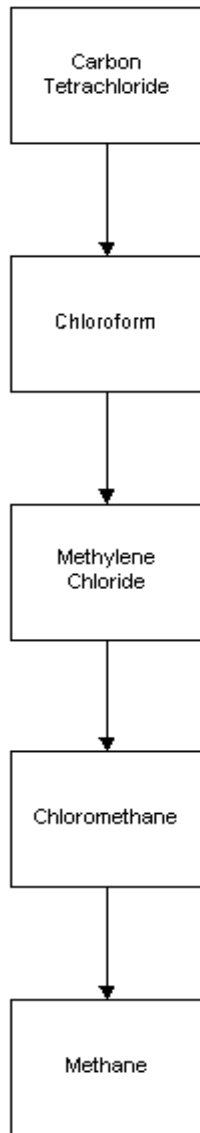


Figure 2. Reductive Dechlorination of Carbon Tetrachloride (from RTDF Bioremediation Consortium 1988)



<b>Table 1. Effluent Limit and Regulatory Information Matrix for Chlorinated Hydrocarbon Solvents</b>									
Name	CAS Number	Effluent limits from individual permits (µg/l)	Drinking Water MCL (µg/l)	WQS, HH for PWS <sup>1</sup> (µg/l)	WQS, HH for Other Waters <sup>2</sup> (µg/l)	Toxicity FW <sup>3</sup> (µg/l)	Toxicity SW <sup>4</sup> (µg/l)	EPA Reg. III Tap Water RBC <sup>5</sup> (µg/l)	Recommended Effluent Limit (µg/l)
Chloroform	67663	100 (3 permits)	80 <sup>6</sup>	60	2000	290	815		60
1,1 Dichloroethane	75343	4 (one permit), 5 (2 permits)				5000		2.4	2.4
1,2 Dichloroethane	107062	5 (3 permits)	5	99	6500	1160	1130		3.8
1,1 Dichloroethylene <sup>A</sup>	75354	7 (4 permits)	7	300	20000	740	2240		7.0
cis-1,2 Dichloroethylene	159592	70 (3 permits)	70			5000			70
trans-1,2 Dichloroethylene	156605	100 (4 permits)	100	100	4000	2200			100
Methylene Chloride <sup>A</sup>	75092	5 (2 permits)	5	20	1000	1930	770		5.0
Tetrachloroethylene <sup>A</sup>	127184	5 (4 permits) and 79 (1 permit)	5	100	290	18	13		5.0
1,1,1 Trichloroethane	71556	200 (4 permits)	200			54	3120		54
1,1,2 Trichloroethane	79005	5	5	5.9	160	180	270		5.0
Trichloroethylene	79016	5 (3 permits)	5	25	300	19	140		5.0
Vinyl Chloride	75014	2 (3 permits)	2	0.22	16				2.0
Carbon Tetrachloride	56235	5	5	4.0	50	20	500		2.3
1,2 Dichlorobenzene	95501	600	600	1000	3000	15.8	19.7		16
Chlorobenzene	108907	NL	100	100	800	3.4	89		3.4
Trichlorofluoromethane	75694	5						1300	5.0
Chloroethane, <sup>A</sup>	75003	5						21000	3.6

<sup>1</sup> The values in this column are human health criteria for public water supplies from the Virginia Water Quality Standards (9 VAC 25-260).

<sup>2</sup> The values in this column are human health criteria for surface waters that are not public water supplies. These numbers are from the Virginia Water Quality Standards (9VAC 5-260).

<sup>3</sup>

<sup>4</sup>

<sup>5</sup> These are tap water risk-based concentrations from the EPA Region III Risk-Based Concentration Table (June 2011). These values are provided only for constituents for which regulatory concentrations do not exist.

<sup>6</sup> This Maximum Contaminant Level (MCL) is for Total Trihalomethanes.

A Synonyms: dichloromethane = methylene chloride, ethyl chloride = chloroethane, 1,1 dichloroethene = 1,1 dichloroethylene, perchloroethylene = tetrachloroethylene

#### 6.4.1 Chloroform

According to Howard (1990), chloroform is used as an industrial solvent, extractant, and chemical intermediate. Chloroform also may be created by the reductive dehalogenation of carbon tetrachloride that has been released into the environment (RRDF Bioremediation Group 1988). The human-health Water Quality Standards for chloroform are 60 µg/l for public water supplies and 2,000 µg/l for other surface waters. The DEQ Northern Regional Office had issued three individual permits having an effluent limit for chloroform and Northern Regional Staff used a technology-based limit of 100 µg/l for all three permits. LeBlanc (1980) found that chloroform, at a concentration of 29,000 µg/l, killed fifty percent of the water fleas (*Daphnia magna*) tested. Bentley and associates (1979) found that chloroform killed fifty percent of the pink shrimp (*Penaeus douranum*) tested when the chloroform concentration was 81,500 µg/l. Applying the safety factor of 100 to these LC50 values resulted in chronic toxicity levels for freshwater and saltwater organisms of 290 and 815 µg/l respectively. DEQ staff recommend that the effluent limit of 80.0 µg/l for chloroform be updated to an effluent limitation of 60 µg/l to be protective of the updated human health criterion for public water supplies.

#### 6.4.2 1,1 Dichloroethane

1,1 Dichloroethane (1,1 DCA) predominantly is used to make other chemicals (Howard 1990 and ATSDR 1999a). This constituent also is used to dissolve substances such as paint and varnish, and as a degreasing agent (ATSDR 1999a). 1,1 DCA may be created by the breakdown of 1,1,1 trichloroethane that has been released into the environment (Dragun 1988).

There is very limited aquatic toxicity information for 1,1 dichloroethane. The EPA ECOTOX database cited a LOEC (lowest observed effects concentration) of 500,000 µg/l for fathead minnows (*Pimephales promelas*) exposed to 1,1 DCA (Great Lakes Environmental Center 2005). The effect observed was mortality. Applying the safety factor of 100 to this LOEC would result in an effluent limit of 5,000 µg/l. There are no promulgated drinking water standards for this constituent nor is there a drinking water MCL. The EPA Region III risk-based concentration for this constituent in tap water is 2.4 µg/l. The DEQ Northern Regional Office has placed an effluent limit of 4 µg/l for this constituent in one VPDES individual permit and 5 µg/l in two permits. DEQ staff recommend an effluent limit of 2.4 µg/l for 1,1 dichloroethane.

#### 6.4.3 1,2 Dichloroethane

According to ATSDR (2001a), 1,2 dichloroethane (1,2 DCA) is used in the production of vinyl chloride which, in turn, is used to make a variety of plastic and vinyl products. 1,2 DCA also is used as a solvent and as a lead scavenger in leaded gasoline. This constituent may be created in the environment by reducing the carbon-carbon double bonds in the cis and trans 1,2 dichloroethylene isomers (Dragun 1988).

The Northern Regional Office had placed an effluent limit of 5 µg/l for 1,2 dichloroethane (1,2 DCA) in 3 VPDES individual permits. The Federal drinking water MCL for 1,2 DCA is 5 µg/l. Virginia's human-health based water quality standards for this constituent were 3.8 µg/l and 990 µg/l for public water supplies and for other surface waters, respectively. The updated human health standards for this parameter are 99 µg/l and 6,500 µg/l. According to the ECOTOX database, the lowest saltwater LC50 concentration for 1,2 DCA is 113,000 µg/l (EPA 1978). The lowest freshwater LC50 concentration reported for 1,2 DCA is 116,000 µg/l (Walbridge 1983). Applying the safety factor of 100 to these LC50 values results in concentrations of 1,160 µg/l and 1,130 µg/l for freshwater and saltwater, respectively. In previous permits, the water quality criteria of 3.8 µg/l for public water supplies was applied as the effluent limit since it is more protective than the drinking water MCL and the aquatic toxicity-based values. Due to backsliding considerations, DEQ staff recommends that this effluent limit of 3.8 µg/l for 1,2 DCA be carried forward with this reissuance.

#### 6.4.4 1,1 Dichloroethylene

1,1 Dichloroethylene (1,1 DCE) is used in the manufacture of plastic wrap, adhesives, and synthetic fiber (Howard 1989). This constituent is formed during the anaerobic biodegradation of trichloroethylene (TCE) and the hydrolysis of 1,1,1 trichloroethane (1,1,1 TCA, Howard 1989 and Dragun 1988). The human health

Water Quality Standards for 1,1 DCE are 310 µg/l for public water supplies and 17,000 µg/l for other surface waters. The MCL for 1,1 DCE is 7 µg/l. Dill and associates (1980) found that 1,1 DCE at a concentration of 11,600 µg/l killed half of the water fleas (*Daphnia magna*) tested. The lowest reported LC50 concentration for saltwater organisms was 224,000 µg/l (EPA 1978).

The DEQ Northern Regional Office had an effluent limit of 7 µg/l for 1,1 DCE in four VPDES individual permits. This effluent limit is the same as the MCL and is recommended as the effluent limit for this general permit.

#### **6.4.5 cis-1,2 Dichloroethylene**

The cis-1,2 dichloroethylene (cis 1,2 DCE) isomer is not a priority pollutant. Much of the cis-1,2 DCE that is found in the environment comes from reductive dehalogenation of trichloroethylene (Howard 1990). There is limited aquatic toxicity data for this constituent. The ECOTOX database lists a LOEC value of 500,000 µg/l for fathead minnows (*Pimephales promelas*) exposed to this constituent (Great Lakes Environmental Center 2005). The observed effect was mortality. Applying the safety factor of 100 to this concentration would yield an effluent limit of 5,000 µg/l. The MCL for cis-1,2 DCE is 70 µg/l. The DEQ Northern Regional Office had three VPDES individual permits with effluent limits for this constituent and all of them had an effluent limit of 70 µg/l. DEQ staff recommend an effluent limit of 70 µg/l for cis-1,2 DCE.

#### **6.4.6 trans 1,2 Dichloroethylene**

Trans 1,2 dichloroethylene (trans-1,2 DCE) is a priority pollutant and the preferred isomer of DCE in most applications (HSDB 1995). This constituent is used as a solvent and extractant used in manufacturing perfumes, lacquers, and thermoplastics (Howard 1990). Trans 1,2 DCE also can be created by the reductive dehalogenation of trichloroethylene (Dragun 1988). The MCL for trans-1,2 DCE is 100 µg/l. Northern Regional Office staff also used an effluent limit of 100 µg/l for trans-1,2 DCE in four VPDES individual permits issued by that office. Current human health-based water quality standards for this constituent are 100 µg/l for public water supplies and 4,000 µg/l for other surface waters. LeBlanc (1980) found that a concentration of 220,000 µg/l trans-1,2 DCE in water was lethal to 50 percent of the water fleas (*Daphnia magna*) tested.

The 2018 TAC recommended that the effluent limit for trans-1,2 DCE be set at 100 µg/l. DEQ staff recommends that this limit be carried forward with this reissuance since it will be protective of the human health criterion for public water supplies.

#### **6.4.7 Methylene Chloride**

Methylene chloride is a solvent and paint remover that may be found in certain aerosols and pesticides, and is used to manufacture photographic film (Howard 1990 and ATSDR 2001b). According to the RTDF Bioremediation Consortium (1998), methylene chloride also may be derived from the anaerobic degradation of chloroform. The lowest freshwater LC50 concentration reported for methylene chloride is 193,000 µg/l for fathead minnows (*Pimephales promelas*, Alexander 1978). Burton and Fisher (1990) found that methylene chloride, at a concentration of 97,000 µg/l, was lethal to 50 percent of the mummichogs (*Fundulus heteroclitus*) tested. The Federal drinking water MCL for methylene chloride is 5 µg/l and this is also the effluent limit that the Northern Regional Office staff used in the two permits that had limits for this constituent. The human health Water Quality Standards for methylene chloride are 20 µg/l and 1,000 µg/l for public water supplies and other surface waters, respectively. DEQ staff recommend an effluent limit of 5 µg/l for methylene chloride be carried forward.

#### **6.4.8 Tetrachloroethylene**

Tetrachloroethylene, also known as perchloroethylene, is used widely for dry cleaning fabrics and as a metal degreasing agent (Howard 1990 and ATSDR 1997). According to Yoshioka and others (1986), tetrachloroethylene at a concentration of 1,800 µg/l was lethal to 50 percent of the water fleas (*Moina macrocopa*) tested. The lowest saltwater LC50 value reported for tetrachloroethylene is 1,300 µg/l for daggerblade grass shrimp (*Palaemonetes pugio*, Horne et al. 1983). Applying the safety factor of 100 to

these LC50 values results in limits of 18 µg/l and 13 µg/l, respectively.

The human health-based water quality standards for tetrachloroethylene are 100 µg/l for public water supplies and 290 µg/l for other surface waters. The MCL for tetrachloroethylene is 5 µg/l.

Five VPDES individual permits in the Northern Regional Office had effluent limits for tetrachloroethylene. Four of these permits have an effluent limit of 5 µg/l and one of the permits had an effluent limit of 79 µg/l.

DEQ staff recommend an effluent limit of 5 µg/l for tetrachloroethylene.

#### **6.4.9 1,1,1 Trichloroethane**

1,1,1 Trichloroethane (1,1,1 TCA) was used as a solvent, a degreasing agent, and as an ingredient of household products such as glues, spot removers, and aerosol sprays (ATSDR 2006a and Howard 1990). According to ATSDR 2006a, TCA was not to be manufactured for domestic use in the United States after January 1, 2002, due to its effects on the ozone layer.

The MCL for 1,1,1 Trichloroethane (1,1,1 TCA) is 200 µg/l. Four VPDES individual permits in the Northern Regional Office had effluent limits for 1,1,1 TCA and the effluent limit in each permit is 200 µg/l.

Virginia has not promulgated water quality standards for 1,1,1 TCA.

The lowest freshwater LC50 value for 1,1,1 TCA that is reported in the ECOTOX database is 5,400 µg/l for water fleas (*Daphnia magna*, Thompson and Carmichael 1989). EPA (1978) found that 1,1,1 TCA at a concentration of 312,000 µg/l was lethal to 50 percent of the opossum shrimp (*Americamysis bahia*) tested. If the customary safety factor of 100 is applied to these LC50 values, results in concentrations of 54 µg/l and 3,120 µg/l, respectively that are expected to be protective of aquatic and marine life.

The most conservative or protective concentration for 1,1,1 TCA is the value that was derived from toxicity of this constituent to water fleas. DEQ staff recommends an effluent limit of 54 µg/l for 1,1,1 TCA.

#### **6.4.10 1,1,2 Trichloroethane**

1,1,2 TCA is a solvent and an intermediate in the production of 1,1 DCA (ATSDR 199b). Only one individual permit in the Northern Regional Office had an effluent limit for 1,1,2 TCA and the limit in that permit is 5 µg/l. The MCL for 1,1,2 TCA also is 5 µg/l.

The Virginia Water Quality Standards for 1,1,2 TCA are 5.9 µg/l for public water supplies and 160 µg/l for other surface waters. LeBlanc (1980) found that 1,1,2 TCA, at a concentration of 18,000 µg/l, was lethal to 50 percent of the water fleas (*Daphnia magna*) tested. The lowest LC50 value reported for this constituent for saltwater organisms is 27,000 µg/l (Adema and Vink 1981). Applying the safety factor of 100 to these LC50 values results in concentration of 18 µg/l and 27 µg/l, respectively.

DEQ staff recommends an effluent limit of 5 µg/l for 1,1,2 TCA.

#### **6.4.11 Trichloroethylene**

Trichloroethylene (TCE) is a solvent commonly used to remove grease from metal parts (Howard 1990 and ATSDR 2003). TCE also is an ingredient in adhesives, paint removers, typewriter correction fluids, and spot removers (ATSDR 2003). TCE can be formed by the breakdown of tetrachloroethylene that has been released into the environment.

The MCL for TCE is 5 µg/l and this is the same effluent limit that the Northern Regional Office staff used for all three VPDES permits that contained limits for TCE. The promulgated water quality standard for public water supplies is 25 µg/l and the water quality standard for all other surface water is 300 µg/l.

The lowest freshwater LC50 value reported to TCE is 1,900 µg/l (Yoshioka 1986). Ward and associates (1986) found that TCE at a concentration of 14,000 µg/l was lethal to 50 percent of the opossum shrimp (*Americamysis bahia*) tested. Applying the safety factor of 100 to these LC50 values results in concentrations of 19 µg/l and 140 µg/l.

DEQ staff recommends an effluent limit of 5.0 µg/l for TCE.



#### **6.4.12 Vinyl Chloride**

Most vinyl chloride is used to manufacture polyvinyl chloride (PVC, Howard 1989 and ATSDR 2006b). This constituent is commonly found in the environment due the breakdown of other chlorinated hydrocarbon solvents (Dragun 1988 and ATSDR 2006b).

The MCL for vinyl chloride is 2 µg/l and is the effluent limit that the DEQ Northern Regional Office staff had used for all three of their individual VPDES permits having a limit for this constituent. The Water Quality Standard for public water supplies is 0.22 µg/l and the water quality standard for other surface waters is 16 µg/l.

DEQ staff recommend an effluent limit of 2.0 µg/l for vinyl chloride. This limit is the same as the MCL and, as a promulgated MCL, is both protective and achievable. Current analytical methods typically cannot quantify vinyl chloride or other volatile organic compounds at concentrations of less than 1 µg/l. MCLs also are set at limits that are believed protective of human health and are can be reached by current treatment technologies. Members of previous TACs utilized during the 2013 general permit reissuance process were not confident that an effluent limit of less than 1 µg/l for vinyl chloride may be achieved by current treatment technologies.

#### **6.4.13 Carbon Tetrachloride**

According to Howard (1990) large quantities of carbon tetrachloride are used for the chemical synthesis of fluorocarbon refrigerants and propellants. Carbon tetrachloride also is used as a degreaser, a cleaning fluid, and a grain fumigant pesticide (Howard 1990 and ATSDR 2005).

The Water Quality Standards for carbon tetrachloride are 4.0 µg/l for public water supplies and 50 µg/l for other surface waters. The MCL for carbon tetrachloride is 5 µg/l.

DEQ staff in the Northern Regional Office had issued one VPDES individual permit having an effluent limit for carbon tetrachloride and that limit was 5 µg/l.

Yoshioka and associates (1986) found that carbon tetrachloride at a concentration of 2,000 µg/l was lethal to 50 percent of the Medaka, high-eyes (*Oryzias latipes*) tested. The lowest saltwater LC50 value listed in the ECOTOX database was 50,000 µg/l for sole order (*Pleuronectiformes*, Pearson and McConnell 1975).

In previous permits, the water quality criteria of 2.3 µg/l for public water supplies was applied as the effluent limit since it is more protective than the drinking water MCL and the aquatic toxicity-based values. Due to backsliding considerations, DEQ staff recommends that the current effluent limit of 2.3 µg/l for Carbon Tetrachloride be carried forward with this reissuance.

#### **6.4.14 1,2 Dichlorobenzene**

According to the National Toxicology Program (NTP), U.S. Department of Health and Human Services (1985), the major use of 1,2 dichlorobenzene is as an intermediate in the synthesis of other organic compounds including the herbicides propanil, diuron, and neburon. This constituent also is used as an engine cleaner, de-inking solvent, a degreasing agent, a heat exchange medium, and a fumigant pesticide (NTP 1985).

The water quality standard for 1,2 dichlorobenzene in public water supplies is 1,000 µg/l and the water quality standard for other surface waters is 3,000 µg/l. There is no promulgated MCL for this constituent.

Staff in the Northern Regional Office issued one VPDES individual permit having an effluent limit for 1,2 dichlorobenzene and the limit in that permit was 600 µg/l.

EPA (1978) reported that 1,2 dichlorobenzene at a concentration of 1,970 µg/l killed 50 percent of the opossum shrimp (*Americamysis bahia*) tested. The lowest freshwater LC50 value reported in the ECOTOX database for this constituent was 1,580 µg/l for rainbow trout (*Oncorhynchus mykiss*, Call and Associates 1983). Applying the customary safety factor of 100 to the LC50 value for rainbow trout results in a concentration of 15.8 µg/l.

DEQ staff previously recommended an effluent limit of 15.8 µg/l for 1,2 dichlorobenzene.

Agency guidance GM06-2016 notes that “effluent limitations should generally be written using two significant figures,” so with this reissuance, staff has updated the limit from 15.8 µg/L to 16 µg/L in Part I.A.5.

#### **6.4.15 Chlorobenzene**

Chlorobenzene production has declined by over half since its peak of use in 1960 (ATSDR 1998). Presently, chlorobenzene is used as a solvent for pesticides, a degreasing agent, and a chemical intermediate (ATSDR 1998).

The MCL for chlorobenzene is 100 µg/l. The water quality standards for this constituent are 100 µg/l for public water supplies and 800 µg/l for other surface waters.

Birge and others (1979) reported that a concentration of 340 µg/l was lethal to 50 percent of the largemouth bass (*Micropterus salmoides*) they tested. The lowest saltwater LC50 value reported in the ECOTOX database for this constituent is 8,900 µg/l for sheepshead minnows (*Cyprinodon variegates*, Heitmuller and others 1981). Applying the customary safety factor of 100 to these LC50 values results in concentrations of 3.4 µg/l and 89 µg/l, respectively. DEQ staff recommend an effluent of 3.4 µg/l for chlorobenzene.

#### **6.4.16 Trichlorofluoromethane**

Trichlorofluoromethane, also known as Freon 11, was used as a propellant for aerosol sprays until its use for this application was banned in the United States on December 15, 1978 (Howard 1990).

Trichlorofluoromethane is used as a refrigerant, foaming agent, solvent, degreaser, and fire extinguishing agent (Howard 1990).

There is no MCL for this constituent, no promulgated water quality standards, and no aquatic toxicity data that has been summarized in the ECOTOX database. The DEQ Northern Regional Office staff had written one individual permit having an effluent limit for this constituent and that effluent limit is 5 µg/l. EPA Region III has listed a risk-based value for trichlorofluoromethane in tap water and that concentration is 1,300 µg/l. DEQ staff recommend an effluent limit of 5 µg/l for trichlorofluoromethane be carried forward.

#### **6.4.17 Chloroethane**

According to ATSDR (1999c), chloroethane is used in the production of cellulose dyes, medicinal drugs, and other commercial products. This constituent is used as a solvent and refrigerant. Chloroethane has been shown to form as a degradation byproduct of other chlorinated hydrocarbon solvents (Howard 1990 and Dragun 1988).

Little aquatic toxicity information exists for chloroethane. The DEQ Northern Regional Office staff had written an individual permit having an effluent limit for this constituent and that effluent limit is 5 µg/l. In 2006, EPA Region III listed a risk-based value of 3.6 µg/l for chloroethane in tap water. The June 2011 Region III Risk Based Concentration Table listed a risk-based concentration of 21,000 µg/l for chloroethane (a.k.a. ethyl chloride) in Tap Water. Due to anti-backsliding policy, DEQ staff recommends retaining the effluent limit of 3.6 µg/l for chloroethane.

### **6.5 Discharges of Water Contaminated by Metals**

With this reissuance of the general permit, DEQ staff proposes to expand the general permit to include other sources of contamination not identified as petroleum or chlorinated hydrocarbon solvents. Non-petroleum sources of contamination include, but are not limited to releases of solvents, degreasers, cleaners, or paint removers, releases from industrial operations, and improper waste management, disposal or transport. The types of sites eligible for coverage under this activity category may be a result of remediation activities related to groundwater pump and treat systems, dewatering systems or other activities where non-petroleum-related sources are a known source of a contaminant of concern, including sites where metals are present.

Adding these limited additional activities and pollutants to the scope of activities authorized under this general permit is needed to better serve the regulated community, to better coordinate across DEQ programs and to save staff time and resources.

Across the state, participation in the Voluntary Remediation Program (VRP) has increased significantly. The Voluntary Remediation Program encourages hazardous substance cleanups that might not otherwise take place. The program is a streamlined mechanism for site owners or operators to voluntarily address contamination sites with support from DEQ. The main goals are site redevelopment and enhanced environmental outcomes. Approximately 25% of statewide VRP work is located in the greater beltway area of Alexandria, Arlington, and Fairfax. In this area, due to economics and costs associated with site redevelopment, the redevelopment trends to be more vertical (i.e. parking garages and deeper parking garages resulting in more dewatering) instead of horizontal. Furthermore, there is an increased awareness of the dewatering issues and permitting, resulting in more sites seeking coverage. In these highly developed areas other contaminants are being encountered whether from the site itself or migrating onto the property. These additional contaminants that are not currently authorized under the general permit have to be addressed.

Cleanup of VRP sites is not limited to sites contaminated by petroleum products or chlorinated hydrocarbon solvents. Increased participation in the VRP program has led to an increase in sites seeking coverage under VAG83. For sites with contamination outside the scope the current general permit, coverage cannot be issued and an individual permit and/or connection to sanitary would be required to properly manage wastewater generated onsite. Connecting to sanitary is costly, and not all POTWs have the treatment capacity to accept these discharges.

Staff recommended one set of effluent limits for the metals and set the limits to protect both aquatic life and human health (including public water supplies). All limits are expressed as total recoverable as required by 9VAC25-31-230C. For metals with criteria that are hardness-based, a Total Hardness value of 70 mg/l as CaCO<sub>3</sub> was used to derive the acute and chronic water quality criteria. This hardness value was derived as the 10<sup>th</sup> percentile of the total hardness data collected during the current permit cycle. The 10<sup>th</sup> percentile was selected as a conservative value to represent the hardness of the effluent and receiving streams statewide.

The metals limitations established for a specific site covered under this general permit shall be determined by the data provided (e.g. data from the Voluntary Remediation Program) with the registration statement. Permit writers will review the data provided (all available data must be submitted) and select the metals that have the reasonable potential to be in the final effluent.

Utilizing DEQ's R-Tool, the following criteria were established:

Parameter (Units)	Background Conc.	Water Quality Criteria			
		Acute	Chronic	HH (PWS)	HH
Antimony (ug/l)	0			5.6000	640.0000
Arsenic (ug/l)	0	340.0000	150.0000	10.0000	
Barium (ug/l)	0			2.00E+03	
Cadmium (ug/l)	0	1.2852	0.5493	5.0000	
Chromium III (ug/l)	0	425.4318	55.3399		
Chromium VI (ug/l)	0	16.0000	11.0000		
Chromium, Total (ug/l)	0			100.0000	
Copper (ug/l)	0	9.6033	6.6030	1.30E+03	
Iron (ug/l)	0			300.0000	
Lead (ug/l)	0	63.6573	7.2320	15.0000	
Mercury (ug/l)	0	1.4000	0.7700		
Nickel (ug/l)	0	134.8584	14.9876	610.0000	4.60E+03
Selenium, Total Recoverable (ug/l)	0	20.0000	5.0000	170.0000	4.20E+03
Silver (ug/l)	0	1.8680			
Thallium (ug/l)	0			0.2400	0.4700
Zinc (ug/l)	0	86.6177	87.3262	7.40E+03	2.60E+04

### 6.5.1. Total Recoverable Antimony

The Water Quality Standards for Antimony only have Human Health criteria. For Public Water Supplies, the Human Health Criteria is 5.6 µg/l and it is staff's professional judgement that this be established as an instantaneous maximum limitation.

### 6.5.2 Total Recoverable Arsenic

The Human Health Standard for Public Water Supplies is 10 µg/l and is well below the established aquatic life criteria, so it is staff's professional judgement that it be used as the instantaneous maximum limitation.

### 6.5.3 Total Recoverable Barium

Staff used professional judgement and did not include a Barium limitation with this reissuance since it has not appeared as a pollutant of concern in data submitted through the Voluntary Remediation Program.

### 6.5.4 Total Recoverable Cadmium

Cadmium is a hardness-based criteria, so the aquatic acute and chronic criteria were established using the 70 mg/l Total Hardness value. The chronic criteria for aquatic life is significantly lower than the Human Health criteria for Public Water Supplies, so it is staff's professional judgement to establish the Total Recoverable Copper instantaneous maximum limitation at 0.55 µg/l.

### 6.5.5 Total Recoverable Chromium

Chromium III is a hardness-based criteria, so the aquatic acute and chronic criteria were established using the 70 mg/l Total Hardness value. The acute and chronic criteria for Chromium VI for aquatic life are independent of hardness as is the Human Health standard for Total Chromium. It is staff's professional judgement to establish the Total Recoverable Chromium instantaneous maximum limitation at 11 µg/l

which shall be protective for all valence states of Chromium.

#### **6.5.6 Total Recoverable Copper**

Copper is a hardness-based criteria, so the aquatic acute and chronic criteria were established using the 70 mg/l Total Hardness value. The chronic criteria for aquatic life is an order of magnitude lower than the Human Health criteria for Public Water Supplies, so it is staff's professional judgement to establish the Total Recoverable Cadmium instantaneous maximum limitation at 6.6 µg/l.

#### **6.5.7 Total Recoverable Iron**

Staff used professional judgement and did not include an Iron limitation with this reissuance since this criterion is to maintain acceptable taste, odor or aesthetic quality of drinking water and applies at the drinking water intake.

#### **6.5.8 Total Recoverable Lead**

Lead is a hardness-based criteria, so the aquatic acute and chronic criteria were established using the 70 mg/l Total Hardness value. The Human Health water quality standard for lead in public water supplies is 15 µg/l. When wastewater is discharged to a public water supply, the effluent will be the lower of 15 µg/l or the calculated aquatic toxicity based limit. The chronic criteria for aquatic life is lower than the Human Health criteria for Public Water Supplies, so it is staff's professional judgement to establish the Total Recoverable Lead instantaneous maximum limitation at 7.2 µg/l.

#### **6.5.9 Total Recoverable Mercury**

Aquatic life criteria are established for Mercury. There are no Human Health criteria established; therefore, it is staff's professional judgement to establish the Total Recoverable Mercury instantaneous maximum limitation at 0.77 µg/l.

#### **6.5.10 Total Recoverable Nickel**

Nickel is a hardness-based criteria, so the aquatic acute and chronic criteria were established using the 70 mg/l Total Hardness value. The Human Health water quality standard for nickel in public water supplies is 610 µg/l. The chronic criteria for aquatic life is significantly lower than the Human Health criteria for Public Water Supplies, so it is staff's professional judgement to establish the Total Recoverable Nickel instantaneous maximum limitation at 15 µg/l.

#### **6.5.11 Total Recoverable Selenium**

Selenium is not a hardness-based criteria. The Human Health water quality standard for nickel in public water supplies is 170 µg/l. The chronic criteria for aquatic life is significantly lower than the Human Health criteria for Public Water Supplies, so it is staff's professional judgement to establish the Total Recoverable Selenium instantaneous maximum limitation at 5 µg/l.

#### **6.5.12 Total Recoverable Silver**

Silver is a hardness-based criteria, so the aquatic acute criteria was established using the 70 mg/l Total Hardness value. There is no Human Health water quality standard for silver. It is staff's professional judgement to establish the Total Recoverable Silver instantaneous maximum limitation at 1.9 µg/l.

#### **6.5.13 Total Recoverable Thallium**

The Water Quality Standards for Thallium only have Human Health criteria. For Public Water Supplies, the Human Health Criteria is 0.24 µg/l and it is staff's professional judgement that this be established as an instantaneous maximum limitation.

#### **6.5.14 Total Recoverable Zinc**

Zinc is a hardness-based criteria, so the aquatic acute and chronic criteria were established using the 70 mg/l

Total Hardness value. The Human Health water quality standard for zinc in public water supplies is 7,400 µg/l. The chronic criteria for aquatic life is significantly lower than the Human Health criteria for Public Water Supplies, so it is staff's professional judgement to establish the Total Recoverable Nickel instantaneous maximum limitation at 87 µg/l.

### **Total Hardness**

When a permittee monitors for a hardness-based metal, they shall also monitor for Total Hardness in the effluent.

### **pH**

The pH limits in this general permit are based on the Virginia Water Quality Standards and range from six (6.0) standard units to nine (9.0) standard units.

## **7.0 Administration of this General Permit Regulation**

The general permit shall have a fixed term of five (5) years effective upon Board approval. Every authorization to discharge under this general permit will expire at the same time and all authorizations to discharge will be renewed on the same date. Discharges will be covered under the general permit either upon approval of the Registration Statement and delivery of a copy of the general permit to the applicant, or in the case of authorized "short term" projects and hydrostatic testing, immediately upon the permit's effective date of March 1, 2023.

This general permit does not apply to any new or increased discharge that will result in significant effects to the receiving waters. That determination is made in accordance with the State Water Control Board's Antidegradation Policy contained in the Virginia Water Quality Standards, 9 VAC 25-260. Anti-backsliding will also be considered prior to granting coverage under this general permit to operations currently discharging under another VPDES permit.

If an applicant for a discharge appears to qualify for this general permit, the applicant will be required to submit a general permit Registration Statement. (This does not apply to authorized "short term" projects and hydrostatic testing, which do not require the submittal of a Registration Statement). The Board will review the Registration Statements received and either send a copy of the general permit to those that qualify, or send a copy of the application for an individual permit to those that do not qualify.

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**MEMORANDUM**

**TO:** State Water Control Board members

**FROM:** Jutta Schneider, Water Planning Division Director 

**SUBJECT:** Final Adoption of Triennial Review Water Quality Standards Regulation Amendments (9VAC25-260)

**DATE:** July 29, 2022

**EXECUTIVE SUMMARY**

Staff intends to ask the Board to adopt final Triennial Review amendments to the Virginia Water Quality Standards regulation (9 VAC 25-260). The Board has a legal mandate for a review of the Water Quality Standards (WQS) under the Code of Virginia (§62.1- 44.15(3a)) and federal regulation at 40 CFR 131, at least once every three years. During this review the Board must adopt, modify or cancel standards as appropriate. This rulemaking is needed because new scientific information is available to update the water quality standards and changes are needed to improve permitting, monitoring and assessment programs. The goal is to provide the citizens of the Commonwealth with a technical regulation that is protective of water quality in surface waters, reflects recent scientific information, reflects agency procedures and is reasonable and practical. The Triennial Review rule-making was initiated in spring 2021. An ad hoc Regulatory Advisory Panel (RAP) advised staff on development of the proposed amendments which were published for a 60-day public comment period starting in January 2022. A list of RAP participants is provided as Attachment 1. Based upon public comment received, staff is recommending the following modifications from what was contained in the proposed amendments published for public comment as appropriate for the final recommended regulatory amendments:

- Add language to the proposed freshwater aluminum criteria that specifies the criteria are expressed as the total recoverable form of the metal.

- Retain the current CAS number 57749 for chlordane, since this corresponds to a different mixture than that described by CAS number 12789036.
- Remove from the proposed amendments the initially proposed language stipulating the freshwater copper Biotic Ligand Model (BLM) is to be used to develop applicable copper criteria when the Board determines there is a sufficient dataset of input parameters. Pending implementation guidance from EPA, DEQ proposes to retain the existing language which provides for a BLM approach for site specific determinations of copper water quality end-points but does not require a BLM.
- Revise the language for the proposed nuisance filamentous algae thresholds to make clear that a determination of nuisance filamentous algae impeding the recreation use will be made when “exceedances of either” of the specified thresholds have occurred in more than one recreation season in three consecutive years.

## **BACKGROUND**

Water quality standards are the cornerstone for water quality programs at the Virginia Department of Environmental Quality. Water quality standards are established as regulation in 9VAC-25-260 and define the goals for healthy waters by designating their uses, setting water quality conditions with narrative and numeric criteria that will protect those uses and establishing anti-degradation provisions to safeguard high quality waters. They establish standards and conditions to protect water quality so rivers, lakes and other waterbodies can be sources of water supplies, support recreational, agricultural, and industrial activities among others and promote the growth of fish and shellfish that are suitable for eating; and protect aquatic life.

The Clean Water Act and State Water Control Law require that the Board conduct a review every three years of the state surface water quality standards regulation for the purposes of revising and updating the standards to reflect changes in law, technology and scientific information. The goal is to provide the citizens of the Commonwealth with a technical regulation that is protective of water quality in surface waters, reflects recent scientific information, reflects agency procedures and is reasonable and practical.

A Notice of Intended Regulatory Action (NOIRA) was published March 1, 2021. The NOIRA is available at: <https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5637>. A NOIRA public comment period was held between March 1 and March 31, 2021. Comments were received from several organizations and individuals. An ad hoc Regulatory Advisory Panel (RAP) consisting of 16 members was formed and four meetings were held (May 18, June 2, June 16, and June 30, 2021). The RAP members and the organization represented by each member are presented as Attachment 1 of this memo. The meeting minutes from each of the four RAP meetings may be accessed online at: <https://townhall.virginia.gov/L/meetings.cfm>

The proposed amendments reflect issues raised by public comments, department programs, EPA and also reflect feedback from the RAP. A proposed regulation was published January 17, 2022. Information related to the proposal is available at: <https://townhall.virginia.gov/L/viewstage.cfm?stageid=9438>. A public comment period was held on the proposed amendments January 17 through March 18, 2022. Public hearings were held February 22 and March 1, 2022. In total, 37 comments were received on the proposed regulatory amendments from organizations, individuals, and EPA. A summary of comments received and

agency response to those comments are included in the attached Town Hall Agency Background document (Attachment 2).

## **PURPOSE**

Staff intends to ask the Board to adopt final Triennial Review amendments to the Water Quality Standards Regulation (9VAC 25-260). The following substantive amendments are proposed:

### **1. Table of Parameters § 9 VAC 25-260-140**

The Table of Parameters contains a list of toxic chemicals and the water quality criteria designed to protect human health and aquatic life. The criteria are expressed as concentrations in parts per billion (micrograms/liter). Triennial Review is the appropriate time to update the Table based on new technical information available on the toxicity of these parameters to human health and aquatic life.

- a) **Criteria to Protect Human Health; 20 Revised Parameters** – Twenty human health criteria for 10 pollutants have been recalculated using updated exposure factor recommendations provided by the U.S. Environmental Protection Agency (EPA). The revised criteria concentrations for antimony, 2,3,7,8-tetrachlorodibenzo-p-dioxin, nickel, n-nitrosodimethylamine, n-nitrosodiphenylamine, n-nitrosodi-n-propylamine, total PCBs, selenium, thallium, and zinc are between 5% and 67% lower than their existing criteria.
- b) **Removal of a Human Health Parameter**— The removal of the parameter bis(chloromethyl) ether from the Table of Parameters is being proposed due to the 38 second half-life of this pollutant and the fact that EPA no longer considers it to be a Priority Pollutant.
- c) **Footnote for Human Health Criteria**— The existing Table of Parameters does not currently contain language specifying the duration of human health criteria. The following language is proposed as a footnote to this section: “Human health criteria are based on the assumption of average amount of exposure on a long-term basis.”
- d) **Freshwater Aluminum Criteria for the Protection of Aquatic Life**--EPA has issued new criteria recommendations for aluminum for the protection of aquatic life. Virginia does not currently have criteria for this metal and criteria for aluminum is being added to the regulation.

### **2. Chesapeake Bay Aquatic Life Criteria §9 VAC 25-260-185**

This section lists criteria that protect designated uses from the impacts of nutrients and suspended sediment in the Chesapeake Bay and its tidal tributaries. Biocriteria in the form of submerged aquatic vegetation (SAV) acres were adopted by the Board for the Bay segments in 2005. The primary basis of these criteria were restoration targets developed by SAV researchers at the Virginia Institute for Marine Science working in conjunction with the Chesapeake Bay Program Partnership. A recent analysis conducted by the Chesapeake Bay Program Partnership found that the acreages adopted for five segments are substantially lower

than the restoration targets the SAV experts recommended for them. The regulatory proposal addresses this discrepancy by increasing the SAV criteria for these segments so they are consistent with the reasoning underlying the other SAV criteria. Corresponding water clarity acres for the five segments have also been increased.

### **3. Criteria for man-made lakes and reservoirs §9 VAC 25-260-187**

This section lists criteria that protect aquatic life and recreational designated uses for man-made lakes and reservoirs of a certain size and significance. DEQ staff recommend that Lake Mooney in Stafford County be added to this section due to its proposed public water supply (PWS) designation.

### **4. Special standards and requirements §9 VAC 25-260-310**

A description of all site-specific criteria and the waters to which they apply are provided in this section of the regulation. The following updates and additions are recommended.

- a) **Numeric Filamentous Algae Criteria**—During the public comment periods for the 2012 and subsequent Integrated Reports, DEQ received comments from citizens regarding the presence of algae in the Shenandoah River and concern that the algae in the river impaired the recreation designated use. In response to citizen comments, DEQ identified five segments (approximately 25 river miles) along the North Fork and South Forks of the Shenandoah River as having an observed effect but lacking sufficient data to assess the attainment status of the recreation use. DEQ monitored these segments over the 2016 to 2019 period, developing and testing scientifically-based, defensible, and reproducible field methods for quantifying filamentous algae growth. Through this work, DEQ staff determined that the concentration of benthic (stream bottom) chlorophyll-a, a green pigment produced by algae, correlates well with filamentous algal growth. DEQ staff also researched thresholds by other states for the purposes of determining when filamentous algae growth has reached a nuisance condition in freshwater streams. The result of this multi-year effort is a proposed special standard for benthic chlorophyll-a designed to limit persistent, nuisance filamentous algae growth in large sections of the mainstem North Fork Shenandoah, South Fork Shenandoah, and Shenandoah Rivers. The recommended amendments provide two-month median and seasonal median criteria for benthic chlorophyll-a, both of which would apply during the recreation season (May 1 through October 31). As proposed, the waters for which these criteria would apply cannot exceed criteria more than once in three years in order to ensure attainment of the recreation use. The technical support document which provides the basis for the proposed filamentous algae thresholds in the Shenandoah River basin may be accessed at the following web link: <https://www.deq.virginia.gov/water/water-quality/water-quality-standards/rulemaking>
- b) **Removal of Special Standard y**— The ammonia criteria adopted by the Board in 2019 stipulates that mussels are present unless the absence of mussels has been adequately demonstrated. This provision contravenes the existing special standard y, which provides a chronic ammonia criterion applicable to the tidal fresh Potomac embayments and its tributaries to the fall line. This ammonia criterion does not consider the presence of

mussels, which are very sensitive to ammonia. This special standard is recommended for removal.

## **PUBLIC COMMENT AND DEQ RESPONSE**

The Board's authorization to hold a public hearing and receive public comments on the proposal was received at the September 28, 2021 meeting. A public comment period was held between January 17 and March 18, 2022. A public hearing was held in Richmond on February 22, 2022. There were three attendees, two of whom provided comments. Another public hearing was held in Harrisonburg on March 1, 2022. There were four attendees, all of whom provided comments. Ms. Jillian Cohen was the hearing officer at this hearing. The recordings of these hearings are available upon request. In total, public comments were received from 37 individuals or groups on the proposed changes to the water quality standards regulation. Thirty-two commenters submitted comments pertaining to the proposed amendments to the freshwater copper criteria. Thirty-two commenters submitted comments pertaining to the proposed benthic chlorophyll-a criteria for selected stretches of the Shenandoah River basin. Three commenters submitted comments recommending the adoption of criteria tied specifically to toxic harmful algal blooms. All comments received and agency responses to comments are presented as an attachment to the Final Agency Regulation Background Document which is included as Attachment 2 in this memorandum. In addition to the proposed amendments, the public was also provided with a copy of the Department of Planning and Budget's Economic Impact Statement and is available at the following web link:

[https://townhall.virginia.gov/L/GetFile.cfm?File=103\5637\9438\EIA\\_DEQ\\_9438\\_v4.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=103\5637\9438\EIA_DEQ_9438_v4.pdf) .

**Attachment 2** is the Final Regulation Agency Background Document which includes a table of the recommended changes made since the proposal stage, a summary and response to public comment, and a table listing all the changes to the regulation being proposed. **Attachment 3** is a copy of 9VAC 25-260, Virginia Water Quality Standards, showing the proposed wording changes (only sections of the regulation with changes at the proposed or final stage are presented).

## **CHANGES BETWEEN PROPOSED AND FINAL AMENDMENTS**

Based upon review and consideration of the comments received during the public comment period, staff is proposing the following changes to the final recommended regulatory amendments from what was contained in the proposed amendments published for public comment:

- The addition of language to the proposed freshwater Al criteria that specifies the criteria are expressed as the total recoverable form of the metal. This specificity was deemed important since criteria for all other metal parameters are expressed as dissolved concentrations.
- Retain the current CAS number 57749 for chlordane, since this corresponds to a different mixture than that described by CAS number 12789036 initially proposed for adoption.
- Removal of the proposed language stipulating the freshwater copper Biotic Ligand Model is to be used to develop criteria when the Board determines there is a sufficient dataset of

input parameters. Staff recommends this decision because there is very limited federal guidance for implementing the copper BLM, specifically in the context of permitting decisions. Additionally, DEQ has found that it is difficult to communicate with stakeholders and DEQ staff about the copper BLM predictions because of the lack of transparency in the computational mechanics of the model and its sole existence in proprietary software. The existing language of the water quality standards provides for a BLM approach for site specific determinations of copper water quality end-points.

- Revise the language for the proposed nuisance filamentous algae thresholds to make clear that that a determination of nuisance filamentous algae impeding the recreation use will be made when “exceedances of either” of the specified thresholds have occurred in more than one recreation season in three years.

### **ATTORNEY GENERAL CERTIFICATION**

Since changes were made to the proposed text in response to public comment, these amendments are being forwarded to the Office of the Attorney General for agency statutory authority. The amendments will be proposed for adoption "contingent upon Attorney General Office statutory authority" if not received by the August Board meeting.

### **STAFF RECOMMENDATIONS**

Staff recommends the Board adopt all final amendments to the Water Quality Standards at 9 VAC 25-260 as presented in Attachment 5.

### **PRESENTER CONTACT INFORMATION:**

**Presenter Name:** Bryant Thomas

**Presenter Office:** Water Quality Standards

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### **ATTACHMENTS**

**Attachment 1** - Listing of the Ad Hoc Advisory Committee Members, May-June 2021.

**Attachment 2** - Final Regulation Agency Background Document, June 2022

**Attachment 3** - 9 VAC 25-260 Virginia Water Quality Standards, Triennial Review Final Amendments, August 2022.



**ATTACHMENT 1**

**2021 Triennial Review  
Regulatory Advisory Panel Membership**

## **Triennial Review 2021**

### **Regulatory Advisory Panel Members and Alternates**

- Joe Wood/Patrick Fanning *Chesapeake Bay Foundation*
- Grace LeRose *City of Richmond*
- Kevin Whalen *Friends of NF Shenandoah*
- Evan Branosky *Home Builders Association of Virginia*
- Jamie Brunkow/Anna Killius *James River Association*
- Phillip Musegaas *Potomac Riverkeeper Network*
- Jamie S. Heisig-Mitchell/  
Richard Sedgley  
(VAMWA) *VA Association of Municipal Wastewater Agencies*
- Martha Moore *VA Farm Bureau Federation*
- Andrew Parker *VA Manufacturers Association (VMA)*
- David Sligh *Wild Virginia*
- Leigh Mitchell *Upper Mattaponi Indian Tribe/Regional Tribal Operations  
Committee*
- Juan J. Vicenty-Gonzalez/  
Denise Hakowski/Greg Voight *EPA Region 3*
- Rene Hypes *Dept. of Conservation & Recreation (DCR)*
- Todd Egerton *Virginia Dept. of Health (VDH)*
- Aaron Moses *Virginia Dept. of Health (VDH)*
- Ernie Aschenbach *Dept. of Wildlife Resources (DWR)*

## **ATTACHMENT 2**

### **Final Regulation Agency Background Document**



## Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC25-260
<b>VAC Chapter title(s)</b>	Water Quality Standards
<b>Action title</b>	Rulemaking to adopt new, update or cancel existing water quality standards as required by § 62.1-44.15 of the Code of Virginia and the federal Clean Water Act, 33 U.S.C. §§ 1251
<b>Date this document prepared</b>	July 13, 2022

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

### Brief Summary

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

The water quality standards are the cornerstone for water programs at the Virginia Department of Environmental Quality. For example, these standards are used to establish pollutant effluent limits in discharge permits, to evaluate the health of waters statewide and to guide clean-up plans designed to address impaired waters. Amendments are proposed to the state's Water Quality Standards Regulation at 9 VAC 25-260 to revise sections 50, 140, 185, 187, 310, 390, 400, 410, 420, 440, 470, and 500.

The intent of this rulemaking is to protect designated and beneficial uses of state waters by adopting regulations that are technically correct, necessary and reasonable. These standards will be used in setting Virginia Pollutant Discharge Elimination System Permit limits and for evaluating the waters of the Commonwealth for inclusion in the Clean Water Act 305(b) report and on the 303(d) list. Waters not meeting standards may require development of a Total Maximum Daily Load, effluent limitations, or further analysis of use removal or modification under the Clean Water Act at 303(e) and Code of Virginia § 62.1-44.19:7.

This rulemaking is needed because the last triennial review was completed in July 2017 and new scientific information is available to update the water quality standards. Changes to the regulation are also needed to improve permitting, monitoring and assessment programs. In addition, the State Water Control Board (Board) must fulfill the legal mandates for a three-year review under the Code of Virginia, per §62.1-44.15(3a), and federal regulations at 40 CFR 131.

Amendments that may be considered substantive are: new freshwater aquatic life criteria for aluminum, and an amendment to add Special Standard "ii" to Section 9VAC25-260-310 which is a benthic chlorophyll-a threshold that protects the recreational use from persistent, nuisance filamentous algae in certain main-stem sections of the North Fork Shenandoah River, South Fork Shenandoah River, and Shenandoah River.

## Acronyms and Definitions

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

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BLM	Biotic Ligand Model
Board	State Water Control Board
CAS	Chemical Abstracts Service
Department	Virginia Department of Environmental Quality (or DEQ)
DWR	Virginia Department of Wildlife Resources
EPA	U.S. Environmental Protection Agency
PWS	Public Water Supply
RAP	Regulatory Advisory Panel
TMDL	Total Maximum Daily Load
VPDES	Virginia Pollutant Discharge Elimination System

## Statement of Final Agency Action

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

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The State Water Control Board adopted final amendments to the Water Quality Standards regulation (9 VAC 25-260) at their August 25, 2022 meeting. The adopted amendments become an effective regulation upon EPA review and approval.

## Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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Federal and state mandates in the Clean Water Act at 303(c), 40 CFR 131 and the Code of Virginia in §62.1-44.15(3a) require that water quality standards be adopted, modified or cancelled every three years. These are the most relevant laws and regulations.

## Legal Basis

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

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The promulgating entity is the State Water Control Board (Board).

The Clean Water Act authorizes restoration and maintenance of the chemical, physical, and biological integrity of the Nation's waters. The Clean Water Act at 303(c) (1) requires that the states hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards.

The Federal regulations at 40 CFR 131 authorize requirements and procedures for developing, reviewing, revising and approving water quality standards by the States as authorized by section 303(c) of the Clean Water Act. 40 CFR 131 specifically requires the states to adopt criteria to protect designated uses.

The State Water Control Law authorizes protection and restoration of the quality of state waters, safeguarding the clean waters from pollution, prevention and reduction of pollution and promotion of water conservation. The State Water Control Law (Code of Virginia) at §62.1-44.15(3a) requires the Board to establish standards of quality and to modify, amend or cancel any such standards or policies. It also requires the Board to hold public hearings from time to time for the purpose of reviewing the water quality standards, and, as appropriate, adopting, modifying or canceling such standards.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendments being considered are modifications of criteria that will protect designated uses and criteria and designated uses are requirements of the Water Quality Standards.

The authority to adopt standards as provided by the provisions in the previously referenced citations is mandated, although the specific standards to be adopted or modified are discretionary to the Environmental Protection Agency and the state.

## Purpose

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

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The rulemaking is essential to the protection of the health, safety, or welfare of the citizens of the Commonwealth because proper water quality standards protect water quality and living resources of Virginia's waters for consumption of fish and shellfish, recreational uses and conservation in general. These standards will be used in setting Virginia Pollutant Discharge Elimination System Permits limits and for evaluating the waters of the Commonwealth for inclusion in the Clean Water Act 305(b) report and on the 303(d) list. Waters not meeting standards will require development of a Total Maximum Daily Load under the Clean Water Act at 303(e).

The justification for the proposed regulatory action is via the Clean Water Act and State Water Control Law requirements that the State conduct a review every three years of the surface water quality standards regulation for the purposes of revising and updating the standards to reflect changes in law, technology and information. This rulemaking is needed because the last triennial review was completed in June 2017 and new scientific information is available to update the water quality standards. The goal is to provide the citizens of the Commonwealth with a technical regulation that is protective of water quality in surface waters, reflects recent scientific information, reflects agency procedures and is reasonable and practical.

## Substance

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

This rulemaking modifies criteria, use designations, standards, and policies as necessary to conform to EPA guidance. It clarifies state intent and implementation of state programs (e.g., permitting, monitoring and assessments), and improves water quality or protects beneficial uses. The proposed amendments to the Water Quality Standards are summarized below.

### Section 9VAC25-260-50

Add missing "\*\*\*\*" (quadruple asterisk) to pH column to clarify that pH criteria apply only to the epilimnion of a lake/reservoir when thermally stratified.

### Section 9VAC25-260-140 (Table of Parameters):

- a) Add freshwater aluminum criteria for the protection of aquatic life according to the 2018 EPA nationally recommended criteria.
- b) Correction of identified errors:
  - i) Ammonia CAS number is formatted with dashes, all other CAS numbers do not have dashes
  - ii) Ammonia CAS number is incorrect 766414; should be 7664417
  - iii) Correct name for Bis2-Chloroisopropyl Ether (2,2'-Oxybis(1-Chloropropane))
  - iv) Nickel CAS number is incorrect 744002; should be 7440020
  - v) Include CAS number for Uranium (7440611)
  - vi) Tributyltin CAS number is incorrect 60105 (no such CAS number); EPA RSL uses E1790678
- c) Delete Bis (chloromethyl) Ether.
- d) Update 20 human health criteria for the following 10 parameters to reflect updated exposure factors recommended by EPA in 2011: antimony, 2,3,7,8-tetrachlorodibenzo-p-dioxin, nickel, n-nitrosodimethylamine, n-nitrosodiphenylamine, n-nitrosodi-n-propylamine, total PCBs, selenium, thallium, and zinc
- e) Add language to Footnotes 3 and 4 stating that human health criteria are based on the assumption of an average amount of exposure on a long-term basis.

### Section 9VAC25-260-185.B – Chesapeake Bay Criteria

Submerged Aquatic Vegetation (SAV) and Water Clarity acreages for 5 Bay segments are increased to match most recent Chesapeake Bay Program recommendations.

### Section 9VAC25-260-187 (Addition of Lake Mooney):

Lake nutrient criteria has been applied to a relatively recently constructed water supply reservoir in the Rappahannock River basin (Lake Mooney).

