9 VAC 25-31-10. Definitions.

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

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

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

2. Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

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

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

"Approved program or approved State" means a state or interstate program which has been approved or authorized by EPA under 40 CFR Part 123 ~~(1995)~~(1999).

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

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

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

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

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

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

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

"Class I sludge management facility" means any POTW identified under Part VII of this regulation as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Regional Administrator, in conjunction with the Director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

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

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

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

waters through a manmade ditch, flushing system or other similar man-made device; or pollutants are discharged directly into surface waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Department" means the Virginia Department of Environmental Quality.

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

"Direct discharge" means the discharge of a pollutant.

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

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

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

"Discharge of a pollutant" means:

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

This definition includes additions of pollutants into surface waters from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

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

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

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

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

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

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

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

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

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

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 ~~(1995)~~(1999) pursuant to Section 311 of CWA.

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

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

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

extinguished, including rights-of-way running through the same.

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

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

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

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

1. Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

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

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

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

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

2. Located in the counties listed in 40 CFR Part 122 Appendix H ~~(1995)~~(1999), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

3. Owned or operated by a municipality other than those described in paragraph 1 or 2 of this definition and that are designated by the Board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph 1 or 2 of this definition. In making this determination the Board may consider the following factors:

a. Physical interconnections between the municipal separate storm sewers;

b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph 1 of this definition;

c. The quantity and nature of pollutants discharged to surface waters;

d. The nature of the receiving waters; and

e. Other relevant factors; or

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

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

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

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

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

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

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the latest Decennial Census by the Bureau of Census (40 CFR Part 122 Appendix G (1999)); or

2. Located in the counties listed in 40 CFR Part 122 Appendix I ~~(1995)~~(1999), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

3. Owned or operated by a municipality other than those described in paragraph 1 or 2 of this definition and that are designated by the Board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph 1 or 2 of this definition. In making this determination the Board may consider the following factors:

a. Physical interconnections between the municipal separate storm sewers;

b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph 1 of this section;

c. The quantity and nature of pollutants discharged to surface waters;

d. The nature of the receiving waters; or

e. Other relevant factors; or

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

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

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

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

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

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

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

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

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

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

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

1. After promulgation of standards of performance under Section 306 of CWA which are applicable to such source, or

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

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

1. a. The building, structure, facility or installation is constructed at a site at which no other source is located; or

b. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. The production of wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

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

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

a. Begun, or caused to begin as part of a continuous onsite construction program:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Primary industry category" means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in 40 CFR Part 122 Appendix A ~~(1995)~~(1999).

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

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

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

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

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

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

The term also means the municipality as defined in Section 502(4) of the CWA, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. All industrial users subject to Categorical Pretreatment Standards under 9 VAC 25-31-780 and incorporated by reference in 9 VAC 25-31-30; and

2. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority, as defined in 9 VAC 25-31-840 A, on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

3. Upon a finding that an industrial user meeting the criteria in paragraph 2 of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with Part VII (9 VAC 25-31-730 et seq.) of this regulation, determine that such industrial user is not a significant industrial user.

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

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

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

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

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

prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

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

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

"State" means the Commonwealth of Virginia.

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

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

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

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program. For the categories of industries identified in ~~paragraphs 1 through 10 of~~ this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and ~~finished~~ final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. ~~For the categories of industries identified in paragraph 11 of this definition, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water.~~ For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, ~~finished~~ final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in paragraphs 1 - 11 of this definition) include those facilities designated under the provisions of 9 VAC 25-31-120 paragraph A 1 e. The following categories of facilities are considered to be engaging in industrial activity for purposes of this subsection:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (except facilities with toxic pollutant effluent standards which are exempted under category 11;

2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 31l, 32 (except 323), 33, 344l, 373;

3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR Part 434.11(1) ~~(1995)~~(1999) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

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

8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221 - 25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs 1 - 7 or 9 - 11 of this definition are associated with industrial activity;

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

10. Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area. ~~which are not part of a larger common plan of development or sale~~ Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

11. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221 – 25. ~~, (and which are not otherwise included within categories 2 - 10;~~

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

1. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Board may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where storm water controls are not needed based on a ''total maximum daily load'' (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Board that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

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

"Submission" means:

1. A request by a POTW for approval of a Pretreatment Program to the Regional Administrator or the Director;

2. A request by POTW to the Regional Administrator or the Director for authority to revise the discharge limits in categorical Pretreatment Standards to reflect POTW pollutant removals; or

3. A request to the EPA by the Director for approval of the Virginia pretreatment program.

"Surface Waters" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. Which are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as surface waters under this definition;

5. Tributaries of waters identified in paragraphs 1 through 4 of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1 through 6 of this definition.

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

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 ~~(1995)~~(1999).

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

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

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

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

"TWTDS" means treatment works treating domestic sewage.

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

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

"Variance" means any mechanism or provision under Section 301 or 316 of CWA or under 40 CFR Part 125 ~~(1995)~~(1999), or in the applicable effluent limitations guidelines which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on Sections 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

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

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

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

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

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

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

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

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

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

Aluminum Forming 40 CFR Part 467 ~~(1995)~~(1999)

Asbestos Manufacturing 40 CFR Part 427 ~~(1995)~~(1999)

Battery Manufacturing 40 CFR Part 461 ~~(1995)~~(1999)

Builders' Paper and Board Mills 40 CFR Part 431 ~~(1995)~~(1999)

Canned and Preserved Fruits and Vegetables 40 CFR Part 407 ~~(1995)~~(1999)

Canned and Preserved Seafood 40 CFR Part 408 ~~(1995)~~(1999)

Carbon Black Manufacturing 40 CFR Part 458 ~~(1995)~~(1999)

Cement Manufacturing 40 CFR Part 411 ~~(1995)~~(1999)

Coal Mining 40 CFR Part 434 (~~(1995)~~(1999)

Coil Coating 40 CFR Part 465 ~~(1995)~~(1999)

Copper Forming 40 CFR Part 468 ~~(1995)~~(1999)

Dairy Products 40 CFR Part 405 ~~(1995)~~(1999)

Electrical and Electronic Components 40 CFR Part 469 ~~(1995)~~(1999)

Electroplating 40 CFR Part 413 ~~(1995)~~(1999)

Explosives Manufacturing 40 CFR Part 457 ~~(1995)~~(1999)

Feedlots 40 CFR Part 412 ~~(1995)~~(1999)

Ferroalloy Manufacturing 40 CFR Part 424 ~~(1995)~~(1999)

Fertilizer Manufacturing 40 CFR Part 418 ~~(1995)~~(1999)

Glass Manufacturing 40 CFR Part 426 ~~(1995)~~(1999)

Grain Mills 40 CFR Part 406 ~~(1995)~~(1999)

Gum and Wood Chemicals Manufacturing 40 CFR Part 454 ~~(1995)~~(1999)

Hospitals 40 CFR Part 460 ~~(1995)~~(1999)

Ink Formulating 40 CFR Part 447 ~~(1995)~~(1999)

Inorganic Chemicals Manufacturing 40 CFR Part 415 ~~(1995)~~(1999)

Iron and Steel Manufacturing 40 CFR Part 420 ~~(1995)~~(1999)

Landfills 40 CFR Part 445 (2000)

Leather Tanning and Finishing 40 CFR Part 425 ~~(1995)~~(1999)

Meat Products 40 CFR Part 432~~(1995)~~(1999)

Metal Finishing 40 CFR Part 433 ~~(1995)~~(1999)

Metal Molding and Casting 40 CFR Part 464 ~~(1995)~~(1999)

Mineral Mining and Processing 40 CFR Part 436~~(1995)~~(1999)

Nonferrous Metals 40 CFR Part 421 ~~(1995)~~(1999)

Nonferrous Metal Forming 40 CFR Part 471~~(1995)~~(1999)

Oil and Gas Extraction 40 CFR Part 435 ~~(1995)~~(1999)

Ore Mining and Dressing 40 CFR Part 440 ~~(1995)~~(1999)

Organic Chemicals, Plastics and Synthetic Fibers 40 CFR Part 414 ~~(1995)~~(1999)

Paint Formulating 40 CFR Part 446 ~~(1995)~~(1999)

Paving and Roofing Materials 40 CFR Part 443 ~~(1995)~~(1999)

Pesticide Chemicals 40 CFR Part 455~~(1995)~~(1999)

Petroleum Refining 40 CFR Part 419 ~~(1995)~~(1999)

Pharmaceutical Manufacturing 40 CFR Part 439 ~~(1995)~~(1999)

Phosphate Manufacturing 40 CFR Part 422~~(1995)~~(1999)

Photographic Processing 40 CFR Part 459 ~~(1995)~~(1999)

Plastics Molding and Forming 40 CFR Part 463~~(1995)~~(1999)

Porcelain Enameling 40 CFR Part 466~~(1995)~~(1999)

Pulp, Paper and Paperboard 40 CFR Part 430 ~~(1995)~~(1999)

Rubber Processing 40 CFR Part 428~~(1995)~~(1999)

Secondary Treatment 40 CFR Part 133~~(1995)~~(1999)

Soaps and Detergents 40 CFR Part 417 ~~(1995)~~(1999)

Steam Electric Power Generation 40 CFR Part 423 ~~(1995)~~(1999)

Sugar Processing 40 CFR Part 409 ~~(1995)~~(1999)

Textile Mills 40 CFR Part 410 ~~(1995)~~(1999)

Timber Products 40 CFR Part 429 ~~(1995)~~(1999)

Toxic Pollutant Effluent Standards 40 CFR Part 129 ~~(1995)~~(1999)

Waste Combustors 40 CFR Part 444 (2000)

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

9 VAC 25-31-40. Exclusions.

The following discharges do not require VPDES permits:

A. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or development.

B. Discharges of dredged or fill material into surface waters which are regulated under Section 404 of CWA.

C. The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.

D. Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR Part 300 ~~(1995)~~(1999) (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR Part 153.10(e) ~~(1995)~~(1999) (Pollution by Oil and Hazardous Substances).

E. Any introduction of pollutants from non point-source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.

F. Return flows from irrigated agriculture.

G. Discharges into a privately owned treatment works, except as the Board may otherwise require.

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

A. Duty to apply.

Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 9 VAC 25-31-420 through 9 VAC 25-31-720 and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this regulation, or a user of a privately owned treatment works unless the Board requires otherwise, shall submit a complete application ~~(which shall include a BMP program for ancillary industrial activities under Section 304(e) of the CWA, if necessary)~~ to the Department in accordance with this section.

B. Who applies.

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

C. Time to apply.

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

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

a. ~~Any existing treatment works treating domestic sewage required to have, or requesting site-specific pollutant limits for sludge, must submit the permit application information required by paragraph J 4 of this section. Treatment works treating domestic sewage may only apply for site-specific pollutant limits for good cause and such requests must be made within 180 days of becoming aware that good cause exists.~~A TWTDS with a currently effective VPDES permit must submit a permit application at the time of its next VPDES permit renewal application. Such information must be submitted in accordance with paragraph D of this section.

b. ~~Any treatment works treating domestic sewage with a currently effective VPDES permit, not addressed under paragraph C 2 a of this section, must submit the application information required by paragraph J 4 of this section with its next VPDES permit renewal application submitted in accordance with paragraph D of this section.~~Any other TWTDS not addressed under paragraph C 2 a of this section must submit the information listed in paragraphs C 2 b (1) through (5) of this section to the Department within 1 year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using a form provided by the Department. The Board will determine when such TWTDS must submit a full permit application.

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

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

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

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

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

~~c. Any other existing treatment works treating domestic sewage not addressed under paragraphs C 2 a or b of this section must submit the information listed in paragraphs C 2 c (1)-(5) of this section to the Department not later than February 19, 1994. The Board shall determine when such treatment works treating domestic sewage must apply for a permit.~~

~~(1) Name, mailing address and location of the treatment works treating domestic sewage;~~

~~(2) The operator's name, address, telephone number, ownership status, and status as federal, state, private, public or other entity;~~

~~(3) A description of the sewage sludge use or disposal practices (including, where applicable, the location of any sites where sewage sludge is transferred for treatment, use, or disposal, as well as the name of the applicator or other contractor who applies the sewage sludge to land, if different from the treatment works treating domestic sewage, and the name of any distributors if the sewage sludge is sold or given away in a bag or similar enclosure for application to the land, if different from the treatment works treating domestic sewage);~~

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

~~(5) The most recent data the treatment works treating domestic sewage may have on the quality of the sewage sludge.~~

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

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

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

D. Duty to reapply.

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

E. Completeness.

1. The Board shall not issue a permit before receiving a complete application for a permit except for VPDES general permits. ~~The Board shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.~~ An application for a permit is complete when the Board receives an application form and any supplemental information which are completed to its satisfaction. ~~Permit applications must comply with the signature and certification requirements of 9 VAC 25-31-110.~~ The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

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

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

4. A permit application shall not be considered complete if the Board has waived application requirements under paragraphs J or P of this section and EPA has disapproved the waiver application. If a waiver request has been submitted to EPA more than 210 days prior to permit expiration and EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

F. Information requirements.

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

1. The activities conducted by the applicant which require it to obtain a VPDES permit.

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

3. Up to four SIC codes which best reflect the principal products or services provided by the facility.

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

5. Whether the facility is located on Indian lands.

6. A listing of all permits or construction approvals received or applied for under any of the following programs:

a. Hazardous Waste Management program under RCRA;

b. UIC program under SDWA;

c. VPDES program under CWA and the Law;

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

e. Nonattainment program under the Clean Air Act;

f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

h. Dredge or fill permits under Section 404 of CWA; and

i. Other relevant environmental permits, including state permits.