### Section 9VAC25-260-310 (Special Standards)

Delete special standard "y" (ammonia criteria for freshwater tidal tributaries of the Potomac River) as it is superseded by freshwater ammonia criteria that became effective in 2020.

Addition of special standard "ii" which is a benthic chlorophyll-a threshold that protects the recreational use from persistent, nuisance filamentous algae in certain main-stem sections of the North Fork Shenandoah River, South Fork Shenandoah River, and Shenandoah River.

### River Basin Issues (9VAC25-260-360 through 540):

- a) Add, modify or delete trout waters as appropriate.
- b) Add, modify or delete public water supplies designations as appropriate.

- c) Adjust temperature criteria or application of temperature criteria to waters stocked with trout by DWR in the winter with the intent of supplying the public with seasonal trout fishing opportunities only in the winter but not in the summer.
- d) Add or correct Class designations as appropriate.
- e) Corrections to section descriptions in river basin tables for clarity and/or accuracy.

**Issues**

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

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The primary advantage to the public is that the updated numerical toxics criteria are based on updated scientific information to protect aquatic life and human health. The disadvantage is that criteria that become more stringent may result in increased costs to the regulated community. However, the goal is to set realistic, protective goals in water quality management and to maintain the most scientifically defensible criteria in the Water Quality Standards regulation. EPA has also provided guidance that these criteria are "approvable" under the Clean Water Act.

The advantage to the agency or the Commonwealth that will result from the adoption of these amendments will be more accurate and scientifically defensible permit limits, assessments and clean-up plans (TMDLs). These are discussed under the "Purpose" section where the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve are discussed.

The regulated community may find that the amendments pertinent to their operations may require additional capital or operating costs for control in their discharge, particularly where the numerical criteria are more stringent.

There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

**Requirements More Restrictive than Federal**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

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There are no requirements that exceed applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

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Other State Agencies Particularly Affected



No other state agencies are anticipated to be particularly affected by these regulations with the exception of those which operate facilities subject to VPDES permitting that may potentially be impacted by the proposed amendments as related to discharge permits. Staff does not anticipate this to impact many facilities.

Localities Particularly Affected

Due to the site-specific nature of some amendments, the below localities may bear an identified disproportionate material water quality impact not experienced by other localities due to the location of these localities relative to the proposed amended criteria for either the benthic chlorophyll-a criteria in the North Fork Shenandoah River, South Fork Shenandoah River, or Shenandoah River, modification of some trout waters, or removal special standard “y” which established seasonal chronic ammonia criteria for freshwater tidal tributaries of the Potomac River.

Counties: Arlington, Augusta, Clark, Fairfax, Lee, Page, Prince William, Rockingham, Shenandoah, Stafford, Warren.

Cities: Alexandria

Towns: Luray, Shenandoah.

Other Entities Particularly Affected

No other entities are anticipated to be affected.

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

There is no locality identified as bearing a disproportionate material water quality impact under the Board's statutes. Water Quality Standards are developed and implemented for the protection of all designated uses statewide. There are no changes to previously reported information

**Periodic Review and Small Business Impact Review  
Report of Findings**

*Indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

This regulatory action is necessary for the protection of public health and for the protection of the Commonwealth's surface waters and aquatic life. The Water Quality Standards regulation forms the basis upon which effluent discharge limits are set and upon which it is determined whether or not waters are attaining applicable designated uses. Comment received during the Notice Of Public Comment on the proposal ranged from agreement that the proposed amendments are necessary to protect designated uses (i.e. aluminum criteria, human health criteria updates, SAV acreage updates, Shenandoah River filamentous algae criteria) to opposition to changes to certain Sections to address freshwater copper criteria, certain elements of proposed filamentous algae criteria implementation, and the need to include certain pollutant parameters in the regulation (i.e. polyfluoroalkyl substances, algal toxins, color, turbidity). Federal and state mandates in the Clean Water Act at 303(c), 40 CFR 131 and the Code of Virginia in §62.1-44.15(3a) require that water quality standards be adopted, modified or cancelled every three years. Potential economic impacts would be the result of possibly more stringent VPDES permit limits. Impacts specific to small businesses are not anticipated.

## Public Comment

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

See Attachment 1.

## Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
9VAC25-260-140.B Criteria for surface water	N/A	<p>Chlordane (µg/l)  <del>57749</del> <del>12789036</del></p> <p>Known or suspected carcinogen; human health criteria at risk level 10<sup>-5</sup>.</p> <p><u>Aluminum</u>  <u>7429905</u>  <u>Acute and chronic freshwater aluminum criteria values for a site shall be calculated using the 2018 Aluminum Criteria Calculator (Aluminum Criteria Calculator V.2.0.xlsx), or a calculator in R or other software package using the same 1985 Guidelines calculation approach and underlying model equations as in the Aluminum Criteria Calculator V.2.0.xlsx, as defined in EPA's Final Aquatic Life Ambient Water Quality Criteria for Aluminum. (EPA-822-R-18-001, 2018)</u></p>	<p>Chlordane (µg/l)  <del>[57749]</del> <del>[12789036]</del></p> <p>Known or suspected carcinogen; human health criteria at risk level 10<sup>-5</sup>.</p> <p><u>Aluminum</u>  <u>7429905</u>  <u>Acute and chronic freshwater aluminum criteria values for a site shall be calculated using the 2018 Aluminum Criteria Calculator (Aluminum Criteria Calculator V.2.0.xlsx), or a calculator in R or other software package using the same 1985 Guidelines calculation approach and underlying model equations as in the Aluminum Criteria Calculator V.2.0.xlsx, as defined in EPA's Final Aquatic Life Ambient Water Quality Criteria for Aluminum. (EPA-822-R-18-001, 2018)</u>  <u>[Values displayed in the table are examples of criteria calculated by the model using the indicated input parameters for pH, hardness, and Dissolved Organic Carbon (DOC). Freshwater criteria expressed as total recoverable.]</u></p>	<p>Retain CAS number "57749". The suggested change to EPA Regional Screening Level (RSL) number is inconsistent with the CAS number EPA assigns to its human health and aquatic life criteria recommendations which could lead to misinterpretations.</p> <p>Text added that specifies the criteria are expressed as the total recoverable form of the metal rather than the dissolved form.</p> <p>Due to the complex nature of the issues</p>

		<p>Copper (µg/l)<sup>5</sup> 7440508</p> <p><u>Freshwater criteria for copper shall be calculated using the EPA 2007 Biotic Ligand Model (see 9VAC25- 260-140 G) where the board has determined that a sufficient dataset of input parameters is available. Where the board has determined that a sufficient dataset is not available, freshwater criteria shall be calculated using the hardness-based equations below. Freshwater values derived using the below equations are a function of total hardness as calcium carbonate CaCO<sub>3</sub> mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400.</u></p> <p>Freshwater acute criterion (µg/l)</p> <p>WER <math>[e^{(0.9422[\ln(\text{hardness}]-1.700)}]</math> (CF<sub>a</sub>)</p> <p>Freshwater chronic criterion (µg/l) WER <math>[e^{(0.8545[\ln(\text{hardness}]-1.702)}]</math> (CF<sub>c</sub>)</p> <p>WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F.</p> <p>e = natural antilogarithm</p> <p>ln = natural logarithm</p> <p>CF = conversion factor a (acute) or c (chronic)</p> <p>CF<sub>a</sub> = 0.960</p> <p>CF<sub>c</sub> = 0.960</p> <p><u>Alternate copper criteria in freshwater: the freshwater criteria for copper can also be calculated using the EPA 2007 Biotic Ligand Model (See 9VAC25-260-140 G).</u></p> <p>Acute saltwater criterion is a 24-hour average not to be exceeded more than once every three years on the average.</p>	<p>Copper (µg/l)<sup>5</sup> 7440508</p> <p><u>[ Freshwater criteria for copper shall be calculated using the EPA 2007 Biotic Ligand Model (see 9VAC25- 260-140 G) where the board has determined that a sufficient dataset of input parameters is available. Where the board has determined that a sufficient dataset is not available, freshwater criteria shall be calculated using the hardness-based equations below. ]</u> Freshwater values <u>[ derived using the below equations ]</u> are a function of total hardness as calcium carbonate CaCO<sub>3</sub> mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400.</p> <p>Freshwater acute criterion (µg/l)</p> <p>WER <math>[e^{(0.9422[\ln(\text{hardness}]-1.700)}]</math> (CF<sub>a</sub>)</p> <p>Freshwater chronic criterion (µg/l) WER <math>[e^{(0.8545[\ln(\text{hardness}]-1.702)}]</math> (CF<sub>c</sub>)</p> <p>WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F.</p> <p>e = natural antilogarithm</p> <p>ln = natural logarithm</p> <p>CF = conversion factor a (acute) or c (chronic)</p> <p>CF<sub>a</sub> = 0.960</p> <p>CF<sub>c</sub> = 0.960</p> <p><u>[ Alternate copper criteria in freshwater: the freshwater criteria for copper can also be calculated using the EPA 2007 Biotic Ligand Model (See 9VAC25-260-140 G). ]</u></p> <p>Acute saltwater criterion is a 24-hour average not to be exceeded more than once every three years on the average.</p>	<p>surrounding the proposal, a future rulemaking will address changes to the biotic ligand model-based copper criteria for freshwater aquatic life.</p>
<p>9VAC25-260-140.G Biotic Ligand Model for copper.</p>	<p>N/A</p>	<p><u>On a case-by-case basis Where the board determines that a sufficient dataset of input parameters is available, EPA's 2007 copper criteria (EPA-822-F-</u></p>	<p><u>[ On a case-by-case basis ] [ Where board determines that a sufficient dataset of input parameters is available ], EPA's 2007 copper criteria (EPA-822-</u></p>	<p>Due to the complex nature of the issues surrounding the proposal, a future rulemaking will</p>

		<p>07-001) biotic ligand model (BLM) for copper <del>may shall</del> be used to determine <del>alternate the applicable</del> copper criteria for freshwater sites. The BLM is a bioavailability model that uses receiving water characteristics to develop site-specific criteria. Site-specific data for 10 parameters are needed to use the BLM. These parameters are temperature, pH, dissolved organic carbon, calcium, magnesium, sodium, potassium, sulfate, chloride, and alkalinity. <del>If sufficient data for these parameters are available, the BLM can be used to calculate alternate criteria values for the copper criteria. The</del> <u>Where the board determines that a sufficient dataset of input parameters is available, the BLM would shall</u> be used instead of the hardness-based criteria and takes the place of the hardness adjustment and the WER. A WER will not be applicable with the BLM.</p>	<p>F-07-001) biotic ligand model (BLM) for copper [ may ] [ <del>shall</del> ] be used to determine [ alternate ] [ <del>the applicable</del> ] copper criteria for freshwater sites. The BLM is a bioavailability model that uses receiving water characteristics to develop site-specific criteria. Site-specific data for 10 parameters are needed to use the BLM. These parameters are temperature, pH, dissolved organic carbon, calcium, magnesium, sodium, potassium, sulfate, chloride, and alkalinity. [ If sufficient data for these parameters are available, the BLM can be used to calculate alternate criteria values for the copper criteria. The ] [ <del>Where the board determines that a sufficient dataset of input parameters is available, the</del> ] BLM [ would <del>shall</del> ] be used instead of the hardness-based criteria and takes the place of the hardness adjustment and the WER. A WER will not be applicable with the BLM.</p>	<p>address changes to the biotic ligand model-based copper criteria for freshwater aquatic life.</p>
<p>9VAC25-260-187.C. Criteria for man-made lakes and reservoirs to protect aquatic life and recreational designated uses from the impacts of nutrients.</p>		<p>When the board determines that the applicable criteria in subsection B of this section for a specific man-made lake or reservoir are exceeded, board shall consult with the Department of Game and Inland Fisheries regarding the status of the fishery in determining whether or not the designated use for that waterbody is being attained. If the designated use of the subject waterbody is not being attained, the board shall assess the waterbody as impaired in accordance with § <a href="#">62.1-44.19:5</a> of the Code of Virginia. If the designated use is being attained, the board shall assess the waterbody as impaired in accordance with § <a href="#">62.1-44.19:5</a> of the Code of Virginia until site-specific criteria are adopted and become effective for that waterbody.</p>	<p>When the board determines that the applicable criteria in subsection B of this section for a specific man-made lake or reservoir are exceeded, the board shall consult with the Department of [ <del>Game and Inland Fisheries</del> ] [ <u>Wildlife Resources</u> ] regarding the status of the fishery in determining whether or not the designated use for that waterbody is being attained. If the designated use of the subject waterbody is not being attained, the board shall assess the waterbody as impaired in accordance with § <a href="#">62.1-44.19:5</a> of the Code of Virginia. If the designated use is being attained, the board shall assess the waterbody as impaired in accordance with § <a href="#">62.1-44.19:5</a> of the Code of Virginia until site-specific criteria are adopted and become effective for that waterbody.</p>	<p>The name "Department of Game and Inland Fisheries" is being changed to reflect the new name "Department of Wildlife Resources".</p>
<p>9VAC25-260-310. Special standards and requirements.</p>	<p>N/A</p>	<p><u>In the wadeable portions of the mainstem sections of the Shenandoah River, North Fork Shenandoah River, and South Fork Shenandoah River listed below, a determination of persistent nuisance filamentous algae impeding the recreation use should be made when exceedances of the specified benthic chlorophyll-a concentration thresholds occur in more than one recreation season</u></p>	<p><u>In the wadeable portions of the mainstem sections of the Shenandoah River, North Fork Shenandoah River, and South Fork Shenandoah River listed below, a determination of persistent nuisance filamentous algae impeding the recreation use should be made when exceedances of [ either of ] the specified benthic chlorophyll-a concentration thresholds occur in more than one recreation</u></p>	<p>Proposed language was modified to indicate that the frequency of exceedance is to be determined by examining at each threshold separately.</p>

		(May 1 to October 31) in three years.	season (May 1 to October 31) in three years.	
9VAC25-260-440. 4. Rappahannock River Basin	N/A	4 III ESW 17,18, 28 Free flowing tributaries of the Rappahannock from Blandfield Point from the Route 1 Alternate Bridge at Fredericksburg to its headwaters, unless otherwise designated in this chapter.	4 III ESW 17,18, 28 Free flowing tributaries of the Rappahannock from [ Blandfield Point ] [ from the Route 1 Alternate Bridge at Fredericksburg ] to its headwaters, unless otherwise designated in this chapter.	Proposed language created a section gap for free flowing tributaries from Blandfield Point to the Route 1 Alternate Bridge. This change corrects that oversight. Notation for ESW-28 in special standards column is retained.

### Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

#### Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-260-50. Numerical criteria for dissolved oxygen, pH, and maximum temperature.	N/A	pH column lacked the footnote (****).	Specifies lake pH criteria applies only to the epilimnion when lake/reservoir is stratified. Adding missing quadruple asterisk (****) to pH column corrects the absence of the footnote when language for Footnote **** was originally adopted. No impacts expected. Footnote (****) states that dissolved oxygen and pH criteria only apply to the epilimnion when the lake/reservoir is stratified.
9VAC25-260-140. Criteria for surface water	N/A	Currently no freshwater criteria for aluminum.  2, 3, 7, 8-Tetrachlorodibenzo-p-dioxin Antimony Nickel N-Nitrosodimethylamine N-Nitrosodiphenylamine N-Nitrosodi-n-propylamine Total PCBs Selenium Thallium Zinc  -----  Current parameter name: Bis2-Chloroisopropyl Ether	Adds nationally recommended freshwater criteria for total aluminum for the protection of aquatic life. This change could have an economic impact on permittees if aluminum is present in their effluent.  Human health criteria for fish tissue and drinking water have been recalculated for these compounds using updated exposure factors based on 2011 EPA recommendations and to be consistent with the way all other human health criteria are calculated in the VA WQS. These changes could have an economic impact on permittees if these particular pollutant parameters are present in their effluent. Substantive impacts are not anticipated.  Correction of several Chemical Abstracts Service (CAS) numbers. No impact.  Name changed to "2,2'-Oxybis(1-Chloropropane)" for correctness. No impact.

		<p>Human health criteria for Bis(chloromethyl) Ether.</p> <p>Human Health criteria footnotes 3 and 4.  <sup>3</sup>Criteria have been calculated to protect human health from toxic effects through drinking water and fish consumption, unless otherwise noted and apply in segments designated as PWS in <a href="#">9VAC25-260-390</a> through <a href="#">9VAC25-260-540</a>.”  <sup>4</sup>Criteria have been calculated to protect human health from toxic effects through fish consumption, unless otherwise noted and apply in all other surface waters not designated as PWS in <a href="#">9VAC25-260-390</a> through <a href="#">9VAC25-260-540</a>.</p>	<p>Deleted Bis(chloromethyl) Ether. Due to the 38 second half-life of this pollutant and the fact that EPA no longer considers it to be a Priority Pollutant. This change is not expected to have an economic impact on permittees that have this human health pollutant in their effluent.</p> <p>The existing Table of Parameters does not contain language specifying the duration of human health criteria. The following language is proposed to be added to the end of footnotes 3 and 4 of this section: “<u>Human health criteria are based on the assumption of average amount of exposure on a long-term basis.</u>” This change is not expected to have an economic impact on permittees that have human health pollutants in their effluent.</p>																																				
<p>9VAC25-260-185. Criteria to protect designated uses from the impacts of nutrients and suspended sediment in the Chesapeake Bay and its tidal tributaries.</p>	<p>N/A</p>	<p>Current SAV and water clarity acreage criteria for 5 Bay segments.</p> <table border="1" data-bbox="573 804 966 976"> <thead> <tr> <th>Bay segment</th> <th>SAV acres</th> <th>Clarity acres</th> </tr> </thead> <tbody> <tr> <td>RPPMH</td> <td>1700</td> <td>5000</td> </tr> <tr> <td>JMSTF2</td> <td>200</td> <td>500</td> </tr> <tr> <td>JMSTF1</td> <td>1000</td> <td>2500</td> </tr> <tr> <td>JMSMH</td> <td>200</td> <td>500</td> </tr> <tr> <td>JMSPH</td> <td>300</td> <td>750</td> </tr> </tbody> </table>	Bay segment	SAV acres	Clarity acres	RPPMH	1700	5000	JMSTF2	200	500	JMSTF1	1000	2500	JMSMH	200	500	JMSPH	300	750	<p>Proposed amendment increases the SAV and water clarity acreage criteria for these segments so they are consistent with the reasoning underlying the SAV criteria for other Bay segments.</p> <table border="1" data-bbox="992 852 1385 999"> <thead> <tr> <th>Bay segment</th> <th>SAV acres</th> <th>Clarity acres</th> </tr> </thead> <tbody> <tr> <td>RPPMH</td> <td><u>5,380</u></td> <td><u>13,450</u></td> </tr> <tr> <td>JMSTF2</td> <td><u>266</u></td> <td><u>665</u></td> </tr> <tr> <td>JMSTF1</td> <td><u>1,333</u></td> <td><u>3,332</u></td> </tr> <tr> <td>JMSMH</td> <td><u>531</u></td> <td><u>1,328</u></td> </tr> <tr> <td>JMSPH</td> <td><u>604</u></td> <td><u>1,510</u></td> </tr> </tbody> </table> <p>These changes are not expected to have an economic impact on permittees.</p>	Bay segment	SAV acres	Clarity acres	RPPMH	<u>5,380</u>	<u>13,450</u>	JMSTF2	<u>266</u>	<u>665</u>	JMSTF1	<u>1,333</u>	<u>3,332</u>	JMSMH	<u>531</u>	<u>1,328</u>	JMSPH	<u>604</u>	<u>1,510</u>
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<p>9VAC25-260-187. Criteria for man-made lakes and reservoirs to protect aquatic life and recreational designated uses from the impacts of nutrients.</p>	<p>N/A</p>	<p>Lake/reservoir criteria to protect against nutrient over-enrichment do not currently apply to Lake Mooney in Stafford County.</p>	<p>DEQ staff recommend that Lake Mooney in Stafford County be added to this section due to its proposed PWS designation. These changes are not expected to have an economic impact on permittees.</p>																																				
<p>9VAC25-260-187.C. Criteria for man-made lakes and reservoirs to protect aquatic life and recreational designated uses from the impacts of nutrients.</p>		<p>When the board determines that the applicable criteria in subsection B of this section for a specific man-made lake or reservoir are exceeded, the board shall consult with the Department of [ <del>Game and Inland Fisheries</del> ] [ <u>Wildlife Resources</u> ] regarding the status of the fishery in determining whether or not the designated use for that waterbody is being attained. If the designated use of the subject waterbody is not being attained, the board shall assess the waterbody as impaired in accordance with § <a href="#">62.1-44.19:5</a> of the Code of Virginia. If the designated use is being attained, the board shall assess the waterbody as impaired in accordance with § <a href="#">62.1-44.19:5</a> of the Code of Virginia until site-specific criteria are adopted and become effective for that waterbody..</p>	<p>The name “Department of Game and Inland Fisheries” is being changed to reflect the new name “Department of Wildlife Resources”.</p>																																				
<p>9VAC25-260-310. Special standards and requirements.</p>	<p>N/A</p>	<p>Special Standard “y” is a site-specific, seasonal chronic ammonia criterion that applies to the tidal freshwater Potomac River and tidal tributaries that enter the</p>	<p>Special Standard “y” is proposed for deletion. This ammonia criterion does not consider the presence of mussels, which are very sensitive to ammonia. The statewide ammonia criteria</p>																																				

		tidal freshwater Potomac River from Cockpit Point (below Occoquan Bay) to the fall line at Chain Bridge.  Currently no Special Standard "ii".	adopted by the Board in 2019 which became effective in 2020 stipulates that mussels are present unless the absence of mussels has been adequately demonstrated. This special standard is being proposed for removal. This change could have an economic impact on permittees.  Added Special Standard "ii" which addresses nuisance filamentous algae growth on the North Fork Shenandoah River, South Fork Shenandoah River, and mainstem Shenandoah River. This proposed special standard may have an economic impact on permittees.
9VAC25-260-390. 6 Potomac River Basin (Potomac River Subbasin).	N/A		Deletion of Special Standard "y" notation in special standards column.
9VAC25-260-400. 1c Potomac River Basin (Shenandoah River Subbasin).	N/A	Currently no notation for "ii".	Added notation for Special Standard "ii".
9VAC25-260-400. 2 Potomac River Basin (Shenandoah River Subbasin).	N/A	Currently no notation for "ii".	Added notation for Special Standard "ii". Deleted ESW notation "12" as in was in wrong basin section.
9VAC25-260-400. 2b Potomac River Basin (Shenandoah River Subbasin).	N/A	Currently no notation for "ii".	Added notation for Special Standard "ii".
9VAC25-260-400. 3 Potomac River Basin (Shenandoah River Subbasin).	N/A	Currently no notation for "ii".	Added notation for Special Standard "ii". Added notation for ESW-12 to correct basin section.
9VAC25-260-400. 3a Potomac River Basin (Shenandoah River Subbasin).	N/A	South River from the dam above Waynesboro (all waters of the impoundment).	South River from the <u>former location of the dam</u> above Waynesboro ( <del>all waters of the impoundment</del> ). Clarified segment description. No impacts expected.
9VAC25-260-400. 5c Potomac River Basin (Shenandoah River Subbasin).	N/A	Dry River (Rockingham County) from Harrisonburg's raw water intake (approximately 11.7 miles above its confluence with the North River) to a point 5 miles upstream, unless otherwise designated in this chapter.	Dry River (Rockingham County) from Harrisonburg's raw water intake (approximately 11.7 miles above its confluence with the North River) to a point 5 miles upstream <u>including Skidmore Fork upstream to the headwaters of Switzer Lake</u> , unless otherwise designated in this chapter.  Clarified application of PWS designation. No impacts expected
9VAC25-260-400. 5d Potomac River Basin (Shenandoah River Subbasin).	N/A	5d VI Dry River and its tributaries from 5 miles above Harrisonburg's raw water intake to its headwaters.  iv Skidmore Fork from its confluence with Dry River upstream including all named and unnamed tributaries.	5d VI Dry River and its tributaries from 5 miles above Harrisonburg's raw water intake to its headwaters. <u>V Stockable Trout Waters in Section 5d viii Switzer Lake from its dam upstream to the impoundment headwaters.</u>  iv Skidmore Fork from its confluence with Dry River upstream including all named and unnamed tributaries. <u>This does not include</u>

			<p><u>Switzer Lake which are Class V Stockable Trout Waters.</u></p> <p>Clarified application of Stockable Trout Waters application. No impacts expected</p>
9VAC25-260-400. 5e Potomac River Basin (Shenandoah River Subbasin).	N/A	<p>5e VI PWS North River and its tributaries from Staunton Dam to their headwaters.</p> <p>VI Natural Trout Waters in Section 5e iv North River from Elkhorn Dam upstream including all named and unnamed tributaries.</p>	<p>5e VI PWS North River and its tributaries from Staunton Dam to their headwaters <u>unless otherwise designated in this chapter.</u></p> <p><u>V Stockable Trout Waters in Section 5e lii ee Elkhorn Lake from the dam upstream to the impoundment headwaters.</u></p> <p>VI Natural Trout Waters in Section 5e iv North River from <u>the headwaters of Elkhorn Dam Lake</u> upstream including all named and unnamed tributaries.</p> <p>Clarified application of Stockable and Natural Trout Waters application and added seasonal Stockable Trout waters special standard "ee". No impacts expected</p>
9VAC25-260-400. 6 Potomac River Basin (Shenandoah River Subbasin).	N/A	Currently no notation for "ii".	Added notation for Special Standard "ii".
9VAC25-260-400. 6a Potomac River Basin (Shenandoah River Subbasin).	N/A	IV PWS Little Passage Creek from the Strasburg Reservoir Dam upstream to its headwaters, unless otherwise designated in this chapter.	<p><u>IV V</u> PWS Little Passage Creek from the Strasburg Reservoir Dam upstream to its headwaters, unless otherwise designated in this chapter.</p> <p>Corrected Water body classification from Class IV to Class V waters (Stockable Trout). No impacts expected</p>
9VAC25-260-410. 1g James River Basin (Lower).	N/A	1g III Shingle Creek from its confluence with the Nansemond River to its headwaters in the Dismal Swamp.	<p>1g III Shingle Creek from <u>its confluence with the Nansemond River the head of tidal waters</u> to its headwaters in the Dismal Swamp <u>unless otherwise designated in this chapter.</u></p> <p>Clarified application of Class III water body classification for Shingle Creek. No impacts expected</p>
9VAC25-260-420. 11e James River Basin (Middle).	N/A	11e III James River and its tributaries, excluding Blackwater Creek, from Six Mile Bridge to the Business Route 29 bridge in Lynchburg.	<p>11e III James River and its tributaries, excluding Blackwater Creek, from Six Mile Bridge to <u>the Business Route 29 bridge 5th Street Bridge</u> in Lynchburg.</p> <p>Clarification of segment description. No impacts expected.</p>
9VAC25-260-440. 3. Rappahannock River Basin	N/A	The Rappahannock River from the Route 1 Alternate Bridge at Fredericksburg upstream to the low dam water intake at Waterloo (Fauquier County).	<p>The Rappahannock River from the Route 1 Alternate Bridge at Fredericksburg upstream <u>to the low dam water intake at Waterloo (Fauquier County) to its headwaters, unless otherwise designated in this chapter.</u></p> <p>Clarification of segment description. No impacts expected.</p>
9VAC25-260-440. 3a. Rappahannock River Basin	N/A	The Rappahannock River and its tributaries from Spotsylvania County's raw water intake near Golin Run to points 5 miles upstream (excluding Motts Run and tributaries, which is in Section 4c).	<p>The Rappahannock River and its tributaries from Spotsylvania County's raw water intake near Golin Run to points 5 miles upstream <u>of the Rocky Pen Run Reservoir (Lake Mooney) pump and store intake</u> (excluding Motts Run and tributaries, which is in Section 4c).</p> <p>Expansion of PWS designation to include PWS designation for Lake Mooney intake. No impacts expected.</p>



9VAC25-260-440. 4. Rappahannock River Basin.	N/A	4 III ESW 17,18 Free flowing tributaries of the Rappahannock from Blandfield Point to its headwaters, unless otherwise designated in this chapter.	4 III ESW 17,18, <u>28</u> Free flowing tributaries of the Rappahannock from Blandfield Point to its headwaters, unless otherwise designated in this chapter.  Placement of ESW-28 (Hazel River Exceptional State Waters segment) in correct basin segment. No impacts expected.
9VAC25-260-440. 4g. Rappahannock River Basin.	N/A	4g III Deep Run and its tributaries.	4g III Deep Run and its tributaries ( <u>Stafford and Fauquier Counties</u> ).  Clarification of tributary location. No impacts expected.
9VAC25-260-470. 2b. Chowan and Dismal Swamp (Chowan River Subbasin).	N/A	Cabin Point Swamp from its confluence with the Nottoway River to its headwaters.	Cabin Point Swamp <u>and its tributaries</u> from its confluence with the Nottoway River to its headwaters.  Swampwater delineation clarification for Cabin Point Swamp. No impacts expected.
9VAC25-260-500. 1. Tennessee and Big Sandy River Basins (Clinch River Subbasin).	N/A	North Fork Powell River from the confluence of Straight Creek to its headwaters.	North Fork Powell River from the confluence of Straight Creek <u>upstream to its headwaters the Keokee Lake dam</u> .  Clarification of application of Stockable Trout waters (Class V) classification for North Fork Powell River. No impacts expected.

### Regulatory Flexibility Analysis

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

Water Quality Standards do not establish compliance or reporting requirements. The proposed changes in the Water Quality Standards Regulation are implemented through established Department programs, including the VPDES permitting program, the water quality monitoring and assessment programs, and the TMDL program. These programs have the flexibility to implement the existing and proposed amendments to the Water Quality Standards to provide for flexibility in regulatory recordkeeping and water quality monitoring efforts.

### Family Impact

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

The direct impact resulting from the development of water quality standards is for the protection of public health and safety and the protection of water quality in surface waters which has an indirect positive impact on families. This regulatory action does not impact the institution of the family or family stability.

**Final Agency Background Document**

**ATTACHMENT 1**

**Summary of Public Comments with Agency Responses**

**Summary of Comment & Agency Response**  
**Triennial Review**  
**Notice of Public Comment**  
Comment period January 17 – March 18 2022

Commenter:

U.S Environmental Protection Agency (EPA Region 3)

EPA Comment 1:

In 9VAC25-260-50, triple asterisk (\*\*\*) indicates that “The water quality criteria in this section do not apply below 7Q10. Commenter is concerned that there are no water quality criteria for DO, pH and temperature that apply below certain flows and recommends adding language indicating that narrative criteria as specified in 9VAC25-260-20 continue to apply and eliminating the footnote. They recommend adding same language to quadruple footnote (\*\*\*\*).

**DEQ Response:** The existing footnote associated with the triple asterisk (\*\*\*) specifies when the numeric criteria for the parameters identified in this section of the regulation are, or are not, applicable. 9VAC25-260-10.A, which precedes Section 50, describes the aquatic life use as “the propagation and growth of a balanced, indigenous population of aquatic life, including game fish, which might reasonably be expected to inhabit them”—and stipulates that all state waters are designated for this use. The general criteria which follow this section of the regulation (9VAC25-260-20.A) are applicable to all state waters and are narrative (e.g. do not contain specific values or numeric criteria). Staff does not agree with the recommendation to expand the footnote in Section 50 of the regulation where specific numeric criteria for specific parameters are provided. The general criteria are narrative, non-numeric and not specific. It is staff’s position that including a reference to a non-specific, general criterion is not necessary and would potentially be confusing to the reader/user of the document.

EPA Comment 2.a.:

EPA recommends including a footnote for aluminum criteria similar to footnote 5 of 9 VAC 25-260-140.B. criteria table, indicating that the aluminum criteria apply to the total recoverable form of the metal. The footnote should also indicate that the values displayed in the table are examples corresponding to the inputs indicated. DEQ should consider developing implementation guidance to accompany the aluminum criteria to clarify expectations for development and implementation.

**DEQ Response:** The suggested additions will be incorporated in the final proposal. Implementation guidance will be developed for the aluminum criteria by permitting and assessment programs.

EPA Comment 2.b.:

DEQ needs to provide a more complete rationale for deletion of bis (chloromethyl) ether deletion criteria, especially as the background document seems to indicate that this parameter may still be present in the effluent of permittees.

**DEQ Response:** EPA removed BCME from its list of priority toxic pollutants (40 CFR 423, Appendix A) on February 4, 1981, citing the fact that its “chemical properties did not justify its inclusion” since the substance's half-life in water of 38 seconds at 20°C. It is DEQ's position that this fact and the lack of an EPA-approved analytical method for this constituent in water make it untenable for the Department to require permittees to monitor for BCME or conduct analyses and make permitting decisions to meet the human health criterion.

EPA Comment 2.c.:

Revising chlordane CAS # to the EPA Regional Screening Level (RSL) number may be inconsistent with the CAS number EPA assigns to its human health and aquatic life criteria recommendations, which could lead to misinterpretations. EPA recommends DEQ reconsider this revision.

**DEQ Response:** DEQ will retract this proposed amendment. The absence of nonstereospecific chlordane (CAS 57-74-9) in EPA's RSL spreadsheet should be addressed so that the aims of risk assessment and remediation are in line with WQS objectives.

EPA Comment 2.d.:

With regard to the freshwater copper BLM, EPA recommends that guidance be provided on what will be considered a “sufficient dataset”. They also recommend DEQ revise this provision as well as 9VAC25-260-140. F to indicate that the aquatic life hardness-based copper criteria equation must be applied with a water effects ratio (WER) of 1, and any site-specific copper criteria must be developed using the copper biotic ligand model (BLM).

**DEQ Response:** DEQ has determined that it is premature to move forward with the language as contained in the initially proposed WQS amendments to further transition to implementing the freshwater copper BLM criteria. While DEQ is supportive of the science behind the BLM as a versatile tool for predicting the toxicity of copper in freshwater systems, there remain a number of uncertainties associated with implementation of the BLM approach at this time.

EPA has produced very limited guidance for implementing the copper BLM, specifically in the context of permitting decisions. Additionally, DEQ has found that it is difficult to communicate with stakeholders and DEQ staff about the copper BLM predictions because of the lack of transparency in the computational mechanics of the model and its sole existence in proprietary software. For these reasons, DEQ has elected not to add any additional language to the freshwater copper criteria at this time. The existing language of the water quality standards already provides for a BLM approach for site specific determinations of copper water quality end-points.

EPA Comment 2.e.:

In updating the human health criteria, DEQ should consider including Relative Source Contributions (RSC= 20%) in its calculation for Ni, Se, and Zn in addition to updating the exposure factors.

**DEQ Response:** In 2015, EPA recommended 94 updated or new human health (HH) criteria, which Virginia adopted in 2017. These criteria reflected recent toxicity information as well as updated exposure factors--average adult body weight, fish consumption rate, and drinking water intake rate. EPA did not update the remaining 20

HH criteria because the toxicity factors for the relevant pollutants had not changed. DEQ has elected to recalculate these criteria with the most recently recommended exposure factors. DEQ did not incorporate the relative source contribution (RSC) factor into this calculation unless EPA recommended one for a specific pollutant, as is the case for antimony and thallium. Because the proposed HH criteria for Ni, Se, and Zn are more stringent than the current nationally recommended criteria, DEQ has chosen not to recalculate the proposed criteria with the default RSC. DEQ recommends EPA recalculate the 20 HH criteria that were not revised in 2015 to ensure that all HH criteria are developed from a uniform set of assumptions. DEQ would consider updating the criteria to reflect revised EPA recommendations at that time.

EPA Comment 2.f.:

The proposed footnotes 3 and 4 of the criteria table indicate that human health criteria are based on the assumption of average amount of exposure on a long-term basis. DEQ may want to consider adding an expression of how that long-term exposure will be measured. Example: an annual arithmetic mean concentration not to be exceeded.

**DEQ Response:** In the absence of EPA guidance on the appropriate duration and magnitude expression of human health criteria, DEQ has decided that it is appropriate for implementation programs to define these parameters.

EPA Comment 3:

Commenter commends VADEQ in its efforts to revise the Commonwealth's proposed Chesapeake Bay submerged aquatic vegetation amendments, but requests the technical addendum documents or other sources that support VADEQ's criteria revision.

**DEQ Response:** Chapter V of the 2017 EPA technical addendum (EPA 903-R 17-00) presents the basis for VADEQ's proposed amendments to the SAV acreage goals. The July 2007 EPA technical addendum (EPA 903-R 07-003) provides the basis for the 2.5 multiplier used to translate SAV acreage to water clarity acreage.

EPA Comment 4:

Commenter asks for clarification on why VADEQ believes the Lake Mooney chlorophyll and total phosphorus criteria proposed for adoption would be protective of the reservoir's Public Water Supply use.

**DEQ Response:** It is DEQ's policy to adopt nutrient criteria for lakes/reservoirs that are deemed significant. A significant lake/reservoir is defined as a publicly accessible lake/reservoir that is a public water supply and/or 100 acres or more in size. Lake Mooney was first opened to the public in 2017 and is currently being proposed for the public water supply designation. Thus, VADEQ has determined it meets the requirements for lakes/reservoir nutrient criteria. Please also refer to EPA Comment 9.

EPA Comment 5:

EPA commends efforts to add special standard "ii" to address nuisance algae growth on the North Fork Shenandoah River, South Fork Shenandoah River and the mainstem Shenandoah River. The documentation provided to EPA, however, does not include a scientific rationale per EPA regulations at 40 CFR 131.11(a)(1) to demonstrate the criteria contain sufficient parameters or constituents to protect the designated use. Please provide sufficient rationale.

**DEQ Response:** Staff has prepared a technical rationale document in support of the proposed criteria provided. It can be found at the following web link:

EPA Comment 6:

DEQ is proposing a number of revisions to its River Basin Section Tables. DEQ must be cautious that in the process of these revisions it does not inadvertently change the designated use of any streams, especially if the change of the designated use is to a use that is less protective. Commenter provides specific examples of proposed revisions to waterbody segments that require more detailed clarification/rationale.

**DEQ Response:** The proposed updates and revisions are based on the input and expertise of DEQ regional office staff as well as Department of Wildlife Resources (DWR) staff. The basis for the updates are provided below in responding to the comments from EPA.

- Comment: 9VAC25-260-400. 3a. Potomac River Basin (Shenandoah River Subbasin). Please confirm if this revision is due to a dam removal.
  - DEQ Response: Yes. The revision is due to a low-water dam that was removed.
- Comment: 9VAC25-260-400. 5c. Potomac River Basin (Shenandoah River Subbasin). Please confirm if the addition of Skidmore Fork upstream to the headwaters of Switzer Lake adds Public Water Supply protections to Skidmore Fork and Switzer Lake.
  - DEQ Response: Yes. Public Water Supply protections are extended to Skidmore Fork and the Switzer Lake reservoir.
- 9VAC25-260-400. 5d. Potomac River Basin (Shenandoah River Subbasin). Please confirm if this WQS revision revises the designated use of Switzer Lake from Mountainous Zones Waters to Stockable Trout Waters.
  - DEQ Response: Yes. Switzer Lake is being changed from Class IV (Mountainous Zone waters) to Class V (Stockable Trout waters).
- 9VAC25-260-400. 5e. Potomac River Basin (Shenandoah River Subbasin). EPA has several comments on the revisions to this section (1) Please provide a rationale for adding “unless otherwise designated in this chapter.” It appears that the Public Water Supply (PWS) continues to apply throughout the North River and its tributaries from Staunton Dam to their headwaters, so the intent of this revision is unclear. (2) It appears that Elkhorn Lake is being redesignated to Stockable Trout designated use and assigned special temperature criteria. VADEQ has provided no rationale as to why the special temperature criteria is appropriate and protective of the Stockable Trout designated use in Elkhorn Lake. (3) The Elkhorn Lake is being classified as iii., which appears to be a Department of Game and Inland Fisheries (DGIF, now DWR) classification for a wild natural trout stream classification as opposed to a stockable trout stream. Please confirm if this DGIF classification is correct.
  - DEQ Response: (1) The phrase “unless otherwise designated in the chapter” is frequently utilized to alert the reader that there may be a subset of waters within the main section description that have a classification, special standard, or use that is different from the one indicated in the main section heading. North River and its tributaries are

Class IV waters with the exception of those segments that are specified as Stockable and Natural trout waters (Class V and VI). The PWS designation applies to all the river segments in section 5e. (2) Elkhorn Lake is being reclassified as Stockable Trout waters (Class V) on recommendation of DWR. The reservoir is stocked with trout only during cooler months for sport fishing opportunities with no expectation of trout survival over the late spring and summer. The maximum temperature criterion for Stockable Trout waters (21°C) will apply during cooler months (November – April). A maximum temperature criterion of 26° C applies during late spring through early fall (May – October). (3) The trout water classification schema utilized by DWR is included in the VA Water Quality Standards for informational purposes only. They serve no regulatory function. DWR was consulted regarding the correct DWR classification for Elkhorn Lake before this amendment was proposed based on their recommendation.

- Comment: 9VAC25-260-400. 6a. Potomac River Basin (Shenandoah River Subbasin). Please clarify if this revision to Little Passage Creek classification is a correction or a redesignation from Mountainous Zones Waters to Stockable Trout Waters.
  - DEQ Response: The revision is a correction. The main header for section 6a incorrectly has the notation of Class IV (Mountainous zone waters – maximum temperature 31° C). It is being changed to match the Stockable Trout waters (Class V – max. temp. 21° C) section description in 6a which has the same narrative language. This change has been confirmed with the VA Department of Wildlife Resources as correct.
- Comment: 9VAC25-260-410. 1g. James River Basin (Lower). The rationale provided for this revision is that it is to clarify the application of the Nontidal Waters for Shingle Creek because almost the entirety of Shingle Creek was designated as Swamp waters during the last triennial review. Please provide copies of the referenced designation from the previous triennial review, including any use attainability analysis from that redesignation so that EPA can confirm the application of the Swamp waters designated use to this waterbody.
  - DEQ Response: The natural conditions assessment report to support reclassification of Shingle Creek was provided to EPA as supporting documentation in DEQ’s amendment approval package dated November 21, 2016. The narrative description for Shingle Creek (section 1g, James River Basin- Lower) is proposed for modification to accommodate any portion of the creek that may not be tidal or contained within the Class VII portion.
- Comment: 9VAC25-260-420. 11e. James River Basin (Middle). Please confirm if the Business Rt 29 bridge and the 5th street bridge is the same structure or if this results in a redesignation of a portion of Blackwater Creek.
  - DEQ Response: It is the same structure.
- 9VAC25-260-440. 3. Rappahannock River Basin. Please confirm that by moving the terminus of this segment from the low dam water intake at Waterloo to the headwaters of the Rappahannock River VADEQ did not redesignate any portion of this waterbody.



- DEQ Response: It is not a redesignation but a clarification of the terminus for Class III waters.
- 9VAC25-260-440. 4. Rappahannock River Basin. Please confirm if Blandfield Point and the Route 1 Alternate Bridge at Fredericksburg is the same structure or if this results in a redesignation of any of the free-flowing tributaries of the Rappahannock.
  - DEQ Response: It is not a redesignation but a clarification of the section description. All of the free flowing tributaries to the Rappahannock River that are Class III waters shall remain Class III waters.
- 9VAC25-260-440. 4g. Rappahannock River Basin. Please confirm if there is any part of Deep Run and its tributaries not in Stafford and Fauquier Counties, and if there is, please provide the designated uses of those portions of Deep Run.
  - DEQ Response: Deep Run and its tributaries are entirely within Stafford and Fauquier Counties
- 9VAC25-260-470. 2b. Chowan and Dismal Swamp (Chowan River Subbasin). The background document indicates the purpose of this revision is to clarify the swampwater designation for Cabin Point Swamp to include the Cabin Point Swamp tributaries. It is unclear what the Cabin Point Swamp tributaries are currently designated, but it appears they are being redesignated from nontidal Waters (Coastal and Piedmont Zones) to Swamp Waters. As the Swamp Water designation requires less stringent criteria, this redesignation should have been accompanied by a UAA (Use Attainability Analysis).
  - DEQ Response: The reclassification of Cabin Point Swamp from Class III (Nontidal Waters) to Swamp Waters (Class VII) was approved by EPA in 2009. A UAA in the form of the report titled “*Natural Conditions Assessment for Low pH and Low Dissolved Oxygen, Nottoway River Tributaries in Dinwiddie, Prince George, and Sussex Counties, Virginia*” and dated April 2007 was submitted and accepted as supporting rationale. The report recommends that the waterbody Class for Cabin Point Swamp and its tributaries be changed from Class III to Class VII. When first adopted, that recommendation was not reflected in the adopted amendment language that did not include the tributaries to Cabin Point Swamp. The proposed language during this Triennial Review corrects that omission.
- 9VAC25-260-500. 1. Tennessee and Big Sandy River Basins (Clinch River Subbasin). Please confirm if removing “its headwaters” and adding “upstream to the Keokee Lake dam” resulted in the redesignation of any portion of that waterbody.
  - DEQ Response: It results in the reclassification of Keokee Lake and its headwaters from Class V (Stockable Trout waters) to Class IV (Mountainous Zone waters). This was done by advisement of DWR. DWR manages Keokee and its headwaters for warmwater fish populations. DWR has never stocked there nor do they plan to do so in the future. Their data suggests that trout could not survive through the summer months.

EPA Comment 7:

EPA had previously encouraged DEQ to adopt the nationally recommended freshwater selenium criteria for the protection of aquatic life.

**DEQ Response:** DEQ is awaiting finalized EPA implementation guidance for freshwater aquatic life selenium criteria before proceeding with rulemaking. The implementation of these criteria will be more challenging than the implementation of other nationally recommended toxics criteria due to the greater importance placed on fish tissue criteria elements than the water column elements and the absence of an acute water column criterion recommendation.

EPA Comment 8:

EPA released national recommendations in 2019 for the Human Health Recreational Ambient Water Quality Criteria or Swimming Advisories (AWQC/SA) for Microcystins and Cylindrospermopsin (EPA 822-R-19-001). These recommendations are intended as guidance to states to consider when developing WQS. Alternatively, these recommendations can be used as the basis of swimming advisories for notification purposes in recreational waters to protect public health. EPA strongly recommends the adoption of these values for the protection of human health.

**DEQ Response:** States are given the discretion to adopt EPA's nationally recommended recreational microcystin and cylindrospermopsin thresholds as water quality criteria and/or swimming advisory levels. Virginia has elected to use these thresholds as the basis for swimming advisory levels, in addition to thresholds for other cyanotoxins and cyanobacterial cell counts. DEQ considers Virginia Department of Health swimming advisories when assessing the recreation use.

EPA Comment 9:

In 2021, EPA published revised lakes and reservoirs nutrient criteria recommendations. DEQ should consider adoption in this triennial review of nutrient criteria for the protection of lakes and reservoirs derived using the models found in this guidance document. At a minimum, DEQ can use EPA's 2021 document to derive criteria for the protection of public water supply for Lake Mooney.

**DEQ Response:** DEQ supports EPA's efforts to revise its previously recommended criteria using best available science by utilizing the stressor-response approach. The revised numeric chlorophyll criteria that Virginia recently adopted for the James River estuary were developed using a similar approach. DEQ also appreciates EPA's efforts to provide transparency by publishing the technical support document describing the methodology used to develop these criteria. However, DEQ is satisfied by the approach used by its Academic Advisory Committee (AAC) to develop the existing ecoregional nutrient criteria for lakes/reservoirs and does not intend to replace this approach with the nationally recommended criteria at this time for the following reasons:

- The Department is not convinced that the dataset used to develop the nationally recommended criteria is representative of Virginia's lakes/reservoirs. While the dataset used to develop the assessment endpoint and criteria models represents approximately 1,800 lakes and reservoirs across the conterminous United States, it only represents two years (2007 and 2012). The southeastern region, including Virginia, experienced moderate-severe drought conditions during the

summer 2007 and dry conditions in the summer 2012. For this reason, VADEQ is concerned the criteria derived from the EPA models may not be representative of ambient conditions.

- Given the high variability of depth at a particular reservoir station, it is unclear what summary statistic (e.g., maximum, minimum, average, 90th percentile, etc.) would best represent lake depth. The stringency of candidate chlorophyll criteria increases with lake depth, while the stringency of TP and TN criteria decreases with increasing depth.

In the future, DEQ may work with the AAC to review the existing Section 187 nutrient criteria. It is DEQ's position that this work would benefit from the flexibility to adopt nationally recommended chlorophyll criteria while declining to adopt nationally recommended TP and TN criteria (or vice versa). DEQ would also prefer to continue its policy of giving the assessment of chlorophyll criteria primacy over the assessment of TP criteria, since chlorophyll has a more direct connection to harmful effects than nutrients. Lastly, stakeholder support for nutrient criteria is very important to DEQ. It is the position of the Department that states should be able to adopt/revise nutrient criteria using assessment endpoints with the most stakeholder support. The value of developing chlorophyll criteria with respect to microcystin concentration is readily apparent to stakeholders, especially given the existence of EPA-recommended recreational microcystin thresholds and the importance of this endpoint to public health. But the relationship of zooplankton biomass to phytoplankton biomass ratio does not carry with it the same urgency. The challenge of building stakeholder consensus around a particular zooplankton biomass slope would likely be considerable and should be given a more concentrated focus than can be considered at this stage of the Triennial Review.

EPA Comment 10:

Should DEQ choose not to revise selenium criteria, nutrient criteria for the protection of lakes and reservoirs, or adopt recreational water quality criteria for cyanotoxins, such an explanation must be submitted. Commenters are providing a copy of these comments to USFWS who may identify any other recommendations for DEQ to consider.

**DEQ Response:** In this response to comments document, DEQ has provided responses to the comments and suggestions regarding revision of the selenium criteria (see response to comment 7), nutrient criteria for the protection of lake and reservoirs (see response to comment 9) and has provided an overview of Virginia's approach to application of the recommended cyanotoxin thresholds in considering recreational swimming advisories (see response to comment 8). DEQ did not receive any additional comments or recommendations from USFWS. Accordingly, DEQ considers these responses as explanation for the proposed regulatory amendments with this triennial review rulemaking. DEQ appreciates EPA's comments and offer of assistance to work together to complete this triennial review process.

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Commenters:

Appomattox Water Authority, Arlington Co. Dept. Environmental Services, Augusta Co. Service Authority, Bath Co. Service Authority, Campbell Co. Service Authority, Culpeper Dept. of Environmental Services, Fork Union Military Academy, Frederick Co. Sanitation

Authority, Halifax Co. Service Authority, Hampton Roads Regional Sanitation District, Hanover Co. Dept. of Public Utilities, Harrisonburg/Rockingham Regional Service Authority, Henrico Co. Dept. of Public Utilities, Leesburg Dept. of Utilities, Louisa Co. Water Authority, Nelson Co. Service Authority, New Kent Co. Dept. Public Utilities, Pepper's Ferry Regional Wastewater Treatment Authority, Purcellville Dept. Public Works, Rapidan Service Authority, Rivanna Water and Sewer Authority, Shenandoah Co. Dept. of Public Services, Stafford Co. Dept. of Utilities, Strasburg Wastewater Treatment Facility, Sussex Service Authority, Upper Occoquan Service Authority, VA Association of Municipal Wastewater Agencies (VAMWA), VA Manufacturers Association (VMA), Waynesboro Dept. of Public Works, Winchester Public Services, Western VA Water Authority

Appomattox Water Authority *et al.* Comment 1:

Commenters express the opinion that current copper standards are fully protective and are unaware of any situations in VA that the current standards are not protective. No data have been presented that suggest BLM has additional benefit to aquatic life, and DEQ has not expressed a viable reason for the proposed change. EPA and its Science Advisory Board have not suggested BLM is a better (more accurate) representation of copper toxicity. The BLM is not a superior approach for copper criteria. A Water Effects Ratio (WER) procedure directly measures and evaluates protective levels on a permittee specific, site-specific basis. Hardness-based copper criteria are a more accurate measure of protective levels. BLM approach would prevent permittees from using the site-specific WER procedure for water quality protection and make obsolete past investments based in sound science. Switching to copper BLM may result in additional though unnecessary treatment improvements. Additionally, EPA is developing a new Multiple Linear Regression (MLR) modeling approach for metals that may replace the BLM, making it inefficient to incorporate the BLM at this time when a future recommendation from EPA may change from the BLM to the MLR. BLM would likely result in substantial wasteful spending. Adoption of BLM would make permitting more difficult and compliance more expensive. Neighboring states have not mandated use of BLM and would place VA at an economically competitive disadvantage. A change to use of the BLM would affect small rural systems across VA. VA should exclude BLM proposal and exercise its CWA discretion and continue using existing Cu standards and WER option.

**DEQ Response:** DEQ is supportive of the science behind the BLM as a versatile tool for predicting the toxicity of copper in freshwater systems. The BLM approach reflects the latest scientific knowledge on metals speciation and bioavailability—both which can be influenced by other site-specific variables besides hardness.

The EPA's Science Advisory Board's 1999 assessment of the BLM as a tool for developing permit limits was measured but generally positive. The SAB's consensus at that time was that the scientific underpinnings of the BLM appear to be sound. The SAB did note the BLM does not necessarily reduce the uncertainty associated with metal toxicity and bioavailability compared to the WER but also stated that "its predictiveness over a wide range of environmental conditions makes the BLM a more versatile and effective tool for deriving site-specific water quality criteria (WQC) compared to the WER.

BLM-based predictions of copper toxicity have shown good agreement with observed toxicity (Welsh et al. 1993, Erickson et al. 1996, Van Genderen et al. 2005, Villavicencio et al. 2005, Dal Pont et al. 2017). In 2006, Parametrix and HydroQual conducted a study that compared—against the backdrop of toxicity data—acute copper criteria derived using the hardness equation, WER adjustment to the hardness equation,

and the BLM for seven western, arid effluent-dependent stream sites. The BLM approach was found to produce criteria that are protective of sensitive biota while the other two were found to produce under protective criteria. As far as DEQ is aware, a similar study has not been done for eastern and/or non-arid streams. However, DEQ is unaware of peer-reviewed research that indicates the adjustment of hardness-based freshwater copper criteria using the WER is a more scientifically defensible way to derive site-specific criteria compared to the BLM.

While DEQ is supportive of the science behind the BLM as a versatile tool for predicting the toxicity of copper in freshwater systems, there remain a number of uncertainties associated with transitioning to implementation of the BLM approach at this time. Accordingly, DEQ staff is recommending that it is premature to move forward with the language as contained in the initially proposed WQS amendments.

EPA has produced very limited guidance for implementing the copper BLM, specifically in the context of permitting decisions. Additionally, DEQ has found that it is difficult to communicate with stakeholders and DEQ staff about the copper BLM predictions because of the lack of transparency in the computational mechanics of the model and its sole existence in proprietary software. For these reasons, DEQ has elected not to add any additional language to the freshwater copper criteria at this time.