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

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

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

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

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

2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit,

labeled to correspond to the more detailed identification under paragraph G 3 of this section. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

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

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

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

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

7. Information on the discharge of pollutants specified in this paragraph (except information on storm water discharges which is to be provided as specified in 9 VAC 25-31-120.) When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 ~~(1995)~~(1999). When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Board may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs G 7 c and d of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the Board may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period

of fifteen minutes (applicants submitting permit applications for storm water discharges under 9 VAC 25-31-120 D may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Board). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9 VAC 25-31-120 C 1. For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9 VAC 25-31-120 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Board may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 ~~(1995)~~(1999), and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

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

Biochemical Oxygen Demand (BOD 5)

Chemical Oxygen Demand

Total Organic Carbon

Total Suspended Solids

Ammonia (as N)

Temperature (both winter and summer)

pH

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

b. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A ~~(1995)~~(1999)) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D ~~(1995)~~(1999) for the applicant's industrial category or categories unless the applicant qualifies as a small business under paragraph G 8 of this section. Table II of 40 CFR Part 122 Appendix D ~~(1995)~~(1999) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes; and

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D ~~(1995)~~(1999) (the toxic metals, cyanide, and total phenols).

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

(2) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D ~~(1995)~~(1999) (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph G 7 b of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under paragraph G 8 of this section is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D ~~(1995)~~(1999) (the organic toxic pollutants).

d. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D ~~(1995)~~(1999) (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

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

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

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

8. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in paragraph G 7 b (1) or G 7 c (1) of this section to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D ~~(1995)~~(1999) (the organic toxic pollutants):

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

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

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

10. [Reserved]

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

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

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

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

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

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

2. Date of expected commencement of discharge;

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

4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the Board. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136 ~~(1995)~~(1999). Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(1) Biochemical Oxygen Demand (BOD 5).

(2) Total Suspended Solids (TSS).

(3) Fecal Coliform (if believed present or if sanitary waste is or will be discharged).

(4) Total Residual Chlorine (if chlorine is used).

(5) Oil and Grease.

(6) Chemical Oxygen Demand (COD) (if non-contact cooling water is or will be discharged).

(7) Total Organic Carbon (TOC) (if non-contact cooling water is or will be discharged).

(8) Ammonia (as N).

(9) Discharge Flow.

(10) pH.

(11) Temperature (Winter and Summer).

b. The Board may waive the testing and reporting requirements for any of the pollutants or flow listed in paragraph H 4 a of this section if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

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

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

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

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

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

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

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

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

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

1. For concentrated animal feeding operations:

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

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

c. The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor; and

2. For concentrated aquatic animal production facilities:

a. The maximum daily and average monthly flow from each outfall;

b. The number of ponds, raceways, and similar structures;

c. The name of the receiving water and the source of intake water;

d. For each species of aquatic animals, the total yearly and maximum harvestable weight;

e. The calendar month of maximum feeding and the total mass of food fed during that month; and

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

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

1. The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the Department:

a. All discharging POTWs with design influent flows equal to or greater than one million gallons per day; and

b. All discharging POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program.

2. In addition to the POTWs listed in paragraph J 1 of this section, the Board may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

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

b. The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);

c. Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;

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

e. Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW), which the Board determines could cause or contribute to adverse water quality impacts.

3. For POTWs required under paragraph J 1 or J 2 of this section to conduct toxicity testing, POTWs shall use methods approved by the Board or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Such testing must have been conducted since the last VPDES permit reissuance or permit modification, whichever occurred later.

4. In addition to any other applicable requirements in this section, all POTWs and other treatment works treating domestic sewage, including sludge-only facilities, must submit with their applications, within the timeframes established in 9 VAC 25-31-100 C 2, the following information:

a. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the treatment works treating domestic sewage, depicting the location of the sludge management facilities (including disposal sites), the location of all water bodies, and the location of wells used for drinking water listed in the public records or otherwise known to the applicant within 1/4 mile of the property boundaries;

b. Any sludge monitoring data the applicant may have, including available ground water monitoring data, with a description of the well locations and approximate depth to ground water, for landfills or land application sites;

c. A description of the applicant's sludge use and disposal practices (including, where applicable, the location of any sites where the applicant transfers sludge for treatment and/or disposal, as well as the name of the applicator or other contractor who applies the sludge to land if different from the applicant, and the name of any distributors when the sludge will be disposed of through distribution and marketing, if different from the applicant);

d. For each land application site the applicant will use during the life of the permit, the applicant will supply information necessary to determine if the site is appropriate for land application and a description of how the site is (or will be) managed. Applicants intending to apply sludge to land application sites not identified at the time of application must submit a land application plan which at a minimum:

(1) Describes the geographical area covered by the plan;

(2) Identifies site selection criteria;

(3) Describes how sites will be managed;

~~(4) Provides for advance notice to the Department of specific land application sites and reasonable time for the Board to object prior to the sludge application; and~~

~~(5) Provides for advance public notice as required by state and local law, but in all cases requires notice to landowners and occupants adjacent to or abutting the proposed land application site;~~

~~e. Annual sludge production volume;~~

~~f. Any information required to determine the appropriate standards for permitting under Part VI of this regulation; and~~

~~g. Any other information the Board may request and reasonably require to assess the sludge use and disposal practices, to determine whether to issue a permit, or to ascertain appropriate permit requirements.~~

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

1. All applicants must provide the following information:

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

b. Name, mailing address, and telephone number of the applicant, and indication as to whether the applicant is the facility's owner, operator, or both;

c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

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

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

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

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

(5) Nonattainment program under the Clean Air Act;

(6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

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

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

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

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

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

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

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

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

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g, treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, and VPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in paragraphs J 1 h (1) through (4) of this section (e.g., underground percolation, underground injection):

(a) A description of the disposal method, including the location and size of each disposal site, if applicable;

(b) The annual average daily volume disposed of by this method, in gallons per day; and

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

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

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

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

(1) Treatment plant area and unit processes;

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is dis charged from the treatment plant. Include outfalls from bypass piping, if applicable;

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

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

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

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

c. Process flow diagram or schematic.

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

(2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

(1) The outfall number of each outfall affected;

(2) A narrative description of each required improvement;

(3) Scheduled or actual dates of completion for the following:

(a) Commencement of construction;

(b) Completion of construction;

(c) Commencement of discharge; and

(d) Attainment of operational level;

(4) A description of permits and clearances concerning other Federal and/or State requirements;

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

a. The following information about each outfall:

(1) Outfall number;

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

(3) Latitude and longitude, to the nearest second;

(4) Distance from shore and depth below surface;

(5) Average daily flow rate, in million gallons per day;

(6) The following information for each outfall with a seasonal or periodic discharge:

(a) Number of times per year the discharge occurs;

(b) Duration of each discharge;

(c) Flow of each discharge; and

(d) Months in which discharge occurs; and

(7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used;

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

(1) Name of receiving water;

(2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;

(3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and

(4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable);

c. The following information describing the treatment provided for discharges from each outfall to surface waters:

(1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(a) Design biochemical oxygen demand (BOD5 or CBOD5) removal (percent);

(b) Design suspended solids (SS) removal (percent); and, where applicable,

(c) Design phosphorus (P) removal (percent);

(d) Design nitrogen (N) removal (percent); and

(e) Any other removals that an advanced treatment system is designed to achieve.

(2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination);

4. Effluent monitoring for specific parameters.

a. As provided in paragraphs J 4 b through j of this section, all applicants must submit to the Department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The Board may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The Board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone;

b. All applicants must sample and analyze for the following pollutants:

(1) Biochemical oxygen demand (BOD–5 or CBOD–5);

(2) Fecal coliform;

(3) Design Flow Rate;

(4) pH;

(5) Temperature; and

(6) Total suspended solids

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

(1) Ammonia (as N)

(2) Chlorine (total residual, TRC)

(3) Dissolved oxygen

(4) Nitrate/Nitrite

(5) Kjeldahl nitrogen

(6) Oil and grease

(7) Phosphorus

(8) Total dissolved solids

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

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

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

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

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

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

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

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

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

(3) The analytical method used; and

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

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

5. Effluent monitoring for whole effluent toxicity.

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

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

(1) All POTWs with design flow rates greater than or equal to one million gallons per day;

(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(3) Other POTWs, as required by the Board, based on consideration of the following factors:

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

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

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

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

(e) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the Board determines could cause or contribute to adverse water quality impacts.

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

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

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

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

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

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

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

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

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

j. Each POTW required to perform whole effluent toxicity testing pursuant to paragraph J 5 b of this section must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past four and one-half years revealed toxicity.

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

a. Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and

b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined at 9 VAC 25-31-10, that discharges to the POTW:

(1) Name and mailing address;

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

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

(4) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and non-process flow;

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

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

(7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past four and one-half years.

c. The information required in paragraphs J 6 a and b of this section may be waived by the Board for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in paragraphs J 6 and b of this section.

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

(2) A pretreatment program;

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

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

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

(2) The hazardous waste number and amount received annually of each hazardous waste;

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

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

(2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261 (1999); if known; and

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

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

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

a. The following information regarding the combined sewer system:

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

(a) All CSO discharge points;

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

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

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

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

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

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

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

(e) The locations of pump stations;

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

(1) The following information on each outfall:

(a) Outfall number;

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

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

(d) Distance from shore and depth below surface;

(e) Whether the applicant monitored any of the following in the past year for this CSO: (i) Rainfall; (ii) CSO flow volume; (iii) CSO pollutant concentrations; (iv) Receiving water quality; (v) CSO frequency; and

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

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

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

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

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

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

(3) The following information about receiving waters:

(a) Name of receiving water;

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

(c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8- digit) code (if known); and

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

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

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

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

K. Application requirements for new sources and new discharges.

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

1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;

2. The expected date of commencement of discharge;

3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

b. A line drawing of the water flow through the facility with a water balance as described in paragraph G 2;

c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for stormwater runoff, spillage, or leaks); and

4. If a new source performance standard promulgated under Section 306 of CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

5. The requirements in paragraphs H 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9 VAC 25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The Board may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

(1) Biochemical Oxygen Demand (BOD).

(2) Chemical Oxygen Demand (COD).

(3) Total Organic Carbon (TOC).

(4) Total Suspended Solids (TSS).

(5) Flow.

(6) Ammonia (as N).

(7) Temperature (winter and summer).

(8) pH.

b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D ~~(1995)~~(1999) (certain conventional and nonconventional pollutants).

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

(1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D ~~(1995)~~(1999) (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);

(2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D ~~(1995)~~(1999) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

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

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS ∀93 - 76 - 5);

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS ∀93 - 72 - 1);

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS ∀136 - 25 - 4);

(4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS ∀299 - 84 - 3);

(5) 2,4,5-trichlorophenol (TCP) (CAS ∀95 - 95 - 4); or

(6) Hexachlorophene (HCP) (CAS ∀70 - 30 - 4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D ~~(1995)~~(1999) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than two years after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in paragraph G of this section. However, the applicant need not complete those portions of

paragraph G requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;

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

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

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

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

L. Variance requests by non-POTWs.

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

1. Fundamentally different factors.

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

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

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

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

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

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

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

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

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

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 ~~(1995)~~(1999) have been

met. Notwithstanding this provision, the complete application for a request under Section 301(g) shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

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

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

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

M. Variance requests by POTWs.

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

1. A request for a modification under CWA Section 301(h) of requirements of CWA Section 301(b)(1)(B) for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G ~~(1995)~~(1999).

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

N. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in paragraphs L and M of this section, the Board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the Board may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 ~~(1995)~~(1999) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

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

O. Recordkeeping.

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

P. Sewage Sludge Management.

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

1. All applicants must submit the following information:

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

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

c. The design flow rate (in million gallons per day);

d. The total population served;

e. The TWTDS's status as Federal, State, private, public, or other entity;

f. The name, mailing address, and telephone number of the applicant; and

g. Indication whether the applicant is the owner, operator, or both;

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

a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);

b. UIC program under the Safe Drinking Water Act (SDWA);

c. NPDES program under the Clean Water Act (CWA);

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

e. Nonattainment program under the Clean Air Act;

f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

g. Dredge or fill permits under section 404 of CWA;

h. Other relevant environmental permits, including State or local permits;

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

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

a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and

b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant;

5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating

sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction;

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

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

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

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

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

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

(2) The analytical method used; and

(3) The method detection level.

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

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

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

(1) The name, mailing address, and location of the other facility;

(2) The total dry metric tons per 365-day period received from the other facility; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;

(4) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under 9 VAC 25-31-500;

(7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(8) Whether either of the vector attraction reduction options of 9 VAC 25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

(9) Other information that describes how the site will be managed, as specified by the Board.

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

(1) Whether the applicant has contacted the permitting authority in the State where the bulk sewage sludge subject to 9 VAC 25-31-540 B 2 will be applied, to ascertain whether bulk sewage sludge subject to 9 VAC 25-31-540 B 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to the site since July 20, 1993, if, based on the inquiry in paragraph 9 VAC 25-31-100 P 8 d (1), bulk sewage sludge subject to cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 has been applied to the site since July 20, 1993;

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

(1) Describes the geographical area covered by the plan;

(2) Identifies the site selection criteria;

(3) Describes how the site(s) will be managed;

(4) Provides for advance notice to the Board of specific land application sites and reasonable time for the Board to object prior to land application of the sewage sludge; and

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

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

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

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

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

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

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

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

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

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any Federal, State, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, and mailing address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9 VAC 25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any ground-water monitoring occurring at the active sewage sludge unit:

(a) A description of any ground-water monitoring occurring at the active sewage sludge unit;

(b) Any available ground-water monitoring data, with a description of the well locations and approximate depth to ground water;

(c) A copy of any ground-water monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified ground-water scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request;

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

a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period;

b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator;

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

a. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

b. The total dry metric tons per 365- day period sent from this facility to the MSWLF;

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

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

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

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

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

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

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

a. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410 ~~(1995)~~(1999)), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

b. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440 ~~(1995)~~(1999)), and testing and reporting for all four fractions in all other subcategories of this industrial category.

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

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

a. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454 ~~(1995)~~(1999)), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

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

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

d. Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430 ~~(1995)~~(1999)); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

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

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

A. Permit requirements.

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

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

b. A discharge associated with industrial activity;

c. A discharge from a large municipal separate storm sewer system;

d. A discharge from a medium municipal separate storm sewer system; or

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

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

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

(2) The size of the discharge;

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

(4) Other relevant factors.

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

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

b. The Board may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

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

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

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

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

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

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

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

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

e. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

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

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

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

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

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

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

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

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

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

9. a. On and after October 1, 1994, for discharges composed entirely of storm water, that are not ~~otherwise already~~ required by paragraph A.1 of this section to obtain a permit, ~~shall be required to apply for and obtain a permit according to the application requirements in paragraph F of this section~~.operators shall be required to obtain a VPDES permit only if:

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

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

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

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

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

c. Operators of storm water discharges designated pursuant to paragraphs A 9 a (3) and A 9 a (4) of this section shall apply to the Board for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Board. ~~The Board may not require a permit for discharges of storm water as provided in paragraph A.2 of this section or for agricultural storm water which is exempted from the definition of a point source.~~

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

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

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

(1) A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR Part 262.34 ~~(1995)~~(1999)); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The name of the receiving water.

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

(1) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR Part 117.21 ~~(1995)~~(1999) or 40 CFR Part 302.6 ~~(1995)~~(1999) at anytime since November 16, 1987; or

(2) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR Part 110.6 ~~(1995)~~(1999) at any time since November 16, 1987; or

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

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

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

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

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

1. Part 1 of the application shall consist of:

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

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

c. Source identification.

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

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

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

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

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

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

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

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

d. Discharge characterization.

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

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

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

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

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

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

(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under Section 314(a) of the CWA (include the following: A description of those publicly owned lakes for which uses are

known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

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

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

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

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

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

(4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136 ~~(1995)~~(1999), the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(a) A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

(b) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

(d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(e) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

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

(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in paragraphs C 1 d (4) (a) through (f) of this section, because a sufficiently detailed map of the separate storm sewer

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

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

e. Management programs.

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

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

f. Fiscal resources.

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

2. Part 2 of the application shall consist of:

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

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

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

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

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

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

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

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

c. When quantitative data for a pollutant are required under paragraph C 2 c (1) (c) of this paragraph, the applicant must collect a sample of effluent in accordance with 9 VAC 25-31-100 G 7 and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 ~~(1995)~~(1999). When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

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

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

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

(c) For samples collected and described under paragraphs C 2 c (1) (a) and (1) (b) of this section, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of 40 CFR Part 122 Appendix D ~~(1995)~~(1999), and for the following pollutants:

Total suspended solids (TSS)
Total dissolved solids (TDS)
COD
BOD 5
Oil and grease
Fecal coliform
Fecal streptococcus
pH
Total Kjeldahl nitrogen
Nitrate plus nitrite
Dissolved phosphorus
Total ammonia plus organic nitrogen
Total phosphorus

(d) Additional limited quantitative data required by the Board for determining permit conditions (the Board may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the

location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the

municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

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

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

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

(a) A description of procedures for site planning which incorporate consideration of potential water quality impacts;

(b) A description of requirements for nonstructural and structural best management practices;

(c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(d) A description of appropriate educational and training measures for construction site operators;

e. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water;

f. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs C 2 c and d of this section. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds;

g. Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and

h. Where requirements under paragraph C 1 d (5), C 2 b, C 2 c (2), and C 2 d of this section are not practicable or are not applicable, the Board may exclude any operator of a discharge from a municipal separate storm sewer which is designated under paragraph A 1 e of this section, or which is located in the counties listed in 40 CFR Part 122 Appendix H or Appendix I ~~(1995)~~(1999) (except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties) from such requirements. The Board shall not exclude the operator of a discharge from a municipal separate storm sewer identified in 40 CFR Part 122 Appendix F, G, H or I ~~(1995)~~(1999) from any of the permit application requirements under this paragraph except where authorized under this section.

D. Application deadlines ~~under 9 VAC 25-31-120 A 1~~

Any operator of a point source required to obtain a permit under ~~paragraph A 1 of~~ this section that does not have an effective VPDES permit ~~covering~~ authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

1. Individual applications.

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

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

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

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

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

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

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

a. Part 1 of the application shall be submitted to the Department by May 18, 1992;

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

c. Part 2 of the application shall be submitted to the Department by May 17, 1993;

4. A permit application shall be submitted to the Department within ~~60~~ 180 days of notice, unless permission for a later date is granted by the Board, for:

a. A storm water discharge which either the Board or the Regional Administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters; or

b. A storm water discharge subject to paragraph B 1 e of this section;

5. Facilities with existing VPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. Facilities with permits for storm water discharges associated with industrial activity which expire on or after May 18, 1992 shall submit a new application in accordance with the requirements of 9 VAC 25-31-100 and 9 VAC 25-31-120 C (Form 1, Form 2F, and other applicable forms) 180 days before the expiration of such permits.

6. For any storm water discharge associated with small construction activity , see 9 VAC 25-31-100 C 1. Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

7. For any discharge from a regulated small MS4, the permit application made under 9 VAC 25-31-121 C must be submitted to the Department by:

a. March 10, 2003 if designated under 9 VAC 25-31-121 B 1 unless your MS4 serves a jurisdiction with a population under 10,000 and the Board has established a phasing schedule under 40 CFR Part 123.35(d)(3) (1999); or

b. Within 180 days of notice, unless the Board grants a later date.

E. Petitions.

1. Any operator of a municipal separate storm sewer system may petition the Board to require a separate VPDES permit for any discharge into the municipal separate storm sewer system.

2. Any person may petition the Board to require a VPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

3. The owner or operator of a municipal separate storm sewer system may petition the Board to reduce the Census estimates of the population served by such separate system to account for storm water discharged to combined sewers as defined by 40 CFR Part 35.2005(b)(11) ~~(1995)~~(1999) that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the VPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

4. Any person may petition the Board for the designation of a large, ~~or~~ medium or small municipal separate storm sewer system as defined by this regulation.

5. The Board shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4, in which case the Board shall make a final determination on the petition within 180 days after its receipt..

~~F. Application requirements for discharges under 9 VAC 25-31-120 A 9~~

~~Any operator of a point source required to obtain a permit under paragraph A.9 of this section shall submit an application in accordance with the following requirements.~~

~~1. The operator shall submit an application in accordance with the following deadlines:~~

~~a. A discharge which the Board determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to surface waters shall apply for a permit to the Board within 180 days of receipt of notice, unless permission for a later date is granted by the Board; or~~

~~b. All other discharges shall apply to the Board no later than August 7, 2001.~~

~~2. The operator shall submit an application in accordance with the following requirements, unless otherwise modified by the Board:~~

~~a. Individual applications for nonmunicipal discharges shall meet the requirements contained in 9 VAC 25-31-120 B 1;~~

~~b. Municipal separate storm sewer discharges shall meet the requirements contained in 9 VAC 25-31-120 C; and~~

~~c. Notices of intent to be covered by a general permit issued by the Board shall meet the requirements contained in 9 VAC 25-31-170 B 2.~~

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

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

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

a. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff;

b. Complete and sign (according to 9 VAC 25-31-110) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph F 2 of this section;

c. Submit the signed certification to the Department once every five years;

d. Allow the Department inspect the facility to determine compliance with the no exposure conditions;

e. Allow the Department to make any no exposure inspection reports available to the public upon request; and

f. For facilities that discharge through an MS4, upon request, submit a copy of the certification of no exposure to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

2. Storm resistant shelter is not required for:

a. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("Sealed" means banded or otherwise secured and without operational taps or valves);

b. Adequately maintained vehicles used in material handling; and

c. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

3. a. Storm water discharges from construction activities are not eligible for this conditional exclusion.

b. This conditional exclusion from the requirement for a VPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be no exposure discharges, individual permit requirements should be adjusted accordingly.

c. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for un-permitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

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

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

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

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

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

(1) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

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

(3) Materials or products from past industrial activity;

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

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

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

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

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

(9) Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

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

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

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

9 VAC 25-31-121. Small Municipal Separate Storm Sewer Systems.

A. Objectives of the storm water regulations for small MS4s.

1. Sections 9 VAC 25-31-121 A through 9 VAC 25-31-121 G are written in a ''readable regulation'' format that includes both rule requirements and guidance that is not legally binding. The recommended guidance is distinguished from the regulatory requirements by putting the guidance in a separate paragraph headed by the word "Note".

2. Under the statutory mandate in section 402(p)(6) of the Clean Water Act, the purpose of this portion of the storm water program is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive storm water program to regulate these sources.

3. Storm water runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways including by changing natural hydrologic patterns and by elevating pollutant concentrations and loadings. Storm water runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

4. The Board strongly encourages partnerships and the watershed approach as the management framework for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health.

B. As an operator of a small MS4, am I regulated under the VPDES storm water program?

1. Unless you qualify for a waiver under paragraph B 3 of this section, you are regulated if you operate a small MS4, including but not limited to systems operated by federal, state, tribal, and local governments, including the state department of transportation; and:

a. Your small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or

b. You are designated by the Board, including where the designation is pursuant to 9 VAC 25-31-121 E 2 c and 9 VAC 25-31-121 E 2 d, or is based upon a petition under 9 VAC 25-31-120 E.

2. You may be the subject of a petition to the Board to require a VPDES permit for your discharge of storm water. If the Board determines that you need a permit, you are required to comply with 9 VAC 25-31-121 C through 9 VAC 25-31-121 E.

3. The Board may waive the requirements otherwise applicable to you if you meet the criteria of paragraph B 4 or B 5 of this section. If you receive a waiver under this section, you may subsequently be required to seek coverage under a VPDES permit in accordance with 9 VAC 25-31-121 C 1 if circumstances change. (See also 9 VAC 25-31-121 E 2)

4. The Board may waive permit coverage if your MS4 serves a population of less than 1,000 within the urbanized area and you meet the following criteria:

a. Your system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the VPDES storm water program (see 9 AC 25-31-121 E 2 d); and

b. If you discharge any pollutants that have been identified as a cause of impairment of any water body to which you discharge, storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established ''total maximum daily load'' (TMDL) that addresses the pollutants of concern.

5. The Board may waive permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria:

a. The Board has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;

b. For all such waters, the Board has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutants of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;

c. For the purpose of this paragraph (B 5), the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your MS4; and

d. The Board has determined that future discharges from your MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

C. If I am an operator of a regulated small MS4, how do I apply for a VPDES permit and when do I have to apply?

1. If you operate a regulated small MS4 under 9 VAC 25-31-121 B, you must seek coverage under a VPDES permit issued by the Board.

2. You must seek authorization to discharge under a general or individual VPDES permit, as follows:

a. If the Board has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you must submit a registration statement that includes the information on your best management practices and measurable goals required by 9 VAC 25-31-121 D 4. You may file your own registration statement, or you and other municipalities or governmental entities may jointly submit a registration statement. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit a registration statement that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

b. (1) If you are seeking authorization to discharge under an individual permit and wish to implement a program under 9 VAC 25-31-121 D, you must submit an application to the Board that includes the information required under 9 VAC 25-31-100 F and 9 VAC 25-31-121 D 4, an estimate of square mileage served by your small MS4, and any additional information that the Board requests. A storm sewer map that satisfies the requirement of 9 VAC 25-31-121 D 2 c (1) will satisfy the map requirement in 9 VAC 25-31-100 F 7.

(2) If you are seeking authorization to discharge under an individual permit and wish to implement a program that is different from the program under 9 VAC 25-31-121 D, you will need to comply with the permit application requirements of 9 VAC 25-31-120 C. You must submit both parts of the application requirements in 9 VAC 25-31-120 C 1 and 2 by March 10, 2003. You do not need to submit the information required by 9 VAC 25-31-120 C 1 b and C 2 regarding your legal authority, unless you intend for the permit writer to take such information into account when developing your other permit conditions.