DEQ finds no reason to remove the copper BLM from the water quality standards regulation as currently written, and staff is supportive of the use of the BLM for derivation of site-specific water quality end-points. However, due the absence of comprehensive implementation guidance from EPA, particularly in the context of developing permit limits, DEQ has decided to not add the proposed language.

Appomattox Water Authority *et al.* Comment 2:

Commenters assert that endpoints should demonstrate persistent and unambiguous undesirable conditions that are not indicative of natural variability. The commenters assert the proposed seasonal median 100 mg/m<sup>2</sup> threshold value lacks sufficient scientific support. Studies reviewed by DEQ did not involve user perception studies that demonstrated a linkage between 100 mg/m<sup>2</sup> and recreational uses. Evaluations by other states demonstrated majority of users found higher chlorophyll-a to be desirable for recreation.

The concept of a two-month mean is a more scientifically defensible approach than the seasonal median; however, a proposed mean of 150 mg/m<sup>2</sup> is an overly conservative value. The proposed seasonal mean fails to reasonably balance costs and benefits and achieve the purpose of the regulation as cost-effectively as possible. "One-in-Three" year assessment should be revised to "Two-in-Six." One-in-Three year period conflicts with and the Two-in-Six period is consistent with, the methodology DEQ generally uses in its Water Quality Assessment Guidance. Two-in-Six approach would be consistent with the recently adopted chlorophyll-a criteria for the tidal James River.

**DEQ Response:** Benthic chlorophyll-a concentrations greater than 100 mg/m<sup>2</sup> have been linked to degraded stream aesthetics, while concentrations greater than 150 mg/m<sup>2</sup> have been linked to impeded recreational uses (see sources in Table 1 in the attached technical rationale memorandum included as Attachment 2). It is DEQ's position that the aesthetics of a stream site are best characterized by evaluating long-term conditions (e.g., most of the recreation season), whereas the loss of recreational use should be viewed as a more acute effect. The use of paired thresholds is consistent with EPA's recommendation that decisions regarding recreational use attainment

address the different exposure patterns of recurring algal blooms (e.g., short-term blooms occurring frequently and blooms that are sustained over an extended period of time).

The proposed criteria allow no more than one recreation season in three years to exceed the thresholds for benthic chlorophyll-a. It is VADEQ's position that one recreation season is insufficient for determining that a waterbody has experienced *persistent* nuisance filamentous algal growth. Consistent with USEPA's rationale for nationally recommended recreational cyanotoxin criteria, VADEQ asserts that a *recurring* pattern of recreational impairment must be documented before the determination of use nonattainment is made. A three-year interval prevents a waterbody from having recreational losses due to nuisance filamentous algae in consecutive years. While Virginia allows consecutive exceedances for James River aquatic life chlorophyll-a criteria—which allow two seasonal mean exceedances in six years—VADEQ believes that human recreators are more sensitive to the spacing of seasonal filamentous algal blooms than aquatic life are to seasonal phytoplankton blooms.

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Commenter:

Environmental Integrity Project (EIP)

Comments:

The numeric criteria for filamentous algae should include a maximum. DEQ should change the two-month median of 150 mg/m<sup>2</sup> to a maximum. Criteria for filamentous algae should apply to all of the Commonwealth's fresh waters. Existing research quantifying how much algae is too much appears to coalesce around the conclusion that benthic chlorophyll-a concentrations over 100-150 mg/m<sup>2</sup> are considered too high for recreational enjoyment. These thresholds seem to apply across wide geographies. Strongly encourage DEQ to proactively monitor for algae rather than rely on complaints, and to also improve and expand upon the systems for complaints to be reported and tracked and for using the observational and complaint information in DEQs water quality programs.

**DEQ Response:** Averaging periods have been chosen (as opposed to instantaneous thresholds) because it is DEQ's position that filamentous algal growth impacts the recreation use and should be addressed when it causes a pattern of persistent aesthetic and/or recreational losses. This reasoning is not at odds with existing recreational criteria. EPA's nationally recommended recreational bacteria criteria (USEPA, 2012; USEPA, 2015) allow an averaging period up to 90 days in length. EPA's nationally recommended recreational cyanotoxin criteria (USEPA, 2019) allow a waterbody's recreation use to be made unusable by elevated cyanotoxins for as long as 30 days.

It is DEQ's position that enough monitoring data have been collected in the portions of the North Fork Shenandoah, South Fork Shenandoah, and Shenandoah Rivers targeted by the proposed amendments to verify that the proposed thresholds are appropriate indicators of nuisance filamentous algae in the wadeable portions of those systems. Other segments may be added as more monitoring data are collected. Different thresholds may possibly be recommended for these additional waters.

Regarding enhancing the reporting and tracking system of algal complaints, the process entails a coordinated effort among DEQ and the Virginia Department of Health. The system which allows residents to report possible harmful algal blooms (HABs) is

maintained by VDH, and is accessible at: <https://www.vdh.virginia.gov/waterborne-hazards-control/harmful-algal-bloom-online-report-form/#:~:text=Please%20contact%20the%20HAB%20Hotline,in%20or%20near%20the%20water>. DEQ works with VDH to consider reported algal blooms and determine if investigations are warranted. This system is response-based for freshwater algal blooms in Virginia. Advisories and monitoring data collected in support of HAB investigations through this system are considered by DEQ in its' water quality programs, including the water quality assessment.

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Commenter:  
Chesapeake Bay Foundation

Comments 1 and 2:

Commenter expresses support for the revised submerged aquatic vegetation (SAV) criteria and DEQ's decision to no longer use attainability as a basis for these criteria.

Recommend DEQ adopt EPA recommended criteria for microcystin and cylindrospermopsin in addition to utilizing VDH advisories for several reasons related to assessment, impairment identification and the TMDL process to address impaired waters.

**DEQ Response:** Consistent with EPA's guidance, states are given the discretion to adopt EPA's nationally recommended recreational microcystin and cylindrospermopsin thresholds as water quality criteria and/or swimming advisory levels. Virginia has elected to use these thresholds as the basis for swimming advisory levels, in addition to thresholds for other cyanotoxins and cyanobacterial cell counts. DEQ considers Virginia Department of Health swimming advisories when assessing the recreation use.

Comment 3:

The commenter supports the adoption of standards to protect against impairment by filamentous algae and recommends that DEQ adopt criteria to protect all VA non-tidal waters from filamentous algal blooms and their impacts upon designated uses.

**DEQ Response:** It is VADEQ's position that enough monitoring data have been collected in the portions of the North Fork Shenandoah, South Fork Shenandoah, and Shenandoah Rivers targeted by the proposed amendments to verify that the proposed thresholds are appropriate indicators of nuisance filamentous algae in the wadeable portions of those systems. Other segments may be added as more monitoring data are collected. Different thresholds than the ones proposed may possibly be recommended for these additional waters should criteria be developed in the future.

Comment 4:

Commenter recommends that protocols be established for incorporating climate change into TMDLs and across all programs and permitting processes consistent with 2020 legislation.

**DEQ Response:** It is staff's position that the policies and framework called for in the referenced legislation are best suited to be developed and applied by the DEQ programs which implement measures which may promote climate resilience mitigation practices.

Comments 5&6:

DEQ should adopt numeric chlorophyll criteria for all tidal waters of the Chesapeake Bay, particularly the York River, and finalize establishment of numeric turbidity criteria.

**DEQ Response:** VADEQ continues to work with the Chesapeake Bay Program Partnership on the development of chlorophyll-a thresholds that would allow for the implementation for the narrative chlorophyll-a criterion provided in 9VAC25-260-185 (Criteria to Protect Designated Uses from the Impacts of Nutrients and Suspended Sediment in the Chesapeake Bay and Its Tidal Tributaries).

VADEQ appreciates the comment regarding turbidity. The rulemaking for turbidity was initiated with the NOIRA in April 21, 2021 with a first RAP meeting held in August 2021. Staff has not yet had the capacity to return to this rulemaking.

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Commenter:

Potomac Riverkeeper Network/Shenandoah Riverkeeper

Comment:

Commenters fully support the adoption of Special Standard ii in 9VAC25-260-310 given the chronic problem of widespread algal blooms and, recently, detection of cyanotoxins in the Shenandoah River. Commenters state that a benthic chlorophyll-a standard may ultimately be insufficient as the sole tool to determine whether the recreational uses of the Shenandoah are being impaired. The commenter notes that in addition to implementing threshold criteria that protects the recreational use, DEQ should assess to what extent algal blooms affect achievement of the aquatic life criteria in the Shenandoah River. Commenters recommend revising the Water Quality Assessment guidance or develop stand-alone guidance applicable to monitoring for chlorophyll-a in the Shenandoah and other Virginia Rivers. They also recommend adoption of EPA's recommendation for microcystin and cylindrospermopsin criteria as VDH's use of the criteria to inform public HAB advisories is insufficient, because it does not provide DEQ with a regulatory mechanism to assess the impact of cyanotoxins, and the related algal blooms, on designated uses of the Shenandoah and other rivers across the Commonwealth.

**DEQ Response:** The development of the benthic chlorophyll a criteria has entailed a multi-year effort to establish appropriate, reproducible, defensible field methods to provide representative results as well as analysis of the thresholds established by other states and evaluation of the DEQ-generated data.

DEQ is proposing to implement the recommended criteria to ensure the protection of the recreation use and will continue to implement the complementary water programs in place to consider other possible impacts to other beneficial uses. These include responding to reported algal blooms, working cooperatively with the Department of Health to determine if harmful algae are present, as well as routine water monitoring efforts considering stream health through biological and physicochemical monitoring.

All water quality criteria are subject to periodic review and revision, if deemed unnecessary, so that advances in scientific understanding can be incorporated. If adopted, the proposed benthic chlorophyll-a thresholds would be treated no differently and thus could be revised if they are deemed to be insufficiently protective.



The Water Quality Assessment guidance manual will be updated with implementation guidance for the proposed filamentous algae thresholds at such time that the proposed criteria are finalized and become effective.

States are given the discretion to adopt EPA's nationally recommended recreational microcystin and cylindrospermopsin thresholds as water quality criteria and/or swimming advisory levels. Virginia has elected to use these thresholds as the basis for swimming advisory levels, in addition to thresholds for other cyanotoxins and cyanobacterial cell counts. VADEQ considers VDH swimming advisories when assessing the recreation use, and has regulatory mechanisms available to address water quality impairments if and as they are identified, including those which may arise from issuance of VDH issued swimming advisories.

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Commenter:

Wild Virginia on behalf of Preserve Giles, Waterkeepers Chesapeake, Green New Deal Virginia, Alleghany-Blue Ridge Alliance, Loudoun Climate Project, Protect Our Water, Heritage, Rights and RVA Interfaith Climate Justice League

Comment 1:

Commenter asks the Board to amend the WQS to ensure that all parts of the narrative criteria are fully implemented and enforced, and provides suggested language to amend 9VAC25-260-20. They cite concerns that application and enforcement of the narrative criteria have been insufficient and/or inconsistent in DEQ as currently implemented through guidance and policy, and the WQS should be updated to provide more specific implementation direction in the regulation. The commenter states that the State Water Control Board has an important opportunity through this triennial review process to change practices that have left the promises of the Clean Water Act, the State Water Control Law, and the water quality standards regulation itself unfulfilled in numerous instances.

**DEQ Response:** As noted by the commenter, DEQ water quality programs implement the general criteria as contained in 9VAC25-260.A, often referred to as the narrative criteria, through program policy and guidance. The narrative criteria are descriptive and goal oriented, but do not establish specific, numeric criteria or endpoints. DEQ water quality programs implement these criteria through various policies and practices. The water quality programs maintain these guidelines in program-specific implementation guidance manuals, which are revised periodically through the public participation procedures stipulated by §2.2-4002.1 of the Administrative Process Act. The narrative criteria are applied in many ways, including the biological monitoring of upland and coastal streams, fish consumption advisories, shellfish harvesting, beach closures, and Whole Effluent Toxicity (WET) testing. The measures to support WQS narrative criteria include: biennial Water Quality Assessments, response to pollution events, establishment of VPDES permit conditions and limitations, and possible support for enforcement actions against permitted and unpermitted dischargers. Additionally, it is common practice that policies and procedures established to implement regulation be developed and implemented outside of the regulatory framework. This allows programmatic flexibility to implement regulation while providing for public input in the process of establishing implementation guidance.

Comment 2:

The commenter requests the State Water Control Board to direct DEQ to initiate and/or expedite regulatory processes, apart from the current triennial review rulemaking, to develop appropriate numeric criteria for turbidity and/or solids, nutrients and per- and polyfluoroalkyl substances (PFAS).

**DEQ Response:**

The science of PFAS/PFOA is still emerging. The process for incorporating numeric criteria is generally derived from the research and recommendations from EPA. EPA is currently developing water quality criteria for these substances but has not yet issued finalized nationally recommended regulatory thresholds. At the third RAP meeting for the 2021 Triennial Review development process, Mr. Jeffrey Steers (Director of Central Operations) delivered a presentation describing Virginia's efforts to address PFAS/PFOA. The Virginia PFAS Workgroup, for which Mr. Steers is a member, is conducting research that may lead to recommended maximum contaminant levels for inclusion in the regulations of the Board of Health.

To control nutrient over-enrichment, Virginia relies heavily on the implementation measures and nutrient control strategies from existing programs, to include: the Chesapeake Bay Watershed Implementation Plan implementing the Chesapeake Bay TMDL, local nutrient, sediment and bacteria TMDLs as well as monitoring implementing and evaluating nutrient criteria for lakes/reservoirs. Virginia is making good progress on meeting its 2025 nitrogen reduction goal under the Chesapeake Bay TMDL. Over the past decade, the Commonwealth has reduced nitrogen discharges from wastewater treatment plants by 45%. These achievements are a testament to the robust nutrient reduction program that exists in Virginia.

Lastly, DEQ did initiate rule-making to develop numeric turbidity criteria. This rulemaking was initiated with the NOIRA in April 21, 2021; a first RAP meeting was held in August 2021. Staff has not had the capacity to return to this rulemaking.

Comment 3:

The commenter notes that Virginia lacks specific data quality guidance for evaluating qualitative citizen data, and requests the Board to instruct DEQ to develop guidance for the agency's use of qualitative water quality data and information, to empower members of the public to contribute necessary water quality information that the agency will use in regulatory actions and in other appropriate ways.

**DEQ Response:** DEQ has developed three levels of data quality for citizen and other non-DEQ water quality monitoring data based upon both the level of data quality and the authorized uses of the data provided to the agency. Citizen data that are potentially useful but lack a DEQ-approved quality assurance plan (QAPP)/standard operating procedure(SOP) or do not pertain to a water quality standard are categorized as "Level I", which permits the data to be used for education and public notification of pollution events. Data are categorized as Level II when they are submitted with a DEQ-approved QAPP and SOP but were collected using methods that deviate significantly from ones used by DEQ. These data are typically used by DEQ to identify sites needing follow-up monitoring. Data categorized as Level III meet the same integrity requirements that DEQ's data are held to and are thus used the same way that DEQ's data are used for water quality assessments. Citizen scientists that have been audited by DEQ and who have submitted calibration records and other quality control information generate Level III data. Through its Citizen Water Quality Monitoring

Programs Guidance manual, DEQ provides individuals interested in collecting monitoring data with protocols for commonly sampled parameters and guidance on how to develop quality assurance plans and monitoring programs. While the protocols outlined in the manual are focused mainly on quantitative measures of water quality (e.g., dissolved oxygen, pH, and bacteria), the manual also points to methods for conducting visual habitat quality evaluations. These datasets would not be used by DEQ for regulatory actions due to the absence of a water quality standard for physical habitat quality, but they could be used by the agency to prioritize monitoring resources, track TMDL implementation progress, or establish baseline conditions. The Virginia Citizen Water Quality Monitoring Program Methods Manual can be accessed here: <https://www.deq.virginia.gov/home/showpublisheddocument/12448/637704018822470000>.

**ATTACHMENT 3**  
**9 VAC 25-260 Virginia Water Quality Standards, Triennial  
Review Proposed Amendments (only sections of the regulation  
with changes at the proposed or final stage are included.)**

**State Water Control Board  
Triennial Review Rulemaking (9VAC25-260)**

**9VAC25-260-50. Numerical criteria for dissolved oxygen, pH, and maximum temperature\*\*\*.**

CLASS	DESCRIPTION OF WATERS	DISSOLVED OXYGEN (mg/l)****		pH****	Max. Temp. (°C)
		Min.	Daily Avg.		
I	Open Ocean	5.0	--	6.0-9.0	--
II	Tidal Waters in the Chowan Basin and the Atlantic Ocean Basin	4.0	5.0	6.0-9.0	--
II	Tidal Waters in the Chesapeake Bay and its tidal tributaries	see 9VAC25-260-185		6.0-9.0	
III	Nontidal Waters (Coastal and Piedmont Zones)	4.0	5.0	6.0-9.0	32
IV	Mountainous Zones Waters	4.0	5.0	6.0-9.0	31
V	Stockable Trout Waters	5.0	6.0	6.0-9.0	21
VI	Natural Trout Waters	6.0	7.0	6.0-9.0	20
VII	Swamp Waters	*	*	3.7-8.0*	**

\*This classification recognizes that the natural quality of these waters may fluctuate outside of the values for D.O. and pH set forth above as water quality criteria in Class I through VI waters. The natural quality of these waters is the water quality found or expected in the absence of human-induced pollution. Water quality standards will not be considered violated when conditions are determined by the board to be natural and not due to human-induced sources. The board may develop site specific criteria for Class VII waters that reflect the natural quality of the waterbody when the evidence is sufficient to demonstrate that the site specific criteria rather than narrative criterion will fully protect aquatic life uses. Virginia Pollutant Discharge Elimination System limitations in Class VII waters shall not cause significant changes to the naturally occurring dissolved oxygen and pH fluctuations in these waters.

\*\*Maximum temperature will be the same as that for Classes I through VI waters as appropriate.

\*\*\*The water quality criteria in this section do not apply below the lowest flow averaged (arithmetic mean) over a period of seven consecutive days that can be statistically expected to occur once every 10 climatic years (a climatic year begins April 1 and ends March 31). See 9VAC25-260-310 and 9VAC25-260-380 through 9VAC25-260-540 for site specific adjustments to these criteria.

\*

\*\*\*\*For a thermally stratified man-made lake or reservoir in Class III, IV, V, or VI waters that are listed in 9VAC25-260-187, these dissolved oxygen and pH criteria apply only to the

27 epilimnion of the waterbody. When these waters are not stratified, the dissolved oxygen and  
 28 pH criteria apply throughout the water column.

29 **9VAC25-260-140. Criteria for surface water.**

30 A. Instream water quality conditions shall not be acutely<sup>1</sup> or chronically<sup>2</sup> toxic except as  
 31 allowed in 9VAC25-260-20 B (mixing zones). The following are definitions of acute and chronic  
 32 toxicity conditions:

33 "Acute toxicity" means an adverse effect that usually occurs shortly after exposure to a  
 34 pollutant. Lethality to an organism is the usual measure of acute toxicity. Where death is not easily  
 35 detected, immobilization is considered equivalent to death.

36 "Chronic toxicity" means an adverse effect that is irreversible or progressive or occurs  
 37 because the rate of injury is greater than the rate of repair during prolonged exposure to a  
 38 pollutant. This includes low level, long-term effects such as reduction in growth or reproduction.

39 B. The following table is a list of numerical water quality criteria for specific parameters.

Table of Parameters <sup>6,7</sup>						
PARAMETER CAS Number	USE DESIGNATION					
	AQUATIC LIFE				HUMAN HEALTH	
	FRESHWATER		SALTWATER		Public Water Supply <sup>3</sup>	All Other Surface Waters <sup>4</sup>
	Acute <sup>1</sup>	Chronic <sup>2</sup>	Acute <sub>1</sub>	Chronic <sub>2</sub>		
Acenaphthene (µg/l) 83329					70	90
Acrolein (µg/l) 107028	3.0	3.0			3	400
Acrylonitrile (µg/l) 107131 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .					0.61	70
Aldrin (µg/l) 309002 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .	3.0		1.3		0.000007 7	0.000007 7

<p><u>Aluminum (µg/l)</u> <u>7429905</u></p> <p><u>Acute and chronic freshwater aluminum criteria values for a site shall be calculated using the 2018 Aluminum Criteria Calculator (Aluminum Criteria Calculator V.2.0.xlsx), or a calculator in R or other software package using the same 1985 Guidelines calculation approach and underlying model equations as in the Aluminum Criteria Calculator V.2.0.xlsx, as defined in EPA's Final Aquatic Life Ambient Water Quality Criteria for Aluminum. (EPA-822-R-18-001, 2018) [ Values displayed in the table are examples of criteria calculated by the model using the indicated input parameters for pH, hardness, and Dissolved Organic Carbon (DOC). Freshwater criteria expressed as total recoverable. ]</u></p>	<p><u>1,300</u></p> <p><u>pH= 7.0</u></p> <p><u>Total hardness</u> <u>≤</u> <u>(CaCO3</u> <u>) = 25</u> <u>mg/l</u> <u>DOC =</u> <u>5.0 mg/l</u></p>	<p><u>500</u></p> <p><u>pH= 7.0</u></p> <p><u>Total hardness</u> <u>≤</u> <u>(CaCO3</u> <u>) = 25</u> <u>mg/l</u> <u>DOC =</u> <u>5.0 mg/l</u></p>			
<p><u>Ammonia (µg/l)</u> <u>766-41-7 7664417</u></p> <p><u>Chronic criterion is a 30-day average concentration not to be exceeded more than once every three years on the average.(see 9VAC25-260-155)</u></p>					
<p><u>Anthracene (µg/l)</u> <u>120127</u></p>				<p><u>300</u></p>	<p><u>400</u></p>
<p><u>Antimony (µg/l)</u> <u>7440360</u></p>				<p><u>5.6</u> <u>5.3</u></p>	<p><u>640</u> <u>580</u></p>

Arsenic ( $\mu\text{g/l}$ ) <sup>5</sup> 7440382	340	150	69	36	10	
Bacteria (see 9VAC25-260-160 and 9VAC25-260-170)						
Barium ( $\mu\text{g/l}$ ) 7440393					2,000	
Benzene ( $\mu\text{g/l}$ ) 71432 Known or suspected carcinogen; human health criteria at risk level $10^{-5}$					5.8	160
Benzidine ( $\mu\text{g/l}$ ) 92875 Known or suspected carcinogen; human health criteria at risk level $10^{-5}$					0.0014	0.11
Benzo (a) anthracene ( $\mu\text{g/l}$ ) 56553 Known or suspected carcinogen; human health criteria at risk level $10^{-5}$					0.012	0.013
Benzo (b) fluoranthene ( $\mu\text{g/l}$ ) 205992 Known or suspected carcinogen; human health criteria at risk level $10^{-5}$					0.012	0.013
Benzo (k) fluoranthene ( $\mu\text{g/l}$ ) 207089 Known or suspected carcinogen; human health criteria at risk level $10^{-5}$					0.12	0.13
Benzo (a) pyrene ( $\mu\text{g/l}$ ) 50328 Known or suspected carcinogen; human					0.0012	0.0013



health criteria at risk level 10 <sup>-5</sup>					
Bis2-Chloroethyl Ether (µg/l) 111444 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup>				0.30	22
<del>Bis-(chloromethyl) Ether 542881 Known or suspected carcinogen; human health criteria at risk level 10<sup>-5</sup></del>				<del>0.0015</del>	<del>0.17</del>
<del>Bis2-Chloroisopropyl Ether (Bis (2-Chloro-1-methylethyl) Ether) 2,2'-Oxybis(1-Chloropropane) (µg/l) 108601</del>				200	4,000
Bis2-Ethylhexyl Phthalate (µg/l) 117817 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> . Synonym = Di-2-Ethylhexyl Phthalate.				3.2	3.7
Bromoform (µg/l) 75252 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .				70	1,200
Butyl benzyl phthalate (µg/l) 85687				1.0	1.0

<p>Cadmium (µg/l)<sup>5</sup> 7440439</p> <p>Freshwater values are a function of total hardness as calcium carbonate (CaCO<sub>3</sub>) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400.</p> <p>Freshwater acute criterion (µg/l) WER e<sup>(0.9789[ln(hardness)]-3.866)</sup> (CF<sub>a</sub>)</p> <p>Freshwater chronic criterion (µg/l) WER e<sup>(0.7977[ln(hardness)]-3.909)</sup> (CF<sub>c</sub>)</p> <p>WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F</p> <p>e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF<sub>a</sub> = 1.136672-[(ln hardness)(0.041838)] CF<sub>c</sub> = 1.101672-[(ln hardness)(0.041838)]</p>	<p>1.8 CaCO<sub>3</sub> = 100</p>	<p>0.72 CaCO<sub>3</sub> = 100</p>	<p>33 X WER</p>	<p>7.9 X WER</p>	<p>5</p>	
<p>Carbon tetrachloride (µg/l) 56235</p> <p>Known or suspected carcinogen; human health criteria at risk level 10<sup>-5</sup>.</p>					<p>4.0</p>	<p>50</p>

Carbaryl (µg/l) 63252	2.1	2.1	1.6			
Chlordane (µg/l) [ 57749 ] [ <del>12789036</del> ] Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .	2.4	0.0043	0.09	0.0040	0.0031	0.0032
Chloride (µg/l) 16887006 Human health criterion to maintain acceptable taste and aesthetic quality and applies at the drinking water intake. Chloride criteria do not apply in Class II transition zones (see subsection C of this section).	860,000	230,000			250,000	
Chlorine, Total Residual (µg/l) 7782505 In DGIF class i and ii trout waters (9VAC25-260-390 through 9VAC25-260-540) or waters with threatened or endangered species are subject to the halogen ban (9VAC25-260-110).	19 See 9VAC25- -260- 110	11 See 9VAC25- -260- 110				
Chlorine Produced Oxidant (µg/l) 7782505			13	7.5		
Chlorobenzene (µg/l) 108907					100	800
Chlorodibromomethane (µg/l) 124481 Known or suspected carcinogen; human					8.0	210

health criteria at risk level 10 <sup>-5</sup> .						
Chloroform (µg/l) 67663					60	2,000
2-Chloronaphthalene (µg/l) 91587					800	1,000
2-Chlorophenol (µg/l) 95578					30	800
Chlorpyrifos (µg/l) 2921882	0.083	0.041	0.011	0.0056		
Chromium III (µg/l) <sup>5</sup> 16065831 Freshwater values are a function of total hardness as calcium carbonate CaCO <sub>3</sub> mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion µg/l WER [e <sup>{0.8190[ln(hardness)]+3.7256}</sup> ] (CF <sub>a</sub> ) Freshwater chronic criterion µg/l WER [e <sup>{0.8190[ln(hardness)]+0.6848}</sup> ] (CF <sub>c</sub> ) WER = Water Effect Ratio = 1 unless determined otherwise	570 (CaCO <sub>3</sub> = 100)	74 (CaCO <sub>3</sub> = 100)			100 (total Cr)	

<p>under 9VAC25-260-140.F</p> <p>e = natural antilogarithm</p> <p>ln = natural logarithm</p> <p>CF = conversion factor a (acute) or c (chronic)</p> <p>CF<sub>a</sub>= 0.316</p> <p>CF<sub>c</sub>=0.860</p>						
<p>Chromium VI (µg/l)<sup>5</sup></p> <p>18540299</p>	16	11	1,100	50		
<p>Chrysene (µg/l)</p> <p>218019</p> <p>Known or suspected carcinogen; human health criteria at risk level 10<sup>-5</sup>.</p>					1.2	1.3

Copper (µg/l) <sup>5</sup> 7440508	13 CaCO <sub>3</sub> = 100	9.0 CaCO <sub>3</sub> = 100	9.3 X WER	6.0 X WER	1,300	
<p><u>[ Freshwater criteria for copper shall be calculated using the EPA 2007 Biotic Ligand Model (see 9VAC25-260-140 G) where the board has determined that a sufficient dataset of input parameters is available. Where the board has determined that a sufficient dataset is not available, freshwater criteria shall be calculated using the hardness-based equations in this table cell. ]</u> Freshwater values <u>[ derived using these equations ]</u> are a function of total hardness as calcium carbonate CaCO<sub>3</sub> mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400.</p> <p>Freshwater acute criterion (µg/l)  <math>WER [e^{\{0.9422[\ln(\text{hardness})]-1.700\}}] (CF_a)</math></p> <p>Freshwater chronic criterion (µg/l)  <math>WER [e^{\{0.8545[\ln(\text{hardness})]-1.702\}}] (CF_c)</math></p> <p>WER = Water Effect Ratio = 1 unless</p>						

<p>determined otherwise under 9VAC25-260-140 F.</p> <p>e = natural antilogarithm</p> <p>ln = natural logarithm</p> <p>CF = conversion factor a (acute) or c (chronic)</p> <p>CF<sub>a</sub> = 0.960</p> <p>CF<sub>c</sub> = 0.960</p> <p>[ Alternate copper criteria in freshwater: the freshwater criteria for copper can also be calculated using the EPA 2007 Biotic Ligand Model (See 9VAC25-260-140 G). ]</p> <p>Acute saltwater criterion is a 24-hour average not to be exceeded more than once every three years on the average.</p>						
<p>Cyanide, Free (µg/l) 57125</p>	22	5.2	1.0	1.0	4	400
<p>DDD (µg/l) 72548</p> <p>Known or suspected carcinogen; human health criteria at risk level 10<sup>-5</sup>.</p>					0.0012	0.0012
<p>DDE (µg/l) 72559</p> <p>Known or suspected carcinogen; human health criteria at risk level 10<sup>-5</sup>.</p>					0.00018	0.00018

DDT (µg/l) 50293 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> . Total concentration of DDT and metabolites shall not exceed aquatic life criteria.	1.1	0.0010	0.13	0.0010	0.00030	0.00030
Demeton (µg/l) 8065483		0.1		0.1		
Diazinon (µg/l) 333415	0.17	0.17	0.82	0.82		
Dibenz (a, h) anthracene (µg/l) 53703 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .					0.0012	0.0013
1,2-Dichlorobenzene (µg/l) 95501					1,000	3,000
1,3-Dichlorobenzene (µg/l) 541731					7	10
1,4 Dichlorobenzene (µg/l) 106467					300	900
3,3 Dichlorobenzidine (µg/l) 91941 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .					0.49	1.5
Dichlorobromomethane (µg/l) 75274 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .					9.5	270



1,2 Dichloroethane (µg/l) 107062 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .					99	6,500
1,1 Dichloroethylene (µg/l) 75354					300	20,000
1,2-trans-dichloroethylene (µg/l) 156605					100	4,000
2,4 Dichlorophenol (µg/l) 120832					10	60
2,4 Dichlorophenoxy acetic acid (Chlorophenoxy Herbicide) (2,4-D) (µg/l) 94757					1,300	12,000
1,2-Dichloropropane (µg/l) 78875 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .					9.0	310
1,3-Dichloropropene (µg/l) 542756 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .					2.7	120
Dieldrin (µg/l) 60571 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .	0.24	0.056	0.71	0.0019	0.000012	0.000012
Diethyl Phthalate (µg/l) 84662					600	600
2,4 Dimethylphenol (µg/l) 105679					100	3,000

Dimethyl Phthalate (µg/l) 131113					2,000	2,000
Di-n-Butyl Phthalate (µg/l) 84742					20	30
2,4 Dinitrophenol (µg/l) 51285					10	300
Dinitrophenols (µg/l) 25550587					10	1,000
2-Methyl-4,6-Dinitrophenol (µg/l) 534521					2	30
2,4 Dinitrotoluene (µg/l) 121142  Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .					0.49	17
Dioxin 2, 3, 7, 8- tetrachlorodibenzo-p-dioxin (µg/l) 1746016					<u>5.0 E-8</u> <u>4.6 E-8</u>	<u>5.1 E-8</u> <u>4.7 E-8</u>
1,2-Diphenylhydrazine (µg/l) 122667  Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .					0.3	2.0
Dissolved Oxygen (µg/l) (See 9VAC25-260-50)						
Alpha-Endosulfan (µg/l) 959988  Total concentration alpha and beta- endosulfan shall not exceed aquatic life criteria.	0.22	0.056	0.034	0.0087	20	30

Beta-Endosulfan (µg/l) 33213659 Total concentration alpha and beta-endosulfan shall not exceed aquatic life criteria.	0.22	0.056	0.034	0.0087	20	40
Endosulfan Sulfate (µg/l) 1031078					20	40
Endrin (µg/l) 72208	0.086	0.036	0.037	0.0023	0.03	0.03
Endrin Aldehyde (µg/l) 7421934					1	1
Ethylbenzene (µg/l) 100414					68	130
Fecal Coliform (see 9VAC25-260-160)						
Fluoranthene (µg/l) 206440					20	20
Fluorene (µg/l) 86737					50	70
Foaming Agents (µg/l) Criterion measured as methylene blue active substances. Criterion to maintain acceptable taste, odor, or aesthetic quality of drinking water and applies at the drinking water intake.					500	
Guthion (µg/l) 86500		0.01		0.01		
Heptachlor (µg/l) 76448 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .	0.52	0.0038	0.053	0.0036	0.000059	0.000059

<p>Heptachlor Epoxide (µg/l) 1024573</p> <p>Known or suspected carcinogen; human health criteria at risk level 10<sup>-5</sup>.</p>	0.52	0.0038	0.053	0.0036	0.00032	0.00032
<p>Hexachlorobenzene (µg/l) 118741</p> <p>Known or suspected carcinogen; human health criteria at risk level 10<sup>-5</sup>.</p>					0.00079	0.00079
<p>Hexachlorobutadiene (µg/l) 87683</p> <p>Known or suspected carcinogen; human health criteria at risk level 10<sup>-5</sup>.</p>					0.1	0.1
<p>Hexachlorocyclohexane Alpha-BHC (µg/l) 319846</p> <p>Known or suspected carcinogen; human health criteria at risk level 10<sup>-5</sup>.</p>					0.0036	0.0039
<p>Hexachlorocyclohexane Beta-BHC (µg/l) 319857</p> <p>Known or suspected carcinogen; human health criteria at risk level 10<sup>-5</sup>.</p>					0.080	0.14
<p>Hexachlorocyclohexane (µg/l) (Lindane) Gamma-BHC 58899</p>	0.95		0.16		4.2	4.4
<p>Hexachlorocyclohexane (HCH)-Technical (µg/l) 608731</p> <p>Known or suspected carcinogen; human</p>					0.066	0.1

health criteria at risk level 10 <sup>-5</sup> .					
Hexachlorocyclopentadiene (µg/l) 77474				4	4
Hexachloroethane (µg/l) 67721 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .				1	1
Hydrogen sulfide (µg/l) 7783064		2.0	2.0		
Indeno (1,2,3,-cd) pyrene (µg/l) 193395 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .				0.012	0.013
Iron (µg/l) 7439896 Criterion to maintain acceptable taste, odor, or aesthetic quality of drinking water and applies at the drinking water intake.				300	
Isophorone (µg/l) 78591 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .				340	18,000
Kepone (µg/l) 143500		zero	zero		

Lead (µg/l) <sup>5</sup> 7439921	94 CaCO <sub>3</sub> = 100	11 CaCO <sub>3</sub> = 100	230 X WER	8.8 X WER	15	
<p>Freshwater values are a function of total hardness as calcium carbonate CaCO<sub>3</sub> mg/l and the water effect ratio. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400.</p> <p>Freshwater acute criterion (µg/l)  <math>WER [e^{\{1.273[\ln(\text{hardness})]-1.084\}}](CF_a)</math></p> <p>Freshwater chronic criterion (µg/l)  <math>WER [e^{\{1.273[\ln(\text{hardness})]-3.259\}}](CF_c)</math></p> <p>WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F</p> <p>e = natural antilogarithm  ln = natural logarithm  CF = conversion factor a (acute) or c (chronic)  <math>CF_a = 1.46203 - [(\ln \text{hardness})(0.145712)]</math>  <math>CF_c = 1.46203 - [(\ln \text{hardness})(0.145712)]</math></p>						
Malathion (µg/l) 121755		0.1		0.1		
Mercury (µg/l) 5 7439976	1.4	0.77	1.8	0.94		

Methyl Bromide (µg/l) 74839					100	10,000
3-Methyl-4-Chlorophenol 59507					500	2,000
Methyl Mercury (Fish Tissue Criterion mg/kg) 8 22967926					0.30	0.30
Methylene Chloride (µg/l) 75092  Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> . Synonym = Dichloromethane					20	1,000
Methoxychlor (µg/l) 72435		0.03		0.03	0.02	0.02
Mirex (µg/l) 2385855		zero		zero		
Nickel (µg/l) <sup>5</sup> <del>744002</del> <u>7440020</u>  Freshwater values are a function of total hardness as calcium carbonate CaCO <sub>3</sub> mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400.  Freshwater acute criterion (µg/l) WER [e <sup>{0.8460[ln(hardness)] + 1.312}</sup> ] (CF <sub>a</sub> )  Freshwater chronic criterion (µg/l)	180 CaCO <sub>3</sub> = 100	20 CaCO <sub>3</sub> = 100	74 X WER	8.2 X WER	<del>610</del> <u>470</u>	<del>4,600</del> <u>1,500</u>

<p>WER <math>[e^{0.8460[\ln(\text{hardness})] - 0.8840}]</math> (<math>CF_c</math>)</p> <p>WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F</p> <p>e = natural antilogarithm</p> <p>ln = natural logarithm</p> <p>CF = conversion factor a (acute) or c (chronic)</p> <p><math>CF_a = 0.998</math></p> <p><math>CF_c = 0.997</math></p>					
Nitrate as N ( $\mu\text{g/l}$ ) 14797558				10,000	
Nitrobenzene ( $\mu\text{g/l}$ ) 98953				10	600
N-Nitrosodimethylamine ( $\mu\text{g/l}$ ) 62759 Known or suspected carcinogen; human health criteria at risk level $10^{-5}$ .				<del>0.0069</del> <u>0.0065</u>	<del>30</del> <u>27</u>
N-Nitrosodiphenylamine ( $\mu\text{g/l}$ ) 86306 Known or suspected carcinogen; human health criteria at risk level $10^{-5}$ .				<del>33</del> <u>30</u>	<del>60</del> <u>55</u>
N-Nitrosodi-n-propylamine ( $\mu\text{g/l}$ ) 621647				<del>0.050</del> <u>0.047</u>	<del>5.4</del> <u>4.6</u>



Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .						
Nonylphenol (µg/l) 84852153	28	6.6	7.0	1.7		
Parathion (µg/l) 56382	0.065	0.013				
PCB Total (µg/l) 1336363 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .		0.014		0.030	<del>0.00064</del> <u>0.00058</u>	<del>0.00064</del> <u>0.00058</u>
Pentachlorobenzene (µg/l) 608935					0.1	0.1
Pentachlorophenol (µg/l) 87865 Known or suspected carcinogen; human health criteria risk level at 10 <sup>-5</sup> . Freshwater acute criterion (µg/l) e <sub>e</sub> (1.005(pH)-4.869) Freshwater chronic criterion (µg/l) e <sub>e</sub> (1.005(pH)-5.134)	8.7 pH = 7.0	6.7 pH = 7.0	13	7.9	0.3	0.4
pH See 9VAC25-260-50						
Phenol (µg/l) 108952					4,000	300,000
Phosphorus Elemental (µg/l) 7723140				0.10		
Pyrene (µg/l) 129000					20	30
Radionuclides						

Gross Alpha Particle Activity (pCi/L)					15	
Beta Particle & Photon Activity (mrem/yr) (formerly man-made radionuclides)					4	
Combined Radium 226 and 228 (pCi/L)					5	
Uranium (µg/L) <u>7440611</u>					30	
Selenium (µg/l) <sup>5</sup> 7782492  WER shall not be used for freshwater acute and chronic criteria. Freshwater criteria expressed as total recoverable.	20	5.0	290 X WER	71 X WER	<del>170</del> -160	<del>4,200</del> <u>3,800</u>
Silver (µg/l) <sup>5</sup> 7440224  Freshwater values are a function of total hardness as calcium carbonate (CaCO <sub>3</sub> ) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400.  Freshwater acute criterion (µg/l) WER [e <sup>{1.72[ln(hardness)]-6.52}</sup> ] (CF <sub>a</sub> )  WER = Water Effect Ratio = 1 unless determined otherwise	3.4; CaCO <sub>3</sub> = 100		1.9 X WER			

<p>under 9VAC25-260-140  F  e = natural antilogarithm  ln = natural logarithm  CF = conversion factor a  (acute) or c (chronic)  CF<sub>a</sub> = 0.85</p>					
<p>Sulfate (µg/l)  Criterion to maintain acceptable taste, odor, or aesthetic quality of drinking water and applies at the drinking water intake.</p>				250,000	
<p>Temperature  See 9VAC25-260-50</p>					
<p>1,2,4,5-Tetrachlorobenzene  95943</p>				0.03	0.03
<p>1,1,2,2-Tetrachloroethane  (µg/l)  79345  Known or suspected carcinogen; human health criteria at risk level 10<sup>-5</sup>.</p>				2.0	30
<p>Tetrachloroethylene (µg/l)  127184  Known or suspected carcinogen; human</p>				100	290

health criteria at risk level 10 <sup>-5</sup> .						
Thallium (µg/l) 7440280					0.24 0.22	0.47 0.43
Toluene (µg/l) 108883					57	520
Total Dissolved Solids (µg/l) Criterion to maintain acceptable taste, odor or aesthetic quality of drinking water and applies at the drinking water intake.					500,000	
Toxaphene (µg/l) 8001352 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .	0.73	0.0002	0.21	0.0002	0.0070	0.0071
Tributyltin (µg/l) <del>60105</del> E1790678	0.46	0.072	0.42	0.0074		
1, 2, 4 Trichlorobenzene (µg/l) 120821 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .					0.71	0.76
1,1,1-Trichloroethane 71556					10,000	200,000
1,1,2-Trichloroethane (µg/l) 79005 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .					5.5	89
Trichloroethylene (µg/l) 79016 Known or suspected carcinogen; human					6.0	70

health criteria at risk level 10 <sup>-5</sup> .						
2, 4, 5 –Trichlorophenol 95954					300	600
2, 4, 6-Trichlorophenol (µg/l) 88062 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .					15	28
2-(2, 4, 5-Trichlorophenoxy) propionic acid (Silvex) (µg/l) 93721					100	400
Vinyl Chloride (µg/l) 75014 Known or suspected carcinogen; human health criteria at risk level 10 <sup>-5</sup> .					0.22	16
Zinc (µg/l) <sup>5</sup> 7440666 Freshwater values are a function of total hardness as calcium carbonate (CaCO <sub>3</sub> ) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum, hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [e <sup>{0.8473[ln(hardness)]+0.884}</sup> ](CF <sub>a</sub> ) )	120 CaCO <sub>3</sub> = 100	120 CaCO <sub>3</sub> = 100	90 X WER	81 X WER	<del>7,400</del> <u>7,000</u>	<del>26,000</del> <u>23,000</u>

Freshwater chronic  
criterion ( $\mu\text{g/l}$ )

WER

$$[e^{\{0.8473[\ln(\text{hardness})]+0.884\}}]$$

( $\text{CF}_c$ )

WER = Water Effect

Ratio = 1 unless

determined otherwise

under 9VAC25-260-140

F

e = natural antilogarithm

ln = natural logarithm

CF = conversion factor a  
(acute) or c (chronic)

$$\text{CF}_a = 0.978$$

$$\text{CF}_c = 0.986$$

<sup>1</sup>One hour average concentration not to be exceeded more than once every 3 years on the average, unless otherwise noted.

<sup>2</sup>Four-day average concentration not to be exceeded more than once every 3 years on the average, unless otherwise noted.

<sup>3</sup>Criteria have been calculated to protect human health from toxic effects through drinking water and fish consumption, unless otherwise noted and apply in segments designated as PWS in 9VAC25-260-390 through 9VAC25-260-540. Human health criteria are based on the assumption of average amount of exposure on a long-term basis.

<sup>4</sup>Criteria have been calculated to protect human health from toxic effects through fish consumption, unless otherwise noted and apply in all other surface waters not designated as PWS in 9VAC25-260-390 through 9VAC25-260-540. Human health criteria are based on the assumption of average amount of exposure on a long-term basis.

<sup>5</sup>Acute and chronic saltwater and freshwater aquatic life criteria apply to the biologically available form of the metal and apply as a function of the pollutant's water effect ratio (WER) as defined in 9VAC25-260-140 F (WER X criterion). Metals measured as dissolved shall be considered to be biologically available, or, because local receiving water characteristics may otherwise affect the biological availability of the metal, the biologically available equivalent measurement of the metal can be further defined by determining a water effect ratio (WER) and multiplying the numerical value shown in 9VAC25-260-140 B by the WER. Refer to 9VAC25-260-140 F. Values displayed above in the table are examples and correspond to a WER of 1.0. Metals criteria have been adjusted to convert the total recoverable fraction to dissolved fraction using a conversion factor. Criteria that change with hardness have the conversion factor listed in the table above.

<sup>6</sup>The flows listed below are default design flows for calculating steady state wasteload allocations unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of the water quality criteria.

Aquatic Life:	
Acute criteria	1Q10
Chronic criteria	7Q10
Chronic criteria (ammonia)	30Q10
Human Health:	
Noncarcinogens	30Q5
Carcinogens	Harmonic mean

The following are defined for this section:

"1Q10" means the lowest flow averaged over a period of 1 day which on a statistical basis can be expected to occur once every 10 climatic years.

"7Q10" means the lowest flow averaged over a period of 7 consecutive days that can be statistically expected to occur once every 10 climatic years.

"30Q5" means the lowest flow averaged over a period of 30 consecutive days that can be statistically expected to occur once every 5 climatic years.

"30Q10" means the lowest flow averaged over a period of 30 consecutive days that can be statistically expected to occur once every 10 climatic years.

"Averaged" means an arithmetic mean.

"Climatic year" means a year beginning on April 1 and ending on March 31.

<sup>7</sup>The criteria listed in this table are two significant digits. For other criteria that are referenced to other sections of this regulation in this table, all numbers listed as criteria values are significant.

<sup>8</sup>The fish tissue criterion for methylmercury applies to a concentration of 0.30 mg/kg as wet weight in edible tissue for species of fish and shellfish resident in a waterbody that are commonly eaten in the area and have commercial, recreational, or subsistence value.



40 C. Application of freshwater and saltwater numerical criteria. The numerical water quality  
 41 criteria listed in subsection B of this section (excluding dissolved oxygen, pH, temperature) shall  
 42 be applied according to the following classes of waters (see 9VAC25-260-50) and boundary  
 43 designations:

CLASS OF WATERS	NUMERICAL CRITERIA
I and II (Estuarine Waters)	Saltwater criteria apply
II (Transition Zone)	More stringent of either the freshwater or saltwater criteria apply
II (Tidal Freshwater), III, IV, V, VI and VII	Freshwater criteria apply

44 The following describes the boundary designations for Class II, (estuarine, transition zone and  
 45 tidal freshwater waters) by river basin:

46 1. Rappahannock Basin. Tidal freshwater is from the fall line of the Rappahannock River  
 47 to the upstream boundary of the transition zone including all tidal tributaries that enter the  
 48 tidal freshwater Rappahannock River.

49 Transition zone upstream boundary – N38° 4' 56.59"/W76° 58' 47.93" (430 feet east of  
 50 Hutchinson Swamp) to N38° 5' 23.33"/W76° 58' 24.39" (0.7 miles upstream of Peedee  
 51 Creek).

52 Transition zone downstream boundary – N37° 58' 45.80"/W76° 55' 28.75" (1,000 feet  
 53 downstream of Jenkins Landing) to N37° 59' 20.07"/W76° 53' 45.09" (0.33 miles upstream  
 54 of Mulberry Point). All tidal waters that enter the transition zone are themselves transition  
 55 zone waters.

56 Estuarine waters are from the downstream boundary of the transition zone to the mouth  
 57 of the Rappahannock River (Buoy 6), including all tidal tributaries that enter the estuarine  
 58 waters of the Rappahannock River.

59 2. York Basin. Tidal freshwater is from the fall line of the Mattaponi River at N37° 47'  
 60 20.03"/W77° 6' 15.16" (800 feet upstream of the Route 360 bridge in Aylett) to the  
 61 upstream boundary of the Mattaponi River transition zone, and from the fall line of the  
 62 Pamunkey River at N37° 41' 22.64"/W77° 12' 50.83" (2,000 feet upstream of Totopotomy  
 63 Creek) to the upstream boundary of the Pamunkey River transition zone, including all tidal  
 64 tributaries that enter the tidal freshwaters of the Mattaponi and Pamunkey Rivers.

65 Mattaponi River transition zone upstream boundary – N37° 39' 29.65"/W76° 52' 53.29"  
 66 (1,000 feet upstream of Mitchell Hill Creek) to N37° 39' 24.20"/W76° 52' 55.87" (across  
 67 from Courthouse Landing).

68 Mattaponi River transition zone downstream boundary – N37° 32' 19.76"/W76° 47' 29.41"  
 69 (old Lord Delaware Bridge, west side) to N37° 32' 13.25"/W76° 47' 10.30" (old Lord  
 70 Delaware Bridge, east side).

71 Pamunkey River transition zone upstream boundary – N37° 32' 36.63"/W76° 58' 29.88"  
 72 (Cohoke Marsh, 0.9 miles upstream of Turkey Creek) to N37° 32' 36.51"/W76° 58' 36.48"  
 73 (0.75 miles upstream of creek at Cook Landing).

74 Pamunkey River transition zone downstream boundary – N37° 31' 57.90"/W76° 48' 38.22"  
 75 (old Eltham Bridge, west side) to N37° 32' 6.25"/W76° 48' 18.82" (old Eltham Bridge, east  
 76 side).

77 All tidal tributaries that enter the transition zones of the Mattaponi and Pamunkey Rivers  
 78 are themselves in the transition zone.

79 Estuarine waters are from the downstream boundary of the transition zones of the  
80 Mattaponi and Pamunkey Rivers to the mouth of the York River (Tue Marsh Light)  
81 including all tidal tributaries that enter the estuarine waters of the York River.

82 3. James Basin. Tidal freshwater is from the fall line of the James River in the City of  
83 Richmond upstream of Mayo Bridge to the upstream boundary of the transition zone,  
84 including all tidal tributaries that enter the tidal freshwater James River.

85 James River transition zone upstream boundary – N37° 14' 28.25"/W76° 56' 44.47" (at  
86 Tettington) to N37° 13' 38.56"/W76° 56' 47.13" (0.3 miles downstream of Sloop Point).

87 Chickahominy River transition zone upstream boundary – N37° 25' 44.79"/W77° 1' 41.76"  
88 (Holly Landing).

89 Transition zone downstream boundary – N37° 12' 7.23"/W76° 37' 34.70" (near Carters  
90 Grove Home, 1.25 miles downstream of Grove Creek) to N37° 9' 17.23"/W76° 40' 13.45"  
91 (0.7 miles upstream of Hunnicutt Creek). All tidal waters that enter the transition zone are  
92 themselves transition zone waters.

93 Estuarine waters are from the downstream transition zone boundary to the mouth of the  
94 James River (Buoy 25) including all tidal tributaries that enter the estuarine waters of the  
95 James River.

96 4. Potomac Basin. Tidal freshwater includes all tidal tributaries that enter the Potomac  
97 River from its fall line at the Chain Bridge (N38° 55' 46.28"/W77° 6' 59.23") to the upstream  
98 transition zone boundary near Quantico, Virginia.

99 Transition zone includes all tidal tributaries that enter the Potomac River from N38° 31'  
100 27.05"/W77° 17' 7.06" (midway between Shipping Point and Quantico Pier) to N38° 23'  
101 22.78"/W77° 1' 45.50" (one mile southeast of Mathias Point).

102 Estuarine waters includes all tidal tributaries that enter the Potomac River from the  
103 downstream transition zone boundary to the mouth of the Potomac River (Buoy 44B).

104 5. Chesapeake Bay, Atlantic Ocean, and small coastal basins. Estuarine waters include  
105 the Atlantic Ocean tidal tributaries, and the Chesapeake Bay and its small coastal basins  
106 from the Virginia state line to the mouth of the bay (a line from Cape Henry drawn through  
107 Buoys 3 and 8 to Fishermans Island), and its tidal tributaries, excluding the Potomac  
108 tributaries and those tributaries listed in subdivisions 1 through 4 of this subsection.

109 6. Chowan River Basin. Tidal freshwater includes the Northwest River and its tidal  
110 tributaries from the Virginia-North Carolina state line to the free flowing portion, the  
111 Blackwater River and its tidal tributaries from the Virginia-North Carolina state line to the  
112 end of tidal waters at approximately state route 611 at river mile 20.90, the Nottoway River  
113 and its tidal tributaries from the Virginia-North Carolina state line to the end of tidal waters  
114 at approximately Route 674, and the North Landing River and its tidal tributaries from the  
115 Virginia-North Carolina state line to the Great Bridge Lock.

116 Transition zone includes Back Bay and its tributaries in the City of Virginia Beach to the  
117 Virginia-North Carolina state line.

118 D. Site-specific modifications to numerical water quality criteria.

119 1. The board may consider site-specific modifications to numerical water quality criteria in  
120 subsection B of this section where the applicant or permittee demonstrates that the  
121 alternate numerical water quality criteria are sufficient to protect all designated uses (see  
122 9VAC25-260-10) of that particular surface water segment or body.

123 2. Any demonstration for site-specific human health criteria shall be restricted to a  
124 reevaluation of the bioconcentration or bioaccumulation properties of the pollutant. The

125 exceptions to this restriction are for site-specific criteria for taste, odor, and aesthetic  
126 compounds noted by double asterisks in subsection B of this section and nitrates.

127 3. Procedures for promulgation and review of site-specific modifications to numerical water  
128 quality criteria resulting from subdivisions 1 and 2 of this subsection.

129 a. Proposals describing the details of the site-specific study shall be submitted to the  
130 board's staff for approval prior to commencing the study.

131 b. Any site-specific modification shall be promulgated as a regulation in accordance  
132 with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). All  
133 site-specific modifications shall be listed in 9VAC25-260-310 (Special standards and  
134 requirements).

135 E. Variances to water quality standards.

136 1. A variance from numeric criteria may be granted to a discharger if it can be  
137 demonstrated that one or more of the conditions in 9VAC25-260-10 H limit the attainment  
138 of one or more specific designated uses.

139 a. Variances shall apply only to the discharger to whom they are granted and shall be  
140 reevaluated and either continued, modified, or revoked at the time of permit issuance.  
141 At that time the permittee shall make a showing that the conditions for granting the  
142 variance still apply.

143 b. Variances shall be described in the public notice published for the permit. The  
144 decision to approve a variance shall be subject to the public participation requirements  
145 of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation,  
146 9VAC25-31.