(3) If allowed by the Board, you and another regulated entity may jointly apply under either paragraph 9 VAC 25-31-121 C 2 b (1) or 9 VAC 25-31-121 C 2 b (2) to be co-permittees under an individual permit.

c. If your small MS4 is in the same urbanized area as a medium or large MS4 with a VPDES storm water permit and that other MS4 is willing to have you participate in its storm water program, you and the other MS4 may jointly seek a modification of the other MS4 permit to include you as a limited co-permittee. As a limited co-permittee, you will be responsible for compliance with the permit's conditions applicable to your jurisdiction. If you choose this option you will need to comply with the permit application requirements of 9 VAC 25-31-120, rather than the requirements of 9 VAC 25-31-121 D. You do not need to comply with the specific application requirements of 9 VAC 25-31-120 C 1 c and d and (VAC 25-31-120 C 2 c (discharge characterization). You may satisfy the requirements in 9 VAC 25-31-120 C 1 e and 9 VAC 25-31-120 C 2 d (identification of a management program) by referring to the other MS4's storm water management program.

d. NOTE: In referencing an MS4's storm water management program, you should briefly describe how the existing plan will address discharges from your small MS4 or would need to be supplemented in order to adequately address your discharges. You should also explain your role in coordinating storm water pollutant control activities in your MS4, and detail the resources available to you to accomplish the plan.

3. If you operate a regulated small MS4:

a. Designated under 9 VAC 25-31-121 B 1 a, you must apply for coverage under a VPDES permit, or apply for a modification of an existing VPDES permit under paragraph 9 VAC 25-31-121 C 2 c by March 10, 2003, unless your MS4 serves a jurisdiction with a population under 10,000 and the Board has established a schedule for phasing in permit coverage with a final deadline of March 8, 2007.

b. Designated under 9 VAC 25-31-121 B 1 b, you must apply for coverage under a VPDES permit, or apply for a modification of an existing VPDES permit under paragraph 9 VAC 25-31-121 C 2 c of this section, within 180 days of notice, unless the Board grants a later date.

D. As an operator of a regulated small MS4, what will my VPDES MS4 storm water permit require?

1. Your VPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act and the State Water Control Law. Your storm water management program must include the minimum control measures described in paragraph 9 VAC 25-31-121 D 2 of this section unless you apply for a permit under 9 VAC 25-31-120 C. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this section and the provisions of the permit required pursuant to 9 VAC 25-31-121 C constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. The Board will specify a time period of up to 5 years from the date of permit issuance for you to develop and implement your program.

2. Minimum control measures

a. Public education and outreach on storm water impacts.

(1) You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

(2) NOTE: You may use storm water educational materials provided by the state, your tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce storm water pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. The Board recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. The Board recommends that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, the Board recommends that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. You are encouraged to tailor your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

b. Public involvement/participation.

(1) You must, at a minimum, comply with state, tribal, and local public notice requirements when

implementing a public involvement/participation program.

(2) The Board recommends that the public be included in developing, implementing, and reviewing your storm water management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local storm water management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

c. Illicit discharge detection and elimination.

(1) You must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined at 9 VAC 25-31-10) into your small MS4.

(2) You must:

(a) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all surface waters that receive discharges from those outfalls;

(b) To the extent allowable under state, tribal or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(c) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to your system; and

(d) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(3) You need address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR Part 35.2005(20) (1999)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to surface waters).

(4) NOTE: The Board recommends that the plan to detect and address illicit discharges include the following four components: (i) procedures for locating priority areas likely to have illicit discharges; (ii) procedures for tracing the source of an illicit discharge; (iii) procedures for removing the source of the discharge; and (iv) procedures for program evaluation and assessment. The Board recommends visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling, a program to promote, publicize, and facilitate public reporting of illicit connections or discharges, and distribution of outreach materials.

d. Construction site storm water runoff control.

(1) You must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Board waives requirements for storm

water discharges associated with small construction activity in accordance with the definition in 9 VAC 25-31-10, you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

(2) Your program must include the development and implementation of, at a minimum:

(a) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state, tribal, or local law;

(b) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(c) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(d) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(e) Procedures for receipt and consideration of information submitted by the public, and

(f) Procedures for site inspection and enforcement of control measures.

(3) NOTE: Examples of sanctions to ensure compliance include non-monetary penalties, fines, bonding requirements and/or permit denials for non-compliance. The Board recommends that procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. You are encouraged to provide appropriate educational and training measures for construction site operators. You may wish to require a storm water pollution prevention plan for construction sites within your jurisdiction that discharge into your system. (See 9 VAC 25-31-220 R and 9 VAC 25-31-121 E 2) (The Board may recognize that another government entity may be responsible for implementing one or more of the minimum measures on your behalf.)

e. Post-construction storm water management in new development and redevelopment.

(1) You must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(2) You must:

(a) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for your community;

(b) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state, tribal or local law; and

(c) Ensure adequate long-term operation and maintenance of BMPs.

(3) NOE: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. The Board recommends that the BMPs chosen: be appropriate for the local community; minimize water quality impacts; and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, the Board encourages you to participate in locally-based watershed planning efforts which attempt to involve a diverse group of stakeholders including interested citizens. When developing a program that is consistent with this measure's intent, the Board recommends that you adopt a planning process that identifies the municipality's program goals (*e.g.*, minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation

strategies (e.g., adopt a combination of structural and/or non-structural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing your program, you should consider assessing existing ordinances, policies, programs and studies that address storm water runoff quality. In addition to assessing these existing documents and programs, you should provide opportunities to the public to participate in the development of the program. Non-structural BMPs are preventative actions that involve management and source controls such as: policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. The Board recommends that you ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Storm water technologies are constantly being improved, and the Board recommends that your requirements be responsive to these changes, developments or improvements in control technologies.

f. Pollution prevention/good housekeeping for municipal operations.

(1) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, state, tribe, or other organizations, your program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(2) NOTE: The Board recommends that, at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all storm water management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

3. If an existing qualifying local program requires you to implement one or more of the minimum control measures of paragraph 9 VAC 25-31-121 D 2, the Board may include conditions in your VPDES permit that direct you to follow that qualifying program's requirements rather than the requirements of 9 VAC 25-31-121 D 2. A qualifying local program is a local, state or tribal municipal storm water management program that imposes, at a minimum, the relevant requirements of 9 VAC 25-31-121 D 2.

4. a. In your permit application (either a registration statement for coverage under a general permit or an individual

permit application), you must identify and submit to the Board the following information:

(1) The best management practices (BMPs) that you or another entity will implement for each of the storm water minimum control measures at paragraphs 9 VAC 25-31-121 D 2 a through f;

(2) The measurable goals for each of the BMPs including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and

(3) The person or persons responsible for implementing or coordinating your storm water management program.

b. If you obtain coverage under a general permit, you are not required to meet any measurable goals identified in your registration statement in order to demonstrate compliance with the minimum control measures in paragraphs 9 VAC 25-31-121 D 2 c through f unless, prior to submitting your registration statement, EPA or the Board has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

c. NOTE: Either EPA or the Board will provide a menu of BMPs. You may choose BMPs from the menu or select others that satisfy the minimum control measures.

5. a. You must comply with any more stringent effluent limitations in your permit, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The Board may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

b. NOTE: The Board strongly recommends that until the evaluation of the storm water program in 9 VAC 25-31-121 G, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.

6. You must comply with other applicable VPDES permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of 9 VAC 25-31-190 through 9 VAC 25-31-250, as appropriate.

7. Evaluation and assessment

a. You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals. The Board may determine monitoring requirements for you in accordance with monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

b. You must keep records required by the VPDES permit for at least 3 years. You must submit your records to the Department only when specifically asked to do so. You must make your records, including a description of your storm water management program, available to the public at reasonable times during regular business hours (see 9 VAC 25-31-80 for confidentiality provision). (You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.)

c. Unless you are relying on another entity to satisfy your VPDES permit obligations under 9 VAC 25-31-121 E 1, you must submit annual reports to the Department for your first permit term. For subsequent permit terms, you must submit reports in years two and four unless the Department requires more frequent reports. Your report must include:

(1) The status of compliance with permit conditions, an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control

measures;

(2) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(3) A summary of the storm water activities you plan to undertake during the next reporting cycle;

(4) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(5) Notice that you are relying on another governmental entity to satisfy some of your permit obligations (if applicable).

E. As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

1. You may rely on another entity to satisfy your VPDES permit obligations to implement a minimum control measure if:

a. The other entity, in fact, implements the control measure;

b. The particular control measure, or component thereof, is at least as stringent as the corresponding VPDES permit requirement; and

c. The other entity agrees to implement the control measure on your behalf. In the reports you must submit under 9 VAC 25-31-121 D 7 c, you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another governmental entity regulated under section 122 to satisfy all of your permit obligations, including your obligation to file periodic reports required by 9 VAC 25-31-121 D 7 c, you must note that fact in your registration statement, but you are not required to file the periodic reports. You remain responsible for compliance with your permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, the Board encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your permit.

2. In some cases, the Board may recognize, either in your individual VPDES permit or in a VPDES general permit, that another governmental entity is responsible under a VPDES permit for implementing one or more of the minimum control measures for your small MS4. Where the Board does so, you are not required to include such minimum control measure(s) in your storm water management program. Your permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

F. As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in 9 VAC 25-31-121 C through 9 VAC 25-31-121 E?

VPDES permits are enforceable under the Clean Water Act and the State Water Control Law. Violators may be subject to the enforcement actions and penalties described in Clean Water Act sections 309 (b), (c), and (g) and 505, or under sections 62.1-44.20 through 62.1-44.32 of the Code of Virginia.. Compliance with a permit issued pursuant to section 402 of the Clean Water Act is deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403, except any standard imposed under section 307 for toxic pollutants injurious to human health. If you are covered as a co-permittee under an individual permit or under a general permit by means of a joint registration statement you remain subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in your jurisdiction except as set forth in 9 VAC 25-31-121 E 2.

G. Will the small MS4 storm water program regulations at 9 VAC 25-31-121 B through 9 VAC 25-31-121 F change in the future?

The Board will evaluate the small MS4 regulations at 9 VAC 25-31-121 B through 9 VAC 25-31-121 F after December 10, 2012 and make any necessary revisions. (EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 storm water program. The Board will re-evaluate the regulations based on data from the EPA NPDES MS4 storm water program, from research on receiving water impacts from storm water, and the effectiveness of best management practices (BMPs), as well as other relevant information sources.)

9 VAC 25-31-170. General permits.

A. Coverage.

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

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

a. Designated planning areas under Sections 208 and 303 of CWA;

b. Sewer districts or sewer authorities;

c. City, county, or state political boundaries;

d. State highway systems;

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

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

g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate, within the area described in paragraph A 1 of this section, either:

a. Storm water point sources; or

b. A category of point sources other than storm water point sources, or a category of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage 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.

B. Administration.

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

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

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

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with 9 VAC 25-31-110.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit.

d. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), in accordance with the permit either upon receipt of the notice of intent by the Department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Board. Coverage may be terminated or revoked in accordance with paragraph B 3 of this section.

e. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Board, be authorized to discharge under a general permit without submitting a notice of intent where the Board finds that a notice of intent requirement would be inappropriate. In making such a finding, the Board shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Board shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The Board may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph B 3 c of this section.

3. Requiring an individual permit.

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

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

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

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

(4) A Water Quality Management plan containing requirements applicable to such point sources is approved;

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

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

(7) The discharge(s) is a significant contributor of pollutants. In making this determination, the Board may consider the following factors:

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

(b) The size of the discharge;

(c) The quantity and nature of the pollutants dis charged to surface waters; and

(d) Other relevant factors;

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

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

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

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

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9 VAC 25-31-100, with

reasons supporting the request. The request shall be processed under the applicable parts of this regulation. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

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

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

9 VAC 25-31-190. Conditions applicable to all permits.

The following conditions apply to all VPDES permits. Additional conditions applicable to VPDES permits are in 9 VAC 25-31-200. All conditions applicable to VPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this regulation must be given in the permit.

A. Duty to Comply.

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

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

B. Duty to Reapply.

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

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

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

D. Duty to Mitigate.

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

E. Proper Operation and Maintenance.

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

F. Permit Actions.

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

G. Property Rights.

Permits do not convey any property rights of any sort, or any exclusive privilege.

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

I. Inspection and Entry.

The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

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

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

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

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

J. Monitoring and Records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. Except for records of monitoring information required by the permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by Part VI of this regulation), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip

chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the Board.

3. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 ~~(1995)~~(1999) or alternative EPA approved methods; or, in the case of sludge use or disposal, approved under 40 CFR Part 136 ~~(1995)~~(1999) unless otherwise specified in Part VI of this regulation, unless other test procedures have been specified in the permit.

K. Signatory Requirements.

All applications, reports, or information submitted to the Department shall be signed and certified as required by 9 VAC 25-31-110.

L. Reporting Requirements.

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

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 9 VAC 25-31-180 A; or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 9 VAC 25-31-200 A 1.

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

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

3. Permits are not transferable to any person except after notice to the Department. The Board may require modification or revocation and reissuance of permits to change the name of the permittee and incorporate such other requirements as may be necessary under the Law or the CWA.