147 c. Variances shall not prevent the maintenance and protection of existing uses or  
148 exempt the discharger or regulated activity from compliance with other appropriate  
149 technology or water quality-based limits or best management practices.

150 d. Variances granted under this section shall not apply to new discharges.

151 e. Variances shall be submitted by the department's Division of Scientific Research or  
152 its successors to the U.S. Environmental Protection Agency for review and approval  
153 or disapproval.

154 f. A list of variances granted shall be maintained by the department's Division of  
155 Scientific Research or its successors.

156 2. None of the variances in this subsection shall apply to the halogen ban section  
157 (9VAC25-260-110) or temperature criteria in 9VAC25-260-50 if superseded by § 316(a)  
158 of the Clean Water Act requirements. No variances in this subsection shall apply to the  
159 criteria that are designed to protect human health from carcinogenic and noncarcinogenic  
160 toxic effects (subsection B of this section) with the exception of the metals, and the taste,  
161 odor, and aesthetic compounds noted by double asterisks and nitrates, listed in subsection  
162 B of this section.

163 F. Water effect ratio.

164 1. A water effects ratio (WER) shall be determined by measuring the effect of receiving  
165 water (as it is or will be affected by any discharges) on the bioavailability or toxicity of a  
166 metal by using standard test organisms and a metal to conduct toxicity tests  
167 simultaneously in receiving water and laboratory water. The ratio of toxicities of the metals  
168 in the two waters is the WER (toxicity in receiving water divided by toxicity in laboratory  
169 water equals WER). Once an acceptable WER for a metal is established, the numerical  
170 value for the metal in subsection B of this section is multiplied by the WER to produce an

171 instream concentration that will protect designated uses. This instream concentration shall  
172 be utilized in permitting decisions.

173 2. The WER shall be assigned a value of 1.0 unless the applicant or permittee  
174 demonstrates to the department's satisfaction in a permit proceeding that another value is  
175 appropriate, or unless available data allow the department to compute a WER for the  
176 receiving waters. The applicant or permittee is responsible for proposing and conducting  
177 the study to develop a WER. The study may require multiple testing over several seasons.  
178 The applicant or permittee shall obtain the department's Division of Scientific Research or  
179 its successor approval of the study protocol and the final WER.

180 3. 9VAC25-31-230 C requires that permit limits for metals be expressed as total  
181 recoverable measurements. To that end, the study used to establish the WER may be  
182 based on total recoverable measurements of the metals.

183 4. The WER is established in a permit proceeding, shall be described in the public notice  
184 associated with the permit proceeding, and applies only to the applicant or permittee in  
185 that proceeding. The department's action to approve or disapprove a WER is a case  
186 decision, not an amendment to the present regulation.

187 The decision to approve or disapprove a WER shall be subject to the public participation  
188 requirements of Virginia Pollutant Discharge Elimination System (VPDES) Regulation,  
189 Part IV (9VAC25-31-260 et seq.). A list of final WERs will be maintained by the  
190 department's Division of Scientific Research or its successor.

191 5. A WER shall not be used for the freshwater and saltwater chronic mercury criteria or  
192 the freshwater acute and chronic selenium criteria.

193 G. Biotic Ligand Model for copper. [ On a case-by-case basis ] [ ~~Where the board determines~~  
194 ~~that a sufficient dataset of input parameters is available,~~ ] EPA's 2007 copper criteria (EPA-822-  
195 F-07-001) biotic ligand model (BLM) for copper [ may shall ] be used to determine [ alternate ] [   
196 the applicable ] copper criteria for freshwater sites. The BLM is a bioavailability model that uses  
197 receiving water characteristics to develop site-specific criteria. Site-specific data for 10  
198 parameters are needed to use the BLM. These parameters are temperature, pH, dissolved  
199 organic carbon, calcium, magnesium, sodium, potassium, sulfate, chloride, and alkalinity. [ If  
200 sufficient data for these parameters are available, the BLM can be used to calculate alternate  
201 criteria values for the copper criteria. The ] [ ~~Where the board determines that a sufficient dataset~~  
202 ~~of input parameters is available, the~~ ] BLM [ would shall- ] be used instead of the hardness-based  
203 criteria and takes the place of the hardness adjustment and the WER. A WER will not be  
204 applicable with the BLM.

205 **9VAC25-260-185. Criteria to protect designated uses from the impacts of nutrients and**  
206 **suspended sediment in the Chesapeake Bay and its tidal tributaries.**

207 A. Dissolved oxygen. The dissolved oxygen criteria in the following table apply to all  
208 Chesapeake Bay waters according to their specified designated use and supersede the dissolved  
209 oxygen criteria in 9VAC25-260-50.

Designated Use	Criteria Concentration/Duration	Temporal Application
Migratory fish spawning and nursery	7-day mean $\geq$ 6 mg/l (tidal habitats with 0-0.5 ppt salinity) Instantaneous minimum $\geq$ 5 mg/l	February 1 - May 31
Open water <sup>1</sup>	30-day mean $\geq$ 5.5 mg/l (tidal habitats with 0-0.5 ppt salinity)	year-round <sup>2</sup>

	30-day mean $\geq$ 5 mg/l (tidal habitats with $>$ 0.5 ppt salinity)	
	7-day mean $\geq$ 4 mg/l	
	Instantaneous minimum $\geq$ 3.2 mg/l at temperatures $<$ 29°C	
	Instantaneous minimum $\geq$ 4.3 mg/l at temperatures $\geq$ 29°C	
Deep water	30-day mean $\geq$ 3 mg/l 1-day mean $\geq$ 2.3 mg/l Instantaneous minimum $\geq$ 1.7 mg/l	June 1 - September 30
Deep channel	Instantaneous minimum $\geq$ 1 mg/l	June 1 - September 30

<sup>1</sup>In applying this open water instantaneous criterion to the Chesapeake Bay and its tidal tributaries where the existing water quality for dissolved oxygen exceeds an instantaneous minimum of 3.2 mg/l, that higher water quality for dissolved oxygen shall be provided antidegradation protection in accordance with 9VAC25-260-30 A 2.

<sup>2</sup>Open-water dissolved oxygen criteria attainment is assessed separately over two time periods: summer (June 1- September 30) and nonsummer (October 1-May 31) months.

210 B. Submerged aquatic vegetation (SAV) and water clarity. Attainment of the shallow-water  
211 submerged aquatic vegetation designated use shall be determined using any one of the following  
212 criteria:

Designated Use	Chesapeake Bay Program Segment	SAV Acres <sup>1</sup>	Percent Light-Through-Water <sup>2</sup>	Water Clarity Acres <sup>1</sup>	Temporal Application
Shallow water submerged aquatic vegetation use	CB5MH	7,633	22%	14,514	April 1 - October 31
	CB6PH	1,267	22%	3,168	March 1 - November 30
	CB7PH	15,107	22%	34,085	March 1 - November 30
	CB8PH	11	22%	28	March 1 - November 30
	POTTF	2,093	13%	5,233	April 1 - October 31
	POTOH	1,503	13%	3,758	April 1 - October 31
	POTMH	4,250	22%	10,625	April 1 - October 31
	RPPTF	66	13%	165	April 1 - October 31
	RPPOH	4	13%	10	April 1 - October 31
	RPPMH	<del>1700</del> <u>5,380</u>	22%	<del>5000</del> <u>13,450</u>	April 1 - October 31

CRRMH	768	22%	1,920	April 1 - October 31
PIAMH	3,479	22%	8,014	April 1 - October 31
MPNTF	85	13%	213	April 1 - October 31
MPNOH	-	-	-	-
PMKTF	187	13%	468	April 1 - October 31
PMKOH	-	-	-	-
YRKMH	239	22%	598	April 1 - October 31
YRKPH	2,793	22%	6,982	March 1 - November 30
MOBPH	15,901	22%	33,990	March 1 - November 30
JMSTF2	<del>200</del> <u>266</u>	13%	<del>500</del> <u>665</u>	April 1 - October 31
JMSTF1	<del>4000</del> <u>1,333</u>	13%	<del>2500</del> <u>3,332</u>	April 1 - October 31
APPTF	379	13%	948	April 1 - October 31
JMSOH	15	13%	38	April 1 - October 31
CHKOH	535	13%	1,338	April 1 - October 31
JMSMH	<del>200</del> <u>531</u>	22%	<del>500</del> <u>1,328</u>	April 1 - October 31
JMSPH	<del>300</del> <u>604</u>	22%	<del>750</del> <u>1,510</u>	March 1 - November 30
WBEMH	-	-	-	-
SBEMH	-	-	-	-
EBEMH	-	-	-	-
ELIPH	-	-	-	-
LYNPH	107	22%	268	March 1 - November 30
POCOH	-	-	-	-
POCMH	4,066	22%	9,368	April 1 - October 31
TANMH	13,579	22%	22,064	April 1 - October 31

<sup>1</sup>The assessment period for SAV and water clarity acres shall be the single best year in the most recent three consecutive years. When three consecutive years of data are not available, a minimum of three years within the data assessment window shall be used.

<sup>2</sup>Percent light-through-water =  $100e^{-K_d Z}$  where  $K_d$  is water column light attenuation coefficient and can be measured directly or converted from a measured secchi depth where  $K_d = 1.45/\text{secchi depth}$ .  $Z$  = depth at location of measurement of  $K_d$ .

213 C. Chlorophyll a.

Designated Use	Chlorophyll a Narrative Criterion	Temporal Application
Open water	Concentrations of chlorophyll a in free-floating microscopic aquatic plants (algae) shall not exceed levels that result in undesirable or nuisance aquatic plant life or render tidal waters unsuitable for the propagation and growth of a balanced, indigenous population of aquatic life or otherwise result in ecologically undesirable water quality conditions such as reduced water clarity, low dissolved oxygen, food supply imbalances, proliferation of species deemed potentially harmful to aquatic life or humans, or aesthetically objectionable conditions.	March 1 - September 30

See 9VAC25-260-310 special standard bb for numerical chlorophyll criteria for the tidal James River.

214 D. Implementation.

215 1. Chesapeake Bay program segmentation scheme as described in Chesapeake Bay  
 216 Program, 2004 Chesapeake Bay Program Analytical Segmentation Scheme-Revisions,  
 217 Decisions and Rationales: 1983–2003, CBP/TRS 268/04, EPA 903-R-04-008,  
 218 Chesapeake Bay Program, Annapolis, Maryland, and the Chesapeake Bay Program  
 219 published 2005 addendum (CBP/TRS 278-06; EPA 903-R-05-004) is listed in the following  
 220 table and shall be used as the spatial assessment unit to determine attainment of the  
 221 criteria in this section for each designated use.

Chesapeake Bay Segment Description	Segment Name <sup>1</sup>	Chesapeake Bay Segment Description	Segment Name <sup>1</sup>
Lower Central Chesapeake Bay	CB5MH	Mobjack Bay	MOBPH
Western Lower Chesapeake Bay	CB6PH	Upper Tidal Fresh James River	JMSTF2
Eastern Lower Chesapeake Bay	CB7PH	Lower Tidal Fresh James River	JMSTF1
Mouth of the Chesapeake Bay	CB8PH	Appomattox River	APPTF
Upper Potomac River	POTTF	Middle James River	JMSOH
Middle Potomac River	POTOH	Chickahominy River	CHKOH
Lower Potomac River	POTMH	Lower James River	JMSMH

Upper Rappahannock River	RPPTF	Mouth of the James River	JMSPH
Middle Rappahannock River	RPPOH	Western Branch Elizabeth River	WBEMH
Lower Rappahannock River	RPPMH	Southern Branch Elizabeth River	SBEMH
Corrotoman River	CRRMH	Eastern Branch Elizabeth River	EBEMH
Piankatank River	PIAMH	Lafayette River	LAFMH
Upper Mattaponi River	MPNTF	Mouth of the Elizabeth River	ELIPH
Lower Mattaponi River	MPNOH	Lynnhaven River	LYNPH
Upper Pamunkey River	PMKTF	Middle Pocomoke River	POCOH
Lower Pamunkey River	PMKOH	Lower Pocomoke River	POCMH
Middle York River	YRKMH	Tangier Sound	TANMH
Lower York River	YRKPH		

<sup>1</sup>First three letters of segment name represent Chesapeake Bay segment description, letters four and five represent the salinity regime of that segment (TF = Tidal Fresh, OH = Oligohaline, MH = Mesohaline, and PH = Polyhaline) and a sixth space is reserved for subdivisions of that segment.

222 2. The assessment period shall be the most recent three consecutive years. When three  
223 consecutive years of data are not available, a minimum of three years within the data  
224 assessment window shall be used.

225 3. Attainment of these criteria shall be assessed through comparison of the generated  
226 cumulative frequency distribution of the monitoring data to the applicable criteria reference  
227 curve for each designated use. If the monitoring data cumulative frequency curve is  
228 completely contained inside the reference curve, then the segment is in attainment of the  
229 designated use. The reference curves and procedures to be followed are published in the  
230 USEPA, Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and  
231 Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-03-002, April  
232 2003 and the 2004 (EPA 903-R-03-002 October 2004), 2007 (CBP/TRS 285/07, EPA 903-  
233 R-07-003), 2007 (CBP/TRS 288/07, EPA 903-R-07-005), 2008 (CBP/TRS 290-08, EPA  
234 903-R-08-001), 2010 (CBP/TRS 301-10, EPA 903-R-10-002), and 2017 (CBP/TRS 320-  
235 17, EPA 903-R-17-002) addenda. An exception to this requirement is in measuring  
236 attainment of the SAV and water clarity acres, which are compared directly to the criteria.

237 **9VAC25-260-187. Criteria for man-made lakes and reservoirs to protect aquatic life and**  
238 **recreational designated uses from the impacts of nutrients.**

239 A. The criteria in subsection B of this section apply to the man-made lakes and reservoirs  
240 listed in this section. Additional man-made lakes and reservoirs may be added as new reservoirs  
241 are constructed or monitoring data become available from outside groups or future agency  
242 monitoring.

243 B. Whether or not algicide treatments are used, the chlorophyll a criteria apply to all waters  
244 on the list. The total phosphorus criteria apply only if a specific man-made lake or reservoir  
245 received algicide treatment during the monitoring and assessment period of April 1 through  
246 October 31.



247 The 90th percentile of the chlorophyll a data collected at one meter or less within the lacustrine  
 248 portion of the man-made lake or reservoir between April 1 and October 31 shall not exceed the  
 249 chlorophyll a criterion for that waterbody in each of the two most recent monitoring years that  
 250 chlorophyll a data are available. For a waterbody that received algicide treatment, the median of  
 251 the total phosphorus data collected at one meter or less within the lacustrine portion of the man-  
 252 made lake or reservoir between April 1 and October 31 shall not exceed the total phosphorus  
 253 criterion in each of the two most recent monitoring years that total phosphorus data are available.

254 Monitoring data used for assessment shall be from sampling ~~location(s)~~ locations within the  
 255 lacustrine portion where observations are evenly distributed over the seven months from April 1  
 256 through October 31 and are in locations that are representative, either individually or collectively,  
 257 of the condition of the man-made lake or reservoir.

Man-made Lake or Reservoir Name	Location	Chlorophyll a (µg/L)	Total Phosphorus (µg/L)
Abel Lake	Stafford County	35	40
Airfield Pond	Sussex County	35	40
Amelia Lake	Amelia County	35	40
Aquia Reservoir (Smith Lake)	Stafford County	35	40
Bark Camp Lake (Corder Bottom Lake, Lee/Scott/Wise Lake)	Scott County	35	40
Beaver Creek Reservoir	Albemarle County	35	40
Beaverdam Creek Reservoir (Beaverdam Reservoir)	Bedford County	35	40
Beaverdam Reservoir	Loudoun County	35	40
Bedford Reservoir (Stony Creek Reservoir)	Bedford County	35	40
Big Cherry Lake	Wise County	35	40
Breckenridge Reservoir	Prince William County	35	40
Briery Creek Lake	Prince Edward County	35	40
Brunswick Lake (County Pond)	Brunswick County	35	40
Burke Lake	Fairfax County	60	40
Carvin Cove Reservoir	Botetourt County	35	40
Cherrystone Reservoir	Pittsylvania County	35	40
Chickahominy Lake	Charles City County	35	40
Chris Green Lake	Albemarle County	35	40
Claytor Lake	Pulaski County	25	20

Clifton Forge Reservoir (Smith Creek Reservoir)	Alleghany County	35	20
Coles Run Reservoir	Augusta County	10	10
Curtis Lake	Stafford County	60	40
Diascund Creek Reservoir	New Kent County	35	40
Douthat Lake	Bath County	25	20
Elkhorn Lake	Augusta County	10	10
Emporia Lake (Meherrin Reservoir)	Greensville County	35	40
Fairystone Lake	Henry County	35	40
Falling Creek Reservoir	Chesterfield County	35	40
Fluvanna Ruritan Lake	Fluvanna County	60	40
Fort Pickett Reservoir	Nottoway/Brunswick County	35	40
Gatewood Reservoir	Pulaski County	35	40
Georges Creek Reservoir	Pittsylvania County	35	40
Goose Creek Reservoir	Loudoun County	35	40
Graham Creek Reservoir	Amherst County	35	40
Great Creek Reservoir	Lawrenceville	35	40
Harrison Lake	Charles City County	35	40
Harwood Mills Reservoir	York County	60	40
Hidden Valley Lake	Washington County	35	40
Hogan Lake	Pulaski County	35	40
Holiday Lake	Appomattox County	35	40
Hungry Mother Lake	Smyth County	35	40
Hunting Run Reservoir	Spotsylvania County	35	40
J. W. Flannagan Reservoir	Dickenson County	25	20
Kerr Reservoir, Virginia portion (Buggs Island Lake)	Halifax County	25	30
Keysville Reservoir	Charlotte County	35	40
Lake Albemarle	Albemarle County	35	40
Lake Anna	Louisa <del>County</del> , <u>Spotsylvania, Orange</u> <u>Counties</u>	25	30

Lake Arrowhead	Page County	35	40
Lake Burnt Mills	Isle of Wight County	60	40
Lake Chesdin	Chesterfield County	35	40
Lake Cohoon	Suffolk City	60	40
Lake Conner	Halifax County	35	40
Lake Frederick	Frederick County	35	40
Lake Gaston, (Virginia portion)	Brunswick County	25	30
Lake Gordon	Mecklenburg County	35	40
Lake Keokee	Lee County	35	40
Lake Kilby	Suffolk City	60	40
Lake Lawson	Virginia Beach City	60	40
Lake Manassas	Prince William County	35	40
Lake Meade	Suffolk City	60	40
Lake Moomaw	Bath County	10	10
<u>Lake Mooney</u>	<u>Stafford County</u>	<u>25</u>	<u>40</u>
Lake Nelson	Nelson County	60	40
Lake Nottoway (Lee Lake, Nottoway Lake)	Nottoway County	35	40
Lake Orange	Orange County	60	40
Lake Pelham	Culpeper County	35	40
Lake Prince	Suffolk City	60	40
Lake Robertson	Rockbridge County	35	40
Lake Smith	Virginia Beach City	60	40
Lake Whitehurst	Norfolk City	60	40
Lake Wright	Norfolk City	60	40
Lakeview Reservoir	Chesterfield County	35	40
Laurel Bed Lake	Russell County	35	40
Lee Hall Reservoir (Newport News Reservoir)	Newport News City	60	40
Leesville Reservoir	Bedford County	25	30
Little Creek Reservoir	Virginia Beach City	60	40
Little Creek Reservoir	James City County	25	30

Little River Reservoir	Montgomery County	35	40
Lone Star Lake F (Crystal Lake)	Suffolk City	60	40
Lone Star Lake G (Crane Lake)	Suffolk City	60	40
Lone Star Lake I (Butler Lake)	Suffolk City	60	40
Lunga Reservoir	Prince William County	35	40
Lunenburg Beach Lake (Victoria Lake)	Town of Victoria	35	40
Martinsville Reservoir (Beaver Creek Reservoir)	Henry County	35	40
Mill Creek Reservoir	Amherst County	35	40
Modest Creek Reservoir	Town of Victoria	35	40
Motts Run Reservoir	Spotsylvania County	25	30
Mount Jackson Reservoir	Shenandoah County	35	40
Mountain Run Lake	Culpeper County	35	40
Ni Reservoir	Spotsylvania County	35	40
North Fork Pound Reservoir	Wise County	35	40
Northeast Creek Reservoir	Louisa County	35	40
Occoquan Reservoir	Fairfax County	35	40
Pedlar Lake	Amherst County	25	20
Philpott Reservoir	Henry County	25	30
Phelps Creek Reservoir (Brookneal Reservoir)	Campbell County	35	40
Powhatan Lakes (Upper and Lower)	Powhatan County	35	40
Ragged Mountain Reservoir	Albemarle County	35	40
Rivanna Reservoir (South Fork Rivanna Reservoir)	Albemarle County	35	40
Roaring Fork	Pittsylvania County	35	40
Rural Retreat Lake	Wythe County	35	40
Sandy River Reservoir	Prince Edward County	35	40
Shenandoah Lake	Rockingham County	35	40
Silver Lake	Rockingham County	35	40

Smith Mountain Lake	Bedford County	25	30
South Holston Reservoir	Washington County	25	20
Speights Run Lake	Suffolk City	60	40
Spring Hollow Reservoir	Roanoke County	25	20
Staunton Dam Lake	Augusta County	35	40
Stonehouse Creek Reservoir	Amherst County	60	40
Strasburg Reservoir	Shenandoah County	35	40
Stumpy Lake	Virginia Beach	60	40
Sugar Hollow Reservoir	Albemarle County	25	20
Swift Creek Lake	Chesterfield County	35	40
Swift Creek Reservoir	Chesterfield County	35	40
Switzer Lake	Rockingham County	10	10
Talbott Reservoir	Patrick County	35	40
Thrashers Creek Reservoir	Amherst County	35	40
Totier Creek Reservoir	Albemarle County	35	40
Townes Reservoir	Patrick County	25	20
Troublesome Creek Reservoir	Buckingham County	35	40
Waller Mill Reservoir	York County	25	30
Western Branch Reservoir	Suffolk City	25	20
Wise Reservoir	Wise County	25	20

258 C. When the board determines that the applicable criteria in subsection B of this section for a  
259 specific man-made lake or reservoir are exceeded, the board shall consult with the Department  
260 of [ ~~Game and Inland Fisheries~~ ] [ Wildlife Resources ] regarding the status of the fishery in  
261 determining whether or not the designated use for that waterbody is being attained. If the  
262 designated use of the subject waterbody is not being attained, the board shall assess the  
263 waterbody as impaired in accordance with § 62.1-44.19:5 of the Code of Virginia. If the designated  
264 use is being attained, the board shall assess the waterbody as impaired in accordance with §  
265 62.1-44.19:5 of the Code of Virginia until site-specific criteria are adopted and become effective  
266 for that waterbody.

267 D. If the nutrient criteria specified for a man-made lake or reservoir in subsection B of this  
268 section do not provide for the attainment and maintenance of the water quality standards of  
269 downstream waters as required in 9VAC25-260-10 C, the nutrient criteria herein may be modified  
270 on a site-specific basis to protect the water quality standards of downstream waters.

271 **9VAC25-260-310. Special standards and requirements.**

272 The special standards are shown in small letters to correspond to lettering in the basin tables.  
273 The special standards are as follows:

274 a. Shellfish waters. In all open ocean or estuarine waters capable of propagating shellfish  
275 or in specific areas where public or leased private shellfish beds are present, including  
276 those waters on which condemnation classifications are established by the Virginia  
277 Department of Health, the following criteria for fecal coliform bacteria will apply:

278 The geometric mean fecal coliform value for a sampling station shall not exceed an MPN  
279 (most probable number) or MF (membrane filtration using mTEC culture media) of 14 per  
280 100 milliliters (ml) of sample and the estimated 90th percentile shall not exceed an MPN  
281 of 43 per 100 ml for a 5-tube decimal dilution test or an MPN of 49 per 100 ml for a 3-tube  
282 decimal dilution test or MF test of 31 CFU (colony forming units) per 100 ml.

283 The shellfish area is not to be so contaminated by radionuclides, pesticides, herbicides,  
284 or fecal material that the consumption of shellfish might be hazardous.

285 b. Policy for the Potomac Embayments. At its meeting on September 12, 1996, the board  
286 adopted a policy (9VAC25-415. Policy for the Potomac Embayments) to control point  
287 source discharges of conventional pollutants into the Virginia embayment waters of the  
288 Potomac River, and their tributaries, from the fall line at Chain Bridge in Arlington County  
289 to the Route 301 bridge in King George County. The policy sets effluent limits for BOD<sub>5</sub>,  
290 total suspended solids, phosphorus, and ammonia, to protect the water quality of these  
291 high profile waterbodies.

292 c. Canceled.

293 d. Canceled.

294 e. Canceled.

295 f. Canceled.

296 g. Occoquan watershed policy. At its meeting on July 26, 1971 (Minute 10), the board  
297 adopted a comprehensive pollution abatement and water quality management policy for  
298 the Occoquan watershed. The policy set stringent treatment and discharge requirements  
299 in order to improve and protect water quality, particularly since the waters are an important  
300 water supply for Northern Virginia. Following a public hearing on November 20, 1980, the  
301 board, at its December 10-12, 1980, meeting, adopted as of February 1, 1981, revisions  
302 to this policy (Minute 20). These revisions became effective March 4, 1981. Additional  
303 amendments were made following a public hearing on August 22, 1990, and adopted by  
304 the board at its September 24, 1990, meeting (Minute 24) and became effective on  
305 December 5, 1990. Copies are available upon request from the Department of  
306 Environmental Quality.

307 h. Canceled.

308 i. Canceled.

309 j. Canceled.

310 k. Canceled.

311 l. Canceled.

312 m. The following effluent limitations apply to wastewater treatment facilities treating an  
313 organic nutrient source in the entire Chickahominy watershed above Walker's Dam (this  
314 excludes discharges consisting solely of stormwater):

CONSTITUENT	CONCENTRATION
1. Biochemical oxygen demand 5-day	6 mg/l monthly average, with not more than 5% of individual samples to exceed 8 mg/l.
2. Settleable solids	Not to exceed 0.1 ml/l monthly average.

3. Suspended solids	5.0 mg/l monthly average, with not more than 5% of individual samples to exceed 7.5 mg/l.
4. Ammonia nitrogen	Not to exceed 2.0 mg/l monthly average as N.
5. Total phosphorus	Not to exceed 0.10 mg/l monthly average for all discharges with the exception of Tyson Foods, Inc., which shall meet 0.30 mg/l monthly average and 0.50 mg/l daily maximum.
6. Other physical and chemical constituents	Other physical or chemical constituents not specifically mentioned will be covered by additional specifications as conditions detrimental to the stream arise. The specific mention of items 1 through 5 does not necessarily mean that the addition of other physical or chemical constituents will be condoned.

- 315 n. No sewage discharges, regardless of degree of treatment, should be allowed into the  
316 James River between Boshier and Williams Island Dams.
- 317 o. The concentration and total amount of impurities in Tuckahoe Creek and its tributaries  
318 of sewage origin shall be limited to those amounts from sewage, industrial wastes, and  
319 other wastes that are now present in the stream from natural sources and from existing  
320 discharges in the watershed.
- 321 p. Canceled.
- 322 q. Canceled.
- 323 r. Canceled.
- 324 s. Canceled.
- 325 t. Canceled.
- 326 u. Maximum temperature for the New River Basin from the Virginia-West Virginia state  
327 line upstream to the Giles-Montgomery County line:  
328 The maximum temperature shall be 27°C (81°F) unless caused by natural conditions; the  
329 maximum rise above natural temperatures shall not exceed 2.8°C (5°F).  
330 This maximum temperature limit of 81°F was established in the 1970 water quality  
331 standards amendments so that Virginia temperature criteria for the New River would be  
332 consistent with those of West Virginia, since the stream flows into that state.
- 333 v. The maximum temperature of the New River and its tributaries (except trout waters)  
334 from the Montgomery-Giles County line upstream to the Virginia-North Carolina state line  
335 shall be 29°C (84°F).
- 336 w. Canceled.
- 337 x. Clinch River from the confluence of Dumps Creek at river mile 268 at Carbo downstream  
338 to river mile 255.4. The special water quality criteria for copper (measured as total  
339 recoverable) in this section of the Clinch River are 12.4 µg/l for protection from chronic  
340 effects and 19.5 µg/l for protection from acute effects. These site-specific criteria are  
341 needed to provide protection to several endangered species of freshwater mussels.
- 342 y. ~~Tidal freshwater Potomac River and tidal tributaries that enter the tidal freshwater~~  
343 ~~Potomac River from Cockpit Point (below Occoquan Bay) to the fall line at Chain Bridge.~~  
344 ~~During November 1 through February 14 of each year the 30-day average concentration~~  
345 ~~of total ammonia nitrogen (in mg N/L) shall not exceed, more than once every three years~~  
346 ~~on the average, the following chronic ammonia criterion:~~

$$\left( \frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} \right) \times 1.45(10^{0.028(25 - \text{MAX})})$$

347 MAX = temperature in °C or 7, whichever is greater.  
 348 ~~The default design flow for calculating steady state wasteload allocations for this chronic~~  
 349 ~~ammonia criterion is the 30Q10, unless statistically valid methods are employed which~~  
 350 ~~demonstrate compliance with the duration and return frequency of this water quality~~  
 351 ~~criterion. Canceled.~~

352 z. A site specific dissolved copper aquatic life criterion of 16.3 µg/l for protection from acute  
 353 effects and 10.5 µg/l for protection from chronic effects applies in the following area:

354 Little Creek to the Route 60 (Shore Drive) bridge including Little Channel, Desert Cove,  
 355 Fishermans Cove, and Little Creek Cove.

356 Hampton Roads Harbor including the waters within the boundary lines formed by I-664  
 357 (Monitor-Merrimac Memorial Bridge Tunnel) and I-64 (Hampton Roads Bridge Tunnel),  
 358 Willoughby Bay, and the Elizabeth River and its tidal tributaries.

359 This criterion reflects the acute and chronic copper aquatic life criterion for saltwater in  
 360 9VAC25-260-140 B X a water effect ratio. The water effect ratio was derived in accordance  
 361 with 9VAC25-260-140 F.

362 aa. The following site-specific dissolved oxygen criteria apply to the tidal Mattaponi and  
 363 Pamunkey Rivers and their tidal tributaries because of seasonal lower dissolved oxygen  
 364 concentration due to the natural oxygen depleting processes present in the extensive  
 365 surrounding tidal wetlands. These criteria apply June 1 through September 30 to  
 366 Chesapeake Bay segments MPNTF, MPNOH, PMKTF, PMKOH and are implemented in  
 367 accordance with subsection D of 9VAC25-260-185. These criteria supersede the open  
 368 water criteria listed in subsection A of 9VAC25-260-185.

Designated use	Criteria Concentration/Duration	Temporal Application
Open water	30 day mean ≥ 4.0 mg/l	June 1 - September 30
	Instantaneous minimum ≥ 3.2 mg/l at temperatures <29°C	
	Instantaneous minimum ≥ 4.3 mg/l at temperatures ≥ 29°C	

369 A site-specific pH criterion of 5.0-8.0 applies to the tidal freshwater Mattaponi Chesapeake  
 370 Bay segment MPNTF to reflect natural conditions.

371 bb. The following site-specific seasonal mean criteria should not be exceeded in the  
 372 specified tidal James River segment more than twice in six years. Should consecutive  
 373 exceedances of the same seasonal mean criterion occur in a waterbody segment after the  
 374 effective date, January 9, 2020, of these chlorophyll a criteria, the department will examine  
 375 additional lines of evidence, including the occurrence of harmful algae blooms,  
 376 physicochemical monitoring and phytoplankton datasets, and fish kill reports in the  
 377 evaluation of the appropriate assessment category for the waterbody segment. The  
 378 department will develop guidance for inclusion in the Water Quality Assessment Guidance  
 379 Manual to address evaluating the appropriate assessment category when consecutive  
 380 exceedances of the same seasonal mean criterion occur. The department will determine  
 381 if additional monitoring for harmful algal blooms is warranted.



Designated Use	Chlorophyll a $\mu\text{l}$	Chesapeake Bay Program Segment	Temporal Application
Open water	8	JMSTF2	March 1 - May 31 (spring)
	10	JMSTF1	
	13	JMSOH	
	7	JMSMH	
	8	JMSPH	
	21	JMSTF2	July 1 - September 30 (summer)
	24	JMSTF1	
	11	JMSOH	
	7	JMSMH	
	7	JMSPH	

382 The following site-specific chlorophyll a concentrations at the specified duration should not  
383 be exceeded more than 10% of the time over six summer seasons in the specified area  
384 of the tidal James River. These criteria protect against aquatic life effects due to harmful  
385 algal blooms. Such effects have not been documented in the upper portion of JMSTF2 or  
386 in JMSOH.

Chlorophyll a $\mu\text{g/l}$	Chesapeake Bay Program Segment	Spatial Application	Duration
--	JMSTF2	Upstream boundary of JMSTF2 to river mile 95	--
52	JMSTF2	River mile 95 to downstream boundary of JMSTF2	1-month median
52	JMSTF1	Upstream boundary of JMSTF1 to river mile 67	1-month median
34	JMSTF1	River mile 67 to downstream boundary of JMSTF1	1-month median
--	JMSOH	Entire segment	--
59	JMSMH	Entire segment	1-day median
20	JMSPH	Entire segment	1-day median

387 (1) The site-specific numerical chlorophyll a criteria apply to the tidal James River  
388 segments (excludes tributaries) JMSTF2, JMSTF1, JMSOH, JMSMH, and JMSPH, the  
389 boundaries of which are described in EPA 903-R-05-004.

390 (2) For segments JMSOH, JMSMH, and JMSPH, the median of same-day samples  
391 collected one meter or less in a segment should be calculated to represent the chlorophyll  
392 a expression of a segment over that day, and the median of same-month chlorophyll a  
393 values should be calculated to represent the chlorophyll a expression of a segment over  
394 that month. The seasonal geometric mean shall be calculated from the monthly chlorophyll  
395 a values for a segment.

396 (3) For segment JMSTF2, chlorophyll a data collected in the "upper zone" (from the  
397 upstream boundary at the fall line to approximately river mile 95 (N37° 23' 15.27" / W77°  
398 18' 45.05" to N37° 23' 19.31" / W77° 18' 54.03")) should be pooled, in the manner  
399 described in subdivision bb (2) of this section, separately from chlorophyll a data collected  
400 in the "lower zone" (from river mile 95 to the downstream boundary of JMSTF2). The  
401 seasonal geometric mean for each of these zones should be calculated from their  
402 respective monthly chlorophyll a values. To calculate the seasonal segment-wide  
403 geometric mean, an area-weighted average of the zonal geometric means should be  
404 calculated using the following equation:

405 
$$\text{Upper Zone Geometric Mean} \times 0.41 + \text{Lower Zone Geometric Mean} \times 0.59$$

406 (4) For segment JMSTF1, chlorophyll a data collected in the "upper zone" (from the  
407 upstream boundary of JMSTF1 to approximately river mile 67 (N37° 17' 46.21" / W77° 7'  
408 9.55" to N37° 18' 58.94" / W77° 6' 57.14")) should be pooled, in the manner described in  
409 subdivision bb (2) of this section, separately from chlorophyll a data collected in the "lower  
410 zone" (between river mile 67 to the downstream boundary of JMSTF1). The seasonal  
411 geometric mean for each of these zones should be calculated from their respective  
412 monthly chlorophyll a values. To calculate the seasonal segment-wide geometric mean,  
413 an area-weighted average of the zonal geometric means should be calculated using the  
414 following equation:

415 
$$\text{Upper Zone Geometric Mean} \times 0.49 + \text{Lower Zone Geometric Mean} \times 0.51$$

416 cc. For Mountain Lake in Giles County, chlorophyll a shall not exceed 6 µg/L at a depth of  
417 six meters and orthophosphate-P shall not exceed 8 µg/L at a depth of one meter or less.

418 dd. For Lake Drummond, located within the boundaries of Chesapeake and Suffolk in the  
419 Great Dismal Swamp, chlorophyll a shall not exceed 35 µg/L and total phosphorus shall  
420 not exceed 40 µg/L at a depth of one meter or less.

421 ee. Maximum temperature for these seasonally stockable trout waters is 26°C and applies  
422 May 1 through October 31.

423 ff. Maximum temperature for these seasonally stockable trout waters is 28°C and applies  
424 May 1 through October 31.

425 gg. Little Calfpasture River from the Goshen Dam to 0.76 miles above its confluence with  
426 the Calfpasture River has a stream condition index (A Stream Condition Index for Virginia  
427 Non-Coastal Streams, September 2003, Tetra Tech, Inc.) of at least 20.5 to protect the  
428 subcategory of aquatic life that exists in this river section as a result of the hydrologic  
429 modification. From 0.76 miles to 0.02 miles above its confluence with the Calfpasture  
430 River, aquatic life conditions are expected to gradually recover and meet the general  
431 aquatic life uses at 0.02 miles above its confluence with the Calfpasture River.

432 hh. Maximum temperature for these seasonally stockable trout waters is 31°C and applies  
433 May 1 through October 31.

434 ii. In the wadeable portions of the mainstem sections of the Shenandoah River, North Fork  
435 Shenandoah River, and South Fork Shenandoah River listed in the table in this  
436 subdivision, a determination of persistent nuisance filamentous algae impeding the  
437 recreation use should be made when exceedances of [ either of ] the specified benthic  
438 chlorophyll-a concentration thresholds occur in more than one recreation season (May 1  
439 to October 31) in three years. "Wadeable" constitutes a stream that can be crossed and  
440 sampled safely during a given sampling event occurring within the recreation season.

<u>Segment</u>	<u>Two-Month Median (mg/m<sup>2</sup>)</u>	<u>Seasonal Median (mg/m<sup>2</sup>)</u>
<u>Shenandoah River from its confluence of the North Fork and South Fork Shenandoah Rivers downstream to the Virginia-West Virginia state line</u>	<u>150</u>	<u>100</u>
<u>North Fork Shenandoah River from its confluence with Fort Run downstream to its confluence with the South Fork Shenandoah River</u>	<u>150</u>	<u>100</u>
<u>South Fork Shenandoah River from its confluence with the North and South Rivers downstream to its confluence with the North Fork Shenandoah River</u>	<u>150</u>	<u>100</u>

441

**9VAC25-260-390. Potomac River Basin (Potomac River Subbasin).**

442

## Potomac River Subbasin

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	II	a	Tidal tributaries of the Potomac River from Smith Point to Upper Machodoc Creek (Baber Point).
1a	III		All free flowing portions of tributaries to the Potomac River from Smith Point to the Route 301 Bridge in King George County unless otherwise designated in this chapter.
	VII		Swamp waters in Section 1a
			Mattox Creek and its tributaries from the head of tidal waters to their headwaters.
			Monroe Creek and tributaries from the head of tidal waters at Route 658 to their headwaters.
			Pine Hill Creek and its tributaries from the confluence with Rosier Creek to their headwaters.
			Popes Creek and Canal Swamp (a tributary to the tidal portion of Popes Creek) and their tributaries from the head of tidal waters to their respective headwaters.
1b	III	b	All free flowing portions of tributaries to the Potomac River from the Route 301 Bridge in King George County to, and including, Potomac Creek, unless otherwise designated in this chapter.
1c	III	PWS,b	Potomac Creek and its tributaries from the Stafford County water supply dam (Abel Lake Reservoir) to their headwaters.
2	II	a	Tidal Upper Machodoc Creek and the tidal portions of its tributaries.
2a	III		Free flowing portions of Upper Machodoc Creek and its tributaries.
3	II	b	Tidal portions of the tributaries to the Potomac River from the Route 301 Bridge in King George County to Marlboro Point.

4	II	b	Tidal portions of the tributaries to the Potomac River from Marlboro Point to Brent Point (to include Aquia Creek and its tributaries).
4a	III	b	Free flowing portions of tributaries to the Potomac River in Section 4 up to the Aquia Sanitary District Water Impoundment.
4b	III	PWS,b	Aquia Creek from the Aquia Sanitary District Water Impoundment, and other tributaries into the impoundment, including Beaverdam Run and the Lunga Reservoir upstream to their headwaters.
5	II	b	Tidal portions of tributaries to the Potomac River from Brent Point to Shipping Point, including tidal portions of Chopawamsic Creek and its tidal tributaries.
5a	III	b	Free flowing portions of Chopawamsic Creek and its tributaries upstream to Quantico Marine Base water supply dam.
5b	III	PWS,b	Chopawamsic Creek and its tributaries above the Quantico Marine Base water supply intakes at the Gray and Breckenridge Reservoirs to their headwaters.
6	II	b, <del>y</del>	Tidal portions of tributaries to the Potomac River from Shipping Point to Chain Bridge.
7	III	b	Free flowing portions of tributaries to the Potomac River from Shipping Point to Chain Bridge, unless otherwise designated in this chapter.
7a	III	g	Occoquan River and its tributaries to their headwaters above Fairfax County Water Authority's water supply impoundment, unless otherwise designated in this chapter.
7b	III	PWS,g	The impounded waters of Occoquan River above the water supply dam of the Fairfax County Water Authority to backwater of the impoundment on Bull Run and Occoquan River, and the tributaries of Occoquan above the dam to points 5 miles above the dam.
7c	III	PWS,g	Broad Run and its tributaries above the water supply dam of the City of Manassas upstream to points 5 miles above the dam.
7d			(Deleted)
7e	III	PWS,g	Cedar Run and its tributaries from the Town of Warrenton's raw water intake to points 5 miles upstream (Fauquier County).
7f	III	PWS,g	The Quantico Marine Base Camp Upshur and its tributaries' raw water intake on Cedar Run (located approximately 0.2 mile above its confluence with Lucky Run) to points 5 miles upstream.
7g	III	PWS,g	The proposed impounded waters of Licking Run above the multiple purpose impoundment structure in Licking Run near Midland (Fauquier County) upstream to points 5 miles above the proposed impoundment.
7h	III	PWS,g	The proposed impounded waters of Cedar Run above the proposed multiple purpose impoundment structure on the main stem of Cedar

			Run near Auburn (Fauquier County), to points 5 miles above the impoundment.
8	III	PWS	Tributaries to the Potomac River in Virginia between Chain Bridge and the Monacacy River from their confluence with the Potomac upstream 5 miles, to include Goose Creek to the City of Fairfax's raw water intake, unless otherwise designated in this chapter.
8a	VI	PWS	Big Spring Creek and its tributaries in Loudoun County, from its confluence with the Potomac River upstream to their headwaters. (The temperature standard for natural trout water may be exceeded in the area above Big Spring and Little Spring at Routes 15 and 740 due to natural conditions). This section was given a PWS designation due to the Town of Leesburg's intake on the Potomac as referenced in Section 8b.
	iii		Big Spring Creek from its confluence with the Potomac River upstream to Big Spring.
8b	III	PWS	Those portions of Virginia tributaries into the Potomac River that are within a 5 mile distance upstream of the Town of Leesburg's intake on the Potomac River, unless otherwise designated in this chapter.*
8c	III	PWS	Those portions of Virginia tributaries into the Potomac River that are within a 5 mile distance upstream of the County of Fairfax's intake on the Potomac River.*
9	III		Broad Run, Sugarland Run, Difficult Run, Tuscarora Creek, Sycolin Creek, and other streams tributary to streams in Section 8 from a point 5 miles above their confluence with the Potomac River to their headwaters, unless otherwise designated in this chapter.
9a	III	PWS	All the impounded water of Goose Creek from the City of Fairfax's water supply dam upstream to backwater, and its tributaries above the dam to points 5 miles above the dam.
9b	III	PWS	The Town of Round Hill's (inactive-early 1980s) raw water intake at the Round Hill Reservoir, and including the two spring impoundments located northwest of the town on the eastern slope of the Blue Ridge Mountains.
9c	III	PWS	Unnamed tributary to Goose Creek, from Camp Highroad's (inactive-late 1980s) raw water intake (Loudoun County) located in an old quarry to its headwaters.
9d	III	PWS	Sleeter Lake (Loudoun County).
10	III		Tributaries of the Potomac River from the Monacacy River to the West Virginia-Virginia state line in Loudoun County, from their confluence with the Potomac River upstream to their headwaters, unless otherwise designated in this chapter.
10a	III	PWS	North Fork Catoclin Creek and its tributaries from Purcellville's raw water intake to their headwaters.

10b	III		South Fork Catoclin Creek and its tributaries from its confluence with the North Fork Catoclin Creek to its headwaters.
11	IV	pH-6.5-9.5	Tributaries of the Potomac River in Frederick and Clarke Counties, Virginia, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 11
	***	pH-6.5-9.5	Back Creek (upper) from Rock Enon 4 miles upstream.
	***	pH-6.5-9.5	Back Creek (lower) from Route 600 to the mouth of Hogue Creek - 2 miles.
	***	hh	Hogue Creek from Route 679 upstream 6 miles to the Forks below Route 612.
	vi	pH-6.5-9.5	Opequon Creek (in Frederick County) from its confluence with Hoge Run upstream to the point at which Route 620 first crosses the stream.
	vi	pH-6.5-9.6	Turkey Run (Frederick County) from its confluence with Opequon Creek 3.6 miles upstream.
	VI		Natural Trout Waters in Section 11
	ii	pH-6.5-9.5	Bear Garden Run from its confluence with Sleepy Creek 3.1 miles upstream.
	iii	pH-6.5-9.5	Redbud Run from its confluence with Opequon Creek 4.4 miles upstream.
11a	IV	pH-6.5-9.5	Hot Run and its tributaries from its confluence with Opequon Creek to its headwaters.
	V		Stockable Trout Waters in Section 11a
	vi	pH-6.5-9.5	Clearbrook Run from its confluence with Hot Run 2.1 miles upstream.
12	IV	ESW-6	South Branch Potomac River and its tributaries, such as Strait Creek, and the North Fork River and its tributaries from the Virginia-West Virginia state line to their headwaters.
	V		Stockable Trout Waters in Section 12
	vi		Frank Run from its confluence with the South Branch Potomac River 0.8 mile upstream.
	vii	pH-6.5-9.5	South Branch Potomac River (in Highland County) from 69.2 miles above its confluence with the Potomac River 4.9 miles upstream.
	VI		Natural Trout Waters in Section 12
	ii		Blight's Run from its confluence with Laurel Fork (Highland County) upstream including all named and unnamed tributaries.

	ii		Buck Run (Highland County) from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
	ii		Collins Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
	ii		Laurel Fork (Highland County) from 1.9 miles above its confluence with the North Fork South Branch Potomac River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Laurel Run (Highland County) from its confluence with Strait Creek upstream including all named and unnamed tributaries.
	ii		Locust Spring Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
	ii		Lost Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
	ii		Mullenax Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
	ii		Newman Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
	ii		Slabcamp Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Strait Creek (Highland County) from its confluence with the South Branch Potomac River upstream to the confluence of West Strait Creek.

443

**9VAC25-260-400. Potomac River Basin (Shenandoah River Subbasin).**

444

Shenandoah River Subbasin

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	IV	pH-6.5-9.5, <u>ii</u>	Shenandoah River and its tributaries in Clarke County, Virginia, from the Virginia-West Virginia state line to Lockes Landing, unless otherwise designated in this chapter.
1a	IV	PWS pH-6.5-9.5, <u>ii</u>	Shenandoah River and its tributaries from river mile 24.66 (latitude 39°16'19"; longitude 77°54'33") approximately 0.7 mile downstream of the confluence of the Shenandoah River and Dog Run to 5 miles above Berryville's raw water intake, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 1a
	vi	pH-6.5-9.5	Chapel Run (Clarke County) from its confluence with the Shenandoah River 5.7 miles upstream.
	vi	pH-6.5-9.5	Spout Run (Clarke County) from its confluence with the Shenandoah River (in the vicinity of the Ebenezer Church at Route 604) to its headwaters.