4. Monitoring results shall be reported at the intervals specified in the permit.

a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices.

b. If the permittee monitors any pollutant specifically addressed by the permit more frequently than required by the permit using test procedures approved under 40 CFR Part 136 ~~(1995)~~(1999) or, in the case of sludge use or disposal, approved under 40 CFR Part 136 ~~(1995)~~(1999) unless otherwise specified in Part VI of this regulation, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.

c. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

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

6. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and such discharge enters or could be expected to enter state waters, the owner shall promptly notify, in no case later than 24 hours, the Department by telephone after the discovery of such discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the Department within five days of discovery of the discharge in accordance with paragraph L 7 a of this section. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

a. Unusual spillage of materials resulting directly or indirectly from processing operations;

b. Breakdown of processing or accessory equipment;

c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as sewer lines or wastewater pump stations); and

d. Flooding or other acts of nature.

7. Twenty-four hour reporting.

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

b. The following shall be included as information which must be reported within 24 hours under this paragraph.

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit.

(2) Any upset which exceeds any effluent limitation in the permit.

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

c. The Board may waive the written report on a case-by-case basis for reports under paragraph L 7 of this section if the oral report has been received within 24 hours.

8. The permittee shall report all instances of noncompliance not reported under paragraphs L 4, 5, 6, and 7 of this section, in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in paragraph L 7 of this section.

9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

M. Bypass

1. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs M 2 and M 3 of this section.

2. Notice

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

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph L 7 of this section (24-hour notice).

3. Prohibition of bypass.

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

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

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

(3) The permittee submitted notices as required under paragraph M 2 of this section.

b. The Board may approve an anticipated bypass, after considering its adverse effects, if the Board determines that it will meet the three conditions listed above in paragraph M 3 a of this section.

N. Upset

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph N 2 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

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

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

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

c. The permittee submitted notice of the upset as required in paragraph L 7 b (2) of this section (24 hour notice); and

d. The permittee complied with any remedial measures required under paragraph D of this section.

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

9 VAC 25-31-200. Additional conditions applicable to specified categories of VPDES permits.

The following conditions, in addition to those set forth in 9 VAC 25-31-190, apply to all VPDES permits within the categories specified below:

A. Existing manufacturing, commercial, mining, and silvicultural dischargers.

All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. One hundred micrograms per liter (100 ug/l);

b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the Board in accordance with 9 VAC 25-31-220 F.

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. Five hundred micrograms per liter (500 ug/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the Board in accordance with 9 VAC 25-31-220 F.

B. Publicly and privately owned treatment works.

1. All POTWs and PVOTWs must provide adequate notice to the Department of the following:

a. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger which would be subject to Section 301 or 306 of CWA and the Law if it were directly discharging those pollutants; and

b. Any substantial change in the volume or character of pollutants being introduced into that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at the time of issuance of the permit.

For purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW or PVOTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or PVOTW.

2. When the monthly average flow influent to a POTW or PVOTW reaches 95 percent of the design capacity authorized by the VPDES permit for each month of any three consecutive month period, the owner shall within 30 days notify the Department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

a. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could be reasonably anticipated, resulting from high influent flows.

b. Upon receipt of the owner's plan of action, the Board shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.

d. Nothing herein shall in any way impair the authority of the Board to take enforcement action under ээ 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Law.

C. Municipal separate storm sewer systems.

The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Board under 9 VAC 25-31-120 A 1 e must submit an annual report by a date specified in the permit for such system. The report shall include:

1. The status of implementing the components of the storm water management program that are established as permit conditions;

2. Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with 9 VAC 25-31-120 C 2 d;

3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application;

4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

5. Annual expenditures and budget for year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and

7. Identification of water quality improvements or degradation.

D. Wastewater Works Operator Requirements

1. The permittee shall employ or contract at least one wastewater works operator who holds a current wastewater license appropriate for the permitted facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators. Not withstanding the foregoing requirement, unless the discharge is determined by the Board on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

a. That have a design hydraulic capacity equal to or less than 0.04 mgd;

b. That discharge industrial waste or other waste from coal mining operations; or

c. That do not utilize biological or physical/chemical treatment.

2. In making this case by case determination, the Board shall consider the location of the discharge with respect to state waters, the size of the discharge, the quantity and nature of pollutants reaching state waters and the treatment methods used at the wastewater works.

3. The permittee shall notify the Department in writing whenever he is not complying, or has grounds for anticipating he will not comply with the requirements of paragraph D 1 of this section. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

E. Lake level contingency plans.

Any VPDES permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions, and such plan shall take into account and minimize any

adverse effects of any release reduction requirements on downstream users. This section shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

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

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

A. Technology-based effluent limitations and standards.

Technology-based effluent limitations and standards established in accordance with the criteria and standards of 40 CFR Part 125, Subpart A ~~(1995)~~(1999) and based on the effluent limitations and standards incorporated by reference in 9 VAC 25-31-30, based on case-by-case effluent limitations determinations, or based on a combination of the two. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 9 VAC 25-31-180 B (protection period).

B. Other effluent limitations and standards.

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

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

C. Reopener clause.

For any discharger within a primary industry category as listed in 40 CFR Part 122 Appendix A ~~(1995)~~(1999), requirements under Section 307(a)(2) of CWA as follows:

1. On or before June 30, 1981:

a. If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard or limitation is promulgated under Sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) and that

effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

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

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

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

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

D. Water quality standards and state requirements.

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

1. Achieve water quality standards established under the Law and Section 303 of the CWA, including state narrative criteria for water quality.

a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Board determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.

b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the Board shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

c. When the Board determines, using the procedures in paragraph D 1 b of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a Virginia water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

d. Except as provided in this subparagraph, when the Board determines, using the procedures in paragraph D 1 b of this section, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the permit must contain

effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Board demonstrates in the fact sheet or statement of basis of the VPDES permit, using the procedures in paragraph D 1 b of this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.

e. Where Virginia has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable Virginia water quality standard, the Board must establish effluent limits using one or more of the following options:

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

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

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

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

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

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

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

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

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

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR Part 130.7 ~~(1995)~~(1999);

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

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

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

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

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

7. Incorporate Section 403(c) criteria under 40 CFR Part 125, Subpart M ~~(1995)~~(1999), for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR Part 125, Subpart D ~~(1995)~~(1999).

E. Technology-based controls for toxic pollutants.

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

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

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

a. Limitations on those pollutants; or

b. Limitations on other pollutants which, in the judgment of the Board, will provide treatment of the pollutants under paragraph E 1 of this section to the levels required by the Law and 40 CFR Part 125, Subpart A ~~(1995)~~(1999).

F. Notification level.

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

G. Twenty-four-hour reporting.

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

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

I. Monitoring requirements.

The following monitoring requirements:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

2. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 9 VAC 25-31-190 and in paragraphs I 5 through 8 of this section. Reporting shall be no less frequent than specified in the above regulation;

4. To assure compliance with permit limitations, requirements to monitor:

a. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

b. The volume of effluent discharged from each outfall;

c. Other measurements as appropriate including pollutants in internal waste streams; pollutants in intake water for net limitations; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; and pollutants in sewage sludge or other monitoring as specified in Part VI of this regulation; or as determined to be necessary on a case-by-case basis pursuant to the Law and Section 405(d)(4) of the CWA; and

d. According to test procedures approved under 40 CFR Part 136 ~~(1995)~~(1999) for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the permit for pollutants with no approved methods;

5. Except as provided in paragraphs I 7 and I 8 of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less that once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in Part VI of this regulation (where applicable), but in no case less than once a year;

6. Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;

7. Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph I 6 of this section) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

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

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

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

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

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

J. Pretreatment program for POTWs.

Requirements for POTWs to:

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

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

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

~~3.~~4. For POTWs which are sludge-only facilities, a requirement to develop a pretreatment program under Part VII when the Board determines that a pretreatment program is necessary to assure compliance with Part VI of this regulation.

K. Best management practices.

Best management practices, developed according to the criteria and standards of 40 CFR Part 125, Subpart K ~~(1995)~~(1999) to control or abate the discharge of pollutants when:

1. Authorized under Section 304(e) of CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

2. Authorized under Section 402(p) of CWA for the control of storm water discharges;

~~2.~~3. Numeric effluent limitations are infeasible; or

~~3.~~4. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Law and the CWA.

L. Reissued permits.

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

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

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

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

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

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

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

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification). Subparagraph L 2 b of this section shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the Law or the CWA or for reasons otherwise unrelated to water quality.

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

M. Privately owned treatment works.

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

N. Grants.

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

O. Sewage sludge.

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

P. Coast Guard.

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

Q. Navigation.

Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired.

R. Qualifying State, Tribal, or local programs.

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

a. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

b. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

c. Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved state, tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and

d. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

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

9 VAC 25-31-230. Calculating VPDES permit conditions.

A. Outfalls and discharge points.

Permit effluent limitations, monitoring requirements, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under 9 VAC 25-31-220 and paragraph H of this section (limitations on internal waste streams).

B. Production-based limitations.

1. In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.

2. a. Except in the case of POTWs or as provided in paragraph B 2 b of this section, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

b. (1) (a) The Board may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(b) For the automotive manufacturing industry only, the Board may establish a condition under paragraph B 2 b (1) (a) of this section if the applicant satisfactorily demonstrates to the Board at the time the application is submitted that its actual production, as indicated in paragraph B 2 a of this section, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(2) If the Board establishes permit conditions under paragraph B 2 b (1) of this section:

(a) The permit shall require the permittee to notify the Department at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice;

(b) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Department under paragraph B 2 b (2) (a) of this section, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice; and

(c) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

C. Metals.

All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total recoverable metal as defined in 40 CFR Part 136 ~~(1995)~~(1999) unless:

1. An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or

2. In establishing permit limitations on a case-by-case basis under 40 CFR Part 125.3 ~~(1995)~~(1999), it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA and the Law; or

3. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

D. Continuous Discharges.

For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

1. Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

2. Average weekly and average monthly discharge limitations for POTWs.

E. Noncontinuous Discharges.

Discharges which are not continuous, as defined in 9 VAC 25-31-10, shall be particularly described and limited, considering the following factors, as appropriate:

1. Frequency;
2. Total mass;
3. Maximum rate of discharge of pollutants during the discharge; and
4. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

F. Mass Limitations.

1. All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

a. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

b. When applicable standards and limitations are expressed in terms of other units of measurement; or

c. If in establishing technology-based permit limitations on a case-by-case basis, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

2. Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

G. Pollutants in Intake Water.

1. Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water to the extent necessary to meet the applicable technology-based limitation or standard, up to a maximum value equal to the influent value. Credit shall be granted only if:

a. The applicable effluent limitations and standards contained in the regulations incorporated by reference in 9 VAC 25-31-30 specifically provide that they shall be applied on a net basis; or

b. The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meets the limitations and standards in the absence of pollutants in the intake waters.

2. Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

3. Credit for the level of pollutants in the intake water may be considered in setting water quality-based effluent limitations according to 9 VAC 25-31-220 D. Where a total maximum daily load has been established for the receiving waterbody and it is applicable to the discharge, it shall be considered when such effluent limitations are developed. The Board may consider the presence of intake pollutants when determining either that water quality-based effluent limitations are not necessary under 9 VAC 25-31-220 D or that any water quality-based effluent limitations justified by 9 VAC 25-31-220 D will be established in a manner that does not hold the permittee responsible for removing pollutants originating in its intake water.

4. Additional monitoring may be necessary to determine eligibility for any credits and compliance with permit limits.

5. Credits shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Board may waive this requirement for technology-based effluent limitations, standards, and prohibitions if he finds that no environmental degradation will result.

a. An intake pollutant is considered to be from the same body of water as the discharge if the Board finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding may be deemed established if:

(1) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water;

(2) There is direct hydrological connection between the intake and discharge points; and

(3) Water quality characteristics (e.g. temperature, pH, hardness) are similar in the intake and receiving waters. Other site-specific factors relevant to the transport and fate of the pollutant may be considered in making this finding.

b. An intake pollutant from ground water may be considered to be from the same body of water if the Board determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, except that such a pollutant is not from the same body of water if the ground water contains the pollutant partially or entirely due to human activity, such as industrial, commercial, or municipal operations, disposal actions or treatment processes.

c. For pollutants in intake water provided by a water supply system, where the raw water supply is removed from the same body of water as the discharge, the concentration of the intake pollutant shall be determined at the point where the water enters the water supplier's distribution system.

d. Where a facility discharges intake pollutants that originate in part from the same body of water and in part from a different body of water, the effluent limitation may provide for intake credits for the portion of the pollutants derived from the same body of water, provided that adequate monitoring to determine compliance can be established and is included in the permit.

6. Credits shall not be granted if the discharger contributes to the level of the pollutant in the intake water prior to the intake.

7. Credits for intake pollutants do not apply to technology-based limitations on the discharge of raw water clarifier sludge generated from the treatment of intake water.

H. Internal Waste Streams.

1. When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by 9 VAC 25-31-220 I shall also be applied to the internal waste streams.

2. Limits on internal waste streams will be imposed only when the fact sheet sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

I. Disposal of pollutants into wells, POTWs or by land application.

1. When part of a discharger's process wastewater is not being discharged into surface waters or into the contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into surface waters, applicable effluent standards and limitations for the discharge in a VPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

a. If none of the waste from a particular process is discharged into surface waters, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

b. In all cases other than those described in paragraph I 1 a of this section, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into surface waters, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$$P = \frac{E \times N}{T}$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total wastestream, N is the wastewater flow to be treated and discharged to surface waters, and T is the total wastewater flow.

2. Paragraph I 1 of this section does not apply to the extent that promulgated effluent limitations guidelines:

a. Control concentrations of pollutants discharged but not mass; or

b. Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

3. Paragraph I 1 of this section does not alter a discharger's obligation to meet any more stringent requirements established in the permit.

9 VAC 25-31-280. Fact sheet.

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

B. The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity which is the subject of the draft permit;

2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

5. A description of the procedures for reaching a final decision on the draft permit including:

a. The beginning and ending dates of the comment period for the draft permit and the address where comments will be received;

b. Procedures for requesting a public hearing and the nature of that hearing; and

c. Any other procedures by which the public may participate in the final decision.

6. Name and telephone number of a person to contact for additional information.

7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

8. When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

a. Limitations to control toxic pollutants;

b. Limitations on internal waste streams;

c. Limitations on indicator pollutants; or

d. Technology-based or sewage sludge disposal limitations set on a case-by-case basis.

9. For every permit to be issued to a treatment works owned by a person other than a state or municipality, an explanation of the Board's decision on regulation of users.

10. When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; ~~and~~

11. For permits that include a sewage sludge land application plan under ~~9 VAC 25-31-100 C 2~~ 9 VAC 25-31-100 P 8 e, a brief description of how each of the required elements of the land application plan are addressed in the permit; and

12. Justification of waiver of any application requirements under 9 VAC 25-31-100 J or P.

9 VAC 25-31-340. Decision on variances.

A. The Board may grant or deny requests for variances requested pursuant to 9 VAC 25-31-100 L 4, subject to EPA objection. Decisions on these variances shall be made according to the criteria of 40 CFR Part 125, Subpart H ~~(1995)~~(1999).

B. The Board may deny, or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

1. A variance based on the economic capability of the applicant submitted pursuant to 9 VAC 25-31-100 L 2; or

2. A variance based on water quality related effluent limitations submitted pursuant to 9 VAC 25-31-100 L 3 or 9 VAC 25-31-100 M 2.

C. If the EPA Office Director for Wastewater Management approves the variance, the Board may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

D. The Board may deny or forward to the Administrator with a written concurrence a completed request for:

1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based, made according to the criteria and standards of 40 CFR Part 125, Subpart D ~~(1995)~~(1999); or

2. A variance based upon certain water quality factors submitted pursuant to 9 VAC 25-31-100 L 2 or 9 VAC 25-31-100 M 1.

E. If the Administrator approves the variance, the Board may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

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

A. Causes for modification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. When a discharger is no longer eligible for net limitations.

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

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

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

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

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

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

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

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

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

a. The permit does not include such measures based upon the determination that another entity was responsible for implementation of the requirements; and

b. The other entity fails to implement measures that satisfy the requirements.

B. Causes for modification or revocation and reissuance.

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

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

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

9 VAC 25-31-500. Definitions.

In addition to the definitions given in Part I, the following definitions apply to Part VI of this regulation. Where the same term is defined in both Parts, the definition of Part VI applies to the use of the term in Part VI.

"Active sewage sludge unit" means a sewage sludge unit that has not closed.

"Aerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

"Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

"Agronomic rate" means the whole sludge application rate (dry weight basis) designed: (1) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land and (2) to minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the ground water.

"Anaerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

"Annual pollutant loading rate" means the maximum amount of a pollutant that can be applied to a unit area of land during a 365 day period.

"Annual whole sludge application rate" means the maximum amount of sewage sludge (dry weight basis) that can be applied to a unit area of land during a 365 day period.

"Apply sewage sludge or sewage sludge applied to the land" means land application of sewage sludge.

"Aquifer" means a geologic formation, group of geologic formations, or a portion of a geologic formation capable of yielding ground water to wells or springs.

"Base flood" means a flood that has a one percent chance of occurring in any given year (i.e., a flood with a magnitude equalled once in 100 years).

"Bulk sewage sludge" means sewage sludge that is not sold or given away in a bag or other container for application to the land.

"Class I sludge management facility" means any publicly owned treatment works (POTW) required to have an approved pretreatment program under this regulation and any treatment works treating domestic sewage classified as a Class I sludge management facility by the Board because of the potential for its sewage sludge use or disposal practice to affect public health and the environment adversely.

"Contaminate an aquifer" means to introduce a substance that causes the maximum contaminant level for nitrate in the Virginia Water Quality Standards or in ~~40 CFR 141.11 (1995)~~ 40 CFR 141.62(b) (1999) to be exceeded in ground water or that causes the existing concentration of nitrate in ground water to increase when the existing concentration of nitrate in the ground water exceeds the maximum contaminant level for nitrate in the Virginia Water Quality Standards or ~~40 CFR 141.11 (1995)~~40 CFR 141.62(b) (1999).

"Cover" means soil or other material used to cover sewage sludge placed on an active sewage sludge unit.

"Cover crop" means a small grain crop, such as oats, wheat, or barley, not grown for harvest.

"Cumulative pollutant loading rate" means the maximum amount of an inorganic pollutant that can be applied to an area of land.

"Density of microorganisms" means the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Domestic septage" means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

"Domestic sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

"Dry weight basis" means calculated on the basis of having been dried at 105 degrees Celsius until reaching a constant mass (i.e., essentially 100 percent solids content).

"Fault" means a fracture or zone of fractures in any materials along which strata on one side are displaced with respect to strata on the other side.

"Feed crops" means crops produced primarily for consumption by animals.

"Fiber crops" means crops such as flax and cotton.

"Final cover" means the last layer of soil or other material placed on a sewage sludge unit at closure.

"Food crops" means crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

"Forest" means a tract of land thick with trees and underbrush.

"Ground water" means water below the land surface in the saturated zone.

"Holocene time" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene epoch to the present.

"Industrial wastewater" means wastewater generated in a commercial or industrial process.

"Land application" means the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

"Land with a high potential for public exposure" means land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g, a construction site located in a city).

"Land with a low potential for public exposure" means land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

"Leachate collection system" means a system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sewage sludge unit.

"Liner" means soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less.

"Lower explosive limit for methane gas" means the lowest percentage of methane gas in air, by volume, that propagates a flame at 25 degrees Celsius and atmospheric pressure.

"Monthly average" means the arithmetic mean of all measurements taken during the month.

"Municipality" means a city, town, county, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management Agency under Section 208 of the CWA, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in Section 201(e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

"Other container" means either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

"Pasture" means land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

"Pathogenic organisms" means disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

"Person who prepares sewage sludge" means either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

"pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25^{o} Centigrade or measured at another temperature and then converted to an equivalent value at 25^{o} Centigrade..

"Place sewage sludge or sewage sludge placed" means disposal of sewage sludge on a surface disposal site.

"Pollutant" means an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly

from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the Board, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

"Pollutant limit" means a numerical value that describes the amount of a pollutant allowed per unit amount of sewage sludge (e. g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e. g., kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

"Public contact site" means land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

"Qualified ground water scientist" means an individual with a baccalaureate or post-graduate degree in the natural sciences or engineering who has sufficient training and experience in ground water hydrology and related fields, as may be demonstrated by state registration, professional certification, or completion of accredited university programs, to make sound professional judgments regarding ground water monitoring, pollutant fate and transport, and corrective action.

"Range land" means open land with indigenous vegetation.

"Reclamation site" means drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and construction sites.

"Runoff" means rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

"Seismic impact zone" means an area that has a 10 percent or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

"Sewage sludge" means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

"Sewage sludge unit" means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include surface waters.

"Sewage sludge unit boundary" means the outermost perimeter of an active sewage sludge unit.

"Specific oxygen uptake rate (SOUR)" means the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

"Store or storage of sewage sludge" means the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

"Surface disposal site" means an area of land that contains one or more active sewage sludge units.

"Total solids" means the materials in sewage sludge that remain as residue when the sewage sludge is dried at 103 to 105 degrees Celsius.

"Treat or treatment of sewage sludge" means the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

"Treatment works" means either a Federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

"Unstable area" means land subject to natural or human-induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is not limited to, land on which the soils are subject to mass movement.

"Unstabilized solids" means organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

"Vector attraction" means the characteristic of sewage sludge that attracts rodents, flies, mosquitos, or other organisms capable of transporting infectious agents.

"Volatile solids" means the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550 degrees Celsius in the presence of excess air.

9 VAC 25-31-510. Applicability.

A. This subpart applies to any person who prepares sewage sludge that is applied to the land, to any person who applies sewage sludge to the land, to sewage sludge applied to the land, and to the land on which sewage sludge is applied.

Bulk sewage sludge

B. 1. The general requirements in 9 VAC 25-31-530 and the management practices in 9 VAC 25-31-550 do not apply when bulk sewage sludge is applied to the land if the bulk sewage sludge meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8.

2. The Board may apply any or all of the general requirements in 9 VAC 25-31-530 and the management practices in 9 VAC 25-31-550 to the bulk sewage sludge in 9 VAC 25-31-510 B 1 on a case-by-case basis after determining that the general requirements or management practices are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any pollutant in the bulk sewage sludge.

C. 1. The general requirements in 9 VAC 25-31-530 and the management practices in 9 VAC 25-31-550 do not apply when a bulk material derived from sewage sludge is applied to the land if the derived bulk material meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8.

2. The Board may apply any or all of the general requirements in 9 VAC 25-31-530 or the management practices in 9 VAC 25-31-550 to the bulk material in 9 VAC 25-31-510 C 1 on a case-by-case basis after determining that the general requirements or management practices are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any pollutant in the bulk sewage sludge.

D. The requirements in this subpart do not apply when a bulk material derived from sewage sludge is applied to the land if the sewage sludge from which the bulk material is derived meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8.

Sewage sludge sold or given away in a bag or other container for application to the land

E. The general requirements in 9 VAC 25-31-530 and the management practices in 9 VAC 25-31-550 do not apply when sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge sold or given away in a bag or other container for application to the land meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8.

F. The general requirements in 9 VAC 25-31-530 and the management practices in 9 VAC 25-31-550 do not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the derived material meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8.

G. The requirements in this subpart do not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge from which the material is derived meets the ceiling concentrations in 9

VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8.

9 VAC 25-31-570. Frequency of monitoring.

A. Sewage sludge.

1. The frequency of monitoring for the pollutants listed in Table 1, Table 2, Table 3 and Table 4 of 9 VAC 25-31-540; the pathogen density requirements in 9 VAC 25-31-710 A and in 9 VAC 25-31-710 B 2 through B 4; and the vector attraction reduction requirements ~~9 VAC 25-31-720 B 1 through B 8~~ in 9 VAC 25-31-720 B 1 through B 4 and 9 VAC 25-31-720 B 7 through B 8 shall be the frequency in Table 1 of 9 VA C 25-31-570.

TABLE 1 OF 9 VAC 25-31-570 -- FREQUENCY OF MONITORING - LAND APPLICATION

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)

* Either the amount of bulk sewage sludge applied to the land or the amount of sewage sludge ~~received by a person who prepares sewage sludge that is sold or given away~~ prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).

2. After the sewage sludge has been monitored for two years at the frequency in Table 1 of 9 VAC 25-31-570, the Board may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in 9 VAC 25-31-710 A 5 ~~a~~ b and c~~, but in no case shall the frequency of monitoring be less than once per year when sewage sludge is applied to the land~~.

B. Domestic septage.

If either the pathogen requirements in 9 VAC 25-31-710 C 2 or the vector attraction reduction requirements in 9 VA C 25-31-720 B 12 are met when domestic septage is applied to agricultural land, forest, or a reclamation site, each container of domestic septage applied to the land shall be monitored for compliance with those requirements.

9 VAC 25-31-580. Recordkeeping.

A. Sewage sludge.

1. The person who prepares the sewage sludge in 9 VAC 25-31-510 B 1 or in 9 VAC 25-31-510 E shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 3 of 9 VAC 25-31-540 in the sewage sludge;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9 VAC 25-31-710 A and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8] ~~have been met. This determination has been made~~ was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the pathogen requirements and vector attraction reduction requirements have been met~~. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the Class A pathogen requirements in 9 VAC 25-31-710 A are met; and

d. A description of how one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 is met.

2. The person who derives the material in 9 VAC 25-31-510 C 1 or in 9 VAC 25-31-510 F shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 3 of 9 VAC 25-31-540 in the material;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9 VAC 25-31-710 A and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8] ~~have been met. This determination has been made~~ was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the pathogen requirements and the vector attraction reduction requirements have been met~~. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the Class A pathogen requirements in 9 VAC 25-31-710 A are met; and

d. A description of how one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 is met.