1b			(Deleted)
1c	IV	pH-6.5-9.5, <u>ii</u>	Shenandoah River and its tributaries from a point 5 miles above Berryville's raw water intake to the confluence of the North and South Forks of the Shenandoah River.
	VI		Natural Trout Waters in Section 1c
	iii	pH-6.5-9.5	Page Brook from its confluence with Spout Run, 1 mile upstream.
	***	pH-6.5-9.5	Roseville Run (Clarke County) from its confluence with Spout Run upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Spout Run (Clarke County) from its confluence with the Shenandoah River (in the vicinity of Calmes Neck at Routes 651 and 621), 3.9 miles upstream.
	***	pH-6.5-9.5	Westbrook Run (Clarke County) from its confluence with Spout Run upstream including all named and unnamed tributaries.
1d			(Note: Moved to Section 2b).
2	IV	ESW- <del>12</del> , 14, 15, <u>ii</u>	South Fork Shenandoah River from its confluence with the North Fork Shenandoah River, upstream to a point 5 miles above the Town of Shenandoah's raw water intake and its tributaries to their headwaters in this section, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 2
	vii	pH-6.5-9.5	Bear Lithia Spring from its confluence with the South Fork Shenandoah River 0.8 miles upstream.
	vi	pH-6.5-9.5	Flint Run from its confluence with the South Fork Shenandoah River 4 miles upstream.
	***	pH-6.5-9.5	Gooney Run from the mouth to its confluence with Broad Run above Browntown (in the vicinity of Route 632).
	***	pH-6.5-9.5, hh	Hawksbill Creek from Route 675 in Luray to 1 mile above Route 631.
	VI		Natural Trout Waters in Section 2
	ii	pH-6.5-9.5	Big Creek (Page County) from its confluence with the East Branch Naked Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Big Ugly Run from its confluence with the South Branch Naked Creek upstream including all named and unnamed tributaries.
	ii		Boone Run from 4.6 miles above its confluence with the South Fork Shenandoah River (in the vicinity of Route 637) upstream including all named and unnamed tributaries.



	iii	pH-6.5-9.5	Browns Run from its confluence with Big Run upstream including all named and unnamed tributaries.
	ii		Cub Run (Page County) from Pitt Spring Run upstream including all named and unnamed tributaries.
	***	pH-6.5-9.5	Cub Run from its mouth to Pitt Spring Run.
	i	pH-6.5-9.5	East Branch Naked Creek from its confluence with Naked Creek at Route 759 upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Fultz Run from the Park boundary (river mile 1.8) upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Gooney Run (Warren County) from 6.6 miles above its confluence with the South Fork Shenandoah River 3.9 miles upstream.
	ii	pH-6.5-9.5	Hawksbill Creek in the vicinity of Pine Grove at Route 624 (river mile 17.7) 1.5 miles upstream.
	ii	pH-6.5-9.5	Jeremys Run from the Shenandoah National Park boundary upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Lands Run from its confluence with Gooney Run upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Little Creek (Page County) from its confluence with Big Creek upstream including all named and unnamed tributaries.
	i	pH-6.5-9.5	Little Hawksbill Creek from Route 626 upstream including all named and unnamed tributaries.
	ii		Morgan Run (Page County) from its confluence with Cub Run upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Overall Run from its confluence with the South Fork Shenandoah River 4.8 miles upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Pass Run (Page County) from its confluence with Hawksbill Creek upstream including all named and unnamed tributaries.
	ii		Pitt Spring Run from its confluence with Cub Run upstream including all named and unnamed tributaries.
	ii		Roaring Run from its confluence with Cub Run upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	South Branch Naked Creek from 1.7 miles above its confluence with Naked Creek (in the vicinity of Route 607) upstream including all named and unnamed tributaries.

	iv	pH-6.5-9.5	Stony Run (Page County) from 1.6 miles above its confluence with Naked Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	West Branch Naked Creek from 2.1 miles above its confluence with Naked Creek upstream including all named and unnamed tributaries.
2a	IV	PWS, pH-6.5-9.5	Happy Creek and Sloan Creek from Front Royal's raw water intake to its headwaters.
2b	IV	PWS, <u>ii</u>	The South Fork Shenandoah River and its tributaries from the Town of Front Royal's raw water intake (at the State Route 619 bridge at Front Royal) to points 5 miles upstream.
2c			(Deleted)
2d			(Deleted)
	V		Stockable Trout Waters in Section 2d
	VI		Natural Trout Waters in Section 2d
3	IV	pH-6.5-9.5, ESW- <u>12</u> , <u>16</u> , <u>ii</u>	South Fork Shenandoah River from 5 miles above the Town of Shenandoah's raw water intake to its confluence with the North and South Rivers and its tributaries to their headwaters in this section, and the South River and its tributaries from its confluence with the South Fork Shenandoah River to their headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 3
	vi	pH-6.5-9.5	Hawksbill Creek (Rockingham County) from 0.8 mile above its confluence with the South Fork Shenandoah River 6.6 miles upstream.
	vi	pH-6.5-9.5	Mills Creek (Augusta County) from 1.8 miles above its confluence with Back Creek 2 miles upstream.
	vi	pH-6.5-9.5	North Fork Back Creek (Augusta County) from its confluence with Back Creek 2.6 miles upstream, unless otherwise designated in this chapter.
	VI		Natural Trout Waters in Section 3
	i	pH-6.5-9.5	Bearwallow Run from its confluence with Onemile Run upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Big Run (Rockingham County) from 3.3 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Cold Spring Branch (Augusta County) from Sengers Mountain Lake (Rhema Lake) upstream including all named and unnamed tributaries.

	iv	pH-6.5-9.5	Cool Springs Hollow (Augusta County) from Route 612 upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Deep Run (Rockingham County) from 1.8 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	East Fork Back Creek from its confluence with the South Fork Back Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Gap Run from 1.7 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	iii		Inch Branch (Augusta County) from the dam upstream including all named and unnamed tributaries.
	ii		Johns Run (Augusta County) from its confluence with the South River upstream including all named and unnamed tributaries.
	iv		Jones Hollow (Augusta County) from 1.1 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	ii		Kennedy Creek from its confluence with the South River upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Lee Run from 0.6 mile above its confluence with Elk Run 3.3 miles upstream.
	iii	pH-6.5-9.5	Loves Run (Augusta County) from 2.7 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Lower Lewis Run (Rockingham County) from 1.7 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Madison Run (Rockingham County) from 2.9 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Meadow Run (Augusta County) from its confluence with the South River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	North Fork Back Creek (Augusta County) from river mile 2.6 (in the vicinity of its confluence with Williams Creek) upstream including all named and unnamed tributaries.
	i	pH-6.5-9.5	Onemile Run (Rockingham County) from 1.5 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.

	iv		Orebank Creek from its confluence with Back Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Paine Run (Augusta County) from 1.7 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	ii		Robinson Hollow (Augusta County) from the dam upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Rocky Mountain Run from its confluence with Big Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Sawmill Run from 2.5 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	South Fork Back Creek from its confluence with Back Creek at Route 814 (river mile 2.1) upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Stony Run (Augusta County) from 3.5 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Stony Run (Rockingham County) from 4.1 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	iii		Toms Branch (Augusta County) from 1.1 miles above its confluence with Back Creek upstream including all named and unnamed tributaries.
	i	pH-6.5-9.5	Twomile Run from 1.4 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Upper Lewis Run from 0.5 mile above its confluence with Lower Lewis Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	West Swift Run (Rockingham County) from the Route 33 crossing upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Whiteoak Run from its confluence with Madison Run upstream including all named and unnamed tributaries.
3a	IV	pH-6.5-9.5	South River from the <u>former location of the</u> dam above Waynesboro ( <del>all waters of the impoundment</del> ).
3b	IV	PWS	Coles Run and Mills Creek from South River Sanitary District's raw water intake to their headwaters.
	VI	PWS	Natural Trout Waters in Section 3b
	ii		Coles Run (Augusta County) from 3.9 miles above its confluence with the South River Sanitary District's raw water

			intake (Coles Run Dam) upstream including all named and unnamed tributaries.
	ii		Mills Creek (Augusta County) from the South River Sanitary District's raw water intake (river mile 3.8) upstream including all named and unnamed tributaries.
3c	IV	PWS pH-6.5-9.5	A tributary to Coles Run from Stuarts Draft raw water intake approximately 0.5 mile south of Stuarts Draft and just off Route 610, to its headwaters.
3d	IV	PWS	South Fork Shenandoah River and its tributaries from the City of Harrisonburg water supply intake near the confluence of Big Run to points 5 miles upstream.
4	IV	pH-6.5-9.5	Middle River and its tributaries from the confluence with the North River upstream to its headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 4
	v	pH-6.5-9.5	Barterbrook Branch from its confluence with Christians Creek 2.8 miles upstream.
	***	pH-6.5-9.5	East Dry Branch from its confluence with the Buffalo Branch to its confluence with Mountain Run.
	vi	pH-6.5-9.5	Folly Mills Creek from 2.4 miles above its confluence with Christians Creek (in the vicinity of Route 81) 4.5 miles upstream.
	VI		Natural Trout Waters in Section 4
	iv		Buffalo Branch from Route 703 upstream including all named and unnamed tributaries.
	ii		Cabin Mill Run (Augusta County) from the Camp Shenandoah Boy Scout Lake upstream including all named and unnamed tributaries.
	iv		East Dry Branch (Augusta County) from the confluence of Mountain Run upstream including all named and unnamed tributaries.
	iv		Jennings Branch (Augusta County) from the confluence of White Oak Draft upstream including all named and unnamed tributaries.
4a	IV	PWS pH-6.5-9.5	Middle River and its tributaries from Staunton's raw water intake at Gardner Spring to points 5 miles upstream.
5	IV	pH-6.5-9.5	North River and its tributaries from its confluence with the South River upstream to its headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 5

	v	pH-6.5-9.5	Beaver Creek (Rockingham County) from its confluence with Briery Branch to the spring at a point 2.75 miles upstream.
	v	pH-6.5-9.5	Naked Creek (Augusta County) from 3.7 miles above its confluence with the North River at Route 696, 2 miles upstream.
	VI		Natural Trout Waters in Section 5
	iv		Big Run (Augusta County) from 0.9 mile above its confluence with Little River upstream including all named and unnamed tributaries.
	ii		Black Run (Rockingham County) from its mouth upstream including all named and unnamed tributaries.
	iii		Briery Branch (Rockingham County) from river mile 6.9 upstream including all named and unnamed tributaries.
	iv		Gum Run from its mouth upstream including all named and unnamed tributaries.
	iii		Hone Quarry Run from its confluence with Briery Branch upstream including all named and unnamed tributaries.
	iv		Little River from its confluence with the North River at Route 718 upstream including all named and unnamed tributaries.
	iv		Maple Spring Run from its mouth upstream including all named and unnamed tributaries.
	iv		Mines Run from its confluence with Briery Branch upstream including all named and unnamed tributaries.
	iv		Rocky Run (which is tributary to Briery Branch in Rockingham County) from its mouth upstream including all named and unnamed tributaries.
	iii		Rocky Run (which is tributary to Dry River in Rockingham County) from its mouth upstream including all named and unnamed tributaries.
	ii		Union Springs Run from 3 miles above its confluence with Beaver Creek upstream including all named and unnamed tributaries.
	iv		Wolf Run (Augusta County) from its confluence with Briery Branch upstream including all named and unnamed tributaries.
5a	IV	PWS pH-6.5-9.5	Silver Lake
5b	IV	PWS pH-6.5-9.5	North River and its tributaries from Harrisonburg's raw water intake at Bridgewater to points 5 miles above Bridgewater's raw water intake to include Dry River and Muddy Creek.
	V	PWS	Stockable Trout Waters in Section 5b

	v	pH-6.5-9.5	Mossy Creek from its confluence with the North River 7.1 miles upstream.
	v	pH-6.5-9.5	Spring Creek (Rockingham County) from its confluence with the North River 2 miles upstream.
5c	IV	PWS	Dry River (Rockingham County) from Harrisonburg's raw water intake (approximately 11.7 miles above its confluence with the North River) to a point 5 miles upstream, <u>including Skidmore Fork upstream to the headwaters of Switzer Lake</u> , unless otherwise designated in this chapter.
	V	PWS	Stockable Trout Waters in Section 5c
	viii		Raccoon Run (Rockingham County) from its confluence with Dry River to its headwaters.
	VI	PWS	Natural Trout Waters in Section 5c
	iv		Dry River (Rockingham County) from Harrisonburg's raw water intake (approximately 11.7 miles above its confluence with the North River) to a point 5 miles upstream.
	iv		Dry Run (Rockingham County) from its confluence with Dry River upstream including all named and unnamed tributaries.
	iv		Hopkins Hollow from its confluence with Peach Run upstream including all named and unnamed tributaries.
	iv		Kephart Run from its confluence with Dry River upstream including all named and unnamed tributaries.
5d	VI		Dry River and its tributaries from 5 miles above Harrisonburg's raw water intake to its headwaters.
	<u>V</u>		<u>Stockable Trout Waters in Section 5d</u>
	<u>viii</u>		<u>Switzer Lake from its dam upstream to the impoundment headwaters.</u>
	VI		Natural Trout Waters in Section 5d
	iv		Dry River (Rockingham County) from 5 miles above Harrisonburg's raw water intake upstream including all named and unnamed tributaries.
	ii		Laurel Run (Rockingham County) from its confluence with Dry River upstream including all named and unnamed tributaries.
	ii		Little Laurel Run from its confluence with Dry River upstream including all named and unnamed tributaries.
	ii		Low Place Run from its confluence with Dry River upstream including all named and unnamed tributaries.
	iv		Miller Spring Run from its confluence with Dry River upstream including all named and unnamed tributaries.

	iii		Sand Run from its confluence with Dry River upstream including all named and unnamed tributaries.
	iv		Skidmore Fork from its confluence with Dry River upstream including all named and unnamed tributaries. <u>This does not include Switzer Lake, which is Class V Stockable Trout Waters.</u>
5e	VI	PWS	North River and its tributaries from Staunton Dam to their headwaters <u>unless otherwise designated in this chapter.</u>
	<u>V</u>		<u>Stockable Trout Waters in Section 5e</u>
	<u>iii</u>	<u>ee</u>	<u>Elkhorn Lake from the dam upstream to the impoundment headwaters.</u>
	VI		Natural Trout Waters in Section 5e
	iv		North River from <u>the headwaters of Elkhorn Dam Lake</u> upstream including all named and unnamed tributaries.
6	IV	pH-6.5-9.5 <u>ii</u>	North Fork Shenandoah River from its confluence with the Shenandoah River to its headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 6
	vi	pH-6.5-9.5	Bear Run from its confluence with Foltz Creek to its headwaters.
	vi	pH-6.5-9.5	Bull Run (Shenandoah County) from its confluence with Foltz Creek to its headwaters.
	vi	pH-6.5-9.5	Falls Run from its confluence with Stony Creek to its headwaters.
	vi	pH-6.5-9.5	Foltz Creek from its confluence with Stony Creek to its headwaters.
	vi	pH-6.5-9.5	Little Passage Creek from its confluence with Passage Creek to the Strasburg Reservoir Dam.
	***	pH-6.5-9.5, hh	Mill Creek from Mount Jackson to Route 720 - 3.5 miles.
	vi	pH-6.5-9.5	Mountain Run from its mouth at Passage Creek to its headwaters.
	***	pH-6.5-9.5	Passage Creek from the U.S. Forest Service line (in the vicinity of Blue Hole and Buzzard Rock) 4 miles upstream.
	vi	pH-6.5-9.5	Passage Creek from 29.6 miles above its confluence with the North Fork Shenandoah River to its headwaters.
	vi	pH-6.5-9.5	Peters Mill Run from the mouth to its headwaters.
	***	pH-6.5-9.5	Shoemaker River from 612 at Hebron Church to its junction with Route 817 at its confluence with Slate Lick Branch.



	v	pH-6.5-9.5	Stony Creek from its confluence with the North Fork Shenandoah River to Route 682.
	***	pH-6.5-9.5	Stony Creek from Route 682 above Edinburg upstream to Basye.
	VI		Natural Trout Waters in Section 6
	ii	pH-6.5-9.5	Anderson Run (Shenandoah County) from 1.1 miles above its confluence with Stony Creek upstream including all named and unnamed tributaries.
	iv		Beech Lick Run from its confluence with the German River upstream including all named and unnamed tributaries.
	iii		Bible Run from its confluence with Little Dry River upstream including all named and unnamed tributaries.
	ii		Camp Rader Run from its confluence with the German River upstream including all named and unnamed tributaries.
	iv		Carr Run from its confluence with Little Dry River upstream including all named and unnamed tributaries.
	iv		Clay Lick Hollow from its confluence with Carr Run upstream including all named and unnamed tributaries.
	iv		Gate Run from its confluence with Little Dry River upstream including all named and unnamed tributaries.
	iv		German River (Rockingham County) from its confluence with the North Fork Shenandoah River at Route 820 upstream including all named and unnamed tributaries.
	ii		Laurel Run (Shenandoah County) from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Little Stony Creek from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	iv		Marshall Run (Rockingham County) from 1.2 miles above its confluence with the North Fork Shenandoah River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Mine Run (Shenandoah County) from its confluence with Passage Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Poplar Run (Shenandoah County) from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Rattlesnake Run (Rockingham County) from its confluence with Spruce Run upstream including all named and unnamed tributaries.

	iv		Root Run from its confluence with Marshall Run upstream including all named and unnamed tributaries.
	iv		Seventy Buck Lick Run from its confluence with Carr Run upstream including all named and unnamed tributaries.
	iv		Sirks Run (Spring Run) from 1.3 miles above its confluence with Crab Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Spruce Run (Rockingham County) from its confluence with Capon Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Sumac Run from its confluence with the German River upstream including all named and unnamed tributaries.
6a	<del>iv</del> <u>v</u>	PWS pH-6.5-9.5	Little Passage Creek from the Strasburg Reservoir Dam upstream to its headwaters, unless otherwise designated in this chapter.
	v	PWS	Stockable Trout Waters in Section 6a
	vi	pH-6.5-9.5	Little Passage Creek from the Strasburg Reservoir Dam upstream to its headwaters.
6b	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from the Winchester raw water intake to points 5 miles upstream (to include Cedar Creek and its tributaries to their headwaters).
	v	PWS	Stockable Trout Waters in Section 6b
	***	pH-6.5-9.5	Cedar Creek (Shenandoah County) from Route 55 (river mile 23.56) to the U.S. Forest Service Boundary (river mile 32.0) - approximately 7 miles.
	v	PWS pH-6.5-9.5	Meadow Brook (Frederick County) from its confluence with Cedar Creek 5 miles upstream.
	VI	PWS	Natural Trout Waters in Section 6b
	iii	pH-6.5-9.5	Cedar Creek (Shenandoah County) from the U.S. Forest Service boundary (river mile 32.0) near Route 600 upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Duck Run from its confluence with Cedar Creek upstream including all named and unnamed tributaries.
			Paddy Run (Frederick County) from the mouth upstream including all named and unnamed tributaries.
	***		Paddy Run (Frederick County) from its mouth (0.0) to river mile 1.8.
	vi**		Paddy Run (Frederick County) from river mile 1.8 to river mile 8.1-6.3 miles.

	iii	pH-6.5-9.5	Sulphur Springs Gap (Shenandoah County) from its confluence with Cedar Creek 1.9 miles upstream.
6c	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from Strasburg's raw water intake to points 5 miles upstream.
6d	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from Woodstock's raw water intake (approximately 0.25 mile upstream of State Route 609 bridge near Woodstock) to points 5 miles upstream.
6e	IV	PWS pH-6.5-9.5	Smith Creek and its tributaries from New Market's raw water intake to their headwaters.
			Natural Trout Waters in Section 6e
	iv	pH-6.5-9.5	Mountain Run (Fridley Branch, Rockingham County) from Route 722 upstream including all named and unnamed tributaries.
6f	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from the Food Processors Water Coop, Inc. dam at Timberville and the Town of Broadway's intakes on Linville Creek and the North Fork Shenandoah to points 5 miles upstream.
6g	IV		Shoemaker River and its tributaries from Slate Lick Run, and including Slate Lick Run, to its headwaters.
	V		Stockable Trout Waters in Section 6g
	***		Slate Lick Run from its confluence with the Shoemaker River upstream to the 1500 foot elevation.
	VI		Natural Trout Waters in Section 6g
	iv		Long Run (Rockingham County) from its confluence with the Shoemaker River upstream including all named and unnamed tributaries.
	iv		Slate Lick Run from the 1500 foot elevation upstream including all named and unnamed tributaries.
6h	IV	PWS pH-6.5-9.5	Unnamed tributary of North Fork Shenandoah River (on the western slope of Short Mountain opposite Mt. Jackson) from the Town of Mt. Jackson's (inactive mid-1992) raw water intake (north and east dams) to its headwaters.
6i	IV	PWS pH-6.5-9.5	Little Sulfur Creek, Dan's Hollow and Horns Gully (tributaries of the North Fork Shenandoah River on the western slope of Short Mountain opposite Mt. Jackson) which served as a water supply for the Town of Edinburg until March 31, 1992, from the Edinburg intakes upstream to their headwaters.

445 **9VAC25-260-410. James River Basin (Lower).**

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
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1	II	a,z, bb, ESW-11	James River and its tidal tributaries from Old Point Comfort - Fort Wool to the end of tidal waters (fall line, Mayo's Bridge, 14th Street, Richmond), except prohibited or spoil areas, unless otherwise designated in this chapter.
1a	III		Free flowing or nontidal portions of streams in Section 1, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 1a
			Gunns Run and its tributaries from the head of tide at river mile 2.64 to its headwaters.
1b	II	a,z	Eastern and Western Branches of the Elizabeth River and tidal portions of their tributaries from their confluence with the Elizabeth River to the end of tidal waters.
1c	III		Free flowing portions of the Eastern Branch of the Elizabeth River and its tributaries. Includes Salem Canal up to its intersection with Timberlake Road at N36°48'35.67"/W76°08'31.70".
1d	II	a,z	Southern Branch of the Elizabeth River from its confluence with the Elizabeth River to the lock at Great Bridge.
1e	III		Free flowing portions of the Western Branch of the Elizabeth River and of the Southern Branch of the Elizabeth River from their confluence with the Elizabeth River to the lock at Great Bridge.
1f	II	a	Nansemond River and its tributaries from its confluence with the James River to Suffolk (dam at Lake Meade), unless otherwise designated in this chapter.
1g	III		<del>Shingle Creek from its confluence with the Nansemond River to its headwaters in the Dismal Swamp. (Deleted)</del>
	VII		Swamp waters in Section <del>1g</del> <u>1f</u> Shingle Creek and its tributaries from the head of tide (approximately 500 feet downstream of Route 13/337) to their headwaters.
1h	III	PWS	Lake Prince, Lake Burnt Mills and Western Branch impoundments for Norfolk raw water supply and Lake Kilby - Cahoon Pond, Lake Meade and Lake Speight impoundments for Portsmouth raw water supply and including all tributaries to these impoundments.
	VII		Swamp waters in Section 1h
			Eley Swamp and its tributaries from Route 736 upstream to their headwaters.

1i	III		Free flowing portions of the Pagan River and its free flowing tributaries.
1j			(Deleted)
1k	III	PWS	Skiffes Creek Reservoir (Newport News water impoundment).
1l	III	PWS	The Lone Star lakes and impoundments in the City of Suffolk, Chuckatuck Creek watershed which serve as a water source for the City of Suffolk.
1m	III	PWS	The Lee Hall Reservoir system, near Skiffes Creek and the Warwick River, in the City of Newport News.
1n	III	PWS	Chuckatuck Creek and its tributaries from Suffolk's raw water intake (at Godwin's Millpond) to a point 5 miles upstream.
1o	II	PWS, bb	James River from City Point (Hopewell) to a point 5 miles upstream.
1p	III	PWS	Free flowing tributaries to section 1o.
2	III		Free flowing tributaries of the Chickahominy River to Walkers Dam, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 2
			Morris Creek and its tributaries from the head of tide at river mile 5.97 upstream to its headwaters.
2a	III	PWS	Diascund Creek and its tributaries from Newport News's raw water intake dam to its headwaters.
2b	III	PWS	Little Creek Reservoir and its tributaries from the City of Newport News impoundment dam to 5 miles upstream of the raw water intake.
3	III	m	Chickahominy River and its tributaries from Walkers Dam to Bottoms Bridge (Route 60 bridge), unless otherwise designated in this chapter.
	VII		Swamp waters in Section 3
		m	Chickahominy River from its confluence with Toe Ink Swamp at river mile 43.07 upstream to Bottoms Bridge (Route 60).
		m	Rumley Marsh and tributaries from the confluence of an unnamed tributary at river mile 2.61, upstream to the confluence with Beus Swamp. Beus Swamp, Piney Branch, and Pelham Swamp above the confluence of Beus Swamp are excluded.

		m	White Oak Swamp and its tributaries from its confluence with the Chickahominy River to their headwaters.
3a	III	PWS,m	Chickahominy River and its tributaries from Walkers Dam to points 5 miles upstream.
4	III	m	Chickahominy River and its tributaries, unless otherwise designated in this chapter, from Bottoms Bridge (Route 60 bridge) to its headwaters.
	VII		Swamp waters in Section 4
		m	Chickahominy River from Bottoms Bridge (Route 60) upstream to its confluence with Stony Run at rivermile 71.03.
		m	Stony Run and tributaries from the confluence with Chickahominy River to their headwaters.
4a	III		Free flowing tributaries to the James River from Brandon to the fall line at Richmond, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 4a
			Fourmile Creek and its tributaries to their headwaters.

446 **9VAC25-260-420. James River Basin (Middle).**

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
6	III		James River and its tributaries from the fall line at Richmond (Mayo's Bridge, 14th Street) to the Rockfish River unless otherwise designated in this chapter.
7			(Deleted)
7a			(Deleted)
8	III		James River and its tributaries from the low water dam above 14th Street Bridge to Richmond's raw water intake at Williams Island Dam.
9	III	PWS,n	James River and its tributaries, unless otherwise designated in this chapter, from Richmond's raw water intake at Douglasdale Road, inclusive of the Williams Island Dam intake, the Henrico County raw water intake and the Benedictine Society's raw water intake to river mile 127.26 (at latitude 37°35'24"; longitude 77°42'33") near public landing site.
9a	III	PWS,o	Tuckahoe Creek and its tributaries from its confluence with the James River to its headwaters.
	VII		Swamp waters in Section 9a

		Tuckahoe Creek from its confluence with Little Tuckahoe Creek to the confluence with the James River.
10	III	James River and its tributaries from a point at latitude 37°40'32"; longitude 77°54'08" to, and including the Rockfish River, unless otherwise designated in this chapter.
	V	Stockable Trout Waters in Section 10
	vii	Lynch River from the upper Route 810 crossing near the intersection of Route 628 2.9 miles upstream (to Ivy Creek).
	***	Rockfish Creek from its confluence with the South Fork Rockfish River to its headwaters.
	VI	Natural Trout Waters in Section 10
	ii	Doyles River from 6.4 miles above its confluence with Moormans River above Browns Cove at Route 629 including all named and unnamed tributaries.
	iii	Fork Hollow from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	iii	Ivy Creek (Greene County) from its confluence with the Lynch River upstream including all named and unnamed tributaries.
	ii	Jones Falls Run from its confluence with Doyles River upstream including all named and unnamed tributaries.
	ii	Little Stony Creek (Nelson County) from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	iv	Mill Creek (Nelson County) from its confluence with Goodwin Creek upstream including all named and unnamed tributaries.
	ii	Mutton Hollow from its confluence with Swift Run upstream including all named and unnamed tributaries.
	iv	Pauls Creek (Nelson County) from 1.3 miles above its confluence with the North Fork Rockfish River upstream including all named and unnamed tributaries.
	iv	Rodes Creek from its confluence with Goodwin Creek upstream including all named and unnamed tributaries.
	ii	South Fork Rockfish River from 8 miles above its confluence with the Rockfish River upstream including all named and unnamed tributaries.
	ii	Spruce Creek (Nelson County) from 1.5 miles above its confluence with the South Fork Rockfish River upstream including all named and unnamed tributaries.

	ii		Stony Creek (Nelson County) from 1 mile above its confluence with the South Fork Rockfish River upstream including all named and unnamed tributaries.
	ii		Swift Run from 14.5 miles above its confluence with the North Fork Rivanna River upstream including all named and unnamed tributaries.
10a	III	PWS	James River at river mile 127.26 near the public landing site and its tributaries from, and including, Little River to 5 miles above State Farm's raw water intake, including Beaverdam and Courthouse Creeks, to their headwaters.
10b			(Deleted.)
10c	III		Willis River and its tributaries within Cumberland State Forest.
10d	III	PWS	Johnson Creek above the Schuyler (Nelson County Service Authority) raw water intake to its headwaters.
10e	III	PWS	Totier Creek and its tributaries from the Scottsville (Rivanna Water and Sewer Authority) raw water intake to their headwaters (including the Reservoir).
10f	III		Powell Creek and its tributaries from its confluence with the Rivanna River upstream to their headwaters.
10g	III	PWS	Beaver Creek and its tributaries from the Crozet (Rivanna Water and Sewer Authority) raw water intake upstream to their headwaters (including the reservoir).
10h	III	PWS	Mechums River and its tributaries from the Rivanna Water and Sewer Authority's raw water intake to points 5 miles upstream.
10i	III	PWS	Moormans River and its tributaries from the Rivanna Water and Sewer Authority's raw water intake to points 5 miles upstream (including Sugar Hollow Reservoir).
	VI		Natural Trout Waters in Section 10i
	ii		North Fork Moormans River from its confluence with Moormans River upstream including all named and unnamed tributaries.
	ii		Pond Ridge Branch from its confluence with the North Fork Moormans River upstream including all named and unnamed tributaries.
	iii		South Fork Moormans River from its confluence with Moormans River upstream including all named and unnamed tributaries.
10j	III	PWS	South Fork Rivanna River and its tributaries to their headwaters; except Ivy Creek, from the Rivanna Water and



			Sewer Authority's South Fork Rivanna River Dam to its confluence with the Moormans River, and Ivy Creek to a point 5 miles above the dam.
10k	III	PWS	James River and its tributaries from Fork Union Sanitary District's raw water intake (just below the Route 15 bridge) to points 5 miles upstream, including the Slate River to a point 5 miles above the intake.
10l	III		Lake Monticello in Fluvanna County.
10m	III	PWS	Rivanna River and its tributaries from the raw water intake for Lake Monticello (about 2.76 miles above the Route 600 bridge in Fluvanna County) to points 5 miles upstream.
10n	III	PWS	Ragged Mountain Reservoir (intake for the Rivanna Water and Sewer Authority) including its tributaries to their headwaters.
10o	III	PWS	The North Fork Rivanna River and its tributaries from the Rivanna Water and Sewer Authority's raw water intake (approximately 1/4 mile upstream of the U. S. Route 29 bridge north of Charlottesville) to points 5 miles upstream.
10p	III	PWS	Troublesome Creek in Buckingham County from Buckingham County's raw water intake point at a flood control dam south of the Route 631 bridge to a point 5 miles upstream.
10q	III	PWS	Allen Creek and its tributaries from the Wintergreen Mountain Village's primary raw water intake at Lake Monocan to a point upstream at latitude 37°53'59"; longitude 78°53'14".
10r	III	PWS	Stony Creek from the diversion structure at latitude 37°54'00"; longitude 78°53'47" to its headwaters inclusive of the Stony Creek raw water intake just upstream of the Peggy's Pinch booster pump station.
10s	III	PWS	Mechunk Creek and its tributaries from the Department of Corrections raw water intake (at the US Route 250 bridge ) to points 5 miles upstream.
10t	III	PWS	Cobbs Creek (Cumberland County) and its tributaries from the public water supply intake on Cobbs Creek Reservoir upstream to their headwaters.
11	III	ESW-7, 8, 22, 23, 24, 25, 26, 27	James River and its tributaries from, but not including, the Rockfish River to Balcony Falls, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 11
	vi		Dancing Creek from the junction of Routes 610 and 641 to its headwaters.
	vi		North Fork Buffalo River from its confluence with the Buffalo River 1.8 miles upstream.

vi	Pedlar River from the confluence of Enchanted Creek to Lynchburg's raw water intake.
vi	Terrapin Creek from its confluence with Otter Creek to its headwaters.
***	Tye River from Tyro upstream to its confluence with the South and North Fork Tye Rivers.
VI	Natural Trout Waters in Section 11
ii	Big Branch from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Bluff Creek from its confluence with Enchanted Creek upstream including all named and unnamed tributaries.
ii	Browns Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Campbell Creek (Nelson County) from its confluence with the Tye River upstream including all named and unnamed tributaries.
ii	Cove Creek from its confluence with the North Fork Buffalo River upstream including all named and unnamed tributaries.
ii	Coxs Creek from its confluence with the Tye River upstream including all named and unnamed tributaries.
ii	Crabtree Creek (Nelson County) from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
ii	Crawleys Creek from its confluence with the Piney River upstream including all named and unnamed tributaries.
ii	Cub Creek (Nelson County) from 1.4 miles above its confluence with the Tye River (in the vicinity of Route 699), upstream including all named and unnamed tributaries.
ii	Davis Mill Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Durham Run from its confluence with the North Fork Tye River upstream including all named and unnamed tributaries.
ii	Elk Pond Branch from its confluence with the North Fork Piney River upstream including all named and unnamed tributaries.
ii	Enchanted Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Georges Creek from its confluence with the Little Piney River upstream including all named and unnamed tributaries.

ii	Greasy Spring Branch from its confluence with the South Fork Piney River upstream including all named and unnamed tributaries.
ii	Harpers Creek from its confluence with the Tye River upstream including all named and unnamed tributaries.
ii	King Creek from its confluence with the Little Piney River upstream including all named and unnamed tributaries.
ii	Lady Slipper Run from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Little Cove Creek from its confluence with the North Fork Buffalo River upstream including all named and unnamed tributaries.
iii	Little Irish Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Little Piney River from its confluence with the Piney River upstream including all named and unnamed tributaries.
i	Louisa Spring Branch from its confluence with the North Fork Piney River 1.6 miles upstream.
ii	Maidenhead Branch from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
ii	Meadow Creek (Nelson County) from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
ii	Mill Creek (Nelson County) from its confluence with the North Fork Tye River upstream including all named and unnamed tributaries.
ii	Mill Creek (Nelson County) from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
ii	Nicholson Run from its confluence with Lady Slipper Run upstream including all named and unnamed tributaries.
ii	North Fork Buffalo River from 1.8 miles above its confluence with the Buffalo River upstream including all named and unnamed tributaries.
i	North Fork Piney River from its confluence with the Piney River upstream including all named and unnamed tributaries.
iii	North Fork Thrashers Creek from its confluence with Thrashers Creek upstream including all named and unnamed tributaries.

			North Fork Tye River from its confluence with the Tye River upstream including all named and unnamed tributaries.
	iii		(North Fork Tye River from its confluence with the Tye River 1.6 miles upstream.)
	ii		(North Fork Tye River from 1.6 miles above its confluence with the Tye River 8.3 miles upstream.)
	iii		Pedlar River from 5 miles above Lynchburg's raw water intake upstream including all named and unnamed tributaries.
	ii		Piney River from river mile 13.3 upstream including all named and unnamed tributaries.
	ii		Pompey Creek from its confluence with the Little Piney River upstream including all named and unnamed tributaries.
	ii		Reed Creek from the junction of Routes 764 and 638 upstream including all named and unnamed tributaries.
	ii		Rocky Branch from its confluence with the North Fork Buffalo River upstream including all named and unnamed tributaries.
	ii		Rocky Run (Nelson County) from 1.6 miles above its confluence with the Tye River upstream including all named and unnamed tributaries.
	i		Shoe Creek (Nelson County) from its confluence with Piney River upstream including all named and unnamed tributaries.
	iii		Silver Creek from its confluence with the Tye River upstream including all named and unnamed tributaries.
	ii		South Fork Piney River from its confluence with the Piney River upstream including all named and unnamed tributaries.
	ii		South Fork Tye River from its confluence with the Tye River upstream including all named and unnamed tributaries.
	ii		Statons Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	iii		Wheeler's Run from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	ii		White Rock Creek (Nelson County) from its confluence with the North Fork Tye River upstream including all named and unnamed tributaries.
	ii		Wiggins Branch from its confluence with Statons Creek upstream including all named and unnamed tributaries.
11a	III	PWS	Unnamed tributary to Williams Creek from Sweet Briar College's (inactive) raw water intake to its headwaters.

11b	III	PWS	Buffalo River and its tributaries from Amherst's raw water intake to points 5 miles upstream.
11c	III	PWS	Black Creek and its tributaries from the Nelson County Service Authority intake (approximately <del>4000</del> <u>1,000</u> feet downstream of the Route 56 bridge) upstream to their headwaters (including the reservoir).
11d	III		James River and its tributaries from a point 0.25 mile above the confluence of the Tye River to Six Mile Bridge.
11e	III		James River and its tributaries, excluding Blackwater Creek, from Six Mile Bridge to the <del>Business Route 29 bridge</del> <u>5th Street Bridge</u> in Lynchburg.
11f			(Deleted)
11g	III	PWS	James River and its tributaries from the Business Route 29 bridge in Lynchburg to Reusens Dam to include the City of Lynchburg's alternate raw water intake at the Route 29 bridge and the Amherst County Service Authority's intake on Harris and Graham Creeks.
11h	III	PWS	James River and its tributaries, excluding the Pedlar River, from Reusens Dam to Coleman Dam, including the Eagle Eyrie raw water intake on an unnamed tributary to Judith Creek 1.0 mile from the confluence with Judith Creek, to its headwaters, and also the City of Lynchburg's raw water intake on the James River at Abert.
11i	III	PWS,ESW-5, 8, 2, 23	Pedlar River and its tributaries from Lynchburg's raw water intake to points 5 miles upstream.
	V		Stockable Trout Waters in Section 11i
	vi		Pedlar River from Lynchburg's raw water intake to a point 5 miles upstream.
	VI		Natural Trout Waters in Section 11i
	ii		Brown Mountain Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	iii		Roberts Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
11j	III		James River and its tributaries from the Owens-Illinois raw water intake near Big Island to Balcony Falls.
	V		Stockable Trout Waters in Section 11j
	vi		Battery Creek from its confluence with the James River to its headwaters.
	vi		Cashaw Creek from its confluence with the James River to its headwaters.

	vi		Otter Creek from its confluence with the James River to a point 4.9 miles upstream.
	vi		Rocky Row Run from its confluence with the James River to its headwaters.
	VI		Natural Trout Waters in Section 11j
	iii		Falling Rock Creek from its confluence with Peters Creek upstream including all named and unnamed tributaries.
	ii		Hunting Creek from a point 3.7 miles from its confluence with the James River upstream including all named and unnamed tributaries.
	iii		Otter Creek from 4.9 miles above its confluence with the James River upstream including all named and unnamed tributaries.
	ii		Peters Creek from a point 0.2 mile above its confluence with the James River upstream including all named and unnamed tributaries.
11k			(Deleted)

447 **9VAC25-260-440. Rappahannock River Basin.**

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	II	a	Rappahannock River and the tidal portions of its tributaries from Stingray and Windmill Points to Route 1 Alternate Bridge at Fredericksburg.
1a	II		Hoskins Creek from the confluence with the Rappahannock River to its tidal headwaters.
2	III		Free flowing tributaries of the Rappahannock from Stingray and Windmill Points upstream to Blandfield Point, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 2
			Cat Point Creek and its tributaries, from their headwaters to the head of tide at river mile 10.54.
			Hoskins Creek and its nontidal tributaries from the head of tidal waters to their headwaters. Mount Landing Creek and its tributaries from the end of tidal waters at river mile 4.4 to their headwaters.
			Piscataway Creek and its tributaries from the confluence of Sturgeon Swamp to their headwaters.
3	III		The Rappahannock River from the Route 1 Alternate Bridge at Fredericksburg upstream to <del>the low dam water intake at Waterloo</del>

			<del>(Fauquier County)</del> <u>its headwaters, unless otherwise designated in this chapter.</u>
3a	III	PWS	The Rappahannock River and its tributaries from Spotsylvania County's raw water intake near Golin Run to points 5 miles upstream <u>of the Rocky Pen Run Reservoir (Lake Mooney) pump and store intake</u> (excluding Motts Run and tributaries, which is in Section 4c).
3b	III	PWS	The Rappahannock River and its tributaries from the low dam water intake at Waterloo (Fauquier County) to points 5 miles upstream.
4	III	ESW 17,18, <u>28</u>	Free flowing tributaries of the Rappahannock from from <u>[ Blandfield Point ] [ from the Route 1 Alternate Bridge at Fredericksburg ]</u> to its headwaters, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 4 Goldenvale Creek from the head of tidal waters near the confluence with the Rappahannock River to its headwaters.
			Occupacia Creek and its tributaries from the end of tidal waters at river mile 8.89 on Occupacia Creek to their headwaters.
	V		Stockable Trout Waters in Section 4
	***		Hughes River (Madison County) from Route 231 upstream to the upper crossing of Route 707 near the confluence of Rocky Run.
	***		Robinson River from Route 231 to river mile 26.7.
	***		Rose River from its confluence with the Robinson River 2.6 miles upstream.
	***		South River from 5 miles above its confluence with the Rapidan River 3.9 miles upstream.
	VI		Natural Trout Waters in Section 4
	ii		Berry Hollow from its confluence with the Robinson River upstream including all named and unnamed tributaries.
	ii		Bolton Branch from 1.7 miles above its confluence with Hittles Mill Stream upstream including all named and unnamed tributaries.
	ii		Broad Hollow Run from its confluence with Hazel River upstream including all named and unnamed tributaries.
	i		Brokenback Run from its confluence with the Hughes River upstream including all named and unnamed tributaries.
	i		Bush Mountain Stream from its confluence with the Conway River upstream including all named and unnamed tributaries.
	i		Cedar Run (Madison County) from 0.8 mile above its confluence with the Robinson River upstream including all named and unnamed tributaries.

i	Conway River (Greene County) from the Town of Fletcher upstream including all named and unnamed tributaries.
ii	Dark Hollow from its confluence with the Rose River upstream including all named and unnamed tributaries.
i	Devils Ditch from its confluence with the Conway River upstream including all named and unnamed tributaries.
iii	Entry Run from its confluence with the South River upstream including all named and unnamed tributaries.
iii	Garth Run from 1.9 miles above its confluence with the Rapidan River at the Route 665 crossing upstream including all named and unnamed tributaries.
ii	Hannah Run from its confluence with the Hughes River upstream including all named and unnamed tributaries.
ii	Hazel River (Rappahannock County) from the Route 707 bridge upstream including all named and unnamed tributaries.
ii	Hogcamp Branch from its confluence with the Rose River upstream including all named and unnamed tributaries.
i	Hughes River (Madison County) from the upper crossing of Route 707 near the confluence of Rocky Run upstream including all named and unnamed tributaries.
iii	Indian Run (Rappahannock County) from 3.4 miles above its confluence with the Hittles Mill Stream upstream including all named and unnamed tributaries.
ii	Jordan River (Rappahannock County) from 10.9 miles above its confluence with the Rappahannock River upstream including all named and unnamed tributaries.
iii	Kinsey Run from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
ii	Laurel Prong from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
ii	Mill Prong from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
ii	Negro Run (Madison County) from its confluence with the Robinson River upstream including all named and unnamed tributaries.
ii	North Fork Thornton River from 3.2 miles above its confluence with the Thornton River upstream including all named and unnamed tributaries.
ii	Piney River (Rappahannock County) from 0.8 mile above its confluence with the North Fork Thornton River upstream including all named and unnamed tributaries.



	ii		Pocosin Hollow from its confluence with the Conway River upstream including all named and unnamed tributaries.
	ii		Ragged Run from 0.6 mile above its confluence with Popham Run upstream including all named and unnamed tributaries.
	i		Rapidan River from Graves Mill (Route 615) upstream including all named and unnamed tributaries.
	ii		Robinson River (Madison County) from river mile 26.7 to river mile 29.7.
	i		Robinson River (Madison County) from river mile 29.7 upstream including all named and unnamed tributaries.
	i		Rose River from river mile 2.6 upstream including all named and unnamed tributaries.
	iv		Rush River (Rappahannock County) from the confluence of Big Devil Stairs (approximate river mile 10.2) upstream including all named and unnamed tributaries.
	ii		Sams Run from its confluence with the Hazel River upstream including all named and unnamed tributaries.
	ii		South River from 8.9 miles above its confluence with the Rapidan River upstream including all named and unnamed tributaries.
	ii		Sprucepine Branch from its confluence with Bearwallow Creek upstream including all named and unnamed tributaries.
	i		Staunton River (Madison County) from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
	ii		Strother Run from its confluence with the Rose River upstream including all named and unnamed tributaries.
	iii		Thornton River (Rappahannock County) from 25.7 miles above its confluence with the Hazel River upstream including all named and unnamed tributaries.
	ii		Wilson Run from its confluence with the Staunton River upstream including all named and unnamed tributaries.
4a			(Deleted)
4b	III	PWS	The Rappahannock River and its tributaries, to include the VEPCO Canal, from Fredericksburg's (inactive May 2000) raw water intake to points 5 miles upstream.
4c	III	PWS	Motts Run and its tributaries.
4d	III		Horsepen Run and its tributaries.
4e	III	PWS	Hunting Run and its tributaries.
4f	III		Wilderness Run and its tributaries.

4g	III		Deep Run and its tributaries ( <a href="#">Stafford and Fauquier Counties</a> ).
4h			(Deleted)
4i	III	PWS	Mountain Run and its tributaries from Culpeper's raw water intake to points 5 miles upstream.
4j	III	PWS	White Oak Run and its tributaries from the Town of Madison's raw water intake to points 5 miles upstream.
4k	III	PWS	Rapidan River and its tributaries from Orange's raw water intake near Poplar Run to points 5 miles upstream.
4l	III	PWS	Rapidan River and its tributaries from the Rapidan Service Authority's raw water intake (just upstream of the Route 29 bridge) upstream to points 5 miles above the intake.
4m	III	PWS	Rapidan River and its tributaries from the Wilderness Shores raw water intake (Orange County - Rapidan Service Authority) to points 5 miles upstream.
4n	III	PWS	From the dam of the White Run pumped storage reservoir on an unnamed tributary to White Run upstream to its headwaters.

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**9VAC25-260-470. Chowan and Dismal Swamp (Chowan River Subbasin).**

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	II	NEW-21	Blackwater River and its tidal tributaries from the Virginia-North Carolina state line to the end of tidal waters at approximately State Route 611 at river mile 20.90; Nottoway River and its tidal tributaries from the Virginia-North Carolina state line to the end of tidal waters at approximately Route 674.
2	VII	NEW-21	Blackwater River from the end of tidal waters to its headwaters and its free flowing tributaries in Virginia, unless otherwise designated in this chapter.
2a	VII	PWS	Blackwater River and its tributaries from Norfolk's auxiliary raw water intake near Burdette, Virginia, to points 5 miles above the raw water intake, to include Corrowaugh Swamp to a point 5 miles above the raw water intake.
2b	III		Nottoway River from the end of tidal waters to its headwaters and its free flowing tributaries in Virginia, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 2b
			Assamoosick Swamp and its tributaries from river mile 2.50 to its headwaters.
			Black Branch Swamp from its confluence with the Nottoway River to its headwaters.

			Butterwood Creek from river mile 4.65 (near Route 622) upstream to river mile 14.59 (near Route 643).
			Cabin Point Swamp <u>and its tributaries</u> from its confluence with the Nottoway River to its headwaters.
			Cooks Branch from its confluence with Butterwood Creek to river mile 1.08
			Gosee Swamp and its tributaries from its confluence with the Nottoway River to river mile 6.88.
			Gravelly Run and its tributaries from its confluence with Rowanty Creek to river mile 8.56.
			Harris Swamp and its tributaries from its confluence with the Nottoway River to river mile 8.72.
			Hatcher Run and its tributaries from its confluence with Rowanty Creek to river mile 19.27 excluding Picture Branch.
			Hunting Quarter Swamp and its tributaries from its confluence with the Nottoway River to its headwaters.
			Moore's and Jones Holes Swamp and tributaries from their confluence with the Nottoway River to its headwaters.
			Neblett's Mill Run and its tributaries from its confluence with the Nottoway River to its headwaters.
			Raccoon Creek and its tributaries from its confluence with the Nottoway River to its headwaters.
			Rowanty Creek and its tributaries from its confluence with the Nottoway River to Gravelly Run.
			Southwest Swamp and its tributaries from its confluence with Stony Creek to river mile 8.55.
			Three Creek and its tributaries from its confluence with the Nottoway River upstream to its headwaters at Slagles Lake.
2c	III	PWS	Nottoway River and its tributaries from Norfolk's auxiliary raw water intake near Courtland, Virginia, to points 5 miles upstream unless otherwise designated in this chapter.
	VII		Swamp waters in Section 2c
			Assamoosick Swamp and its tributaries from its confluence with the Nottoway River to river mile 2.50.
2d			(Deleted)
2e	III	PWS	Nottoway River and its tributaries from the Georgia-Pacific and the Town of Jarratt's raw water intakes near Jarratt, Virginia, to points 5 miles above the intakes.

2f	III	PWS	Nottoway River and its tributaries from the Town of Blackstone's raw water intake to points 5 miles upstream.
2g	III	PWS	Lazaretto Creek and its tributaries from Crewe's raw water intake to points 5 miles upstream.
2h	III	PWS	Modest Creek and its tributaries from Victoria's raw water intake to their headwaters.
2i	III	PWS	Nottoway River and its tributaries from the Town of Victoria's raw water intake at the Falls (about 200 feet upstream from State Route 49) to points 5 miles upstream.
2j	III	PWS	Big Hounds Creek from the Town of Victoria's auxiliary raw water intake (on Lunenburg Lake) to its headwaters.
3	III		Meherrin River and its tributaries in Virginia from the Virginia-North Carolina state line to its headwaters, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 3
			Cattail Creek and its tributaries from its confluence with Fontaine Creek to their headwaters. Tarrara Creek and its tributaries from its confluence with the Meherrin River to its headwaters.
			Fontaine Creek and its tributaries from its confluence with the Meherrin River to Route 301.
3a	III	PWS	Meherrin River and its tributaries from Emporia's water supply dam to points 5 miles upstream.
3b	III	PWS	Great Creek from Lawrenceville's raw water intake to a point 7.6 miles upstream.
3c	III	PWS	Meherrin River and its tributaries from Lawrenceville's raw water intake to points 5 miles upstream.
3d	III	PWS	Flat Rock Creek from Kenbridge's raw water intake upstream to its headwaters.
3e	III	PWS	Meherrin River and its tributaries from South Hill's raw water intake to points 5 miles upstream.
3f	III		Couches Creek from a point 1.6 miles downstream from the Industrial Development Authority discharge to its headwaters.
4	III		Free flowing tributaries to the Chowan River in Virginia unless otherwise designated in this section.
	VII		Swamp waters in Section 4
			Unnamed tributary to Buckhorn Creek from its headwaters to the Virginia-North Carolina state line.

**9VAC25-260-500. Tennessee and Big Sandy River Basins (Clinch River Subbasin).**

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
			Somerton Creek and its tributaries from the Virginia-North Carolina state line at river mile 0.00 upstream to river mile 13.78.
1	IV		Powell River and its tributaries from the Virginia-Tennessee state line to their headwaters; Indian Creek and Martin Creek in Virginia, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 1
	vi		Batie Creek from its confluence with the Powell River 0.8 mile upstream.
	vi		Dry Creek from its confluence with Hardy Creek to its headwaters.
	vi		Hardy Creek and its tributaries to their headwaters.
	vi		Lick Branch from its confluence with Indian Creek 1.4 miles upstream.
	vi		Martin Creek (Lee County) from the Virginia-Tennessee state line to its headwaters.
	vii		North Fork Powell River from the confluence of Straight Creek <u>upstream to <del>its headwaters</del> the Keokee Lake dam.</u>
	vi		Poor Valley Branch from its confluence with Martin Creek 1.4 miles upstream.
	vi		Sims Creek from its confluence with the Powell River 1.1 miles upstream to Sims Spring.
	vi		Station Creek at the boundary of the Cumberland Gap National Historical Park (river mile 2.2) 2.6 miles upstream.
	vi		Wallen Creek above its confluence with the Powell River (at Rasnic Hollow) to its headwaters.
	vi		White Branch from its confluence with Poor Valley Branch 0.7 mile upstream (to the Falls at Falling Water Gap).
1a	IV	PWS	Powell River and its tributaries from Pennington Gap's raw water intake to 5 miles upstream.
1b	IV	PWS	Bens Branch from Appalachia's raw water intake to its headwaters.
1c	IV	PWS	South Fork Powell River from Big Stone Gap's raw water intake to its headwaters.
1d	IV	PWS	Benges Branch from Norton's raw water intake to its headwaters.
1e	IV	PWS	Robinette Branch from Norton's raw water intake to its headwaters.

1f	IV	PWS	Fleenortown Creek and its tributaries from the Winn #1 and Barker Springs intakes (which provide raw water to the Town of Jonesville WTP) to points 5 miles upstream.
2	IV		Clinch River and its tributaries from the Virginia-Tennessee state line to their headwaters; North Fork Clinch River and its tributaries, Blackwater Creek and its tributaries, and Little Creek in Virginia, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 2
	vi		Amos Branch from its confluence with Copper Creek 3.3 miles upstream.
	***		Big Cedar Creek from its confluence with Little Cedar Creek to the mouths of Elk Garden Creek and Loop Creek.
	viii		Burns Creek from its confluence with the Guest River to its headwaters.
	viii		Clear Creek (Wise County) from 1/2 mile above its confluence with the Guest River to its headwaters.
	vi		Copper Creek (Russell County) from Route 678 below Parsonage - river mile 52.5 - 4.3 miles upstream.
	vi		Cove Creek from river mile 6.5 (above Stanleytown) 5.5 miles upstream.
	vi		Cowan Creek from its confluence with Sinking Creek 2.7 miles upstream.
	vi		Devil Fork from its confluence with Straight Fork 3.2 miles upstream.
	vi		Fall Creek from its confluence with the Clinch River 4.6 miles upstream.
	vi		Gillinswater Branch from its confluence with Obeyes Creek 2.8 miles upstream.
	vi		Gray Branch from its confluence with Mill Creek (Scott County) 1.6 miles upstream.
	vi		Jessee Branch from its confluence with Copper Creek at Thompson Ford 2 miles upstream.
	vi		Lark Creek from its confluence with Copper Creek 3 miles upstream.
	viii		Laurel Fork (Scott County) from its confluence with Stock Creek 4 miles upstream.
	vi		Liberty Creek from its confluence with Little River 1.6 miles upstream.

	vi		Little Stony Creek from the intersection of the stream and Route 72 upstream to its headwaters.
	vi		Mill Creek (Scott County) from its confluence with the Clinch River at Grays Ford 1.6 miles upstream.
	vi		Obeys Creek from 2.5 miles above its confluence with Copper Creek 6 miles upstream.
	vi		Palmer Branch from its confluence with the Clinch River 1.8 miles upstream.
	vi		Powers Branch from its confluence with the Clinch River 2.4 miles upstream.
	vi		Stock Creek from 0.25 mile north of Sunbright to 1.5 miles north of Mabe.
			Stony Creek from Fort Blackmore upstream to its headwaters.
	***		(Stony Creek from Fort Blackmore (river mile 0.56) 5.5 miles upstream.)
	vi		(Stony Creek from 5.5 miles above its confluence with the Clinch River (in the vicinity of Greens Chapel) 7.2 miles upstream.)
	vi		Straight Fork (Scott County) from its confluence with Stony Creek 5.1 miles upstream.
	vi		Valley Creek from 1.1 miles above its confluence with Copper Creek 6.8 miles upstream.
	viii		Wolf Creek (Scott County) from its confluence with Laurel Fork 1.8 miles upstream.
	VI		Natural Trout Waters in Section 2
	iii		Maiden Spring Creek from 15 miles above its confluence with Little River at Route 602 above Benbow 5.3 miles upstream.
	iii		Mill Creek (Russell County) from its confluence with the Clinch River 2.7 miles upstream.
2a	IV	PWS, x	Clinch River and its tributaries to their headwaters from the Wise County Public Service Authority's raw water intakes to 5 miles upstream from St. Paul's raw water intake.
2b	IV	PWS	Clinch River and its tributaries to their headwaters from Raven-Doran's raw water intake to a point 5 miles upstream of the Richland's raw water intake.
2c	IV	PWS	Clinch River and its tributaries from Tazewell's raw water intake to their headwaters.
2d	IV	PWS	North Fork Clinch River and its tributaries, including Spurlock Branch, from Duffield Development Authority's raw water intake at

			the confluence with Spurlock Branch and the intake on Spurlock Branch to 5 miles upstream.
2e	IV	PWS	Bear Creek from Wise's raw water intake to its headwaters.
2f	IV	PWS	Toms Creek from Coeburn's raw water intake to its headwaters.
2g	IV	PWS	Little River and its tributaries from the Tazewell County Water and Sewer Authority's (Claypool Hill Water Treatment Plant) raw water intake to points 5 miles upstream.
2h	IV	PWS	Unnamed tributary to the North Fork Clinch River from the Divides raw water intake upstream to its headwaters.
2i	IV	PWS	Big Cedar Creek and its tributaries from Lebanon's raw water intake to points 5 miles upstream.
2j	IV	PWS	Cavitts Creek from the proposed Baptist Valley raw water intake to its headwaters.
2k	IV	PWS	Unnamed tributary to Big Creek (Tazewell County) from the Tazewell County Water and Sewer Authority's Jewell Ridge raw water intake upstream to its headwaters.
2l			(moved to 1f)

450 Documents Incorporated by Reference (9VAC25-260)

451 [Chesapeake Bay Program Analytical Segmentation Scheme - Revisions, Decisions and](#)  
452 [Rationales 1983-2003, EPA 903-R-04-008, CBP/TRS 268/04, October 2004, US EPA Region III](#)  
453 [Chesapeake Bay Office](#)

454 [Chesapeake Bay Program Analytical Segmentation Scheme - Revisions, Decisions and](#)  
455 [Rationales 1983-2003, EPA 903-R-05-004, CBP/TRS 278-06, 2005 Addendum, December 2005,](#)  
456 [US EPA Region III Chesapeake Bay Office](#)

457 [Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the](#)  
458 [Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-03-002, April 2003 and 2004 Addendum,](#)  
459 [October 2004, US EPA Region III Chesapeake Bay Office](#)

460 [Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the](#)  
461 [Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-07-003, CBP/TRS 285/07 2007](#)  
462 [Addendum, July 2007, US EPA Region III Chesapeake Bay Office](#)

463 [Technical Support Document for Identification of Chesapeake Bay Designated Uses and](#)  
464 [Attainability, EPA 903-R-03-004, October 2003 and 2004 Addendum, October 2004, US EPA](#)  
465 [Region III Chesapeake Bay Office](#)

466 [Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the](#)  
467 [Chesapeake Bay and its Tidal Tributaries - 2007 Chlorophyll Criteria Addendum, EPA 903-R-07-](#)  
468 [005, CBP/TRS 288/07, November 2007, U.S. EPA Region III Chesapeake Bay Office](#)

469 [Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the](#)  
470 [Chesapeake Bay and its Tidal Tributaries - 2008 Technical Support for Criteria Assessment](#)  
471 [Protocols Addendum, EPA 903-R-08-001, CBP/TRS 290-08, September 2008, U.S. EPA Region](#)  
472 [III Chesapeake Bay Office](#)

473 [Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the](#)  
474 [Chesapeake Bay and its Tidal Tributaries - 2010 Technical Support for Criteria Assessment](#)



475 [Protocols Addendum, EPA 903-R-10-002, CBP/TRS 301-10, May 2010, U.S. EPA Region III](#)  
476 [Chesapeake Bay Office](#)  
477 [Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the](#)  
478 [Chesapeake Bay and Its Tidal Tributaries - 2017 Technical Addendum, EPA 903-R-17-002,](#)  
479 [CBP/TRS 320-17, November 2017, U.S. EPA Region III Chesapeake Bay Office](#)  
480 [Aquatic Life Ambient Freshwater Quality Criteria-Copper, EPA-822-R-07-001, U.S. EPA,](#)  
481 [Office of Water, February 2007 Revision](#)  
482 [Final Aquatic Life Ambient Water Quality Criteria for Aluminum, EPA-822-R-18-001, U.S.](#)  
483 [EPA, Office of Water, December 2018](#)



*Commonwealth of Virginia*

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Director  
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May 4, 2022

**MEMORANDUM**

**TO:** Board Members

**FROM:** Peter Sherman, VPDES Guidance and Regulations Coordinator, Office of VPDES Permits

**SUBJECT:** Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters (VAG 87); Amendments to 9VAC25-800 and Reissuance of General Permit

The current VPDES General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters will expire on February 29, 2024, and the regulation establishing this general permit is being amended to reissue this general permit for another five-year term. The staff is bringing this proposed regulation amendment before the Board to request authorization to hold a public comment period and a public hearing. Draft amendments showing proposed changes to the current regulation and the Agency Town Hall background document, which includes a summary, are attached. The proposed regulation takes into consideration the recommendations of a technical advisory committee formed for this regulatory action. The technical advisory committee consisted of representatives of state government, applicators, trade associations, private citizens and DEQ staff.

A Notice of Intended Regulatory Action (NOIRA) for the amendment was issued on September 27, 2021. No substantive public comments were received in response to the NOIRA.

The Office of the Attorney General is currently reviewing the proposed regulation for certification of statutory authority. The U.S. Environmental Protection Agency will also need to review and approve the general permit prior to final adoption.

Attachments: General Permit  
Agency Background Document (Townhall).