3. If the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and the vector attraction reduction requirements in either 9 VAC 25-31-720 B 9 or B 10 are met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site:

a. The person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(1) The concentration of each pollutant listed in Table 3 of 9 VAC 25-31-540 in the bulk sewage sludge;

(2) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in 9 VAC 25-31-710 A ~~have been met. This determination has been made~~ was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the pathogen requirements have been met~~. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

(3) A description of how the pathogen requirements in 9 VAC 25-31-710 A are met; and

b. The person who applies the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(1) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9 VAC 25-31-550 and the vector attraction reduction requirement in [insert either 9 VAC 25-31-720 B 9 or B 10] ~~have been met. This determination has been made~~ was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the management practices and vector attraction reduction requirements have been met~~. I am aware that there are significant penalties for false certification including fine and imprisonment.";

(2) A description of how the management practices in 9 VAC 25-31-550 are met for each site on which bulk sewage sludge is applied; and

(3) A description of how the vector attraction reduction requirements in either 9 VAC 25-31-720 B 9 or B 10 are met for each site on which bulk sewage sludge is applied.

4. If the pollutant concentrations in 9 VAC 25-31-540 B 3 and the Class B pathogen requirements in 9 VAC 25-31-710 B are met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site:

a. The person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(1) The concentration of each pollutant listed in Table 3 of 9 VAC 25-31-540 in the bulk sewage sludge;

(2) The following certification statement:

"I certify under, penalty of law, that the information that will be used to determine compliance with the Class B pathogen requirements in 9 VAC 25-31-710 B and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 if one of those requirements is met] ~~have been met. This determination has been made~~ was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the pathogen requirements [and vector attraction reduction requirements if applicable] have been met~~. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(3) A description of how the Class B pathogen requirements in 9 VAC 25-31-710 B are met; and

(4) When one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 is met, a description of how the vector attraction reduction requirement is met; and

b. The person who applies the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(1) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9 VAC 25-31-550, the site restrictions in 9 VAC 25-31-710 B 5, and the vector attraction reduction requirements in [insert either 9 VAC 25-31-720 B 9 or B 10, if one of those requirements is met] ~~have been met~~ was prepared for each site on which bulk sewage sludge is applied~~. This determination has been made~~ under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the management practices and site restrictions [and the vector attraction reduction requirements if applicable] have been met~~. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment." ;

(2) A description of how the management practices in 9 VAC 25-31-550 are met for each site on which bulk sewage sludge is applied;

(3) A description of how the site restrictions in 9 VAC 25-31-710 B 5 are met for each site on which bulk sewage sludge is applied; ~~and~~

(4) When the vector attraction reduction requirement in either 9 VAC 25-31-720 B 9 or B 10 is met, a description of how the vector attraction reduction requirement is met; and

(5) The date bulk sewage sludge is applied to each site.

5. If the requirements in 9 VAC 25-31-540 A 2 a are met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site:

a. The person who prepares the bulk sewage sludge shall develop the following information and shall retain the information for five years:

(1) The concentration of each pollutant listed in Table 1 of 9 VAC 25-31-540 in the bulk sewage sludge;

(2) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in [insert either 9 VAC 25-31-710 A or B] and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 if one of those requirements is met] ~~have been met. This determination has been made~~ was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the pathogen requirements [and vector attraction reduction requirements] have been met~~. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(3) A description of how the pathogen requirements in either 9 VAC 25-31-710 A or B are met; and

(4) When one of the vector attraction requirements in 9 VAC 25-31-720 B 1 through B 8 is met, a description of how the vector attraction requirement is met; and

b. The person who applies the bulk sewage sludge shall develop the following information, retain the information in 9 VAC 25-31-580 A 5 b (1) through b (7) indefinitely, and retain the information in 9 VAC 25-31-580 A 5 b (8) through b (13) for five years:

(1) The location, by either street address or latitude and longitude, of each site on which bulk sewage sludge is applied;

(2) The number of hectares in each site on which bulk sewage sludge is applied;

(3) The date ~~and time~~ bulk sewage sludge is applied to each site;

(4) The cumulative amount of each pollutant (i.e., kilograms) listed in Table 2 of 9 VAC 25-31-540 in the bulk sewage sludge applied to each site, including the amount in 9 VAC 25-31-530 E 2 c;

(5) The amount of sewage sludge (i.e., metric tons) applied to each site;

(6) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the requirements to obtain information in 9 VAC 25-31-530 E 2 ~~have been met~~ was prepared for each site on which bulk sewage sludge is applied~~. This determination has been made~~ under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the requirements to obtain information have been met~~. I am aware that there are significant penalties for false certification including fine and imprisonment.";

(7) A description of how the requirements to obtain information in 9 VAC 25-31-530 E 2 are met;

(8) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9 VAC 25-31-550 ~~have been met~~ was prepared for each site on which bulk sewage sludge is applied~~. This determination has been made~~ under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the management practices have been met~~. I am aware that there are significant penalties for false certification including fine and imprisonment.";

(9) A description of how the management practices in 9 VAC 25-31-550 are met for each site on which bulk sewage sludge is applied;

(10) The following certification statement when the bulk sewage sludge meets the Class B pathogen requirements in 9 VAC 25-31-710 B:

"I certify, under penalty of law, that the information that will be used to determine compliance with the site restrictions in 9 VAC 25-31-710 B 5 ~~have been met. This determination has been made~~ was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the site restrictions have been met~~. I am aware that there are significant penalties for false certification including fine and imprisonment.";

(11) A description of how the site restrictions in 9 VAC 25-31-710 B 5 are met for each site on which Class B bulk sewage sludge is applied;

(12) The following certification statement when the vector attraction reduction requirement in either 9 VAC 25-31-720 B 9 or B 10 is met:

"I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirement in [insert either 9 VAC 25-31-720 B 9 or B 10] ~~has been met. This determination has been made~~ was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the vector attraction reduction requirement has been met~~. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

(13) If the vector attraction reduction requirements in either 9 VAC 25-31-720 B 9 or B 10 are met, a description of how the requirements are met.

6. If the requirements in 9 VAC 25-31-540 A 4 b are met when sewage sludge is sold or given away in a bag or other container for application to the land, the person who prepares the sewage sludge that is sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:

a. The annual whole sludge application rate for the sewage sludge that does not cause the annual pollutant loading rates in Table 4 of 9 VAC 25-31-540 to be exceeded;

b. The concentration of each pollutant listed in Table 4 of 9 VAC 25-31-540 in the sewage sludge;

c. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practice in 9 VAC 25-31-550 E, the Class A pathogen requirement in 9 VAC 25-31-710 A, and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8] ~~have been met. This determination has been made~~ was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the management practice, pathogen requirements, and vector attraction reduction requirements have been met~~. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

d. A description of how the Class A pathogen requirements in 9 VAC 25-31-710 A are met; and

e. A description of how one of the vector attraction requirements in 9 VA C 25-31-720 B 1 through B 8 is met.

B. Domestic septage.

When domestic septage is applied to agricultural land, forest, or a reclamation site, the person who applies the domestic septage shall develop the following information and shall retain the information for five years:

1. The location, by either street address or latitude and longitude, of each site on which domestic septage is applied;
2. The number of acres in each site on which domestic septage is applied;
3. The date ~~and time~~ domestic septage is applied to each site;
4. The nitrogen requirement for the crop or vegetation grown on each site during a 365 day period;
5. The rate, in gallons per acre per 365 day period, at which domestic septage is applied to each site;
6. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in [insert either 9 VAC 25-31-710 C 1 or C 2] and the vector attraction reduction requirements in [insert 9 VAC 25-31-720 B 9, B 10, or B 12] ~~have been met. This determination has been made~~ was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the pathogen requirements and vector attraction reduction requirements have been met~~. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

7. A description of how the pathogen requirements in either 9 VAC 25-31-710 C 1 or C 2 are met; and
8. A description of how the vector attraction reduction requirements in 9 VAC 25-31-720 B 9, B 10, or B 12 are met.

9 VAC 25-31-590. Reporting.

A. Class I sludge management facilities, POTWs with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit the following information to the Department:

1. The information in 9 VAC 25-31-580 A, except the information in 9 VAC 25-31-580 A 3 b, A 4 b and in A 5 b, for the appropriate requirements on February 19 of each year for the previous calendar year's activity; and

2. The information in 9 VAC 25-31-580 A 5 b (1) through A 5 b (7) on February 19 of each year for the previous calendar year's activity when 90 percent or more of any of the cumulative pollutant loading rates in Table 2 of 9 VAC 25-31-540 is reached at a land application site.

9 VAC 25-31-620. General requirements.

A. No person shall place sewage sludge on an active sewage sludge unit unless the requirements in this subpart are met.

B. An active sewage sludge unit located within 60 meters of a fault that has displacement in Holocene time; located in an unstable area; or located in a wetland, except as provided in a permit issued pursuant to the Law and Section 402 or 404 of the CWA, shall close by ~~February 19, 1994~~, March 22, 1994 unless, in the case of an active sewage sludge unit located within 60 meters of a fault that has displacement in Holocene time, otherwise specified by the Board.

C. The owner/operator of an active sewage sludge unit shall submit a written closure and post closure plan to the Department 180 days prior to the date that the active sewage sludge unit closes. The plan shall describe how the sewage sludge unit will be closed and, at a minimum, shall include:

1. A discussion of how the leachate collection system will be operated and maintained for three years after the sewage sludge unit closes if the sewage sludge unit has a liner and leachate collection system;

2. A description of the system used to monitor for methane gas in the air in any structures within the surface disposal site and in the air at the property line of the surface disposal site, as required in 9 VAC 25-31-640 J 2; and

3. A discussion of how public access to the surface disposal site will be restricted for three years after the last sewage sludge unit in the surface disposal site closes.

D. The owner of a surface disposal site shall provide written notification to the subsequent owner of the site that sewage sludge was placed on the land.

9 VAC 25-31-660. Frequency of monitoring.

A. Sewage sludge (other than domestic septage).

1. The frequency of monitoring for the pollutants in Tables 1 and 2 of 9 VAC 25-31-630; the pathogen density requirements in 9 VAC 25-31-710 A and in 9 VAC 25-31-710 B 2 ~~through B 4~~; and the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 4 and B 7 through B 8 for sewage sludge placed on an active sewage sludge unit shall be the frequency in Table 1 of 9 VAC 25-31-660.

TABLE 1 OF 9 VAC 25-31-660 -- 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).

2. After the sewage sludge has been monitored for two years at the frequency in Table 1 of 9 VAC 25-31-660, the Board may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in 9 VAC 25-31-710 A 5 b and c~~, but in no case shall the frequency of monitoring be less than once per year when sewage sludge is placed on an active sewage sludge unit~~.

B. Domestic septage.

If the vector attraction reduction requirements in 9 VAC 25-31-720 B 12 are met when domestic septage is placed on an active sewage sludge unit, each container of domestic septage shall be monitored for compliance with those requirements.

C. Air.

Air in structures within a surface disposal site and at the property line of the surface disposal site shall be monitored continuously for methane gas during the period that the surface disposal site contains an active sewage sludge unit on which the sewage sludge is covered and for three years after a sewage sludge unit closes when a final cover is placed on the sewage sludge.

9 VAC 25-31-670. Recordkeeping.

A. When sewage sludge (other than domestic septage) is placed on an active sewage sludge unit:

1. The person who prepares the sewage sludge shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 1 of 9 VAC 25-31-630 in the sewage sludge when the pollutant concentrations in Table 1 of 9 VAC 25-31-630 are met;

b. The following certification statement:

"I certify, under penalty of law, that the <u>information that will be used to determine compliance with the</u> pathogen requirements in [insert 9 VAC 25-31-710 A, B 2, B 3, or B 4 when one of those requirements is met] and the vector attraction reduction requirements in [insert one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 when one of those requirements is met] ~~have been met. This determination has been made~~ <u>was prepared</u> under my direction and supervision in accordance with the

system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine the [pathogen requirements and vector attraction reduction requirements if appropriate] have been met~~. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the pathogen requirements in 9 VAC 25-31-710 A, B 2, B 3, or B 4 are met when one of those requirements is met; and

d. A description of how one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 is met when one of those requirements is met; and

2. The owner/operator of the surface disposal site shall develop the following information and shall retain that information for five years:

a. The concentration of each pollutant listed in Table 2 of 9 VAC 25-31-630 in the sewage sludge when the pollutant concentrations in Table 2 of 9 VAC 25-31-630 are met or when site-specific pollutant limits in 9 VAC 25-31-630 B are met;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9 VAC 25-31-640 and the vector attraction reduction requirement in [insert one of the requirements in 9 VAC 25-31-720 B 9 through B 11 if one of those requirements is met] ~~have been met. This determination has been made~~ was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the management practices [and the vector attraction reduction requirements if appropriate] have been met~~. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the management practices in 9 VAC 25-31-640 are met; and

d. A description of how the vector attraction reduction requirements in 9 VAC 25-31-720 B 9 through B 11 are met if one of those requirements is met.

B. When domestic septage is placed on a surface disposal site.

1. If the vector attraction reduction requirements in 9 VAC 25-31-720 B 12 are met, the person who places the domestic septage on the surface disposal site shall develop the following information and shall retain the information for five years:

a. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirements in 9 VAC 25-31-720 B 12 ~~have been met. This determination has been made~~ was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to determine that the vector attraction requirements have been met~~. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

b. A description of how the vector attraction reduction requirements in 9 VAC 25-31-720 B 12 are met.