SUMMARY OF 9VAC25-800 PROPOSED REVISIONS FOR THE 2024 REISSUANCE -  
VPDES GENERAL PERMIT REGULATION FOR DISCHARGES RESULTING FROM  
THE APPLICATION OF PESTICIDES TO SURFACE WATERS

May 4, 2022

**9VAC25-800**

**Section 10 – Definitions.** Added: “Pesticide discharges to surface waters from pesticide application - means the discharges that result from the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources to surface waters. In the context of this definition of pesticide discharges to surface waters from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law (33 U.S.C. 1342(l); 33 U.S.C. 1362(14)).” EPA added this definition to the 2021 federal NPDES pesticide general permit. We have changed “waters of the United States” to “surface waters” to make it consistent with VPDES program terminology.

**Section 10 – Definitions.** Clarified that "pesticide residue" for the purpose of determining whether an NPDES permit is needed for discharges to surface waters from pesticide application, means that portion of a pesticide application that has been discharged from a point source to surface waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide. EPA clarified this definition in the 2021 federal PGP. We have changed “waters of the United States” to “surface waters” to make it consistent with VPDES program terminology.

**Section 10 – Definitions.** Added the following definition: "Board" means the State Water Control Board. However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, "Board" means the "Department of Environmental Quality". This conforms to recently enacted legislation (SB 657). In the balance of the general permit/ regulation, changed “board” to “department” where the reference was to a permit action.

**Section 15 – Applicability of incorporated references based on the dates that they became effective.** Updated the Code of Federal Regulations (CFR) publication date referenced to be July 1, 2022. This will be adjusted at final approval to the most recent publication date.

**Section 20 – Purpose; delegation of authority; effective date of permit.** Updated the general permit term. This VPDES general permit will become effective on March 1, 2024, and expire on February 28, 2029. Removed “delegation of authority” in the title, and removed “B. The Director of the Department of Environmental Quality, or his designee, may perform any act

of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.” These changes implement SB 657 (2022).

**Section 30 – *Authorization to discharge.*** Revised the language to specifically reference CWA sections for consistency with federal regulatory language and other VPDES general permits. Also some of this language more generic so that dates do not have to be revised for each reissuance. Similar revisions are being made to all VPDES general permits.

**Section 60 – *General permit.*** Revised the term of the general permit: Effective Date: March 1, 2024. Expiration Date: February 28, 2029.

**Section 60 – *General permit.*** For animal pest control, in selecting pest management measures that will minimize discharges resulting from the application of pesticides, the operator must evaluate specified options. Added “cultural methods.” This change reflects the same change made to EPA’s 2021 reissuance of the federal pesticide general permit.

**Section 60 – *General permit.*** In sub-section D.2.d.(2)(d), updated the link to Virginia’s Wildlife Action Plan.

**Section 60 – *General permit.*** In sub-section D.2.d.(3)(h), updated the links to federal and state lists of endangered and threatened species.

**Section 60 – *General permit.*** In sub-section D.5.c, revised language consistent with current online reporting capability. DEQ is making this language consistent across all general permits.

**Section 60 – *General permit.*** In sub-section D.5.d, updated the DEQ regional office address for the Blue Ridge Regional Office. Added a single new fax number for all regions.

TAC MEMBERS FOR THE PESTICIDE GENERAL PERMIT REGULATION

Todd Groh	Program Manager, FRMB, Virginia DOF
Liza Fleeson Trossbach	Program Manager, VDACS Office of Pesticides
Mark Eversole	Marine Resources Commission
Shannon Junior	Aquatic Biologist/ Sr. Business Development Consultant, Solitude Lake Management
Lillian Myers	Maryland Department of the Environment
Corey Connors	Exec. Dir. Virginia Forestry Association
Judy Hinch	Citizen
Randy Buchanan	Virginia Mosquito Control Association
Allan Brockenbrough	DEQ CO VPDES Permits
Peter Sherman	DEQ CO VPDES Permits

DEQ Staff Technical Liaisons

Troy Nipper	CO Compliance
Elleanore Daub	CO VPDES Permits



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## Exempt Action: Proposed Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-800
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters
<b>Action title</b>	Amend and Reissue the Existing General Permit Regulation
<b>Date this document prepared</b>	July 25, 2022

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

### Brief Summary

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

The Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters has existed since 2011. This general permit contains effluent limitations, monitoring requirements and special conditions for discharges of pesticides to surface waters. The proposed changes to the regulation are being made to reissue this general permit and in response to Technical Advisory Committee input, and staff suggestions to clarify the permit conditions.

One substantive change to the existing general permit is being proposed. For animal pest control, we have added “cultural methods” as a method that must be evaluated when selecting pest management measures. Other proposed changes affect effective dates, two definitions, making some language more consistent with other state general permits, and updating certain web address-links.

### Mandate and Impetus

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

VPDES permits are limited to a term of five years. The existing VPDES Pesticide General Permit regulation expires on February 29, 2024, and it must be reissued for another five year term to remain available to pesticide operators that conduct in-scope activities. If this permit is not re-issued in a timely manner, no new coverage is available to any additional operators and such operators would be required to obtain individual VPDES permits. The in-scope pesticide applications have been determined to be point source discharges and if the general permit is not available such pesticide applications will need to apply for and obtain individual VPDES permits, which impose significantly greater burden and costs on permittees and increased administrative burden on DEQ.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

APA: Administrative Process Act  
 BMP: Best Management Practices  
 CFR: Code of Federal Regulations  
 DEQ: Department of Environmental Quality  
 EPA: (U.S. EPA): United States Environmental Protection Agency  
 NPDES: National Pollutant Discharge Elimination System  
 TAC: Technical Advisory Committee  
 USC: United States Code  
 VAC: Virginia Administrative Code  
 VPDES: Virginia Pollutant Discharge Elimination System

## Legal Basis

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

The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, §62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975

under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

### **Purpose**

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

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This proposed regulatory action is needed in order to amend and reissue the existing VPDES general permit for point source discharges of pesticides to surface waters, which expires on February 29, 2024. The goal of the proposed regulation is to continue to make the general permit available, which establishes standard language for control of these point source discharges through effluent limitations, monitoring requirements and special conditions to ensure protection of the environment and public health, safety and welfare.

### **Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.*

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One substantive change to the existing general permit is being proposed. For animal pest control, we have added “cultural methods” as a method that must be evaluated when selecting pest management measures. Other proposed changes affect effective dates (the new term is March 1, 2024 – February 28, 2029), two definitions have been revised based on U.S. EPA 2021 reissuance of the federal NPDES Pesticide General Permit, we are making some language more generic consistent with other state general permits, and we are updating certain web address-links and regional office addresses.

### **Issues**

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

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The advantages to the public and the agency of reissuing this permit are that a VPDES general permit will continue to be available to facilities with eligible discharges enabling them to discharge to surface waters in a manner that is protective of those waters without the increased cost and more complicated application process associated with issuing an individual permit. There are no known disadvantages.

### **Requirements More Restrictive than Federal**

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

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There are no requirements that exceed applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

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

**Other State Agencies Particularly Affected:**

There are no state agencies particularly affected by the proposed regulation.

**Localities Particularly Affected:**

There are no localities particularly affected by the proposed regulation as the regulation applies statewide.

**Other Entities Particularly Affected:**

In-scope operations that apply aquatic pesticides must do so in a manner consistent with this general permit. No other entities are particularly affected by the proposed regulation.

**Regulatory Flexibility Analysis**

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

Specified pesticide discharges are point source discharges of pollutants that must under federal and state law be authorized by a permit. This general permit provides small businesses (and other permittees) a less burdensome permitting option for this type of discharge when compared to an individual permit. In addition, the requirements in this general permit have been coordinated with existing relevant pesticide regulations administered by VDACS to minimize duplicative requirements. This general permit uses performance standards where possible, and monitoring and reporting requirements are the minimum necessary. Finally, the pesticide discharge management plan (PDMP) requirement is only applicable to larger aquatic pesticide applications.

**Public Comment Received**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.*

No comments were received in response to the NOIRA.

## Public Participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. The agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Peter Sherman, P.O. Box 1105, Richmond, Virginia 23218, [peter.sherman@deq.virginia.gov](mailto:peter.sherman@deq.virginia.gov), phone (804) 659-2666, fax (804) 698-4178. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

## Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Please include citations to the specific section(s) of the regulation that are changing.*

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Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-800-10. Definitions		NA	<p>Added: "Pesticide discharges to surface waters from pesticide application - means the discharges that result from the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources to surface waters. In the context of this definition of pesticide discharges to surface waters from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law (33 U.S.C. 1342(l); 33 U.S.C. 1362(14))."</p> <p><i>EPA added this definition to the 2021 federal NPDES pesticide general permit. We have changed "waters of the United States" to "surface waters" to make it consistent with VPDES program terminology.</i></p>
9VAC25-800-10. Definitions		"Pesticide residue" means that portion of a pesticide application that has been discharged from a point source to surface waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.	<p>"Pesticide residue" for the purpose of determining whether an NPDES permit is needed for discharges to surface waters from pesticide application, means that portion of a pesticide application that has been discharged from a point source to surface waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.</p> <p><i>EPA clarified this definition in the 2021 federal PGP. We have changed "waters of the United States" to "surface waters" to make it consistent with VPDES program terminology.</i></p>
9VAC25-800-10. Definitions		NA	<p>Added the following definition: "Board" means the State Water Control Board. However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, "Board" means the "Department of Environmental Quality". This change is based on SB 657.</p> <p>In the balance of the general permit/ regulation, changed "board" to</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			"department" where the reference was to a permit action.
9VAC25-800-15. Applicability of incorporated references based on the dates that they became effective		Code of Federal Regulations (CFR) publication date referenced is July 1, 2018.	Code of Federal Regulations (CFR) publication date referenced is July 1, 2022.  This will be adjusted at final approval to the most recent publication date.
9VAC25-800-20. Purpose; delegation of authority; effective date of permit		C. This VPDES general permit will become effective on March 1, 2019, and expire on February 29, 2024.	C. This VPDES general permit will become effective on March 1, 2024, and expire on February 28, 2029.  <i>This general permit is being reissued for another five-year term.</i>
9VAC25-800-20. Purpose; delegation of authority; effective date of permit		B. The Director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.	Title revised to delete "delegation of authority."  Item B deleted.  Both changes in response to SB 657 (2022).
9VAC25-800-30. Authorization to discharge		F. Compliance with this general permit constitutes compliance with the federal Clean Water Act (33 USC § 1251 et seq.) and the State Water Control Law with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation.	F. Compliance with this general permit constitutes compliance, for purposes of enforcement with §§ 301, 302, 306, 307, 318, 403, and 405(a) through (b) of the federal Clean Water Act and the State Water Control Law with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation.  <i>Revised the language to specifically reference sections for consistency with federal regulatory language and other VPDES general permits.</i>
9VAC25-800-30. Authorization to discharge		G. Continuation of permit coverage. 1. This general permit shall expire on February 29, 2024, except that the conditions of the expired pesticides general permit will continue in force for an operator until coverage	G. Continuation of permit coverage. 1. Permit coverage shall expire at the end of the applicable permit term, except that the conditions of the expired pesticides general permit will continue in force for an operator until coverage is granted under a reissued pesticides general permit if the board,

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
		is granted under a reissued pesticides general permit if the board, through no fault of the operator, does not reissue a pesticides general permit on or before the expiration date of the expiring general permit.	through no fault of the operator, does not reissue a pesticides general permit on or before the expiration date of the expiring general permit.  <i>Made this language more generic so that dates do not have to be revised for each reissuance. Similar revisions are being made to all VPDES general permits.</i>
9VAC25-800-60. General permit		Effective Date: March 1, 2019 Expiration Date: February 29, 2024	Effective Date: March 1, 2024 Expiration Date: February 28, 2029  <i>Reissued for new term.</i>
9VAC25-800-60. General permit		A.1.b.(3) Animal pest control. [In selecting pest management measures that will minimize discharges resulting from the application of pesticides, the operator must evaluate the following options] (i) No action; (ii) Prevention; (iii) Mechanical or physical methods; (iv) Biological control; and (v) Pesticides.	A.1.b.(3) Animal pest control. [In selecting pest management measures that will minimize discharges resulting from the application of pesticides, the operator must evaluate the following options] (i) No action; (ii) Prevention; (iii) Mechanical or physical methods; (iv) Cultural methods; (v) Biological control; and (vi) Pesticides.  Added “cultural methods.” This change reflects the same change made to EPA’s 2021 reissuance of the federal pesticide general permit.
9VAC25-800-60. General permit		D.2.d.(2)(d) Tier I (critical conservation need) or Tier II (very high conservation need) species of greatest conservation need (SGCN) as defined in Virginia’s Wildlife Action Plan ( <a href="http://www.bewildvirginia.org">www.bewildvirginia.org</a> ).	D.2.d.(2)(d) Tier I (critical conservation need) or Tier II (very high conservation need) species of greatest conservation need (SGCN) as defined in Virginia’s Wildlife Action Plan ( <a href="http://bewildvirginia.org/wildlife-action-plan/">http://bewildvirginia.org/wildlife-action-plan/</a> )  <i>Updated the link to Virginia’s Wildlife Action Plan.</i>
9VAC25-800-60. General permit		D.2.d.(3)(h) Date and time of application. Additional information on federally listed threatened or endangered species and federally designated critical habitat is available from NMFS ( <a href="http://www.nmfs.noaa.gov">www.nmfs.noaa.gov</a> ) for anadromous or marine	D.2.d.(3)(h) Date and time of application. Additional information on federally listed threatened or endangered species and federally designated critical habitat is available from NMFS ( <a href="https://www.fisheries.noaa.gov/species-directory/threatened-endangered">https://www.fisheries.noaa.gov/species-directory/threatened-endangered</a> ) for anadromous or marine species or FWS

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
		species or FWS ( <a href="http://www.fws.gov">www.fws.gov</a> ) for terrestrial or freshwater species. Additional information on state-listed threatened or endangered wildlife species is available through the Virginia Fish and Wildlife Information Service ( <a href="http://www.dgif.virginia.gov">www.dgif.virginia.gov</a> ).	( <a href="https://www.fws.gov/species/search">https://www.fws.gov/species/search</a> ) for terrestrial or freshwater species. Additional information on state-listed threatened or endangered wildlife species is available through the Virginia Fish and Wildlife Information Service ( <a href="https://dwr.virginia.gov/wildlife/wildlife-information/">https://dwr.virginia.gov/wildlife/wildlife-information/</a> ).  <i>Updated the links to endangered and threatened species.</i>
9VAC25-800-60. General permit		D.5. NOTE: The immediate (within 24 hours) reports required in Part I D 2 may be made to the department's regional office. Reports may be made by telephone, fax, or online ( <a href="http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx">http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx</a> ). For reports outside normal working hours, leave a message, and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency maintains a 24-hour telephone service at 1-800-468-8892.	D.5.c. The immediate (within 24 hours) reports required in Part I D 2 shall be made to the department's regional office. Reports may be made by telephone, fax, or online ( <a href="https://www.deq.virginia.gov/get-involved/pollution-response">https://www.deq.virginia.gov/get-involved/pollution-response</a> ) (online reporting preferred). For reports outside normal working hours, the online portal shall be used. For emergencies, call the Virginia Department of Emergency Management's Emergency Operations Center (24-hours)_at 1-800-468-8892.  <i>Revised language consistent with current online reporting capability. Making consistent across all general permits.</i>
9VAC25-800-60. General permit		D.5.d. DEQ six regional office addresses.	D.5.d. <i>Updated the DEQ regional office address for the Blue Rudge Regional Office. Added a single new fax number for all regions.</i>

## Family Impact

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

This regulation will have no direct impact on the institution of the family or family stability.

1 **Project 6928 - Exempt Proposed**

2 **State Water Control Board**

3 **25-800 - 2024 Amendment and Reissuance of the Existing General Permit Regulation**

4 Chapter 800

5 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for  
6 Discharges Resulting from the Application of Pesticides to Surface Waters

7 **9VAC25-800-10. Definitions.**

8 The words and terms used in this chapter shall have the same meanings as given in the State  
9 Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the VPDES Permit Regulation  
10 (9VAC25-31), unless the context clearly indicates otherwise, except that for the purposes of this  
11 chapter:

12 "Action threshold" means the point at which pest populations or environmental conditions  
13 necessitate that pest control action be taken based on economic, human health, aesthetic, or  
14 other effects. An action threshold may be based on current or past environmental factors that are  
15 or have been demonstrated to be conducive to pest emergence or growth, as well as past or  
16 current pest presence. Action thresholds are those conditions that indicate both the need for  
17 control actions and the proper timing of such actions.

18 "Active ingredient" means any substance (or group of structurally similar substances if  
19 specified by the federal Environmental Protection Agency (EPA) that will prevent, destroy, repel,  
20 or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the  
21 meaning of § 2(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (40 CFR  
22 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and  
23 used in a living plant, or in the produce thereof, and the genetic material necessary for the  
24 production of such a pesticidal substance (40 CFR 174.3).

25 "Adverse incident" means an unusual or unexpected incident that the operator observes upon  
26 inspection or of which otherwise becomes aware, in which there is evidence that:

- 27 1. A person or nontarget organism has likely been exposed to a pesticide residue; and  
28 2. The person or nontarget organism suffered a toxic or adverse effect.

29 The phrase "toxic or adverse effects" includes effects that occur within surface waters on  
30 nontarget plants, fish, or wildlife that are unusual or unexpected (e.g., effects are to organisms  
31 not described on the pesticide product labels or not expected to be present) as a result of  
32 exposure to a pesticide residue and may include:

- 33 1. Distressed or dead juvenile and small fishes;  
34 2. Washed up or floating fish;  
35 3. Fish swimming abnormally or erratically;  
36 4. Fish lying lethargically at water surface or in shallow water;  
37 5. Fish that are listless or nonresponsive to disturbance;  
38 6. Stunting, wilting, or desiccation of nontarget submerged or emergent aquatic plants;  
39 and  
40 7. Other dead or visibly distressed nontarget aquatic or semi-aquatic organisms  
41 (amphibians, turtles, invertebrates, etc.).



42 The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin  
43 rashes) or domesticated animals (e.g., vomiting, lethargy) that occur either from direct contact  
44 with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or  
45 animals containing pesticides) to surface waters that are temporally and spatially related to  
46 exposure to a pesticide residue.

47 "Biological control" means organisms that can be introduced to sites, such as herbivores,  
48 predators, parasites, and hyperparasites.

49 "Biological pesticides" or "biopesticides" includes microbial pesticides, biochemical pesticides,  
50 and plant-incorporated protectants (PIP).

51 1. "Microbial pesticide" means a microbial agent intended for preventing, destroying,  
52 repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or  
53 desiccant, that:

- 54 a. Is a eukaryotic microorganism, including protozoa, algae, and fungi;
- 55 b. Is a prokaryotic microorganism, including Eubacteria and Archaeobacteria; or
- 56 c. Is a parasitically replicating microscopic element, including viruses.

57 2. "Biochemical pesticide" means a pesticide that:

- 58 a. Is a naturally occurring substance or structurally similar and functionally identical to  
59 a naturally occurring substance;
- 60 b. Has a history of exposure to humans and the environment demonstrating minimal  
61 toxicity, or in the case of a synthetically derived biochemical pesticide, is equivalent to  
62 a naturally occurring substance that has such a history; and
- 63 c. Has a nontoxic mode of action to the target pests.

64 3. "Plant-incorporated protectant" means a pesticidal substance that is intended to be  
65 produced and used in a living plant, or in the produce thereof, and the genetic material  
66 necessary for production of such a pesticidal substance. It also includes any inert  
67 ingredient contained in the plant or produce thereof.

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

71 "Chemical pesticides" means all pesticides not otherwise classified as biological pesticides.

72 "Cultural methods" means manipulation of the habitat to increase pest mortality by making the  
73 habitat less suitable to the pest.

74 "Declared pest emergency situation" means an event defined by a public declaration by a  
75 federal agency, state, or local government of a pest problem determined to require control through  
76 application of a pesticide beginning less than 10 days after identification of the need for pest  
77 control. This public declaration may be based on:

- 78 1. Significant risk to human health;
- 79 2. Significant economic loss; or
- 80 3. Significant risk to:
  - 81 a. Endangered species;
  - 82 b. Threatened species;
  - 83 c. Beneficial organisms; or
  - 84 d. The environment.

85 "DEQ" or "department" means the Virginia Department of Environmental Quality.

86 "Discharge of a pollutant" means the addition of any "pollutant" or combination of pollutants  
87 to surface waters from any point source, or the addition of any pollutant or combination of  
88 pollutants to the water of the contiguous zone or the ocean from any point source.

89 "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act (7 USC § 136 et seq.)  
90 as amended.

91 "Impaired water" or "water quality impaired water" or "water quality limited segment" means  
92 any stream segment where the water quality does not or will not meet applicable water quality  
93 standards, even after the application of technology-based effluent limitations required by §§  
94 301(b) and 306 of the Clean Water Act (CWA) (33 USC § 1251 et seq. as of 1987). Impaired  
95 waters include both impaired waters with approved or established TMDLs, and impaired waters  
96 for which a TMDL has not yet been approved or established.

97 "Inert ingredient" means any substance (or group of structurally similar substances if  
98 designated by EPA), other than an active ingredient, that is intentionally included in a pesticide  
99 product. Inert ingredient also means any substance, such as a selectable marker, other than the  
100 active ingredient, where the substance is used to confirm or ensure the presence of the active  
101 ingredient, and includes the genetic material necessary for the production of the substance,  
102 provided that genetic material is intentionally introduced into a living plant in addition to the active  
103 ingredient.

104 "Integrated pest management" or "IPM" means an effective and environmentally sensitive  
105 approach to pest management that relies on a combination of common-sense practices. IPM uses  
106 current, comprehensive information on the life cycles of pests and their interaction with the  
107 environment. This information, in combination with available pest control methods, is used to  
108 manage pest damage by the most economical means, and with the least possible hazard to  
109 people, property, and the environment.

110 "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device,  
111 or the immediate container thereof, and the outside container or wrapper of the retail package, if  
112 any, of the pesticide or device.

113 "Labeling" means all labels and other written, printed, or graphic matter:

- 114 1. Upon the pesticide or device or any of its containers or wrappers;
- 115 2. Accompanying the pesticide or device at any time; or
- 116 3. To which reference is made on the label or in literature accompanying the pesticide or  
117 device, except when accurate, nonmisleading reference is made to current official  
118 publications of the agricultural experiment station, the Virginia Polytechnic Institute and  
119 State University, the Virginia Department of Agriculture and Consumer Services, the State  
120 Board of Health, or similar federal institutions or other official agencies of the  
121 Commonwealth or other states when such states are authorized by law to conduct  
122 research in the field of pesticides.

123 "Mechanical or physical methods" means mechanical tools or physical alterations of the  
124 environment for pest prevention or removal.

125 "Minimize" means to reduce or eliminate pesticide discharges to surface waters through the  
126 use of pest management measures to the extent technologically available and economically  
127 practicable and achievable.

128 "Nontarget organisms" means the plant and animal hosts of the target species, the natural  
129 enemies of the target species living in the community, and other plants and animals, including  
130 vertebrates, living in or near the community that are not the target of the pesticide.

131 "Operator" means any person involved in the application of a pesticide that results in a  
132 discharge to surface waters that meets either or both of the following two criteria:

- 133 1. The person who has control over the financing for or the decision to perform pesticide  
134 applications that result in discharges, including the ability to modify those decisions; or  
135 2. The person who performs the application of a pesticide or who has day-to-day control  
136 of the application (e.g., they are authorized to direct workers to carry out those activities  
137 that result in discharges to surface waters).

138 "Person" means an individual; a corporation; a partnership; an association; a local, state, or  
139 federal governmental body; a municipal corporation; or any other legal entity.

140 "Pest" means any deleterious organism that is:

- 141 1. Any vertebrate animal other than man;  
142 2. Any invertebrate animal excluding any internal parasite of living man or other living  
143 animals;  
144 3. Any plant growing where not wanted, and any plant part such as a root; or  
145 4. Any bacterium, virus, or other microorganisms, except for those on or in living man or  
146 other living animals and those on or in processed food or processed animal feed,  
147 beverages, drugs (as defined by the federal Food, Drug, and Cosmetic Act at 21 USC §  
148 321(g)(1)), and cosmetics (as defined by the federal Food, Drug, and Cosmetic Act at 21  
149 USC § 321(i)).

150 Any organism classified by state or federal law or regulation as endangered or threatened  
151 shall not be deemed a pest for the purposes of this chapter.

152 "Pest management area" means the area of land, including any water, for which pest  
153 management activities covered by this permit are conducted.

154 "Pest management measure" means any practice used to meet the effluent limitations that  
155 comply with manufacturer specifications, industry standards, and recommended industry  
156 practices related to the application of pesticides, relevant legal requirements, and other provisions  
157 that a prudent operator would implement to reduce or eliminate pesticide discharges to surface  
158 waters.

159 "Pesticide" means:

- 160 1. Any substance or mixture of substances intended for preventing, destroying, repelling,  
161 or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal  
162 life or viruses, except viruses on or in living man or other animals, which the Commissioner  
163 of Agriculture and Consumer Services shall declare to be a pest;  
164 2. Any substance or mixture of substances intended for use as a plant regulator, defoliant,  
165 or desiccant; and  
166 3. Any substance which is intended to become an active ingredient thereof.

167 Pesticides that are used or applied shall only be those that are approved and registered for  
168 use by the Virginia Department of Agriculture and Consumer Services.

169 "Pesticide discharges to surface waters from pesticide application" means the discharges that  
170 result from the application of biological pesticides, and the application of chemical pesticides that  
171 leave a residue, from point sources to surface waters. In the context of this definition of pesticide  
172 discharges to surface waters from pesticide application, this does not include agricultural storm  
173 water discharges and return flows from irrigated agriculture, which are excluded by law (33 U.S.C.  
174 1342(l); 33 U.S.C. 1362(14)).

175 "Pesticide product" means a pesticide in the particular form (including active and inert  
176 ingredients, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or  
177 sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed  
178 or sold with the pesticide.

179 "Pesticide research and development" means activities undertaken on a systematic basis to  
180 gain new knowledge (research) or apply research findings or other scientific knowledge for the  
181 creation of new or significantly improved products or processes (experimental development).

182 "Pesticide residue" for the purposes of determining whether an VPDES permit is needed for  
183 discharges to surface waters from pesticide application, means that portion of a pesticide  
184 application that has been discharged from a point source to surface waters and no longer provides  
185 pesticidal benefits. It also includes any degradates of the pesticide.

186 "Point source" means any discernible, confined, and discrete conveyance including any pipe,  
187 ditch, channel, tunnel, conduit, or container from which pollutants are or may be discharged. This  
188 includes biological pesticides or chemical pesticides that leave a residue coming from a container  
189 or nozzle of a pesticide application device. This term does not include return flows from irrigated  
190 agriculture or agricultural stormwater run-off.

191 "Pollutant" means biological pesticides and any pesticide residue resulting from use of a  
192 chemical pesticide.

193 "Surface waters" means:

- 194 1. All waters that are currently used, were used in the past, or may be susceptible to use  
195 in interstate or foreign commerce, including all waters that are subject to the ebb and flow  
196 of the tide;
- 197 2. All interstate waters, including interstate wetlands;
- 198 3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams),  
199 mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or  
200 natural ponds the use, degradation, or destruction of which would affect or could affect  
201 interstate or foreign commerce including any such waters:
  - 202 a. That are or could be used by interstate or foreign travelers for recreational or other  
203 purposes;
  - 204 b. From which fish or shellfish are or could be taken and sold in interstate or foreign  
205 commerce; or
  - 206 c. That are used or could be used for industrial purposes by industries in interstate  
207 commerce;
- 208 4. All impoundments of waters otherwise defined as surface waters under this definition;
- 209 5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
- 210 6. The territorial sea; and
- 211 7. Wetlands adjacent to waters, other than waters that are themselves wetlands, identified  
212 in subdivisions 1 through 6 of this definition.

213 Surface waters do not include wastewater treatment systems, including treatment ponds or  
214 lagoons designed to meet the requirements of the Clean Water Act (CWA) and the law. Surface  
215 waters do not include prior converted cropland. Notwithstanding the determination of an area's  
216 status as prior converted cropland by any other agency, for the purposes of the CWA, the final  
217 authority regarding the CWA jurisdiction remains with the EPA.

218 "Target pest" means the organism toward which pest management measures are being  
219 directed.

220 "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a  
221 pollutant that a waterbody can receive and still meet water quality standards, and an allocation of  
222 that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point  
223 source discharges, and load allocations (LAs) for nonpoint sources or natural background or both,  
224 and must include a margin of safety (MOS) and account for seasonal variations.

225 "Treatment area" means the area of land including any waters, or the linear distance along  
226 water or water's edge, to which pesticides are being applied. Multiple treatment areas may be  
227 located within a single pest management area.

228 Treatment area includes the entire area, whether over land or water, where the pesticide  
229 application is intended to provide pesticidal benefits. In some instances, the treatment area will  
230 be larger than the area where pesticides are actually applied. For example, the treatment area for  
231 a stationary drip treatment into a canal should be calculated by multiplying the width of the canal  
232 by the length over which the pesticide is intended to control weeds. The treatment area for a lake  
233 or marine area is the water surface area where the application is intended to provide pesticidal  
234 benefits.

235 Treatment area calculations for pesticide applications that occur at water's edge, where the  
236 discharge of pesticides directly to waters is unavoidable, are determined by the linear distance  
237 over which pesticides are applied.

238 "VDACS" means the Virginia Department of Agriculture and Consumer Services. VDACS  
239 administers the provisions of Virginia's pesticide statute, Chapter 39 (§ 3.2-3900 et seq.) of Title  
240 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control  
241 Board. VDACS also has delegated authority to enforce the provisions of FIFRA. As such, VDACS  
242 is the primary agency for the regulatory oversight of pesticides in the Commonwealth.

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

247 **9VAC25-800-15. Applicability of incorporated references based on the dates that they**  
248 **became effective.**

249 Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in  
250 Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated in this chapter,  
251 that regulation shall be as it exists and has been published as of the July 1, ~~2018~~ 2022, CFR  
252 update.

253 **9VAC25-800-20. Purpose; ~~delegation of authority~~; effective date of permit.**

254 A. This general permit regulation governs discharges resulting from the application of  
255 pesticides to surface waters.

256 ~~B. The Director of the Department of Environmental Quality, or his designee, may perform~~  
257 ~~any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code~~  
258 ~~of Virginia.~~

259 ~~C. B.~~ This VPDES general permit will become effective on March 1, ~~2019~~ 2024, and expire  
260 on February ~~29~~ 28, ~~2024~~ 2029.

261 **9VAC25-800-30. Authorization to discharge.**

262 A. Any operator that meets the eligibility requirements in subsection B of this section is hereby  
263 authorized for his discharges resulting from the application of pesticides to surface waters of the  
264 Commonwealth of Virginia.

265 The definition of operator in 9VAC25-800-10 provides that more than one person may be  
266 responsible for the same discharge resulting from pesticide application. Any operator authorized  
267 to discharge under this general permit is responsible for compliance with the terms of this permit  
268 for discharges resulting from the application of pesticides.

269 B. Eligibility. This permit is available to operators who discharge to surface waters from the  
270 application of (i) biological pesticides, or (ii) chemical pesticides that leave a residue (pesticides),  
271 when the pesticide application is for one of the following pesticide use patterns:

- 272 1. Mosquito and other flying insect pest control - to control public health, nuisance and  
 273 other flying insect pests that develop or are present during a portion of their life cycle in or  
 274 above standing or flowing water.
- 275 2. Weed and algae pest control - to control weeds, algae, and pathogens that are pests in  
 276 surface waters.
- 277 3. Animal pest control - to control animal pests in surface waters.
- 278 4. Forest canopy pest control - application of a pesticide to the forest canopy to control  
 279 the population of a pest species (e.g., insect or pathogen) where to target the pests  
 280 effectively, a portion of the pesticide unavoidably will be applied over and deposited to  
 281 surface water.
- 282 5. Intrusive vegetation pest control - to control vegetation along roads, ditches, canals,  
 283 waterways, and utility rights of way where to target the intrusive pests effectively, a portion  
 284 of the pesticide unavoidably will be applied over and deposited to surface water.
- 285 C. Operators applying pesticides are required to maintain a pesticide discharge management  
 286 plan (PDMP) if they exceed the annual calendar year treatment area thresholds in Table 1 of this  
 287 subsection:

Table 1. Annual Treatment Area Thresholds

Pesticide Use	Annual Threshold
Mosquito and Other Flying Insect Pest Control	6400 acres of treatment area <sup>1</sup>
Weed and Algae Pest Control	80 acres of treatment area <sup>1</sup> or 20 linear miles of treatment area <sup>2</sup>
Animal Pest Control	80 acres of treatment area <sup>1</sup> or 20 linear miles of treatment area <sup>2</sup>
Forest Canopy Pest Control	6400 acres of treatment area <sup>1</sup>
Intrusive Vegetation Pest Control	6400 acres of treatment area <sup>1</sup> or 20 linear miles of treatment area <sup>2</sup>

<sup>1</sup>Calculations include the area of the applications made to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a 10-acre site is counted as 20 acres of treatment area.

<sup>2</sup>Calculations include the extent of the application made to linear features (e.g., roads, ditches, canals, waterways, and utility rights of way) or along the water's edge adjacent to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity or area as a separate activity. For example, applying pesticides twice a year to a one mile linear feature (e.g., ditch) equals two miles of treatment area regardless of whether one or both sides of the ditch are treated. Applying pesticides twice a year along one mile of lake shoreline equals two miles of treatment area.

288 D. An operator's discharge resulting from the application of pesticides is not authorized under  
 289 this permit in the event of any of the following:

290 1. The operator is required to obtain an individual VPDES permit in accordance with  
291 9VAC25-31-170 B 3 of the VPDES Permit Regulation.

292 2. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the  
293 Virginia Water Quality Standards. Discharges resulting from the application of pesticides  
294 are temporary and allowable in exceptional waters (see 9VAC25-260-30 A 3 (b) (3)).

295 3. The operator is proposing a discharge from a pesticide application to surface waters  
296 that have been identified as impaired by that pesticide or its degradates. Impaired waters  
297 include both impaired waters with board-adopted, EPA-approved or EPA-imposed  
298 TMDLs, and impaired waters for which a TMDL has not yet been approved, established,  
299 or imposed.

300 If the proposed discharge would not be eligible for coverage under this permit because  
301 the surface water is listed as impaired for that specific pesticide, but the applicant has  
302 evidence that shows the water is no longer impaired, the applicant may submit this  
303 information to the ~~board~~ department and request that coverage be allowed under this  
304 permit.

305 E. Discharge authorization date. Operators are not required to submit a registration statement  
306 and are authorized to discharge under this permit immediately upon the permit's effective date of  
307 March 1, 2019.

308 F. Compliance with this general permit constitutes compliance, for purposes of enforcement  
309 with §§ 301, 302, 306, 307, 318, 403, and 405(a) through (b) with of the federal Clean Water Act  
310 (33 USC § 1251 et seq.) and the State Water Control Law with the exceptions stated in 9VAC25-  
311 31-60 of the VPDES Permit Regulation. Approval for coverage under this VPDES general permit  
312 does not relieve any operator of the responsibility to comply with any other applicable federal,  
313 state, or local statute, ordinance, or regulation. For example, this permit does not negate the  
314 requirements under FIFRA and its implementing regulations to use registered pesticides  
315 consistent with the product's labeling. It also does not negate the requirement to fully comply with  
316 applicable state wetland program requirements administered by DEQ and the Virginia Marine  
317 Resources Commission.

318 G. Continuation of permit coverage.

319 1. ~~This general permit shall expire on February 29, 2024,~~ Permit coverage shall expire at  
320 the end of the applicable permit term, except that the conditions of the expired pesticides  
321 general permit will continue in force for an operator until coverage is granted under a  
322 reissued pesticides general permit if the board, through no fault of the operator, does not  
323 reissue a pesticides general permit on or before the expiration date of the expiring general  
324 permit.

325 2. General permit coverages continued under this section remain fully effective and  
326 enforceable.

327 3. When the operator that was covered under the expiring or expired pesticides general  
328 permit is not in compliance with the conditions of that permit, the ~~board~~ department may  
329 choose to do any or all of the following:

330 a. Initiate enforcement action based upon the pesticides general permit that has been  
331 continued;

332 b. Issue a notice of intent to deny coverage under a reissued pesticides general permit.  
333 If the general permit coverage is denied, the operator would then be required to cease  
334 the activities authorized by the continued general permit or be subject to enforcement  
335 action for operating without a permit;

336 c. Issue an individual permit with appropriate conditions; or

337 d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

338 **9VAC25-800-40. Registration statement.**

339 Operators are not required to submit a registration statement to apply for coverage under this  
340 VPDES general permit for discharges resulting from the application of pesticides to surface  
341 waters.

342 **9VAC25-800-50. Termination of permit coverage.**

343 Operators are not required to submit a notice of termination to terminate permit coverage  
344 under this VPDES general permit for discharges resulting from the application of pesticides to  
345 surface waters.

346 **9VAC25-800-60. General permit.**

347 Any operator who is authorized to discharge shall comply with the requirements contained in  
348 this general permit and be subject to all requirements of 9VAC25-31-170.

349 General Permit No.: VAG87

350 Effective Date: March 1, ~~2019~~ 2024

351 Expiration Date: February ~~29~~ 28, ~~2024~~ 2029

352 GENERAL PERMIT FOR DISCHARGES RESULTING FROM THE APPLICATION OF  
353 PESTICIDES TO SURFACE WATERS OF VIRGINIA

354 AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE  
355 ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

356 In compliance with the provisions of the Clean Water Act (33 USC § 1251 et seq.), as  
357 amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto,  
358 operators that apply pesticides that result in a discharge to surface waters are authorized to  
359 discharge to surface waters within the boundaries of the Commonwealth of Virginia.

360 The authorized discharge shall be in accordance with this cover page, Part I-Effluent  
361 Limitations, Monitoring Requirements, and Special Conditions, and Part II-Conditions Applicable  
362 to All VPDES Permits, as set forth in this general permit. Coverage under this VPDES general  
363 permit does not relieve any operator of the responsibility to comply with any other applicable  
364 federal, state, or local statute, ordinance, or regulation, including the pesticide product label.

365 A. Effluent limitations.

366 1. Technology-based effluent limitations. To meet the effluent limitations in this permit, the  
367 operator shall implement pest management measures that minimize discharges of  
368 pesticides to surface waters.

369 a. Minimize pesticide discharges to surface waters from pesticide application. All  
370 operators who perform the application of pesticides or who have day-to-day control of  
371 applications shall minimize the discharge of pollutants resulting from the application of  
372 pesticides, and:

373 (1) Use the lowest effective amount of pesticide product per application and optimum  
374 frequency of pesticide applications necessary to control the target pest, consistent with  
375 reducing the potential for development of pest resistance without exceeding the  
376 maximum allowable rate of the product label;

377 (2) No person shall apply, dispense, or use any pesticide in or through any equipment  
378 or application apparatus unless the equipment or apparatus is in sound mechanical  
379 condition and capable of satisfactory operation. All pesticide application equipment  
380 shall be properly equipped to dispense the proper amount of material. All pesticide



381 mixing, storage, or holding tanks, whether on application equipment or not, shall be  
382 leak proof. All spray distribution systems shall be leak proof, and any pumps that these  
383 systems may have shall be capable of operating at sufficient pressure to assure a  
384 uniform and adequate rate of pesticide application;

385 (3) All pesticide application equipment shall be equipped with cut-off valves and  
386 discharge orifices to enable the operator to pass over nontarget areas without  
387 contaminating them. All hoses, pumps, or other equipment used to fill pesticide  
388 handling, storage, or application equipment shall be fitted with an effective valve or  
389 device to prevent backflow into water supply systems, streams, lakes, other sources  
390 of water, or other materials. However, these backflow devices or valves are not  
391 required for separate water storage tanks used to fill pesticide application equipment  
392 by gravity systems when the fill spout, tube, or pipe is not allowed to contact or fall  
393 below the water level of the application equipment being filled, and no other possible  
394 means of establishing a back siphon or backflow exists; and

395 (4) Assess weather conditions (e.g., temperature, precipitation, and wind speed) in the  
396 treatment area to ensure application is consistent with product label requirements.

397 b. Integrated pest management (IPM) practices. The operator with control over the  
398 financing for or the decision to perform pesticide applications that result in discharges,  
399 including the ability to modify those decisions, shall to the extent practicable consider  
400 integrated pest management practices to ensure that discharges resulting from the  
401 application of pesticides to surface waters are minimized. Operators that exceed the  
402 annual treatment area thresholds established in 9VAC25-800-30 C are also required  
403 to maintain a pesticide discharge management plan (PDMP) in accordance with Part  
404 I C of this permit. The PDMP documents the operator's IPM practices.

405 The operator's IPM practices shall consider the following for each pesticide use  
406 pattern:

407 (Note: If the operator's discharge of pollutants results from the application of a  
408 pesticide that is being used solely for the purpose of "pesticide research and  
409 development," as defined in 9VAC25-800-10, the operator is only required to fully  
410 implement IPM practices to the extent that the requirements do not compromise the  
411 research design.)

412 (1) Mosquito and other flying insect pest control. This subpart applies to discharges  
413 resulting from the application of pesticides to control public health, nuisance and other  
414 flying insect pests that develop or are present during a portion of their life cycle in or  
415 above standing or flowing water.

416 (a) Identify the problem. Prior to the first pesticide application covered under this permit  
417 that will result in a discharge to surface waters, and at least once each calendar year  
418 thereafter prior to the first pesticide application for that calendar year, the operator  
419 shall consider the following for each pest management area:

420 (i) Identify target pests;

421 (ii) Establish densities for pest populations or identify environmental conditions, either  
422 current or based on historical data, to serve as action thresholds for implementing pest  
423 management measures;

424 (iii) Identify known breeding sites for source reduction, larval control program, and  
425 habitat management;

426 (iv) Analyze existing surveillance data to identify new or unidentified sources of pest  
427 problems as well as sites that have recurring pest problems; and

428 (v) In the event there are no data for the pest management area in the past calendar  
429 year, use other available data as appropriate to meet the conditions in Part I A 1 b (1)  
430 (a).

431 (b) Pest management options. Prior to the first pesticide application covered under this  
432 permit that will result in a discharge to surface waters, and at least once each calendar  
433 year thereafter prior to the first pesticide application for that calendar year, the operator  
434 shall select and implement for each pest management area efficient and effective pest  
435 management measures that minimize discharges resulting from application of  
436 pesticides to control mosquitoes or other flying insect pests. In developing these pest  
437 management measures, the operator shall evaluate the following management  
438 options, including a combination of these options, considering impact to water quality,  
439 impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

440 (i) No action;

441 (ii) Prevention;

442 (iii) Mechanical or physical methods;

443 (iv) Cultural methods;

444 (v) Biological control; and

445 (vi) Pesticides.

446 (c) Pesticide use. If a pesticide is selected to manage mosquitoes or flying insect pests  
447 and application of the pesticide will result in a discharge to surface waters, the operator  
448 shall:

449 (i) Conduct larval or adult surveillance in an area that is representative of the pest  
450 problem or evaluate existing larval surveillance data, environmental conditions, or data  
451 from adjacent areas prior to each pesticide application to assess the pest management  
452 area and to determine when the action threshold is met;

453 (ii) Reduce the impact on the environment and on nontarget organisms by applying  
454 the pesticide only when the action threshold has been met;

455 (iii) In situations or locations where practicable and feasible for efficacious control, use  
456 larvicides as a preferred pesticide for mosquito or flying insect pest control when larval  
457 action thresholds have been met; and

458 (iv) In situations or locations where larvicide use is not practicable or feasible for  
459 efficacious control, use adulticides for mosquito or flying insect pest control when adult  
460 action thresholds have been met.

461 (2) Weed and algae pest control. This subpart applies to discharges resulting from the  
462 application of pesticides to control weeds, algae, and pathogens that are pests in  
463 surface waters.

464 (a) Identify the problem. Prior to the first pesticide application covered under this permit  
465 that will result in a discharge to surface waters, and at least once each calendar year  
466 thereafter prior to the first pesticide application for that calendar year, the operator  
467 shall consider the following for each pest management area:

468 (i) Identify target pests;

469 (ii) Identify areas with pest problems and characterize the extent of the problems,  
470 including, for example, water use goals not attained (e.g., wildlife habitat, fisheries,  
471 vegetation, and recreation);

472 (iii) Identify possible factors causing or contributing to the pest problem (e.g., nutrients,  
473 invasive species, etc.);

474 (iv) Establish past or present pest densities to serve as action thresholds for  
475 implementing pest management strategies; and

476 (v) In the event there are no data for the pest management area in the past calendar  
477 year, use other available data as appropriate to meet the conditions in Part I A 1 b (2)  
478 (a).

479 (b) Pest management options. Prior to the first pesticide application covered under this  
480 permit that will result in a discharge to surface waters, and at least once each calendar  
481 year thereafter prior to the first pesticide application for that calendar year, the operator  
482 shall select and implement, for each pest management area, efficient and effective  
483 pest management measures that minimize discharges resulting from application of  
484 pesticides to control pests. In developing these pest management measures, the  
485 operator shall evaluate the following management options, including a combination of  
486 these options, considering impact to water quality, impact to nontarget organisms, pest  
487 resistance, feasibility, and cost effectiveness:

488 (i) No action;

489 (ii) Prevention;

490 (iii) Mechanical or physical methods;

491 (iv) Cultural methods;

492 (v) Biological control; and

493 (vi) Pesticides.

494 (c) Pesticide use. If a pesticide is selected to manage pests and application of the  
495 pesticide will result in a discharge to surface waters, the operator shall:

496 (i) Conduct surveillance in an area that is representative of the pest problem prior to  
497 each pesticide application to assess the pest management area and to determine  
498 when the action threshold is met that necessitates the need for pest management; and

499 (ii) Reduce the impact on the environment and nontarget organisms by applying the  
500 pesticide only when the action threshold has been met.

501 (3) Animal pest control. This subpart applies to discharges resulting from the  
502 application of pesticides to control animal pests in surface waters.

503 (a) Identify the problem. Prior to the first pesticide application covered under this permit  
504 that will result in a discharge to surface waters, and at least once each calendar year  
505 thereafter prior to the first pesticide application for that calendar year, the operator  
506 shall consider the following for each pest management area:

507 (i) Identify target pests;

508 (ii) Identify areas with pest problems and characterize the extent of the problems,  
509 including, for example, water use goals not attained (e.g., wildlife habitat, fisheries,  
510 vegetation, and recreation);

511 (iii) Identify possible factors causing or contributing to the problem (e.g., nutrients and  
512 invasive species);

513 (iv) Establish past or present pest densities to serve as action thresholds for  
514 implementing pest management strategies; and

515 (v) In the event there are no data for the pest management area in the past calendar  
516 year, use other available data as appropriate to meet the conditions in Part I A 1 b (3)  
517 (a).

518 (b) Pest management options. Prior to the first pesticide application covered under this  
519 permit that will result in a discharge to surface waters, and at least once each year

520 thereafter prior to the first pesticide application during that calendar year, the operator  
521 shall select and implement, for each pest management area, efficient and effective  
522 pest management measures that minimize discharges resulting from application of  
523 pesticides to control animal pests. In developing these pest management measures,  
524 the operator shall evaluate the following management options, including a combination  
525 of these options, considering impact to water quality, impact to nontarget organisms,  
526 pest resistance, feasibility, and cost effectiveness:

- 527 (i) No action;
- 528 (ii) Prevention;
- 529 (iii) Mechanical or physical methods;
- 530 (iv) Cultural methods;

531 ~~(iv)~~ (v) Biological control; and  
532 ~~(v)~~ (vi) Pesticides.

533 (c) Pesticide use. If a pesticide is selected to manage animal pests and application of  
534 the pesticide will result in a discharge to surface waters, the operator shall:

535 (i) Conduct surveillance prior to each application to assess the pest management area  
536 and to determine when the action threshold is met that necessitates the need for pest  
537 management; and

538 (ii) Reduce the impact on the environment and nontarget organisms by evaluating site  
539 restrictions, application timing, and application method in addition to applying the  
540 pesticide only when the action threshold has been met.

541 (4) Forest canopy pest control. This subpart applies to discharges resulting from the  
542 application of pesticides to the forest canopy to control the population of a pest species  
543 where, to target the pests effectively, a portion of the pesticide unavoidably will be  
544 applied over and deposited to surface waters.

545 (a) Identify the problem. Prior to the first pesticide application covered under this permit  
546 that will result in a discharge to surface waters, and at least once each calendar year  
547 thereafter prior to the first pesticide application in that calendar year, the operator shall  
548 consider the following for each pest management area:

549 (i) Identify target pests;

550 (ii) Establish target pest densities to serve as action thresholds for implementing pest  
551 management measures;

552 (iii) Identify current distribution of the target pest and assess potential distribution in  
553 the absence of pest management measures; and

554 (iv) In the event there are no data for the pest management area in the past calendar  
555 year, use other available data as appropriate to meet the conditions in Part I A 1 (b)  
556 (4) (a).

557 (b) Pest management options. Prior to the first pesticide application covered under this  
558 permit that will result in a discharge to surface waters, and at least once each calendar  
559 year thereafter prior to the first pesticide application for that calendar year, the operator  
560 shall select and implement for each pest management area efficient and effective pest  
561 management measures that minimize discharges resulting from application of  
562 pesticides to control forestry pests. In developing these pest management measures,  
563 the operator shall evaluate the following management options, including a combination  
564 of these options, considering impact to water quality, impact to nontarget organisms,  
565 pest resistance, feasibility, and cost effectiveness:

566 (i) No action;

567 (ii) Prevention;  
568 (iii) Mechanical or physical methods;  
569 (iv) Cultural methods;  
570 (v) Biological control; and  
571 (vi) Pesticides.

572 (c) Pesticide use. If a pesticide is selected to manage forestry pests and application of  
573 the pesticide will result in a discharge to surface waters, the operator shall:

574 (i) Conduct surveillance prior to each application to assess the pest management area  
575 and to determine when the pest action threshold is met that necessitates the need for  
576 pest management;

577 (ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed)  
578 in the treatment area to identify conditions that support target pest development and  
579 are conducive for treatment activities;

580 (iii) Reduce the impact on the environment and nontarget organisms by evaluating the  
581 restrictions, application timing, and application methods in addition to applying the  
582 pesticide only when the action thresholds have been met; and

583 (iv) Evaluate using pesticides against the most susceptible developmental stage.

584 (5) Intrusive vegetation pest control. This subpart applies to discharges resulting from  
585 the application of pesticides along roads, ditches, canals, waterways, and utility rights  
586 of way where, to target the intrusive pests effectively, a portion of the pesticide will  
587 unavoidably be applied over and deposited to surface waters.

588 (a) Identify the problem. Prior to the first pesticide application covered under this permit  
589 that will result in a discharge to surface waters, and at least once each calendar year  
590 thereafter prior to the first pesticide application in that calendar year, the operator shall  
591 consider the following for each pest management area:

592 (i) Identify target pests;

593 (ii) Establish target pest densities to serve as action thresholds for implementing pest  
594 management measures;

595 (iii) Identify current distribution of the target pest and assess potential distribution in  
596 the absence of pest management measures; and

597 (iv) In the event there are no data for the pest management area in the past calendar  
598 year, use other available data as appropriate to meet the conditions in Part I A 1 (b)  
599 (5) (a).

600 (b) Pest management options. Prior to the first pesticide application covered under this  
601 permit that will result in a discharge to surface waters, and at least once each calendar  
602 year thereafter prior to the first pesticide application for that calendar year, the operator  
603 shall select and implement for each pest management area efficient and effective pest  
604 management measures that minimize discharges resulting from application of  
605 pesticides to intrusive vegetation pests. In developing these pest management  
606 measures, the operator shall evaluate the following management options, including a  
607 combination of these options, considering impact to water quality, impact to nontarget  
608 organisms, pest resistance, feasibility, and cost effectiveness:

609 (i) No action;

610 (ii) Prevention;

611 (iii) Mechanical or physical methods;

612 (iv) Cultural methods;

- 613 (v) Biological control; and
- 614 (vi) Pesticides.
- 615 (c) Pesticide use. If a pesticide is selected to manage intrusive vegetation pests and
- 616 application of the pesticide will result in a discharge to surface waters, the operator
- 617 shall:
- 618 (i) Conduct surveillance prior to each application to assess the pest management area
- 619 and to determine when the pest action threshold is met that necessitates the need for
- 620 pest management;
- 621 (ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed)
- 622 in the treatment area to identify conditions that support target pest development and
- 623 are conducive for treatment activities;
- 624 (iii) Reduce the impact on the environment and nontarget organisms by evaluating the
- 625 restrictions, application timing, and application methods in addition to applying the
- 626 pesticide only when the action thresholds have been met; and
- 627 (iv) Evaluate using pesticides against the most susceptible developmental stage.

628 2. Water quality-based effluent limitations. The operator's discharge of pollutants must be  
 629 controlled as necessary to meet applicable numeric and narrative water quality standards  
 630 for any discharges authorized under this permit, with compliance required upon beginning  
 631 such discharge.

632 If at any time the operator become aware, or the ~~board~~ department determines, that the  
 633 operator's discharge of pollutants causes or contributes to an excursion of applicable  
 634 water quality standards, corrective action must be taken as required in Part I D 1 of this  
 635 permit.

636 B. Monitoring requirements.

637 All operators covered under this permit must conduct a visual monitoring assessment (i.e.,  
 638 spot checks in the area to and around where pesticides are applied) for possible and  
 639 observable adverse incidents caused by application of pesticides, including the  
 640 unanticipated death or distress of nontarget organisms and disruption of wildlife habitat,  
 641 recreational, or municipal water use.

642 A visual monitoring assessment is only required during the pesticide application when  
 643 feasibility and safety allow. For example, visual monitoring assessment is not required  
 644 during the course of treatment when that treatment is performed in darkness as it would  
 645 be infeasible to note adverse effects under these circumstances. Visual monitoring  
 646 assessments of the application site must be performed:

- 647 1. During any post-application surveillance or efficacy check that the operator
- 648 conducts, if surveillance or an efficacy check is conducted.
- 649 2. During any pesticide application, when considerations for safety and feasibility
- 650 allow.

651 C. Pesticide discharge management plan (PDMP). Any operator applying pesticides and  
 652 exceeding the annual application thresholds established in 9VAC25-800-30 C must prepare a  
 653 PDMP for the pest management area. The plan must be kept up-to-date thereafter for the duration  
 654 of coverage under this general permit, even if discharges subsequently fall below the annual  
 655 application threshold levels. The operator applying pesticides shall develop a PDMP consistent  
 656 with the deadline outlined in Table I-1 below.

Table I-1. Pesticide Discharge Management Plan Deadline

Category	PDMP Deadline
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Operators who know prior to commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.	Prior to first pesticide application covered under this permit.
Operators who do not know until after commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.	Prior to exceeding an annual treatment area threshold.
Operators commencing discharge in response to a declared pest emergency situation as defined in 9VAC25-800-10 that will cause the operator to exceed an annual treatment area threshold.	No later than 90 days after responding to declared pest emergency situation.

657 The PDMP does not contain effluent limitations; the limitations are contained in Parts I A 1  
658 and I A 2 of the permit. The PDMP documents how the operator will implement the effluent  
659 limitations in Parts I A 1 and I A 2 of the permit, including the evaluation and selection of pest  
660 management measures to meet those effluent limitations and minimize discharges. In the PDMP,  
661 the operator may incorporate by reference any procedures or plans in other documents that meet  
662 the requirements of this permit. If other documents are being relied upon by the operator to  
663 describe how compliance with the effluent limitations in this permit will be achieved, such as a  
664 pre-existing integrated pest management (IPM) plan, a copy of the portions of any documents  
665 that are being used to document the implementation of the effluent limitations shall be attached  
666 to the PDMP. The pest management measures implemented must be documented and the  
667 documentation must be kept up to date.

668 1. Contents of the pesticide discharge management plan. The PDMP must include the  
669 following elements:

- 670 a. Pesticide discharge management team;
- 671 b. Problem identification;
- 672 c. Pest management options evaluation;
- 673 d. Response procedures:
- 674 (1) Spill response procedures;
- 675 (2) Adverse incident response procedures; and
- 676 e. Signature requirements.

677 2. PDMP team. The operator shall identify all the persons (by name and contact  
678 information) who compose the team as well as each person's individual responsibilities,  
679 including:

- 680 a. Persons responsible for managing pests in relation to the pest management area;
- 681 b. Persons responsible for developing and revising the PDMP; and
- 682 c. Persons responsible for developing, revising, and implementing corrective actions  
683 and other effluent limitation requirements.

684 3. Problem identification. The operator shall document the following:

- 685 a. Pest problem description. Describe the pest problem at the pest management area,  
686 including identification of the target pests, sources of the pest problem, and sources  
687 of data used to identify the problem in Part I A 1 b (1) through b (5).

- 688 b. Action thresholds. Describe the action thresholds for the pest management area,  
689 including how they were determined.

690 c. General location map. Include a general location map that identifies the geographic  
691 boundaries of the area to which the plan applies and location of major surface waters.

692 4. Integrated pest management options evaluation. Operators shall document the  
693 evaluation of the pest management options, including a combination of the pest  
694 management options, to control the target pests. Pest management options include the  
695 following: no action, prevention, mechanical or physical methods, cultural methods,  
696 biological control agents, and pesticides. In the evaluation, decision makers shall consider  
697 the impact to water quality, impact to nontarget organisms, feasibility, cost effectiveness,  
698 and any relevant previous pest management measures.

699 5. Response procedures. Document the following procedures in the PDMP:

700 a. Spill response procedures. At a minimum the PDMP must have:

701 (1) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills,  
702 and other releases to surface waters. Employees who may cause, detect, or respond  
703 to a spill or leak must be trained in these procedures and have necessary spill  
704 response equipment available. If possible, one of these individuals should be a  
705 member of the PDMP team.

706 (2) Procedures for notification of appropriate facility personnel, emergency response  
707 agencies, and regulatory agencies.

708 b. Adverse incident response procedures. At a minimum the PDMP must have:

709 (1) Procedures for responding to any incident resulting from pesticide applications;  
710 and

711 (2) Procedures for notification of the incident, both internal to the operator's agency or  
712 organization and external. Contact information for DEQ, nearest emergency medical  
713 facility, and nearest hazardous chemical responder must be in locations that are  
714 readily accessible and available.

715 6. PDMP signature requirements.

716 a. The PDMP, including changes to the PDMP to document any corrective actions  
717 taken as required by Part I D 1, and all reports submitted to the department must be  
718 signed by a person described in Part II G 1 or by a duly authorized representative of  
719 that person described in Part II G 2.

720 b. All other changes to the PDMP, and other compliance documentation required  
721 under this permit, must be signed and dated by the person preparing the change or  
722 documentation.

723 c. Any person signing documents in accordance with Part I C 6 a must include the  
724 certification from Part II G 4.

725 7. PDMP modifications and availability.

726 a. PDMP modifications. The operator shall modify the PDMP whenever necessary to  
727 address any of the triggering conditions for corrective action in Part I D 1 a, or when a  
728 change in pest control activities significantly changes the type or quantity of pollutants  
729 discharged. Changes to the PDMP must be made before the next pesticide application  
730 that results in a discharge, if practicable, or if not, as soon as possible thereafter. The  
731 revised PDMP must be signed and dated in accordance with Part II G.

732 The operator shall review the PDMP at a minimum once per calendar year and  
733 whenever necessary to update the pest problem identified and pest management  
734 strategies evaluated for the pest management area.

735 b. PDMP availability. The operator shall retain a copy of the current PDMP, along with  
736 all supporting maps and documents. The operator shall make the PDMP and



737 supporting information available to the department upon request. The PDMP is subject  
738 to the provisions and exclusions of the Virginia Freedom of Information Act (§ 2.2-3700  
739 et seq. of the Code of Virginia).

740 D. Special conditions.

741 1. Corrective action.

742 a. Situations requiring revision of pest management measures. If any of the following  
743 situations occur, the operator shall review and, as necessary, revise the evaluation  
744 and selection of pest management measures to ensure that the situation is eliminated  
745 and will not be repeated in the future:

746 (1) An unauthorized release or discharge associated with the application of pesticides  
747 occurs (e.g., spill, leak, or discharge not authorized by this or another VPDES permit);

748 (2) The operator becomes aware, or the ~~board~~ department concludes, that the pest  
749 management measures are not adequate or sufficient for the discharge of pollutants  
750 to meet applicable water quality standards;

751 (3) Any monitoring activities indicate that the operator failed to meet the technology-  
752 based effluent limitations in Part I A 1 a of this permit;

753 (4) An inspection or evaluation of the operator's activities by DEQ, VDACS, EPA, or a  
754 locality reveals that modifications to the pest management measures are necessary to  
755 meet the non-numeric effluent limits in this permit; or

756 (5) The operator observes (e.g., during visual monitoring that is required in Part I B) or  
757 is otherwise made aware of an adverse incident.

758 b. Corrective action deadlines. If the operator determines that changes to the pest  
759 management measures are necessary to eliminate any situation identified in Part I D  
760 1 a, such changes must be made before the next pesticide application that results in  
761 a discharge if practicable, or if not, as soon as possible thereafter.

762 2. Adverse incident documentation and reporting.

763 a. Twenty-four-hour adverse incident notification. If the operator observes or is  
764 otherwise made aware of an adverse incident that may have resulted from a discharge  
765 from the operator's pesticide application, the operator shall immediately notify the  
766 department (see Part I D 5). This notification must be made within 24 hours of when  
767 the operator becomes aware of the adverse incident and must include at least the  
768 following information:

769 (1) The caller's name and telephone number;

770 (2) Operator's name and mailing address;

771 (3) The name and telephone number of a contact person if different than the person  
772 providing the 24-hour notice;

773 (4) How and when the operator became aware of the adverse incident;

774 (5) Description of the location of the adverse incident;

775 (6) Description of the adverse incident identified and the EPA pesticide registration  
776 number for each product that was applied in the area of the adverse incident; and

777 (7) Description of any steps the operator has taken or will take to correct, repair,  
778 remedy, cleanup, or otherwise address any adverse effects.

779 If the operator is unable to notify the department within 24 hours, notification shall be  
780 made as soon as possible and the rationale for why the notification was not possible  
781 within 24 hours shall be provided.

782 The adverse incident notification and reporting requirements are in addition to what  
783 the registrant is required to submit under FIFRA § 6(a)(2) and its implementing  
784 regulations at 40 CFR Part 159.

785 b. Reporting of adverse incidents is not required under this permit in the following  
786 situations:

787 (1) The operator is aware of facts that clearly establish that the adverse incident was  
788 not related to toxic effects or exposure from the pesticide application.

789 (2) The operator has been notified in writing by the ~~board~~ department that the reporting  
790 requirement has been waived for this incident or category of incidents.

791 (3) The operator receives notification of a potential adverse incident but that  
792 notification and supporting information are clearly erroneous.

793 (4) An adverse incident occurs to pests that are similar in kind to pests identified as  
794 potential targets.

795 c. Five-day adverse incident written report. Within five days of a reportable adverse  
796 incident pursuant to Part I D 2 a, the operator shall provide a written report of the  
797 adverse incident to the appropriate DEQ regional office at the address listed in Part I  
798 D 5. The adverse incident report must include at least the following information:

799 (1) Information required to be provided in Part I D 2 a;

800 (2) Date and time the operator contacted DEQ notifying the department of the adverse  
801 incident, and with whom the operator spoke at DEQ, and any instructions the operator  
802 received from DEQ;

803 (3) Location of incident, including the names of any waters affected and appearance  
804 of those waters (sheen, color, clarity, etc.);

805 (4) A description of the circumstances of the adverse incident including species  
806 affected, estimated number of individuals, and approximate size of dead or distressed  
807 organisms;

808 (5) Magnitude and scope of the affected area (e.g., aquatic square area or total stream  
809 distance affected);

810 (6) Pesticide application rate, intended use site, method of application, and name of  
811 pesticide product, description of pesticide ingredients, and EPA registration number;

812 (7) Description of the habitat and the circumstances under which the adverse incident  
813 occurred (including any available ambient water data for pesticides applied);

814 (8) If laboratory tests were performed, indicate what tests were performed, and when,  
815 and provide a summary of the test results within five days after they become available;

816 (9) If applicable, explain why it is believed the adverse incident could not have been  
817 caused by exposure to the pesticide;

818 (10) Actions to be taken to prevent recurrence of adverse incidents; and

819 (11) Signed and dated in accordance with Part II G.

820 The operator shall report adverse incidents even for those instances when the  
821 pesticide labeling states that adverse effects may occur.

822 d. Adverse incident to threatened or endangered species or critical habitat.

823 (1) Notwithstanding any of the other adverse incident notification requirements of this  
824 section, if the operator becomes aware of an adverse incident to threatened or  
825 endangered species or critical habitat that may have resulted from a discharge from  
826 the operator's pesticide application, the operator shall immediately notify the:

827 (a) National Marine Fisheries Service (NMFS) and the Virginia Department of Game  
828 and Inland Fisheries (DGIF) in the case of an anadromous or marine species;  
829 (b) U.S. Fish and Wildlife Service (FWS) and the DGIF in the case of an animal or  
830 invertebrate species; or  
831 (c) FWS and the Virginia Department of Agriculture and Consumer Services in the  
832 case of plants or insects.  
833 (2) Threatened or endangered species or critical habitats include the following:  
834 (a) Federally listed threatened or endangered species;  
835 (b) Federally designated critical habitat;  
836 (c) State-listed threatened or endangered species; and  
837 (d) Tier I (critical conservation need) or Tier II (very high conservation need) species  
838 of greatest conservation need (SGCN) as defined in Virginia's Wildlife Action Plan  
839 ([www.bewildvirginia.org](http://www.bewildvirginia.org)) (<http://bewildvirginia.org/wildlife-action-plan/>).  
840 (3) This notification must be made by telephone immediately upon the operator  
841 becoming aware of the adverse incident and must include at least the following  
842 information:  
843 (a) The caller's name and telephone number;  
844 (b) Operator's name and mailing address;  
845 (c) The name of the affected species, size of area impacted, and if applicable, the  
846 approximate number of animals affected;  
847 (d) How and when the operator became aware of the adverse incident;  
848 (e) Description of the location of the adverse incident;  
849 (f) Description of the adverse incident, including the EPA pesticide registration number  
850 for each product the operator applied in the area of the adverse incident;  
851 (g) Description of any steps the operator has taken or will take to alleviate the adverse  
852 impact to the species; and  
853 (h) Date and time of application. Additional information on federally listed threatened  
854 or endangered species and federally designated critical habitat is available from NMFS  
855 ([www.nmfs.noaa.gov](http://www.nmfs.noaa.gov)) ([https://www.fisheries.noaa.gov/species-directory/threatened-](https://www.fisheries.noaa.gov/species-directory/threatened-endangered)  
856 [endangered](https://www.fisheries.noaa.gov/species-directory/threatened-endangered)) for anadromous or marine species or FWS ([www.fws.gov](http://www.fws.gov))  
857 (<https://www.fws.gov/species/search>) for terrestrial or freshwater species. Additional  
858 information on state-listed threatened or endangered wildlife species is available  
859 through the Virginia Fish and Wildlife Information Service ([www.dgif.virginia.gov](http://www.dgif.virginia.gov))  
860 (<https://dwr.virginia.gov/wildlife/wildlife-information/>). Listing of state threatened or  
861 endangered plants and insects can be found in §§ 3.2-1000 through 3.2-1011 of the  
862 Code of Virginia and 2VAC5-320-10 of the Virginia Administrative Code (both the Code  
863 of Virginia and the Virginia Administrative Code must be referenced in order to obtain  
864 the complete plant and insect list). (Contact information for these agencies can be  
865 found on the contact information form or through the DEQ website.)  
866 3. Reportable spills and leaks.  
867 a. Spill, leak, or other unauthorized discharge notification. Where a leak, spill, or other  
868 release containing a hazardous substance or oil in an amount equal to or in excess of  
869 a reportable quantity established under either 40 CFR Part 110, 117, or 302 occurs in  
870 any 24-hour period, the operator shall notify the department (see Part I D 2) as soon  
871 as the operator has knowledge of the release. Department contact information must

872 be kept in locations that are readily accessible and available in the area where a spill,  
873 leak, or other unpermitted discharge may occur.

874 b. Five-day spill, leak, or other unauthorized discharge report. Within five days of the  
875 operator becoming aware of a spill, leak, or other unauthorized discharge triggering  
876 the notification in subdivision 3 of this subsection, the operator shall submit a written  
877 report to the appropriate DEQ regional office at the address listed in Part I D 5. The  
878 report shall contain the following information:

- 879 (1) A description of the nature and location of the spill, leak, or discharge;
- 880 (2) The cause of the spill, leak, or discharge;
- 881 (3) The date on which the spill, leak, or discharge occurred;
- 882 (4) The length of time that the spill, leak, or discharge continued;
- 883 (5) The volume of the spill, leak, or discharge;
- 884 (6) If the discharge is continuing, how long it is expected to continue and what the  
885 expected total volume of the discharge will be;
- 886 (7) A summary of corrective action taken or to be taken including date initiated and  
887 date completed or expected to be completed; and
- 888 (8) Any steps planned or taken to prevent recurrence of such a spill, leak, or other  
889 discharge, including notice of whether PDMP modifications are required as a result of  
890 the spill or leak.

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

893 The ~~board~~ department may waive the written report on a case-by-case basis for  
894 reports of noncompliance if the oral report has been received within 24 hours and no  
895 adverse impact on state waters has been reported.

896 4. Recordkeeping and annual reporting. The operator shall keep records as required in  
897 this permit. These records must be accurate, complete, and sufficient to demonstrate  
898 compliance with the conditions of this permit. The operator can rely on records and  
899 documents developed for other obligations, such as requirements under FIFRA and state  
900 or local pesticide programs, provided all requirements of this permit are satisfied. The  
901 ~~board~~ department recommends that all operators covered under this permit keep records  
902 of acres or linear miles treated for all applicable use patterns covered under this general  
903 permit.

904 a. All operators must keep the following records:

- 905 (1) A copy of any adverse incident reports (see Part I D 2 c).
- 906 (2) The operator's rationale for any determination that reporting of an identified  
907 adverse incident is not required consistent with allowances identified in Part I D 2 b.

908 b. Any operator performing the application of a pesticide or who has day-to-day control  
909 of the application and exceeding the annual application thresholds established in  
910 9VAC25-800-30 C must also maintain a record of each pesticide applied. This shall  
911 apply to both general use and restricted use pesticides. Each record shall contain the:

- 912 (1) Name, address, and telephone number of customer and address or location, if  
913 different, of site of application;
- 914 (2) Name and VDACS certification number of the person making the application or  
915 certification number of the supervising certified applicator;
- 916 (3) Day, month, and year of application;
- 917 (4) Type of plants, crop, animals, or sites treated and principal pests to be controlled;

918 (5) Acreage, area, or number of plants or animals treated;  
919 (6) Brand name or common product name;  
920 (7) EPA registration number;  
921 (8) Amount of pesticide concentrate and amount of diluting used, by weight or volume,  
922 in mixture applied; and  
923 (9) Type of application equipment used.

924 c. All required records must be assembled as soon as possible but no later than 30  
925 days following completion of such activity. The operator shall retain any records  
926 required under this permit for at least three years from the date of the pesticide  
927 application. The operator shall make available to the ~~board~~ department, including an  
928 authorized representative of the ~~board~~ department, all records kept under this permit  
929 upon request and provide copies of such records, upon request.

930 d. Annual reporting.

931 (1) Any operator applying pesticides that reports an adverse incident as described in  
932 Part I D 2 must submit an annual report to the department no later than February 10  
933 of the following year (and retain a copy for the operator's records).

934 (2) The annual report must contain the following information:

935 (a) Operator's name;  
936 (b) Contact person's name, title, email address (where available), and phone number;  
937 (c) A summary report of all adverse incidents that occurred during the previous  
938 calendar year; and  
939 (d) A summary of any corrective actions, including spill responses, in response to  
940 adverse incidents, and the rationale for such actions.

941 5. DEQ contact information and mailing addresses.

942 a. All incident reports under Part I D 2 must be sent to the appropriate DEQ regional  
943 office within five days of the operator becoming aware of the adverse incident.

944 b. All other written correspondence concerning discharges must be sent to the address  
945 of the appropriate DEQ regional office listed in Part I D 5 e d.

946 ~~NOTE: c.~~ The immediate (within 24 hours) reports required in Part I D 2 ~~may~~ shall be  
947 made to the department's regional office. Reports may be made by telephone, fax, or  
948 online  
949 (~~[http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaRep](http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx)~~  
950 ~~[ort.aspx](http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx)~~ (~~<https://www.deq.virginia.gov/get-involved/pollution-response>~~) (online  
951 reporting preferred). For reports outside normal working hours, ~~leave a message, and~~  
952 ~~this shall fulfill the immediate reporting requirement~~ the online portal shall be used. For  
953 emergencies, call the Virginia Department of Emergency Management's Emergency  
954 Operations Center (24-hours) ~~maintains a 24-hour telephone service at 1-800-468-~~  
955 ~~8892.~~

956 c. DEQ regional office addresses.

957 (1) Blue Ridge Regional Office (BRRO)  
958 ~~3019 Peters Creek Road~~ 901 Russell Drive  
959 ~~Roanoke~~ Salem, VA 24019153  
960 (540) 562-6700  
961 (fax - for all regional offices) (804) 698-4178  
962 (2) Northern Virginia Regional Office (NVRO)

963 13901 Crown Court  
964 Woodbridge, VA 22193  
965 (703) 583-3800  
966 (3) Piedmont Regional Office (PRO)  
967 4949-A Cox Road  
968 Glen Allen, VA 23060  
969 (804) 527-5020  
970 (4) Southwest Regional Office (SWRO)  
971 355 Deadmore St.  
972 P.O. Box 1688  
973 Abingdon, VA 24212  
974 (276) 676-4800  
975 (5) Tidewater Regional Office (TRO)  
976 5636 Southern Blvd.  
977 Virginia Beach, VA 23462  
978 (757) 518-2000  
979 (6) Valley Regional Office (VRO)  
980 4411 Early Road  
981 Mailing address: P.O. Box 3000  
982 Harrisonburg, VA 22801  
983 (540) 574-7800

## Part II

### Conditions Applicable to all VPDES Permits

#### A. Monitoring.

- 987 1. Samples and measurements taken as required by this permit shall be representative of  
988 the monitored activity.
- 989 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part  
990 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless  
991 other procedures have been specified in this permit.
- 992 3. The operator shall periodically calibrate and perform maintenance procedures on all  
993 monitoring and analytical instrumentation at intervals that will ensure accuracy of  
994 measurements.

#### B. Records.

- 996 1. Records of monitoring information shall include:
  - 997 a. The date, exact place, and time of sampling or measurements;
  - 998 b. The individuals who performed the sampling or measurements;
  - 999 c. The dates and times analyses were performed;
  - 1000 d. The individuals who performed the analyses;
  - 1001 e. The analytical techniques or methods used; and
  - 1002 f. The results of such analyses.
- 1003 2. The operator shall retain records of all monitoring information, including all calibration  
1004 and maintenance records and copies of all reports required by this permit for a period of  
1005 at least three years from the date that coverage under this permit expires. This period of

1006 retention shall be extended automatically during the course of any unresolved litigation  
1007 regarding the regulated activity or regarding control standards applicable to the operator,  
1008 or as requested by the ~~board~~ department.

1009 C. Reporting monitoring results. Monitoring results under this permit are not required to be  
1010 submitted to the department. However, should the department request that the operator submit  
1011 monitoring results, the following subdivisions would apply.

1012 1. The operator shall submit the results of the monitoring required by this permit not later  
1013 than the 10th day of the month after monitoring takes place, unless another reporting  
1014 schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the  
1015 department's regional office.

1016 2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms  
1017 provided, approved, or specified by the department.

1018 3. If the operator monitors any pollutant specifically addressed by this permit more  
1019 frequently than required by this permit using test procedures approved under 40 CFR Part  
1020 136 or using other test procedures approved by the U.S. Environmental Protection Agency  
1021 or using procedures specified in this permit, the results of this monitoring shall be included  
1022 in the calculation and reporting of the data submitted on the DMR or reporting form  
1023 specified by the department.

1024 4. Calculations for all limitations that require averaging of measurements shall utilize an  
1025 arithmetic mean unless otherwise specified in this permit.

1026 D. Duty to provide information. The operator shall furnish to the department, within a  
1027 reasonable time, any information that the ~~board~~ department may request to determine whether  
1028 cause exists for terminating coverage under this permit or to determine compliance with this  
1029 permit. The ~~board~~ department may require the operator to furnish, upon request, such plans,  
1030 specifications, and other pertinent information as may be necessary to determine the effect of the  
1031 wastes from the permittee's discharge on the quality of state waters, or such other information as  
1032 may be necessary to accomplish the purposes of the State Water Control Law. The operator shall  
1033 also furnish to the department, upon request, copies of records required to be kept by this permit.

1034 E. Compliance schedule reports. Reports of compliance or noncompliance with, or any  
1035 progress reports on, interim and final requirements contained in any compliance schedule of this  
1036 permit shall be submitted no later than 14 days following each schedule date.

1037 F. Unauthorized discharges. Except in compliance with this permit, or another permit issued  
1038 by the ~~board~~ department [ or general permit regulation adopted by the board ] , it shall be unlawful  
1039 for any person to:

1040 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or  
1041 deleterious substances; or

1042 2. Otherwise alter the physical, chemical, or biological properties of such state waters and  
1043 make them detrimental to the public health, to animal or aquatic life, or to the use of such  
1044 waters for domestic or industrial consumption, recreation, or other uses.

1045 G. Signature requirements.

1046 1. The PDMP, including changes to the PDMP to document any corrective actions taken  
1047 as required by Part I D 1, and all reports submitted to the department must be signed by  
1048 a person described in this subsection or by a duly authorized representative of that person  
1049 described in subdivision 2 of this subsection.

1050 a. For a corporation: by a responsible corporate officer. For the purpose of this  
1051 subsection, a responsible corporate officer means: (i) a president, secretary, treasurer,  
1052 or vice-president of the corporation in charge of a principal business function, or any  
1053 other person who performs similar policy-making or decision-making functions for the

1054 corporation, or (ii) the manager of one or more manufacturing, production, or operating  
1055 facilities, provided the manager is authorized to make management decisions that  
1056 govern the operation of the regulated activity including having the explicit or implicit  
1057 duty of making major capital investment recommendations and initiating and directing  
1058 other comprehensive measures to assure long-term environmental compliance with  
1059 environmental laws and regulations; the manager can ensure that the necessary  
1060 systems are established or actions taken to gather complete and accurate information  
1061 for permit application requirements; and authority to sign documents has been  
1062 assigned or delegated to the manager in accordance with corporate procedures;

1063 b. For a partnership or sole proprietorship: by a general partner or the proprietor,  
1064 respectively; or

1065 c. For a municipality, state, federal, or other public agency: by either a principal  
1066 executive officer or ranking elected official. For purposes of this subsection, a principal  
1067 executive officer of a federal agency includes (i) the chief executive officer of the  
1068 agency or (ii) a senior executive officer having responsibility for the overall operations  
1069 of a principal geographic unit or the agency.

1070 2. A person is a duly authorized representative only if:

1071 a. The authorization is made in writing by a person described in subdivision 1 of this  
1072 subsection;

1073 b. The authorization specifies either an individual or a position having responsibility for  
1074 the overall operation of the regulated activity such as the position of superintendent,  
1075 position of equivalent responsibility, or an individual or position having overall  
1076 responsibility for environmental matters for the company. A duly authorized  
1077 representative may thus be either a named individual or any individual occupying a  
1078 named position; and

1079 c. The signed and dated written authorization is included in the PDMP. A copy of this  
1080 authorization must be submitted to the department if requested.

1081 3. All other changes to the PDMP, and other compliance documentation required under  
1082 this permit, must be signed and dated by the person preparing the change or  
1083 documentation.

1084 4. Any person signing documents in accordance with subdivision 1 or 2 of this subsection  
1085 must include the following certification:

1086 "I certify under penalty of law that this document and all attachments were prepared under  
1087 my direction or supervision in accordance with a system designed to assure that qualified  
1088 personnel properly gathered and evaluated the information contained therein. Based on  
1089 my inquiry of the person or persons who manage the system or those persons directly  
1090 responsible for gathering the information, the information contained is, to the best of my  
1091 knowledge and belief, true, accurate, and complete. I am aware that there are significant  
1092 penalties for submitting false information, including the possibility of fine and imprisonment  
1093 for knowing violations."

1094 H. Duty to comply. The operator shall comply with all conditions of this permit. Any permit  
1095 noncompliance constitutes a violation of the State Water Control Law and the federal Clean Water  
1096 Act, except that noncompliance with certain provisions of this permit may constitute a violation of  
1097 the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for  
1098 enforcement action, for permit coverage termination, or denial of permit coverage renewal.

1099 The operator shall comply with effluent standards or prohibitions established under § 307(a)  
1100 of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish



1101 these standards or prohibitions, even if this permit has not yet been modified to incorporate the  
1102 requirement.

1103 I. Duty to reapply. If the operator wishes to continue an activity regulated by this permit after  
1104 the expiration date of this permit, the operator must have coverage under a new permit.

1105 J. Effect of a permit. This permit does not convey any property rights in either real or personal  
1106 property or any exclusive privileges, nor does it authorize any injury to private property or invasion  
1107 of personal rights, or any infringement of federal, state, or local law or regulations.

1108 K. State law. Nothing in this permit shall be construed to preclude the institution of any legal  
1109 action under, or relieve the operator from any responsibilities, liabilities, or penalties established  
1110 pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean  
1111 Water Act. Nothing in this permit shall be construed to relieve the operator from civil and criminal  
1112 penalties for noncompliance.

1113 L. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude  
1114 the institution of any legal action or relieve the operator from any responsibilities, liabilities, or  
1115 penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through 62.1-  
1116 44.34:23 of the State Water Control Law.

1117 M. Proper operation and maintenance. The operator shall at all times properly operate and  
1118 maintain all facilities and systems of treatment and control (and related appurtenances) that are  
1119 installed or used by the operator to achieve compliance with the conditions of this permit. Proper  
1120 operation and maintenance also include effective plant performance, adequate funding, adequate  
1121 staffing, and adequate laboratory and process controls, including appropriate quality assurance  
1122 procedures. This provision requires the operation of backup or auxiliary facilities or similar  
1123 systems that are installed by the operator only when the operation is necessary to achieve  
1124 compliance with the conditions of this permit.

1125 N. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of  
1126 treatment or management of pollutants shall be disposed of in a manner so as to prevent any  
1127 pollutant from such materials from entering state waters.

1128 O. Duty to mitigate. The operator shall take all reasonable steps to minimize or prevent any  
1129 discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of  
1130 adversely affecting human health or the environment.

1131 P. Need to halt or reduce activity not a defense. It shall not be a defense for an operator in an  
1132 enforcement action that it would have been necessary to halt or reduce the permitted activity in  
1133 order to maintain compliance with the conditions of this permit.

1134 Q. Inspection and entry. The operator shall allow the director, or an authorized representative  
1135 (including an authorized contractor acting as a representative of the director), upon presentation  
1136 of credentials and other documents as may be required by law, to:

- 1137 1. Enter upon the operator premises where a regulated facility or activity is located or  
1138 conducted, or where records must be kept under the conditions of this permit;
- 1139 2. Have access to and copy, at reasonable times, any records that must be kept under the  
1140 conditions of this permit;
- 1141 3. Inspect at reasonable times any facilities, equipment (including monitoring and control  
1142 equipment), practices, or operations regulated or required under this permit; and
- 1143 4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance  
1144 or as otherwise authorized by the Clean Water Act and the State Water Control Law, any  
1145 substances or parameters at any location.

1146 For purposes of this section, the time for inspection shall be deemed reasonable during  
1147 regular business hours or whenever the facility is discharging. Nothing contained herein shall  
1148 make an inspection unreasonable during an emergency.

1149 R. Permit actions. Permit coverage may be terminated for cause. The filing of a request by  
1150 the operator for a permit termination or a notification of planned changes or anticipated  
1151 noncompliance does not stay any permit condition.

1152 S. Transfer of permit coverage. Permits are not transferable to any person except after notice  
1153 to the department. The transfer of permit coverage under this pesticide general permit is not  
1154 anticipated since coverage is automatic where an operator meets the permit eligibility  
1155 requirements.

1156 T. Severability. The provisions of this permit are severable, and if any provision of this permit  
1157 or the application of any provision of this permit to any circumstance is held invalid, the application  
1158 of such provision to other circumstances, and the remainder of this permit, shall not be affected  
1159 thereby.

1160 FORMS (9VAC25-800)

1161 [Pesticide Discharge Management Plan \(PDMP\) - VAG-87 \(rev. 2019\)](#)

# COMMONWEALTH OF VIRGINIA STATE WATER CONTROL BOARD

## FACT SHEET

### REISSUANCE OF A GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT TO DISCHARGE TO STATE WATERS AND STATE CERTIFICATION UNDER THE STATE WATER CONTROL LAW

**Reissuance Year: March 1, 2024**

The State Water Control Board (Board) has under consideration the reissuance of a general Virginia Pollutant Discharge Elimination System (VPDES) permit for point source discharges resulting from the application of pesticides to surface waters. The issuance of this general permit is required by the Sixth Circuit Court January 9, 2009 decision to vacate EPA's 2006 NPDES Pesticides Rule in *National Cotton Council of America v. EPA*, 553 F.3d 927 (6th Cir., 2009). The court held that the Clean Water Act unambiguously includes "biological pesticides" and "chemical pesticides" with residuals within its definition of "pollutant." Therefore, pesticide applications to surface waters need to be permitted under discharge elimination system programs in all state and federal permitting programs. This Virginia Pollutant Discharge Elimination System (VPDES) permit has taken into account the requirements of the EPA National Pollutant Discharge Elimination System permit for discharges from the application of pesticides effective October 31, 2021 (see [2021 EPA NPDES Pesticide General Permit](#)).

Permit Number: VAG87

Name of Permittee: Any operator with point source discharges resulting from the application of pesticides to surface waters. Operator is defined as any person involved in the application of a pesticide that results in a discharge to state waters that meets either or both of the following two criteria: (1) The person has control over the financing for, or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions; or (2) The person has day-to-day control of or performs activities that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves).

Entities such as subcontractors or employees that are hired by an owner (e.g., of a pesticide application business) or other entity but are under the supervision of such owner or entity generally are not operators. Similarly, you are likely not an operator if, for example, you own the land, but the

activities are being performed outside of your control (e.g., a public entity is spraying for mosquitoes over your property).

This permit is available to operators who discharge to surface waters from the application of: (1) biological pesticides; or (2) chemical pesticides that leave a residue (hereinafter collectively "pesticides"), when the pesticide application is for one of the following pesticide use patterns:

- Mosquito and other flying insect pest control
- Weed and algae pest control
- Animal pest control
- Forest canopy pest control
- Intrusive vegetation pest control.

Operator Location: Commonwealth of Virginia

Receiving Waters: Surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in Board Regulations that prohibit such discharges.

Restrictions: The Department will deem an operator ineligible to discharge under this general permit if the operator is required to obtain an individual permit (9VAC25-31-170 B 3), if the operator is proposing to discharge to surface waters specifically named in Board regulations which prohibit such discharges, if the discharge would violate the Virginia Water Quality Standards antidegradation policy (9VAC25-260-30), or if the discharge is to surface waters that have been identified as impaired by that pesticide or its degradates. Impaired waters include both impaired waters with Board adopted, EPA approved or EPA imposed TMDLs (per 303(d) of the Clean Water Act), and impaired waters for which a TMDL has not yet been approved, established, or imposed for the discharge (those listed in the Virginia Water Quality Assessment 305(b)/303(d) Integrated Report as 'impaired' (includes all categories)).

The Board<sup>1</sup> has made the determination that if the operator meets the conditions of this permit, they will comply with sections 9VAC25-26-30 A 1 and 2 (Tier 1 and 2) of the antidegradation policy in the Water Quality Standards Regulation. Section 9VAC25-260-30 A 3 provides for protection of exceptional waters (Tier 3) and does not allow new, additional, or increased discharge of waste to these waters. However, 9VAC25-260-30 A 3 b (3) allows for activities causing temporary sources of pollution in exceptional waters. The pesticides general permit

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<sup>1</sup> Note: Pursuant to SB 657 (2022), the following definition has been added to this general permit: "Board" means the State Water Control Board. However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the "Department of Environmental Quality".

regulation (9VAC25-800-30 D 2) recognizes applications of pesticides as temporary and allowable in exceptional waters. Currently, there no other Board regulations that prohibit these discharges. However, this general permit regulation prohibits coverage under this permit for operators that discharge to waters that are impaired for that pesticide or its degradates. A list of pesticide-impaired waters in Virginia is in Attachment A.

The permit does not include terrestrial pesticide application or spray drift from terrestrial pesticide application, irrigation return flow and agricultural stormwater runoff. Terrestrial applications should not enter surface water because of restrictions provided under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and therefore do not require coverage under this permit. Return flows from irrigated agriculture and agricultural stormwater runoff are specifically exempted from discharge permitting under the Clean Water Act.

On the basis of preliminary review and application of lawful standards and regulations, the Board proposes to issue the general permit subject to certain conditions and has prepared a draft permit. The Board has determined that this category of discharges is appropriately controlled under a general permit. The category of discharges to be included involves facilities with the same or similar types of operations and the facilities discharge the same or similar types of wastes. The draft general permit requires that all covered discharges meet technology and water quality based effluent limitations, special conditions and monitoring requirements. It also requires that certain covered operators develop a pesticide discharge management plan (PDMP).

All pertinent information is on file and may be inspected, and arrangements made for copying by contacting Peter Sherman at:

Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218  
email: peter.sherman@deq.virginia.gov Telephone (804) 659- 2666 FAX (804) 698-4178

## **1.0 Activities Covered by this Permit**

This permit is available to operators who discharge to surface waters from the application of: (1) biological pesticides; or (2) chemical pesticides that leave a residue (hereinafter collectively "pesticides"), when the pesticide application is for one of the following pesticide use patterns:

- Mosquito and other flying insect pest control - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include but are not limited to mosquitoes and black flies. All mosquito pest control activity using pesticide is considered to result in discharges to surface waters.
- Weed and algae pest control - to control weeds, algae and pathogens that are pests in surface waters. Nuisance weeds include, but are not limited to cattails, hydrilla and

watermeal. (NOTE: If an operator is spraying a ditch with water in it to keep the ditch clear of weeds the operator falls into this use pattern regardless of how near the operator is to the ditch or what types of weeds are in the ditch. If the operator is spraying to clear the ditch itself and the ditch has water in it, the operator must meet the conditions of this permit.) Nuisance algae include, but are not limited to, blue green algae that can cause taste and odor problems in drinking water. Nuisance pathogens are disease-producing agents including, but not limited to, a virus, bacterium or other microorganism. The decision of whether a ditch 'counts' as surface water is usually made after its hydrological connection to a defined surface water is verified. However, for the purposes of this regulation, it is recommended to 'count' every ditch in acreage calculations and consider yourself 'covered' under this permit if you apply pesticides to ditches.

- Animal Pest Control - to control animal pests in surface waters. Animal pests in this use category include, but are not limited to, fish (e.g., snakehead) and zebra mussels.
- Forest Canopy Pest Control - application of a pesticide to the forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target pests effectively a portion of the pesticide unavoidably will be applied over and deposited to surface water. Forest canopy pest control includes aerial mature forest canopy pest control where streams and other small creeks cannot be seen. Juvenile aerial canopy spraying can normally be done in such a way as to avoid surface waters and does not need coverage under the permit or do not need to be included in acreage calculations. Spraying forest canopy from the ground (rather than aurally) may or may not reach surface waters and may not need coverage under this permit or be included in annual treatment area thresholds. The permittee must determine if this type of forest canopy pest control ground spraying will or will not reach surface waters.
- Intrusive vegetation pest control - control of vegetation along roads, ditches, canals, waterways and utility rights of way where to target the intrusive pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to surface water. This includes utility facilities such as pump stations, plants and electric substations where the property is owned by the utility.

The first four use patterns described above reflect the activity categories in U.S. EPA's Pesticide General Permit. The intrusive vegetation pest control use pattern is included in this VPDES general permit to ensure that the permit provides coverage for pesticide applications to areas where utility transmission and distribution lines are located and where such application (often aerial) would unavoidably reach surface waters. DEQ considered expanding the forestry pest control use pattern to include these areas, but received public comment expressing concern that the language proposed was not broad enough to encompass the expected activity and additional coverage was requested for more utility-type pesticide applications that reach surface waters.

The use patterns above were chosen because they represent pesticide discharges that may enter surface waters. Other use patterns where biological pesticides or chemical pesticides are applied (crops or other terrestrial applications) should not enter surface water when the operator correctly follows the product label and FIFRA requirements. If non-exempt biological pesticide or chemical pesticide residue resulting from other use patterns enters state waters, then the operator

is discharging to surface waters without a VPDES permit and is subject to enforcement action under the State Water Control Law.

### **1.1 Other Pesticide Related Activities Not Covered**

#### Hydrogen Peroxide

The *Hydrogen peroxide (Hydrogen dioxide) (000595) Fact Sheet* published by the EPA Office of Pesticide clearly states that if users follow label directions, no risks to the environment are expected from use of pesticide products containing hydrogen peroxide because 1) the substance readily decomposes to water and oxygen gas, leaving no residue; and 2) it is effective at low concentrations where no toxic effects are expected. However, if the product is a registered pesticide in Virginia, you need to consider yourself covered under this general permit under one of the five use categories. If the product is not a registered pesticide in Virginia, then application of the product does not need coverage, even if it falls under one of the five use categories.

#### Pond Dye

Most citizens use pond dyes to enhance the color of a water feature but it is also effective at controlling weed and algae growth due to blocking out sunlight needed for photosynthesis. If the pond dye product is a registered pesticide in Virginia (check [Virginia Department of Agriculture and Consumer Services Pesticide Database Search](#) page for a list of approved pesticides), the owner should consider himself covered under this general permit and abide to the permit requirements. If the pond dye product is not a registered pesticide in Virginia, the use of the dye could still place the owner in violation of the State Water Control law (see [Code of Virginia Title 62.1-44.5](#)). Specifically, paragraph three of the law addresses the alteration of “physical, chemical or biological properties” of state waters without a permit (also see 9VAC25-260-20 A, which requires control of substances that produce color).

### **1.2 No Requirement to Submit a Registration Statement (Notice of Intent)**

9VAC25-31-170 B 2 e states that discharges, other than discharges from publicly owned treatment works, combined sewer overflows, primary industrial facilities, and storm water discharges associated with industrial activity may, at the discretion of the Board, be authorized to discharge under a general permit without submitting a notice of intent where the Board finds that a notice of intent requirement would be inappropriate. In making such a finding, the Board shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Board shall provide in the public notice of the general permit the reasons for not requiring a notice of intent. The Department is exercising this option for pesticide operators after considering the items listed above, with input from the stakeholders on the technical advisory committee that was formed to assist the Department with the development of this permit.

The Department believes this is appropriate for several reasons. Primarily, the registration statements would only provide very general information to the staff. In addition, EPA is focusing their notice of intent submittals on large entities that apply pesticides to large areas (e.g., irrigation control districts, localities with mosquito control programs, etc.). The Virginia Department of Agriculture and Consumer Services (VDACS) maintains a database with persons or businesses operating in Virginia that sell, store, distribute, mix, apply or recommend for use, pesticides. These persons or businesses are required to obtain a valid pesticide business license in accordance with 2VAC20-40-20. These persons or businesses are also required to demonstrate knowledge of pesticide laws and regulations, potential hazards of pesticides to man and the environment and safe distribution, use, and disposal of pesticides. Furthermore, the VDACS also certifies commercial applicators, registered technicians and private applicators. Certified applicators must submit an application indicating contact information and use subcategory for which they wish to be certified (e.g., aquatic, forest canopy pest control, etc.). Commercial applicators must maintain records that contain the location, time, pest treated, pesticide and amount used. It is the Department's view that this information constitutes the information from the largest category of operators that would be on any notices of intent submitted to the Department. Any submittal of paperwork to the Department would be a duplicative effort on the part of the applicant, and present an unnecessary use of staff resources. Not requiring registration statements also eliminates staff resources needed to review registrations, send out acceptance letters and other correspondence normally associated with registrations. Therefore, all operators falling under one or more of the five pesticide 'uses' are automatically covered for discharge to surface waters. Since there is no registration requirement, there is also no fee requirement. A list of pesticide business licensees representative of registrants (NOI submitters) can be found at [VDAC Virginia Licensed Pesticide Businesses](#).

### **1.3 Deadlines**

This permit is effective March 1, 2024 and will remain effective for five years. Since no registration or notice of intent to apply is required, there are no deadlines for the submittal of these documents. The permit requires annual summary reports by February 10 of each year citing adverse incident events observed during the previous year (if any). If there are no adverse incidents, then no report is due. No other reports or plans are required to be submitted to the DEQ. All permittees should read, understand and have a copy of the permit. Permittees that exceed the annual treatment area thresholds in part 9VAC25-800-30 C must maintain a pesticide discharge management plan (PDMP). The requirements for the PDMP are in part 9VAC25-800-60 C. The permit, this fact sheet and a PDMP template are available online at [DEQ's VPDES Permits, Fees and Regulations website page](#).

### **1.4 Complying with Other Statutes, Regulations and Requirements**

Having coverage under this permit does not relieve operators of their responsibility to meet other applicable federal, state or local statutes, ordinances or regulations. For example, coverage under the VPDES pesticide general permit does not negate the requirements under FIFRA and its implementing regulations or under state pesticide law or regulation to use registered pesticides consistent with the product's labelling. In addition, coverage under the VPDES pesticide general



permit does not negate the need to fully comply with state wetland program requirements, including requirements applicable to activities affecting tidal wetlands administered by the Virginia Marine Resources Commission (see generally Subtitle III of Title 28.2 of the Code of Virginia) and wetland compensation sites under DEQ's Virginia Water Protection permit program (see generally 9VAC25-210). VMRC contact information is available at the [Virginia Marine Resource Commission's Contact Information webpage](#). DEQ VWP program information is at [DEQ's Wetlands and Stream Protection webpage](#).

## **1.5 Terminations**

There are no additional termination procedures when an operator decides to stop discharges resulting from the application of pesticides to surface waters.

## **1.6 Endangered and Threatened Species**

Recommendations from various natural resource agencies regarding endangered and threatened species protection for this general permit were provided via the participation of representatives of these agencies on the technical advisory committee during the 2013 reissuance. The public notice comment period for the 2024 reissuance will be the opportunity for the natural resource agencies to provide any updated recommendations. The general permit does not alter existing endangered and threatened species protections that exist under applicable law and requires operators to document and report adverse impacts to threatened and endangered species (see Part I D 2 below).

Operators with concerns about threatened and endangered species or critical habitat for a specific location can consult the [U.S. FWS Virginia Field Office's Endangered Species Project Review webpage](#) for the federally designated critical habitat in Virginia. For location information on all state and federal threatened and endangered species or species of concern, the wildlife information mapper can take you to any location in Virginia, and if you click on 'report' it will list all species within a designated search radius (e.g., 3miles). See the [Virginia Department of Game and Inland Fisheries geographic search page](#). It will list the threatened and endangered species first. (Note: The Virginia Department of Game and Inland Fisheries [DGIF] has been renamed the Department of Wildlife Resources [DWR], although certain still links reflect the old name).

A listing of all aquatic and terrestrial species (except insects and plants) is at the [Virginia Department of Wildlife Resources list of Threatened and Endangered Faunal Species](#) as well as in Attachment B.

Listing of state threatened or endangered plants and insects can be found in § 3.2-1000-1011 of the Code of Virginia and 2VAC5-320-10 of the Virginia Administrative Code, and is in Attachment B.

For a more detailed interaction with U.S. Fish and Wildlife Service's on federally listed species found, the operator may have a project reviewed by following the instructions on the

<https://www.fws.gov/office/virginia-ecological-services/virginia-field-office-online-review-process> .

## **2.0 Substantive Revisions to the Expiring VPDES Pesticide General Permit**

Under the technology-based effluent limits for animal pest control, added “cultural methods” to the management options that must be evaluated prior to selecting and implementing pest management measures that minimize discharges resulting from application of pesticides to control animal pests. This change reflects a change to the 2021 EPA pesticide general permit.

## **3.0 Effluent Limitations and Monitoring Requirements (Part I)**

The general permit requires that all covered discharges meet technology and water quality based effluent limitations (Part I A). Violation of any of these effluent limitations constitutes a violation of the permit.

### **3.1 Technology-based Limits (Part I A 1)**

#### Part I A 1 Technology-based limits - Minimize

Technology-based limits are required per 9VAC25-31-220 A of the VPDES Permit Regulation. Technology-based limits in this permit are not numerical, rather they are narrative best management practices that minimize discharges of pesticides to surface waters. These narrative technology limits are based on EPA’s NPDES Pesticide General Permit for Discharges from the Application of Pesticides (2016), in compliance with the provisions of the Clean Water Act (CWA), as amended (33 United States Code [U.S.C.] 1251 et seq.).

#### Part I A 1 a - Technology-based limits – Operator/Applicator

Operators who perform the application of pesticides or who have day to day control of applications (operator / applicator) are responsible for meeting the first part of the technology-based limits (i.e., to 'minimize pesticide discharges to surface waters'). This is met by following the label (use the lowest effective amount), maintaining application equipment, using equipment with cut-off valves and devices to avoid spills to surface waters, and assessing weather conditions to ensure the application is consistent with product label requirements. See detail below (Technology-Based Limits Operator/Applicator).

#### Part I A 1 b - Technology-based limits – Operator/Decision Maker

The second part of the technology-based limits to 'minimize pesticide discharges to surface waters' is the practice and consideration of integrated pest management (IPM). Operators with control over the financing for, or the decision to perform pesticide applications (operator / decision maker) that result in discharges to surface water shall consider IPM to ensure that discharges resulting for the pesticide application to surface waters are minimized. See detail below (Technology-Based Limits Operator/Decision Maker). In addition, operators (either applicators or decision makers) who exceed the annual treatment area thresholds (those that have

to prepare a PDMP) must document integrated pest management in the PDMP. IPM measures include identifying the target pest, densities and sources or factors contributing to the problem and making determinations about pest management options to manage that problem. Pest management options include no action, prevention, physical methods, cultural methods, biological control or pesticides. If pesticides are chosen, then conduct surveillance to assess the pest management area,<sup>2</sup> determine action thresholds for its use, make sure environmental conditions are correct for application, evaluate site restrictions, application timing and application methods and evaluate using the pesticide against the most susceptible developmental stage of the pest. All these pest management measures to meet these limitations should be done to the extent technologically available and economically achievable.

#### Technology-Based Limits Operator/Applicator

*Part I A 1 a (1) Use the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label.*

It is illegal to use a pesticide in any way prohibited by the FIFRA labeling. In addition, use of pesticides must be consistent with any other applicable state or federal laws. To minimize the total amount of pesticide discharged, operators must consider lower application rates, frequencies, or both to accomplish effective control keeping in mind pesticide resistance. Using the lowest possible effective rate ensures maximum efficiency in pest control with the minimum quantity of pesticide. Using the lowest possible effective rate does not necessarily mean choosing the lowest rate on the label. Sometimes using a higher rate (without exceeding the maximum allowable rate of the product label) is more effective and more protective for the environment. The lowest effective application rate also reduces the amount of pesticide available that is not performing a specific pest-control function. Using the lowest possible effective rate and frequency of application can result in cost and time savings to the user. To minimize discharges of pesticide, operators should base the rate and frequency of application on what is known to be effective against the target pest. Using the lowest effective amount (and not exceeding the product label will assist with resistance management. See National Pesticide Applicator Certification Core Manual, Chapter 1 – Pest Management for additional information on pesticide resistance.

*Part I A 1 a (2) No person shall apply, dispense, or use any pesticide in or through any equipment or application apparatus unless the equipment or apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material. All pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall be leak proof. All spray distribution systems shall be leak proof, and any pumps that these systems may have shall be*

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<sup>2</sup> "Pest management area" means the area of land, including any water, for which pest management activities covered by this permit are conducted.

*capable of operating at sufficient pressure to assure a uniform and adequate rate of pesticide application.*

This requirement is taken from 2VAC5-670-170 A, Regulations Governing Pesticide Product Registration, Handling, Storage, and Disposal under Authority of the Virginia Pesticide Control Act –Application and Equipment.

Common sense and good housekeeping practices enable pesticide users to save time and money and reduce potential for unintended discharges of pesticides to surface waters. Regular maintenance activities should be practiced and improper pesticide mixing and equipment loading should be avoided. When preparing the pesticides for application be certain that you are mixing them correctly and preparing only the amount of material that you need. Carefully choose the pesticide mixing and loading area and avoid places where a spill will discharge into surface waters. Some basic factors operators should consider are:

- Inspect pesticide containers at purchase to ensure proper containment;
- Maintain clean storage facilities for pesticides;
- Regularly monitor containers for leaks;
- Rotate pesticide supplies to prevent leaks that may result from long term storage; and
- Promptly deal with spills following manufacturer recommendations.

*Part I A 1 a (3) All pesticide application equipment shall be equipped with cut-off valves and discharge orifices to enable the operator to pass over non-target areas without contaminating them. All hoses, pumps, or other equipment used to fill pesticide handling, storage, or application equipment shall be fitted with an effective valve or device to prevent backflow into water supply systems, streams, lakes, other sources of water, or other materials. However, these backflow devices or valves are not required for separate water storage tanks used to fill pesticide application equipment by gravity systems when the fill spout, tube, or pipe is not allowed to contact or fall below the water level of the application equipment being filled, and no other possible means of establishing back siphon or backflow exists.*

This requirement is taken from 2VAC5-670-170 B, Regulations Governing Pesticide Product Registration, Handling, Storage, and Disposal under Authority of the Virginia Pesticide Control Act –Application and Equipment.

To minimize discharges of pesticide, operators must ensure that the rate of application is calibrated (i.e., nozzle choice, droplet size, etc.) to deliver the appropriate quantity of pesticide needed to achieve greatest efficacy against the target pest. Improperly calibrated pesticide equipment may cause either too little or too much pesticide to be applied. This lack of precision can result in excess pesticide being available or result in ineffective pest control. When done properly, equipment calibration can assure uniform application to the desired target and result in higher efficiency in terms of pest control and cost. It is important for applicators to know that pesticide application efficiency and precision can be adversely affected by a variety of mechanical problems that can be addressed through regular calibration. Sound calibration practices to consider are:

- Choosing the right spray equipment for the application;
- Ensuring proper regulation of pressure and choice of nozzle to ensure desired application rate;
- Calibrating spray equipment prior to use to ensure the rate applied is that required for effective control of the target pest;
- Cleaning all equipment after each use and/or prior to using another pesticide unless a tank mix is the desired objective and cross contamination is not an issue;
- Checking all equipment regularly (e.g., sprayers, hoses, nozzles, etc.) for signs of uneven wear (e.g., metal fatigue/shavings, cracked hoses, etc.) to prevent equipment failure that may result in inadvertent discharge into the environment;
- Replacing all worn components of pesticide application equipment prior to application.

*Part I A 1 a (4) Assess weather conditions (e.g., temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with product label requirements.*

Weather conditions may affect the results of pesticide application. Applicators must assess the treatment area to determine whether weather conditions support pest populations and are suitable for pesticide application.

#### Part I A 1 b Technology Based Limits, Operator/Decision Maker

The second part of the technology-based effluent limitations in Part I A 1 b are based on integrated pest management (IPM) practices. IPM, as defined in FIFRA, is a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks (FIFRA, 7 U.S.C. 136r-1). IPM is not a single pest control method but, rather, a series of pest management evaluations, decisions and controls. Operators whose discharges of pesticides to surface waters are solely from pesticide research and development activities do not have to comply with these additional technology-based effluent limitations to the extent the limits may compromise the research design.

Part I A 1 b of this permit requires all operators to identify the pest problem; to evaluate and implement efficiently and effectively pest management; and to use pesticides properly. Operators are required to perform each of these permit conditions prior to the first pesticide application covered under this permit and at least once each calendar year thereafter. Below is a general discussion describing the limitations for all use patterns. Requirements for documentation of the specific measures implemented are contained in Part I C (Pesticide Discharge Management Plan).

Operators required to perform IPM practices will be required to do the following regardless of use pattern:

#### Identify the Problem

Operators are required to identify the pest problem, identify the target pest, and establish an action threshold. Understanding the pest biology and ecology will provide insight into selecting

the most effective and efficient pest management strategies (pesticidal or non-pesticidal methods), and in developing an action threshold. An action threshold is a point at which pest populations or environmental conditions indicate that pest control action must be taken. Action thresholds help determine both the need for control actions and the proper timing of such actions. It is a predetermined pest level that is deemed to be unacceptable. In some situations, the action threshold for a pest may be zero (i.e., no presence of the pest is tolerated). This is especially true when the pest is capable of transmitting a human pathogen (e.g., mosquitoes and the West Nile virus). In areas where aquatic weeds are problematic, it may be preferable to use an aquatic herbicide as a preventive measure rather than after weeds become established. In some situations, even a slight amount of pest damage may be unacceptable for ecological or aesthetic reasons. Sometimes pre-emergent pesticide application is needed as a preventive measure to keep aquatic weeds at bay. Action thresholds can vary by pest, by site, and by season. Often the action threshold is expressed as the number of pests per unit area. Action thresholds may be difficult to establish. In a new IPM program, a practical approach is to establish an action threshold for the major pests. As operators gain insight and experience into specific pest management settings, the action levels can be revised up or down.

To identify the problem at a treatment area, operators may use existing data to meet the conditions of the permit. For example, a mosquito district may use surveillance data from an adjacent district to identify mosquito species at their pest management area. Operators may also use relevant historic site data.

### *Pest Management Options*

Operators are required to implement efficient and effective means of pest management that most successfully minimizes discharges to surface waters resulting from the application of pesticides. Operators must evaluate both pesticide and non-pesticide methods. Operators must consider and evaluate the following options or combination of options: no action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides. In the evaluation of these options, operators must consider impacts to water quality, impacts to non-target organisms, pest resistance, feasibility, and cost effectiveness. Combinations of various management methods are frequently the most effective pest management strategies over the long term. The goal should be to emphasize long-term control rather than a temporary fix. Examples of options to pesticide use include:

- Eliminating breeding sites (for insects)
- Reduce nutrients to ponds to control weed and algae growth
- Removing animal pests (e.g. fishing, netting) or preventing their spread (e.g. educating the public)
- Planting trees resistant to parasites
- Mowing or physical removal of intrusive plants.

A list of references for IPM practices are included as Attachment D.

### *Pesticide Use*

Operators are required to conduct pest surveillance and reduce the impact on the environment. Pest surveillance is important to time the need for pest control. To reduce the impact on the environment and non-target organisms, operators are required to apply pesticide when the action threshold has been met. As noted earlier, action thresholds help determine both the need for control actions and the proper timing of such actions. There are additional requirements designed for each use pattern in Sections Part I A 1 b (1), (2), (3), (4) and (5) of the permit. For additional information and other limits on pesticide use, see specific IPM discussion under each use pattern.

Concerns for pesticide use during mosquito control as it relates to bee population health were raised during public comment in 2013 (addressing the prior general permit) because bees can be susceptible to mosquito pesticides. Information about IPM practices to protect bee health population during mosquito control activities are included in Attachment D.

### **3.2 Water Quality-based Limitations (Part I A 2)**

The Permit Regulation at 9VAC25-31-220 D requires VPDES permits to meet water quality standards. The Department does this by including water quality-based effluent limits (WQBELs) in permits where necessary. Unlike individual permits that include requirements tailored to site-specific considerations, general permits, while tailored to specific industrial processes or types of discharges (e.g., specific applications of pesticides), do not contain site-specific WQBELs. Instead, in general, a narrative statement is included that addresses WQBELs. These narrative limits are based on EPA's NPDES Pesticide General Permit for Discharges from the Application of Pesticides (2016), in compliance with the provisions of the Clean Water Act (CWA), as amended (33 *United States Code* [U.S.C.] 1251 *et seq.*).

In this permit, the WQBEL is as follows:

*The operator's discharge of pollutants must be controlled as necessary to meet applicable numeric and narrative water quality standards for any discharges authorized under this permit, with compliance required upon beginning such discharge.*

*If at any time the operator becomes aware, or the department determines, that the operator's discharge of pollutants causes or contributes to an excursion of applicable water quality standards, corrective action must be taken as required in Part I D 1 of this permit.*

Any discharge that results in an excursion of any applicable numeric or narrative water quality standard is prohibited. The Department expects that compliance with the FIFRA label requirements, the technology-based effluent limitations, and other terms and conditions in this permit will meet applicable WQBELs. If an operator becomes aware that an excursion of water quality standards has occurred, corrective actions must be taken and documented per Part I D 1 of the permit. If a water quality standards excursion has also caused an adverse incident, the adverse incident must be documented and reported per Part I D 2. If the water quality standards excursion occurred because of a spill, leak or other unauthorized discharge, notification in excess of a reportable quantity in 40 CFR Parts 110, 117 or 302, it must be reported per Part I D 3 of this permit. A link to the 40 CFRs (Code of Federal Regulations) can be found [on the Government Publishing Office's E-CFR webpage](#).

### 3.3 Monitoring (Part I B)

Monitoring is required in any VPDES permit to demonstrate compliance with the permit conditions per 9VAC25-31-220 I. However, monitoring of pesticide discharges poses several challenges not generally encountered in "traditional" VPDES permitting situations. For example, there is no "wastewater discharge" per se from pesticide applications that is analogous to end-of-pipe discharges. A manufacturing plant would, for example, typically direct its wastewater through a treatment system to remove pollutants and, then, would direct the effluent through a pipe into a receiving waterbody. However, for chemical pesticide applications, at the time of application the pesticide contains both the portion serving its intended purpose as well as the potential residual for which monitoring data would be appropriate. Thus, monitoring the "outfall" in this case would merely provide data on the amount of the product as applied (information already known through the FIFRA registration process) and would not be useful for comparing with any type of effluent limitation or water quality standard.

Ambient water quality monitoring was also considered for this permit and determined that it was infeasible/impracticable for the following reasons:

- **Uncertainty:** Ambient water quality monitoring would generally not be able to distinguish whether the results were from the relevant pesticide application some other upstream source.
- **Lack of applicable measurable standards:** Pesticide-specific water quality standards do not exist at this time for the vast majority of constituents in the products authorized for use under this PGP.
- **Safety and Accessibility:** Pesticides, particularly those used for mosquito control and forest canopy pest control, are often applied over waterbodies in remote areas, hazardous terrain, and swamps that are either inaccessible or pose safety risks for the collection of samples.
- **Difficulty of residue sampling for chemical pesticides:** For chemical pesticides, the "pollutant" regulated by the PGP is the residue that remains after the pesticide has completed its activity, and it is this residue that would be the subject of any water quality monitoring requirement. However, the point at which only "residue" remains is not practically discernable at this time for a pesticide application.
- **Usefulness of data:** Some states have questioned the value of ambient water quality monitoring data obtained from state permitting programs. The data generally showed that water quality impacts were not occurring, and one state even discontinued the requirement in revisions of its state permit.

Given the questionable ability of ambient water quality data to demonstrate permit compliance, EPA (per the NPDES Pesticide General Permit for Discharges from the Application of Pesticides (2021), in compliance with the provisions of the Clean Water Act (CWA), as amended (33 *United States Code* [U.S.C.] 1251 *et seq.*)) has determined that there are suitable alternative monitoring activities to determine permit compliance, other than ambient water quality monitoring, for this permit.



Monitoring requirements for all operators (applicators and decision makers) include visual assessment in the area where pesticides are applied to look for adverse incidents caused by application of pesticides. The visual monitoring requires spot checks in the area to and around where pesticides are applied and must be done during any post-application surveillance or efficacy check, if the operator does one, and during a pesticide application. Visual monitoring is not required when it is infeasible or unsafe to do so (e.g., when the pesticide application is performed in darkness, applications made from aircraft and applications made from a moving vehicle (road vehicle, watercraft, etc.) when the applicator is the driver). A visual monitoring assessment must also be conducted during any post-application surveillance to determine the efficacy of the pesticide treatment. Visual monitoring of this type is only required if the operator performs post application surveillance in the normal course of business. The Department expects that visual assessments may reasonably be conducted during applications and efficacy inspections may be conducted on foot or from a stationary vehicle.

Visual monitoring observations are not required to be submitted to DEQ (except in the case of adverse incidents). The permit does not require the operator to keep a record of the visual monitoring assessments.

### **3.4 Pesticide Discharge Management Plan (Part I C)**

Any operator exceeding certain annual area thresholds must maintain a pesticide discharge monitoring plan (PDMP) in order to document how the operator will implement the effluent limitations. There is no explicit regulatory requirement in the VPDES Permit Regulation for a PDMP; however, it is standard practice when best management practices are used to meet effluent limits to prepare some type of operations manual or a pollution prevention plan to document the management practices and adjustments to the program. EPA has included the PDMP concept in their pesticide general permit and the VA PDMP mirrors the EPA plan. This requirement is based on EPA's NPDES Pesticide General Permit for Discharges from the Application of Pesticides (2021), in compliance with the provisions of the Clean Water Act (CWA), as amended (33 *United States Code* [U.S.C.] 1251 *et seq.*).

A PDMP is a "living" document that requires periodic review and must be kept up-to-date. Where pest management measures are modified or replaced to meet effluent limitations, such as in response to a Part I A 2 water quality standards violation triggering a Part I D 1 corrective action, such changes must be documented in the PDMP. The PDMP is not a limitation and it does not impose requirements on discharges. These are already imposed by the limitations in parts I A 1 and 2. The PDMP is rather a tool for operators to document, among other things, how pest management measures will be implemented to comply with the permit's effluent limitations, and is a permit "term or condition." Failure to have a PDMP, where required, is a violation of the permit.<sup>3</sup> A PDMP template is available to assist operators develop plans. The PDMP can be expanded and improved over time.

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<sup>3</sup> This permit is also consistent with the decision in *Texas Independent Producers and Royalty Owners Assoc., et. al. v. EPA*, 410 F.3d 964 (7<sup>th</sup> Cir. 2005), where petitioners challenged EPA's issuance of the construction general permit (CGP) that covers stormwater discharges. In that case, the Court found that neither the Stormwater Pollution Prevention Plan (SWPPP) nor the Notices of Intent (NOIs) are permits or permit applications because they do not

The PDMP must be developed prior to the first application for those operators who know prior to commencement of discharge that they will exceed an annual treatment threshold, prior to exceeding an annual threshold for operators who do not know until after commencement of discharge that they will exceed an annual treatment threshold for that year, and no later than 90 days after responding to a declared pest emergency situation for operator commencing discharge in response to a declared pest emergency situation.

The PDMP is not required to be submitted to the Department, but must be made available to the public when requested per the Freedom of Information Act (FOIA) (Chapter 37 of Title 2.2) - see *Part I C 7 PDMP Modifications and Availability* section below.

If you exceed the following annual thresholds, you must develop a PDMP:

Annual Treatment Area<sup>a</sup> Thresholds  
9VAC25-800-30 C (Table 1)

Pesticide Use	Annual Threshold
Mosquitoes and Other Flying Insect Pest Control	6400 acres of treatment area <sup>b</sup>
Weed and Algae Pest Control	80 acres of treatment area <sup>b</sup> or 20 linear miles of treatment area <sup>c</sup>
Animal Pest Control	80 acres of treatment area <sup>b</sup> or 20 linear miles of treatment area <sup>c</sup>
Forest Canopy Pest Control	6400 acres of treatment area <sup>b</sup>
Intrusive Vegetation Pest Control	6400 acres of treatment area <sup>b</sup> or 20 linear miles of treatment area <sup>c</sup>
<p><sup>a</sup> "Treatment area" means the area of land including any waters, or the linear distance along water or water's edge, to which pesticides are being applied. Multiple treatment areas may be located within a single pest management area. Treatment area includes the entire area, whether over land or water, where the pesticide application is intended to provide pesticidal benefits. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal should be calculated by multiplying the width of the canal by the length over which the pesticide is intended to control weeds. The treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits. Treatment area calculations for pesticide applications that occur at water's edge, where the discharge of pesticides directly to waters is unavoidable, are determined by the linear distance over which pesticides are applied. The total acreage may include water and land for ease of calculation.</p> <p><sup>b</sup> Calculations include the area of the applications made to: (1) surface waters and (2) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a ten-acre site is counted as twenty acres of treatment area. For lake acreages, the operator may include the entire lake acreage OR only the areas intended to provide pesticidal benefit.</p> <p><sup>c</sup> Calculations include the extent of the application made to linear features (e.g., roads, ditches, canals, waterways and utility rights of way) or along the water's edge adjacent to: (1) surface waters and (2) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity or area as a separate activity. For example, applying pesticides twice a year to a 1 mile linear</p>	

amount to limits. 410 F.3d at 978. Further, the Court found that the permit requirement to develop a SWPPP is not an effluent limitation. For the PGP, the PDMP serves a similar purpose as the CGP SWPPP.

feature (e.g., ditch) equals 2 miles of treatment area regardless of whether one or both sides of the ditch are treated. Applying pesticides twice a year along 1 mile of lake shoreline equals 2 miles of treatment area.
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These calculations include farm ponds, ditches (including roadside and irrigation ditches) and storm water best management practices with a hydrologic connection to surface water. Sediment ponds during construction and retention ponds with no spill way are not surface waters and are not included in calculations. Typically, a storm water pond will start out being used for erosion and sediment control but then will be a water feature and the storm water pond is maintained but it is no longer a treatment unit. If unsure, assume any water body has a hydrologic connection and must be counted. If a ditch is dry or expected to be dry during the application period, it does not need to be counted. Wetlands can be dry or wet, and both must be counted. If unsure about wetlands locations, include the entire spray area, even if it includes land. Wetlands information and acreages can be found at <https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper>. At the web site, zoom to the application area and use the information tool to see the wetlands acreages.

The rationale for the annual treatment area threshold for each use pattern is as follows:

For mosquitoes and other flying insect pests, the annual treatment area threshold has been set at 6400 acres. The Department believes that the vast majority of mosquito control and abatement districts in Virginia manages areas significantly larger than this threshold and may reasonably expect to exceed it during any given year.

For weeds and algae pest control, the annual treatment area threshold has been set at 80 acres or 20 linear miles of treatment on canals and irrigation system conveyances. This threshold has been set to capture operators treating relatively large portions of surface waters and watersheds, such as water management districts, wildlife and game departments, and some homeowner and lake associations.

Animal pest control is most commonly treated by public agencies such as departments of fish and game or utilities such as water management districts that manage areas of surface water in excess of 80 acres. The high mobility and prolific breeding ability that necessitate control of aquatic animals usually means that their treatment most often occurs in the entirety or large portions of the water bodies they inhabit.

Forest canopy pest suppression programs are designed to be applied to large tracts of terrain, throughout which operators may not be able to see or avoid surface waters beneath the canopy. The annual treatment area threshold at 6400 acres for this use pattern will exclude only the smallest applications from the PDMP requirement. These smaller applications generally occur on private lands. Therefore, the Department believes the threshold appropriately captures most operators engaging in this use pattern, particularly public agencies managing large tracts of land.

Intrusive vegetation pest control is designed to be applied to linear features or large tracts of land to maintain public utility structures, roads, rights of way etc. Most structures and rights of way should use the more stringent measurement (that which results in a PDMP) which is normally >20 linear miles. It is reasonable to apply the same acreages and linear mileage for this category

as in the other large management areas (mosquito and forest canopy pest control) for consistency.

The PDMP must include the following elements:

#### Part I C 2 Pesticide discharge management team

The permit requires that a qualified individual or team of individuals be identified to manage pesticide discharges covered under the permit. Identification of a pesticide discharge management team ensures that appropriate persons (or positions) are identified as necessary for developing and implementing the plan. Inclusion of the team in the plan provides notice to staff and management (i.e., those responsible for signing and certifying the plan) of the responsibilities of certain key staff for following through on compliance with the permit's conditions and limits.

The pesticide discharge management team is responsible for developing and revising the PDMP, implementing and maintaining the pest management measures to meet effluent limitations, and taking corrective action where necessary. Team members should be chosen for their expertise in the relevant areas to ensure that all aspects of pest management are considered in developing the plan. The PDMP must clearly describe the responsibilities of each team member to ensure that each aspect of the PDMP is addressed. The Department expects most operators will have more than one individual on the team, except for small entities with relatively simple plans and/or staff limitations. The permit requires that team members have ready access to any applicable portions of the PDMP and the permit.

#### Part I C 3 Pest Problem Description

The permit requires that the PDMP include a description of the pest problem at the pest management area. A detailed pest management area description assists operators in subsequent efforts to identify and set priorities for the evaluation and selection of pest management measures taken to meet effluent limitations set forth in Parts I A 1 and 2 and in identifying necessary changes in pest management. The description must include identification of the target pest(s), source of the pest problem, and source of data used to identify the problem. Historic data or other available data (e.g., from another similar site) may be used to identify the problem at your site. If you use other site data, you must document in this section why data from your site is not available or not taken within the past year and explain why the data is relevant to your site. Additionally, the pest management area descriptions should include any sensitive resources in the area, such as unique habitat areas, rare or listed species, or other species of concern that may limit pest management options.

#### *Action Threshold(s)*

The permit requires that the PDMP include a description of the action threshold(s) established for the target pest, including a description of how they were determined and method(s) to determine when the action threshold(s) has been met. An action threshold is

a level of pest prevalence at which an operator takes action to reduce the pest population. For some pests, action may be needed before pests or pest damage appears. In those cases, an action threshold may be defined as a set of conditions, e.g., a plant is at a susceptible stage for a disease under the right weather conditions.

#### *General Location Map*

The PDMP must also contain a general location map of the site that identifies the geographic boundaries of the area to which the plan applies and location of surface waters (this could be from a state wide or county wide approach or individual water bodies, depending on the extent of applications for that operator). To improve readability of the map, some detailed information may be kept as an attachment to the site map and pictures may be included as deemed appropriate.

#### Part I C 4 Integrated pest management options evaluation

The permit requires the PDMP to document how pest management options or a combination of pest management options are evaluated. Pest management options include no action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides.

All six pest management tools may not be available for a specific use category and/or treatment area. However, the PDMP must include documentation of how the six pest management tools were evaluated prior to selecting a site specific pest management strategy. For the no action option, operators should document the impact of this option without any current pest management strategy at the site. For the prevention option, the operator should document the methods implemented to prevent new introductions or the spread of the pests to new sites such as identifying routes of invasion and how these can be intercepted to reduce the chance of invasion. Prevention may include source reduction, using pathogen-free or weed-free seeds or fill; exclusion methods (e.g., barriers) and/or sanitation methods, like wash stations, to prevent reintroduction by vehicles, personnel, etc. Some prevention management methods may fall under mechanical/physical or cultural methods as well.

For the pesticide management option, operators must include a list of the active ingredient(s) evaluated. Discussion should also identify specific equipment or methods that will prevent or reduce the risks to non-target organisms and pesticide discharges to surface waters.

#### Part I C 5 Response Procedures

##### *Spill Response Procedures*

The PDMP must document procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other release to surface waters. In addition, the PDMP must include documentation of the procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.

##### *Adverse Incident Response Procedures*

In the PDMP, operators must document appropriate procedures for responding to an adverse incident resulting from pesticide applications. Operator must identify and document the following:

- Course of action or responses to any incident resulting from pesticide applications;
- Chain of command notification for the incident, both internal to your agency/organization and external;
- State/Federal contacts with phone numbers;
- Name, location, and telephone of nearest emergency medical facility;
- Name, location, and telephone of nearest hazardous chemical responder; including police/fire.

#### Part I C 6 Signature Requirements

The PDMP must be signed and certified in accordance with the signatory requirements in Part II G of the permit. This requirement is consistent with standard VPDES permit conditions described in 9VAC25-31-110 and is intended to ensure that the operator understands his/her responsibility to create and maintain a complete and accurate PDMP. The signature requirement includes an acknowledgment that there are significant penalties for submitting false information.

#### Part I C 7 PDMP Modifications and Availability

While not required to be submitted to the Department, interested persons can request a copy of the PDMP through the Department, at which point the Department will likely request the operator to provide a copy of the PDMP. By requiring members of the public to request a copy of the PDMP through the Department, the Department is able to provide the operators with assurance that any Confidential Business Information that may be contained within its PDMP is not released to the public. The Water Control Law states that any information, except effluent data, as to secret formulae, processes, or secret methods shall be kept confidential (§ 62.1-44.21). It is the responsibility of the source providing confidential information, not that of DEQ, to identify the information as confidential and seek DEQ's acquiescence in that designation. DEQ is responsible for keeping such designation confidential. It is the Department's expectation that operators can write the PDMP appropriately without including confidential business information.

The operator shall review the PDMP, at a minimum, once per calendar year and whenever necessary to update the pest problem identified and the pest management strategies evaluated for the pest management area.

A PDMP template is available on the <https://www.deq.virginia.gov/permits-regulations/permits/water/surface-water-virginia-pollutant-discharge-elimination-system> under general permit regulations, Pesticide Discharges GP (VAG87).

### 3.5 Special Conditions (Part I D)

Special conditions are included in all VPDES permits per 9VAC25-31-210 (establishing permit conditions). This states that the Board shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the law, the CWA and regulations. These shall include conditions under 9VAC25-31-240 (duration of permits), 9VAC25-31-250 (schedules of compliance) and 9VAC25-31-220 (monitoring). With some exceptions, the special conditions in this permit mirror sections 6 and 7 of the EPA NPDES Pesticide General Permit for Discharges from the Application of Pesticides (2016), in compliance with the provisions of the Clean Water Act (CWA), as amended (33 *United States Code* [U.S.C.] 1251 *et seq.*).

#### Part I D 1 Corrective Action

Corrective actions in this permit are follow-up actions an operator must take to assess and correct problems. They require review and revision of pest management measures and pesticide application activities, as necessary, to ensure that these problems are eliminated and will not be repeated in the future. Changes to pest management measures to eliminate unauthorized releases, meet effluent limits, minimize discharges or correct adverse incidents must be made before the next pesticide application, or if not practical, as soon as possible.

A situation triggering corrective action is not necessarily a permit violation and, as such, may not necessarily trigger a modification of pest management measures to meet effluent limitations. However, failure to conduct corrective action reviews in such cases does constitute a permit violation.

#### Part I D 2 Adverse Incident Documentation and Reporting

Operators are required to take specific actions in response to identified adverse incidents that may have resulted from a discharge from the pesticide application. Namely, operators are required to provide oral notice to the Department within 24 hours and then follow-up with a written report within 5 days of becoming aware of the adverse incident. "Adverse incident" is defined in section 9VAC25-800-10 of the permit regulation but, generally, an adverse incident is defined as any effect of a pesticide's use that is unexpected or unintended. Adverse incidents must be reported even when the product label states that adverse effects may occur.

The 24-hour oral notification must include at least the following information:

- The caller's name and telephone number;
- Operator name and mailing address;
- The name and telephone number of a contact person, if different than the person providing the 24-hour notice;
- How and when the permittee became aware of the adverse incident;
- Description of the location of the adverse incident;
- Description of the adverse incident identified and the EPA pesticide registration number for each product that was applied in the area of the adverse incident; and

- Description of any steps the permittee has taken or will take to correct, repair, remedy, cleanup, or otherwise address any adverse effects.

If notification cannot be completed within 24-hours, notification shall be as soon as possible, and a reason for why the notification was not possible within 24 hours must be provided.

The operator is still required to do FIFRA section 6(a)(2) (40 CFR Part 159) notification and reporting.

The operator does not need to report adverse incidents under the following conditions:

- The operator is aware of facts that clearly establish that the adverse incident was not related to toxic effects or exposure from the pesticide application.
- The operator has been notified in writing by the Department that the reporting requirement has been waived for this incident or category of incidents.
- The operator receives information notifying him of an adverse incident but that information is clearly erroneous.
- An adverse incident occurs to pests that are similar in kind to pests identified as potential targets.

A written report of a reportable adverse incident must be submitted to the Department within 5 days of discovering the adverse incident and must include the following information:

- Information required to be provided in Part I D 2 a;
- Date and time you contacted the Department notifying the agency of the adverse incident and who you spoke to and any instructions you were given;
- Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc.);
- A description of the circumstances of the incident including species affected, number of individual and approximate size of dead or distressed organisms;
- Magnitude and scope of the affected area (e.g., aquatic square area or total stream distance affected);
- Pesticide application rate, intended use site (e.g., banks, above, or direct to water), method of application and name of pesticide product, description of pesticide ingredients and EPA registration number;
- Description of the habitat and the circumstances under which the incident occurred (including any available ambient water data for pesticides applied);
- If laboratory tests were performed, indicate what tests were performed, and when, and provide a summary of the test results within 5 days after they become available;
- If applicable, explain why it is believed the adverse incident could not have been caused by exposure to the pesticide;
- Actions to be taken to prevent recurrence of adverse incidents; and
- Signed and dated in accordance with Part II G.

The Department believes adverse incident information associated with discharges from the application of pesticides is useful to the Agency because the information:



- Indicates the effectiveness of the permit in controlling discharges to protect water quality, including data upon which the Department may base future permit decisions (e.g., modifications to or reissuance of this permit).
- Assists review of current or future pesticide use, adherence to, or effectiveness of Best Management Practices;
- Provides information on the nature, extent, and severity of incidents to decision-makers, stakeholders, and the public; and
- Provides the Agency with information on which to assess compliance with regulatory requirements, including documentation and reporting.

Immediately observable signs of distress or damage to non-target plants, animals and other macro-organisms within the treatment area may warrant concern for a possible adverse incident related to a discharge of pesticides during application. The Department acknowledges that some degree of detrimental impact to non-target species is to be expected and is acceptable during the course of normal pesticide treatment. We expect operators to use their best professional judgment in determining the extent to which non-target effects appear to be abnormal or indicative of an unforeseen problem associated with an application of pesticides.

During visual monitoring, operators should watch for distressed or dead juvenile and small fishes, washed up or floating fish, fish swimming abnormally or erratically, fish lying lethargically at the water surface or in shallow water, fish that are listless or nonresponsive to disturbance, the stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants, and other dead or visibly distressed non-target organisms including amphibians, turtles, and macro-invertebrates. These observations must be noted unless they are deemed not to be aberrant (for example, distressed non-target fish are to be expected when conducting a treatment with rotenone and non-target vegetation will be stressed near the target of contact herbicides). It should be noted that observation of these impacts does not necessarily imply that a pesticide has been misused or that there has been a permit violation or an instance of noncompliance, but may provide cause for further investigation of local water quality or reconsideration of Best Management Practices. Not reporting such incidents, however, is a permit violation.

Part I D 2 d specifies which agencies the operator must notify in the event of an adverse incident to federally or state threatened or endangered species, federally-designated critical habitat and Tier I (critical conservation need) and Tier II (very high conservation need) species of greatest conservation need. These species are defined in Virginia's Wildlife Action Plan ([www.bewildvirginia.org](http://www.bewildvirginia.org)). Federally-designated critical habitat in Virginia includes portions of the Clinch River, Copper Creek, Indian Creek, the Middle and North Forks of the Holston River, Big Moccasin Creek, Little River and the Powell River (see [U.S. FWS Environmental Conservation Online System webpage, Critical Habitat Report](#) and the <https://www.fws.gov/office/virginia-ecological-services/virginia-field-office-online-review-process> webpage for the Virginia habitat information. A full listing of all aquatic and terrestrial species (except insects and plants) can be found at [Virginia Department of Game and Inland Fisheries list of Threatened and Endangered Faunal Species](#) and can be found in Attachment B.

For location information, [the Virginia Department of Game and Inland Fisheries wildlife information mapper](#) can take you to any location in Virginia and if you click on 'report' it will

list all species within a designated search radius (e.g., 2 or 3miles). It will list the threatened and endangered species first.

Listing of state threatened or endangered plants and insects can be found in § 3.2-1000-1011 of the Code of Virginia and 2VAC5-320-10 of the Virginia Administrative Code and is in Attachment B.

In the event of an adverse incident to threatened or endangered species, federally designated critical habitat, or Tier I (critical conservation need) or Tier II (very high conservation need) areas, you must inform the appropriate agency. This is the National Marine Fisheries Service and Virginia Department of Game and Inland Fisheries (DGIF) for anadromous or marine species, and US Fish and Wildlife Service and DGIF for terrestrial or freshwater species. The following information must be provided (see Attachment C for contact information):

- The caller's name and telephone number;
- Operator name and mailing address;
- The name of the affected species, size of area impacted, and if applicable, the approximate number of animals affected;
- How and when the permittee became aware of the adverse incident;
- Description of the location of the adverse incident;
- Description of the adverse incident, including the EPA pesticide registration number for each product the permittee applied in the area of the adverse incident;
- Description of any steps the permittee has taken or will take to alleviate the adverse impact to the species; and
- Date and time of application.

### Part I D 3 Reportable Spills and Leaks

Operators are required to call the Department (contact information in Part I D 5) to report any spill or leak of a hazardous substance or oil into surface waters with 24 hours of becoming aware of the spill or leak.<sup>4</sup> This must be documented in written a report within 5 days of becoming aware of such spill or leak. The report shall contain the following information:

- A description of the nature and location of the spill, leak or discharge;
- The cause of the spill, leak or discharge;
- The date on which the spill, leak or discharge occurred;
- The length of time that the spill, leak or discharge continued;
- The volume of the spill, leak or discharge;
- If the discharge is continuing, how long it is expected to continue, and what the expected total volume of the discharge will be;
- A summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed, and

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<sup>4</sup> Reportable Spills and Leaks are defined as those that trigger the requirement to notify the National Response Center (40 CFR Parts 110, 117, 302) based on the type of pollutant and quantity released.

- Any steps planned or taken to prevent recurrence of such a spill or leak or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

This information will be used by the Department to ascertain compliance with permit conditions. The Department may waive the written report on a case-by-case basis for reports of noncompliance of the oral report has been received within 24 hours and no adverse impact on state water has been reported

#### Part I D 4 Recordkeeping and annual reporting

Operators must maintain certain records to help them assess performance of pest management measures and to document compliance with permit conditions. Operators can rely on records and documents developed for other programs, such as requirements under FIFRA, provided all requirements of the permit are satisfied.

All operators must keep copies of any adverse incident 5-day reports submitted to the Department or a rationale for any determination that reporting of an identified adverse incident is not required per Part I D 2 a.

Any operators applying pesticides and exceeding the annual application thresholds in 9VAC25-800-30 C (e.g., 6,400 acres, 20 linear miles, etc.) must also maintain a record of each pesticide applied. This applies to both general use and restricted use pesticides. These record requirements mirror VDACS recordkeeping requirements in 2VAC5-680-65 . The Department thinks the recordkeeping requirements for the agency mandated to administer the pesticide program in Virginia (i.e., VDACS) is sufficient information for the Department. These records are as follows:

- Name, address, and telephone number of customer and address or location, if different, of site of application (e.g. the customer may be the county, naval base, homeowner association, etc... It does not usually mean individual private properties within the larger entity);
- Name and VDACS certification number of the person making the application or certification number of the supervising certified applicator;
- Day, month and year of application;
- Type of plants, crop, animals, or sites treated and principal pests to be controlled;
- Acreage, area, or number of plants or animals treated;
- Brand name or common product name;
- EPA registration number;
- Amount of pesticide concentrate and amount of diluting used, by weight or volume, in mixture applied; and
- Type of application equipment used.

All required records must be assembled as soon as possible but no later than 30 days following completion of such activity. The operator shall retain any records required under this permit for at least 3 years from the date of the pesticide application. This is consistent with 9VAC25-31-

190 J 2 of the permit regulation. The operator shall make available to the Department, including an authorized representative of the Department, all records kept under this permit upon request and provide copies of such records, upon request. This is consistent with 9VAC25-31-190 H.

In addition to recordkeeping, all operators must submit annual reports of any adverse incidents as described in Part I D 2 no later than February 10 of the following year. The operator must also retain a copy for 3 years. The Department believes that the annual report of adverse incidents, along with the VDACS list of licensed pesticide businesses and certified operators, and the availability of records containing location, pest and product information with the operator, is equal to the annual reporting requirements in the federal EPA NPDES permit.

The annual report must contain the following:

- Operator's name;
- Contact person name, title, e-mail address (where available), and phone number;
- A summary report of all adverse incidents that occurred during the previous calendar year; and
- A summary of any corrective actions, including spill responses, in response to adverse incidents, and the rationale for such actions.

This information in the annual report will be used by the Department to assess permit compliance and to determine whether additional controls on pesticide discharges are necessary to protect water quality.

#### Part I D 5 DEQ contact information and mailing addresses

This section contains all the DEQ contact information for 24-hour reporting for adverse incidents and spills and leaks.

### **4.0 Conditions Applicable to All Permits (Part II)**

VPDES Permit Regulation, 9VAC25-31-190, requires all VPDES permits to contain or specifically cite the conditions that are listed in this section. Some of the conditions in section 190 of the VPDES Permit Regulation have been eliminated because either there was no application to pesticide discharges or the requirement was already in Part I. For example, in monitoring Part II B we removed references to records related to sewage sludge, removed 'notice of planned changes', 'bypass' and 'upset' conditions as these relate only to treatment works. Also, removed 'reports of unauthorized discharges' and 'reports of unusual or extraordinary discharges' as these requirements exist elsewhere in the permit. Some of these conditions also have been edited to reflect the nature of VPDES general permits and specific aspects of this general permit.

**ATTACHMENT A**  
**Pesticide Impaired Waters**

James River (City of Richmond) **Chlordane\***, **DDE\***, **DDT\***

James River from the Boulevard Bridge to the fall line at approximately the railroad trestle above Mayos Bridge.

Harwood Mills Reservoir (York County) **Copper**.

Segment begins at northwest end of reservoir and ends at southeast end of reservoir, Rt 17 crossing. This cause encompasses the Harwood Mills Reservoir, portion of Poquoson River upstream of dam @ RM 5.7. PWS for York County.

Lee Hall Reservoir, East and West Segments (York County, Newport News) **Copper**.

This includes the entirety of Lee Hall Reservoir. Located southeast of Lee Hall area. Northeast of Fort Eustis. Lee Hall is split by I-64. Newport News PWS.

Bailey Creek (Hopewell City, Prince George County) **Aldrin**.\*

Segment begins at the headwaters of Bailey Creek and extends downstream to the fall line.

Bailey Branch (Surry County) **Mirex**.\*

Bailey Branch from the headwaters to its tidal limit.

Lovills Creek Lake (Carroll County) **DDD\***, **DDE\*** and **DDT**.\*

The Lovills Creek flood control impoundment east of Cana.

Difficult Run (Fairfax County) **Hepatachlor Epoxide**.\*

Begins at the confluence with Captain Hickory Run, approximately 0.6 rivermile upstream from Route 683, and continues downstream until the confluence with the Potomac River.

Four Mile Run (Arlington County) **Chlordane**.\*

Tidal waters of Fourmile Run; from rivermile 1.46 downstream until the confluence with the Potomac River, at the state line.

Pimmit Run (Arlington and Fairfax Counties) **Chlordane\*** and **Heptachlor Epoxide**.\*

Location begins at the confluence with Little Pimmit Run, approximately 0.1 rivermile downstream from Route 695, and continues downstream until the confluence with the Potomac River

Bluestone River (Tazewell County) **Chlordane**.\*

This segment includes the mainstem from the confluence with Big Branch downstream to West Virginia political boundary; may be found on the Bramwell quad sheet.

**\* Legacy pesticides or used in pesticides that are currently banned in the United States. You may apply other allowable pesticides in these waters.**

List derived from DEQ Integrated Water Quality Report, 2020. Appendix 1.a, 2020 Impaired Waters – 303(d) List, Category 5 – Waters needing Total Maximum Daily Load Study. Appendix 5, Fact Sheets for Impaired (Category 4 or 5) Waters in 2020.

<https://www.deq.virginia.gov/water/water-quality/assessments/integrated-report>

## ATTACHMENT B

### Virginia Department of Wildlife Resources

#### Special Status Faunal Species in Virginia

#### Threatened and Endangered Faunal Species

Common Name/ Scientific Name/ Federal <sup>5</sup> / State <sup>6</sup> / WAP <sup>7</sup> Tier (I-IV)/ WAP <sup>8</sup> Rank (a-c)
FRESHWATER FISHES
Atlantic sturgeon <i>Acipenser oxyrinchus</i> FE SE I b
Blackbanded sunfish <i>Enneacanthus chaetodon</i> SE I a
Blackside dace <i>Chrosomus (=Phoxinus) cumberlandensis</i> FT ST
Candy darter <i>Etheostoma osburni</i> FE SE I b
Carolina darter <i>Etheostoma collis</i> ST II c
Clinch Dace <i>Chrosomus sp. cf. saylora</i> SE I a
Duskytail darter <i>Etheostoma percnurum</i> FE SE I a
Emerald shiner <i>Notropis atherinoides</i> ST IV c
Golden darter <i>Etheostoma denoncourti</i> ST II b
Greenfin darter <i>Etheostoma chlorbranchium</i> ST I b
Orangefin madtom <i>Noturus gilberti</i> ST II b
Paddlefish <i>Polyodon spathula</i> ST IV c
Roanoke logperch <i>Percina rex</i> FE SE II a
Sharphead darter <i>Etheostoma acuticeps</i> SE I c
Shortnose sturgeon <i>Acipenser brevirostrum</i> FE SE I a
Sickle darter <i>Percina williamsi</i> FP ST I c
Slender chub <i>Erimystax cahni</i> FT ST I c
Spotfin chub <i>Erimonax monachus</i> FT ST I b
Steelcolor shiner <i>Cyprinella whipplei</i> ST III c
Tennessee dace <i>Chrosomus (=Phoxinus) tennesseensis</i> SE I b
Variagate darter <i>Etheostoma variatum</i> SE I a
Western sand darter <i>Ammocrypta clara</i> ST IV c
Whitemouth shiner <i>Notropis alborus</i> ST II c
Yellowfin madtom <i>Noturus flavipinnis</i> FT ST I a
AMPHIBIANS
Eastern tiger salamander <i>Ambystoma tigrinum</i> SE II a
Mabee's salamander <i>Ambystoma mabeei</i> ST II a
Shenandoah salamander <i>Plethodon shenandoah</i> FE SE I c

<sup>5</sup> FE=Federal Endangered; FT=Federal Threatened; S/A=Similarity of Appearance; FC=Federal Candidate; FP=Federal Proposed.

<sup>6</sup> SE=State Endangered; ST=State Threatened.

<sup>7</sup> WAP Tier = Virginia Wildlife Action Plan (WAP) Tiered Species, from the Species of Greatest Conservation Need list that is defined in the plan: Tiers I-IV (not a legal status, Tier levels defined in WAP).

<sup>8</sup> WAP Rank = Conservation Opportunity Rankings assigned to each Tiered Species, Ranks a-b (not a legal status, Ranks defined in WAP).

Common Name/ Scientific Name/ Federal <sup>5</sup> / State <sup>6</sup> / WAP <sup>7</sup> Tier (I-IV)/ WAP <sup>8</sup> Rank (a-c)
REPTILES
<p>Bog turtle <i>Glyptemys muhlenbergii</i> FT(S/A) SE I a</p> <p>Canebrake rattlesnake <i>Crotalus horridus</i> SE II a (Coastal Plain population of timber rattlesnake)</p> <p>Eastern chicken turtle <i>Deirochelys reticularia reticularia</i> SE I a</p> <p>Eastern glass lizard <i>Ophisaurus ventralis</i> ST II a</p> <p>Green sea turtle <i>Chelonia mydas</i> FT ST I b</p> <p>Hawksbill sea turtle <i>Eretmochelys imbricata</i> FE SE</p> <p>Kemp's ridley sea turtle <i>Lepidochelys kempii</i> FE SE I a</p> <p>Leatherback sea turtle <i>Dermochelys coriacea</i> FE SE I c</p> <p>Loggerhead sea turtle <i>Caretta caretta</i> FT ST I a</p> <p>Wood turtle <i>Glyptemys insculpta</i> ST I a</p>
BIRDS
<p>Bachman's sparrow <i>Aimophila aestivalis</i> ST I a</p> <p>Bachman's warbler (=wood) <i>Vermivora bachmanii</i> FE SE</p> <p>Bewick's wren <i>Thryomanes bewickii</i> SE</p> <p>Eastern black rail <i>Laterallus jamaicensis jamaicensis</i> FT SE I a</p> <p>Gull-billed tern <i>Sterna nilotica</i> ST I a</p> <p>Henslow's sparrow <i>Ammodramus henslowii</i> ST I a</p> <p>Kirtland's warbler <i>Setophaga kirtlandii</i> (=Dendroica kirtlandii) SE</p> <p>Loggerhead shrike <i>Lanius ludovicianus</i> ST I a</p> <p>Peregrine falcon <i>Falco peregrinus</i> ST I a</p> <p>Piping plover <i>Charadrius melodus</i> FT ST II a</p> <p>Red knot <i>Calidris canutus rufa</i> FT ST I a</p> <p>Red-cockaded woodpecker <i>Picoides borealis</i> FE SE I a</p> <p>Roseate tern <i>Sterna dougallii dougallii</i> FE SE</p> <p>Wilson's plover <i>Charadrius wilsonia</i> SE I a</p>
MAMMALS
<p>American water shrew <i>Sorex palustris</i> SE II a</p> <p>Carolina northern flying squirrel <i>Glaucomys sabrinus coloratus</i> FE SE I c</p> <p>Gray bat <i>Myotis grisescens</i> FE SE II a</p> <p>Indiana bat <i>Myotis sodalis</i> FE SE I a</p> <p>Little brown bat <i>Myotis lucifugus</i> SE I a</p> <p>Northern long-eared bat <i>Myotis septentrionalis</i> FT ST I a</p> <p>Rafinesque's eastern big-eared bat <i>Corynorhinus rafinesquii macrotis</i> SE I a</p> <p>Rock vole <i>Microtus chrotorrhinus</i> SE II a</p> <p>Snowshoe hare <i>Lepus americanus</i> SE I c</p> <p>Tri-colored bat <i>Perimyotis subflavus</i> SE I a</p> <p>Virginia big-eared bat <i>Corynorhinus</i> (=Plecotus) <i>townsendii virginianus</i> FE SE II a</p>
MOLLUSKS
<i>Freshwater Mussels</i>
<p>Appalachian monkeyface (pearlymussel) <i>Theliderma</i> (=Quadrula) <i>sparsa</i> FE SE I a</p> <p>Atlantic pigtoe <i>Fusconaia masoni</i> FT ST I a</p> <p>Birdwing pearlymussel <i>Lemiox rimosus</i> FE SE I a</p> <p>Black sandshell <i>Ligumia recta</i> ST III a</p> <p>Brook floater <i>Alasmidonta varicosa</i> SE I b</p>



<b>Common Name/ Scientific Name/ Federal<sup>5</sup> / State<sup>6</sup>/ WAP<sup>7</sup> Tier (I-IV)/ WAP<sup>8</sup> Rank (a-c)</b>	
Cracking pearlymussel <i>Hemistena lata</i> FE SE I b	
Cumberland monkeyface (pearlymussel) <i>Theliderma (=Quadrula) intermedia</i> FE SE I a	
Cumberlandian combshell <i>Epioblasma brevidens</i> FE SE I a	
Deertoe <i>Truncilla truncata</i> SE III b	
Dromedary pearlymussel <i>Dromus dromas</i> FE SE I a	
Dwarf wedgemussel <i>Alasmidonta heterodon</i> FE SE I a	
Elephantear <i>Elliptio crassidens</i> SE III a	
Fanshell <i>Cyprogenia stegaria</i> FE SE I a	
Finerayed pigtoe <i>Fusconaia cuneolus</i> FE SE I a	
Fluted kidneyshell <i>Ptychobranthus subtentus</i> FE SE II a	
Fragile papershell <i>Leptodea fragilis</i> ST IV c	
Golden riffleshell (=Tan riffleshell) <i>Epioblasma aureola (=E. florentina walkeri (=E. walkeri))</i> FE SE I a	
Green blossom (pearlymussel) <i>Epioblasma gubernaculum (=E. torulosa gubernaculum)</i> FE SE	
Green floater <i>Lasmigona subviridis</i> ST II a	
James spiny mussel <i>Parvaspina (=Pleurobema) collina</i> FE SE I a	
Littlewing pearlymussel <i>Pegias fabula</i> FE SE I c	
Longsolid <i>Fusconaia subrotunda</i> FP III a	
Ohio pigtoe <i>Pleurobema cordatum</i> SE III c	
Oyster mussel <i>Epioblasma capsaeformis</i> FE SE I a	
Pimpleback <i>Quadrula pustulosa pustulosa</i> ST IV b	
Pink mucket (pearlymussel) <i>Lampsilis abrupta</i> FE SE I a	
Pistolgrip <i>Tritogonia verrucosa</i> ST III b	
Purple lilliput <i>Toxolasma lividus</i> SE II c	
Pyramid pigtoe <i>Pleurobema rubrum</i> SE II a	
Rayed bean <i>Paetulunio (=Villosa) fabalis</i> FE SE II a	
Rough pigtoe <i>Pleurobema plenum</i> FE SE I a	
Rough rabbitsfoot <i>Quadrula cylindrica strigillata</i> FE SE I a	
Sheepnose <i>Plethobasus cyphus</i> FE SE II a	
Shiny pigtoe <i>Fusconaia cor</i> FE SE I a	
Slabside pearlymussel <i>Pleurobema dolabelloides</i> FE SE II a	
Slippershell mussel <i>Alasmidonta viridis</i> SE I b	
Snuffbox mussel <i>Epioblasma triquetra</i> FE SE I a	
Spectaclecase <i>Cumberlandia monodonta</i> FE SE I b	
Tennessee Bean (= Cumberland Bean (Pearlymussel) and Purple Bean (Pearlymussel)) <i>Venustaconcha trabalis (= Villosa trabalis and Villosa perpurpurea)</i> FE SE I a	
Tennessee heelsplitter <i>Lasmigona holstonia</i> SE II a	
Yellow lance <i>Elliptio lanceolata</i> FT ST II a	
<i>Freshwater &amp; Land Snails</i>	
Appalachian springsnail <i>Fontigens bottimeri</i> SE II c	
Brown supercoil <i>Paravitrea septadens</i> ST I c	
Rubble coil <i>Helicodiscus lirellus</i> SE I a	
Shaggy coil <i>Helicodiscus diadema</i> SE I c	
Spider elimia <i>Elimia arachnoidea</i> SE II c	
Spiny riversnail <i>Io fluvialis</i> ST III a	
Spirit supercoil <i>Paravitrea hera</i> SE I a	
Thankless ghostsnail <i>Holsingeria unthinksensis</i> SE I a	
Virginia fringed mountain snail <i>Polygyriscus virginianus</i> FE SE I a	

<b>Common Name/ Scientific Name/ Federal<sup>5</sup> / State<sup>6</sup>/ WAP<sup>7</sup> Tier (I-IV)/ WAP<sup>8</sup> Rank (a-c)</b>
Virginia springsnail <i>Fontigens morrisoni</i> SE I a
<b>FRESHWATER CRUSTACEANS</b>
Big Sandy crayfish <i>Cambarus callainus</i> (formerly <i>C. veteranus</i> ) FT ST I c Lee County Cave isopod <i>Lirceus usdagalun</i> FE SE III c Madison Cave amphipod <i>Stygobromus stegerorum</i> ST I b Madison Cave isopod <i>Antrolana lira</i> FT ST II c
<b>MILLIPEDES</b>
Ellett Valley pseudotremia <i>Pseudotremia cavernarum</i> ST I c Laurel Creek xystodesmid <i>Sigmoria whiteheadi</i> ST I c
<b>ARACHNIDS</b>
Spruce-fir moss spider <i>Microhexura montivaga</i> FE SE
<b>INSECTS<sup>9</sup></b>
American burying beetle <i>Nicrophorus americanus</i> FE I c Appalachian grizzled skipper <i>Pyrgus wyandot</i> (= <i>Pyrgus centaureae wyandot</i> ) ST I a Buffalo Mountain mealybug <i>Puto kosztarabi</i> SE I c Holsinger's cave beetle <i>Pseudanophthalmus holsingeri</i> SE I c Mitchell's satyr butterfly <i>Neonympha mitchellii</i> FE SE I a Northeastern beach tiger beetle <i>Cicindela dorsalis dorsalis</i> FT ST II a Rusty patched bumble bee <i>Bombus affinis</i> FE I a Thomas' cave beetle <i>Pseudanophthalmus thomasi</i> SE II c Virginia Piedmont water boatman <i>Sigara depressa</i> SE I c
<b>MARINE MAMMALS</b>
Blue whale <i>Balaenoptera musculus</i> FE SE Finback whale <i>Balaenoptera physalus</i> FE SE IV b Humpback whale <i>Megaptera novaeangliae</i> FE SE I b North Atlantic Right whale <i>Eubalaena glacialis</i> FE SE I b Sei whale <i>Balaenoptera borealis</i> FE SE Sperm whale <i>Physeter catodon</i> (= <i>macrocephalus</i> ) FE SE West Indian manatee <i>Trichechus manatus</i> FE SE IV b
For further information or details regarding this list or any species listed herein, please contact: Aquatic Wildlife Resources Division Virginia Department of Wildlife Resources Physical Address: 7870 Villa Park Dr, Suite 400 Mailing Address: P. O. Box 90778 Henrico, VA 23228 (804) 367-4335

Based on DWR file 03/14/2022 shw 1 See,

[Virginia Threatened and Endangered Species List](#)

<sup>9</sup> All insects listed as federal or state endangered or threatened are protected by regulations that fall under the Virginia Department of Agriculture and Consumer Services' jurisdiction.

**ATTACHMENT B, continued...**  
**Threatened and Endangered Plants and Insects**

Threatened per § 3.2-1000-1011 Code of Virginia

Panax quinquefolius L, Wild Ginseng (threatened only when occurring in the wild)

Threatened per 2VAC5-320-10 Virginia Administrative Code

1. Aeschynomene virginica, sensitive-joint vetch.
2. Amaranthus pumilus, seabeach amaranth.
3. Arabis serotina, shale barren rockcress.
4. Cicindela dorsalis dorsalis, Northeastern beach tiger beetle.
5. Clematis viticaulis, Millboro leatherflower.
6. Echinacea laevigata, smooth coneflower.
7. Houstonia purpurea var. montana, Roan Mountain bluet.
8. Juncus caesariensis, New Jersey rush.
9. Nuphar sagittifolia, narrow-leaved spatterdock.
10. Paxistima canbyi, Canby's mountain-lover.
11. Phlox buckleyi, sword-leaf phlox.
12. Platanthera leucophaea, Eastern prairie fringed orchid.
13. Pycnanthemum torreyi, Torrey's mountain-mint.
14. Pyrgus wyandot, Appalachian grizzled skipper.
15. Rhus michauxii, Michaux's sumac.
16. Rudbeckia heliopsidis, sun-facing coneflower.
17. Scirpus flaccidifolius, reclining bulrush.

Endangered per § 3.2-1000-1011 Code of Virginia

Betula uber, Virginia birch or round-leaf birch

Endangered per 2VAC5-320-10 Virginia Administrative Code

1. Boltonia montana, valley doll's-daisy.

2. *Bombus affinis*, rusty patch bumble bee.
3. *Cardamine micranthera*, small-anthered bittercress.
4. *Carex juniperorum*, juniper sedge.
5. *Clematis addisonii*, Addison's leatherflower.
6. *Corallorhiza bentleyi*, Bentley's coralroot.
7. *Fimbristylis perpusilla*, Harper's fimbriatylis.
8. *Helenium virginicum*, Virginia sneezeweed.
9. *Helonias bullata*, swamp-pink.
10. *Ilex collina*, long-stalked holly.
11. *Iliamna corei*, Peter's Mountain mallow.
12. *Isoetes virginica*, Virginia quillwort.
13. *Isotria medeoloides*, small whorled pogonia.
14. *Ludwigia ravenii*, Raven's seedbox.
15. *Neonympha mitchellii*, Mitchell's satyr butterfly.
16. *Phemeranthus piedmontanus*, Piedmont fameflower.
17. *Pseudanophthalmus holsingeri*, Holsinger's cave beetle.
18. *Pseudanophthalmus parvicollis*, Hupp's Hill cave beetle.
19. *Pseudanophthalmus thomasi*, Thomas' cave beetle.
20. *Ptilimnium nodosum*, harperella.
21. *Puto kosztarabi*, Buffalo Mountain mealybug.
22. *Scirpus ancistrochaetus*, Northeastern bulrush.
23. *Sigara depressa*, Virginia Piedmont water boatman.
24. *Spiraea virginiana*, Virginia spiraea.
25. *Trifolium calcaricum*, running glade clover.

#### Federally Endangered

1. *Nicrophorus americanus*, American burying beetle.
2. *Bombus affinis*, rusty patched bumble bee.
3. *Neonympha mitchellii mitchellii*, Mitchell's satyr Butterfly.
4. *Habroscelimorpha dorsalis dorsalis*, Northeastern beach tiger beetle.
5. *Ptilimnium nodosum*, Harperella.
6. *Rhus michauxii*, Michaux's sumac.
7. *Scirpus ancistrochaetus*, Northeastern bulrush.

8. *Iliamna corei*, Peter's Mountain mallow.
9. *Hedyotis purpurea* var. *montana*, Roan Mountain bluet.
10. *Boechera serotina*, Shale barren rock cress.
11. *Cardamine micranthera*, Small-anthered bittercress.
12. *Echinacea laevigata*, Smooth coneflower.
13. *Geum radiatum*, Spreading avens.
14. *Platanthera leucophaea*, Eastern prairie fringed orchid.

Source for federally endangered: <https://ecos.fws.gov/ecp/report/species> (Search for plant, insect, in Virginia).

**ATTACHMENT C**

**CONTACT INFORMATION FOR THREATENED AND ENDANGERED SPECIES  
ADVERSE INCIDENT REPORTING**

**FOR THREATENED OR ENDANGERED ANADROMOUS OR MARINE SPECIES CONTACTS:**

Department of Wildlife Resources at (804) 367-6913

AND

National Marine Fisheries Service at NOAA OLE national hotline at 1-800-853-1964.

**FOR THREATENED OR ENDANGERED ANIMAL OR INVERTEBRATE SPECIES CONTACTS:**

Department of Wildlife Resources [collectionpermits@dwr.virginia.gov](mailto:collectionpermits@dwr.virginia.gov) and/or (804) 3676913 (email notification is preferred for record keeping purposes)

AND

U.S. Fish and Wildlife Service Virginia Field Office at 804-693-6694, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061

**FOR THREATENED OR ENDANGERED PLANTS OR INSECTS CONTACTS:**

Virginia Department of Agriculture and Consumer Services

Mr. Keith Tignor

804.786.3515

[E-mail: Keith.Tignor@vdacs.virginia.gov](mailto:Keith.Tignor@vdacs.virginia.gov)

U.S. Fish and Wildlife Service Virginia Field Office at 804-693-6694, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061

**ATTACHMENT D**  
**INTEGRATED PEST MANAGEMENT REFERENCES**

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Tew, J.E., Alabama Cooperative Extension. Protecting Honey Bees from Pesticides. ANR-1088. Available at: <http://www.aces.edu/pubs/docs/A/ANR-1088/ANR-1088.pdf>

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#### FOREST CANOPY PEST CONTROL

Emily Grafton and Ralph Webb. Homeowner's guide to gypsy moth management. West Virginia University Extension Service. <http://www.nj.gov/agriculture/divisions/pi/pdf/GMguide.pdf>

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