2. The owner/operator of the surface disposal site shall develop the following information and shall retain that information for five years:

a. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9 VAC 25-31-640 and the vector attraction reduction requirements in [insert 9 VAC 25-31-720 B 9 through B 11 when one of those requirements is met] ~~have been met. This determination has been made~~ was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate ~~the~~ this information ~~used to~~

~~determine that the management practices [and the vector attraction reduction requirements if appropriate] have been met~~. I am aware that there are significant penalties for false certification including the possibility of fine or imprisonment.";

b. A description of how the management practices in 9 VAC 25-31-640 are met; and

c. A description how the vector attraction reduction requirements in 9 VAC 25-31-720 B 9 through B 11 are met if one of those requirements in met.

9 VAC 25-31-710. Pathogens.

A. Sewage sludge - Class A.

1. The requirement in 9 VAC 25-31-710 A 2 and the requirements in either 9 VAC 25-31-710 A 3, A 4, A 5, A 6, A 7, or A 8 shall be met for a sewage sludge to be classified Class A with respect to pathogens.

2. The Class A pathogen requirements in 9 VAC 25-31-710 A 3 through A 8 shall be met either prior to meeting or at the same time the vector attraction reduction requirements in 9 VAC 25-31-720, except the vector attraction reduction requirements in 9 VAC 25-31-720 B 6 through B 8, are met.

3. Class A - Alternative 1

a. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F.

b. The temperature of the sewage sludge that is used or disposed shall be maintained at a specific value for a period of time.

(1) When the percent solids of the sewage sludge is seven percent or higher, the temperature of the sewage sludge shall be 50 degrees Celsius or higher; the time period shall be 20 minutes or longer; and the temperature and time period shall be determined using equation (3), except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

$$D = \frac{131{,}700{,}000}{10^{0.1400t}} \qquad (3)$$

Where,

D = time in days.

t = temperature in degrees Celsius.

(2) When the percent solids of the sewage sludge is seven percent or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50 degrees Celsius or higher; the time period shall be 15 seconds or longer; and the temperature and time period shall be determined using equation (3).

(3) When the percent solids of the sewage sludge is less than seven percent and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using equation (3).

(4) When the percent solids of the sewage sludge is less than seven percent; the temperature of the sewage sludge is 50 degrees Celsius or higher; and the time period is 30 minutes or longer, the temperature and time period shall be determined using equation (4).

$$D = \frac{50{,}070{,}000}{10^{0.1400t}} \qquad (4)$$

Where,

D = time in days.

t = temperature in degrees Celsius.

4. Class A - Alternative 2

a. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F.

b. (1) The pH of the sewage sludge that is used or disposed shall be raised to above 12 and shall remain above 12 for 72 hours.

(2) The temperature of the sewage sludge shall be above 52 degrees Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(3) At the end of the 72 hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50 percent.

5. Class A - Alternative 3

a. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F.

b. (1) The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses.

(2) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(3) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric

viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented.

(4) After the enteric virus reduction in paragraph b (3) of this subsection is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in paragraph b (3) of this subsection.

c. (1) The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains viable helminth ova.

(2) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(3) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(4) After the viable helminth ova reduction in paragraph c (3) of this subsection is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in paragraph c (3) of this subsection.

6. Class A - Alternative 4

a. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F.

b. The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F, unless otherwise specified by the Board.

c. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F, unless otherwise specified by the Board.

7. Class A - Alternative 5

a. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella, sp. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage

sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F.

b. Sewage sludge that is used or disposed shall be treated in one of the Processes to Further Reduce Pathogens described in 9 VAC 25-31-710 E.

8. Class A - Alternative 6

a. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella, sp. bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed; at the time the sewage sludge is prepared for sale or give away in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in 9 VAC 25-31-510 B, C, E, or F.

b. Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a Process to Further Reduce Pathogens, as determined by the Board.

B. Sewage sludge - Class B.

1. a. The requirements in either 9 VAC 25-31-710 B 2, B 3, or B 4 shall be met for a sewage sludge to be classified Class B with respect to pathogens.

b. The site restrictions in 9 VAC 25-31-710 B 5 shall be met when sewage sludge that meets the Class B pathogen requirements in 9 VAC 25-31-710 B 2, B 3, or B 4 is applied to the land.

2. Class B - Alternative 1

a. Seven representative samples of the sewage sludge that is used or disposed shall be collected ~~at the time the sewage sludge is used or disposed~~.

b. The geometric mean of the density of fecal coliform in the samples collected in paragraph 2 a of this subsection shall be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

3. Class B - Alternative 2

Sewage sludge that is used or disposed shall be treated in one of the Processes to Significantly Reduce Pathogens described in 9 VAC 25-31-710 D.

4. Class B - Alternative 3

Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a Process to Significantly Reduce Pathogens, as determined by the Board.

5. Site Restrictions

a. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.

b. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for four months or longer prior to incorporation into the soil.

c. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than four months prior to incorporation into the soil.

d. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.

e. Animals shall not be ~~allowed to graze~~ grazed on the land for 30 days after application of sewage sludge.

f. Turf grown on land where sewage sludge is applied shall not be harvested for one year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the Board.

g. Public access to land with a high potential for public exposure shall be restricted for one year after application of sewage sludge.

h. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge.

C. Domestic septage.

1. The site restrictions in 9 VAC 25-31-710 B 5 shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site; or

2. The pH of domestic septage applied to agricultural land, forest, or a reclamation site shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes and the site restrictions in 9 VAC 25-31-710 B 5 a through B 5 d shall be met.

D. Processes to significantly reduce pathogens (PSRP).

1. Aerobic digestion

Sewage sludge is agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 40 days at 20 degrees Celsius and 60 days at 15 degrees Celsius.

2. Air drying

Sewage sludge is dried on sand beds or on paved or unpaved basins. The sewage sludge dries for a minimum of three months. During two of the three months, the ambient average daily temperature is above zero degrees Celsius.

3. Anaerobic digestion

Sewage sludge is treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 35 to 55 degrees Celsius and 60 days at 20 degrees Celsius.

4. Composting

Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the sewage sludge is raised to 40 degrees Celsius or higher and remains at 40 degrees Celsius or higher for five days. For four hours during the five days, the temperature in the compost pile exceeds 55 degrees Celsius.

5. Lime stabilization

Sufficient lime is added to the sewage sludge to raise the pH of the sewage sludge to 12 after two hours of contact.

E. Processes to further reduce pathogens (PFRP).

1. Composting

Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the sewage sludge is maintained at 55 degrees Celsius or higher for three days.

Using the windrow composting method, the temperature of the sewage sludge is maintained at 55 degrees or higher for 15 days or longer. During the period when the compost is maintained at 55 degrees or higher, there shall be a minimum of five turnings of the windrow.

2. Heat drying

Sewage sludge is dried by direct or indirect contact with hot gases to reduce the moisture content of the sewage sludge to 10 percent or lower. Either the temperature of the sewage sludge particles exceeds 80 degrees Celsius or the wet bulb temperature of the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds 80 degrees Celsius.

3. Heat treatment

Liquid sewage sludge is heated to a temperature of 180 degrees Celsius or higher for 30 minutes.

4. Thermophilic aerobic digestion

Liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10 days at 55 to 60 degrees Celsius.

5. Beta ray irradiation

Sewage sludge is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (ca. 20 degrees Celsius).

6. Gamma ray irradiation

Sewage sludge is irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at dosages of at least 1.0 megarad at room temperature (ca. 20 degrees Celsius).

7. Pasteurization

The temperature of the sewage sludge is maintained at 70 degrees Celsius or higher for 30 minutes or longer.

9 VAC 25-31-720. Vector attraction reduction.

A. 1. One of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 10 shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.

2. One of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 shall be met when bulk sewage sludge is applied to a lawn or a home garden.

3. One of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 8 shall be met when sewage sludge is sold or given away in a bag or other container for application to the land.

4. One of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through B 11 shall be met when sewage sludge (other than domestic septage) is placed on an active sewage sludge unit.

5. One of the vector attraction reduction requirements in 9 VAC 25-31-720 B 9, B 10, or B 12 shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 9 through B 12 shall be met when domestic septage is placed on an active sewage sludge unit.

B. 1. The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38 percent, calculated according to the method in 9 VAC 25-31-490 B 8.

2. When the 38 percent volatile solids reduction requirement in 9 VAC 25-31-720 B 1 cannot be met for an anaerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30 and 37 degrees Celsius. When at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17 percent, vector attraction reduction is achieved.

3. When the 38 percent volatile solids reduction requirement in 9 VAC 25-31-720 B 1 cannot be met for an aerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of two percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20 degrees Celsius. When at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15 percent, vector attraction reduction is achieved.

4. The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20 degrees Celsius.

5. Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40 degrees Celsius and the average temperature of the sewage sludge shall be higher than 45 degrees Celsius.

6. The pH of sewage sludge shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.

7. The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75 percent based on the moisture content and total solids prior to mixing with other materials.

8. The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90 percent based on the moisture content and total solids prior to mixing with other materials.

9. a. Sewage sludge shall be injected below the surface of the land.

b. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.

c. When the sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

10. a. Sewage sludge applied to the land surface or placed on ~~a surface disposal site~~ an active sewage sludge unit shall be incorporated into the soil within six hours after application to or placement on the land, unless otherwise specified by the Board.

b. When sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

11. Sewage sludge placed on an active sewage sludge unit shall be covered with soil or other material at the end of each operating day.

12. The pH of domestic septage shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes.

9 VAC 25-31-750. Incorporation of Federal Regulations.

The following federal regulations are hereby incorporated into this regulation:

(1) 40 CFR Part 403 ~~(1995)~~(1999), Appendix B-E, and Appendix G

(2) 40 CFR Part 136 ~~(1995)~~(1999), Guidelines for Establishing Test Procedures for the Analysis of Pollutants.

9 VAC 25-31-770. National Pretreatment Standards: Prohibited Discharges.

A. 1. General Prohibitions.

A user may not introduce into any POTW any pollutant(s) which cause Pass Through, Interference or violation of water quality standards. These general prohibitions and the specific prohibitions in paragraph B of this section apply to each User introducing pollutants into a POTW whether or not the User is subject to other National Pretreatment Standards or any national, state, or local Pretreatment Requirements.

2. Affirmative Defenses.

A User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in paragraph A 1 of this section and the specific prohibitions in paragraphs B 3, B 4, B 5, B 6, and B 7 of this section where the user can demonstrate that:

a. It did not know or have reason to know that its Discharge, alone or in conjunction with a discharge or discharges from other sources, would cause Pass Through or Interference; and

b. (1) A local limit designed to prevent Pass Through and/or Interference, as the case may be, was developed in accordance with paragraph C of this section for each pollutant in the User's Discharge that caused Pass Through or Interference, and the User was in compliance with each such local limit directly prior to and during the Pass Through or Interference; or

(2) If a local limit designed to prevent Pass Through and/or Interference, as the case may be, has not been developed in accordance with paragraph C of this section for the pollutant(s) that caused the Pass Through or Interference, the User's Discharge directly prior to and during the Pass Through or Interference did not change substantially in nature or constituents from the User's prior discharge activity when the POTW was regularly in compliance with the POTW's VPDES permit requirements and, in the case of Interference, applicable requirements for sewage sludge use or disposal.

B. Specific prohibitions.

In addition, the following pollutants shall not be introduced into a POTW:

1. Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21 ~~(1995)~~(1999);

2. Pollutants which will cause corrosive structural damage to the POTW, but in no case Discharges with pH lower that 5.0, unless the works is specifically designed to accommodate such Discharges;

3. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in Interference;

4. Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW;

5. Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40EC (104EF) unless the Director, upon request of the POTW, approves alternate temperature limits;

6. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

7. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; or

8. Any trucked or hauled pollutants, except at discharge points designated by the POTW.

C. When specific limits must be developed by POTW.

1. Each POTW developing a POTW Pretreatment Program pursuant to 9 VAC 25-31-800 shall develop and enforce specific limits to implement the prohibitions listed in paragraphs A 1 and B of this section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.

2. All other POTW's shall, in cases where pollutants contributed by User(s) result in Interference, Pass Through or water quality standards violations and such violation is likely to recur, develop and enforce specific effluent limits for Industrial User(s), and all other users, as appropriate, which, together with appropriate changes in the POTW Treatment Plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's VPDES permit or sludge use or disposal practices.

3. Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

4. All POTWs with approved pretreatment programs shall provide a written technical evaluation of the need to revise their local limits within one year of reissuance of VPDES permits for applicable treatment works, or within one year of VPDES permit modifications resulting in significant changes in VPDES permit limitations, POTW pretreatment operations, or POTW sludge disposal methods.

D. Local limits.

Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with paragraph C above, such limits shall be deemed Pretreatment Standards for the purposes of Section 307(d) of the CWA.

E. EPA and state enforcement actions under the Law and Section 309(f) of the CWA.

If, within 30 days after notice of an Interference or Pass Through violation has been sent by the Director or EPA to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the Director or EPA may take appropriate enforcement action under the authority provided by the Law and in Section 309(f) of the CWA.

9 VAC 25-31-780. National Pretreatment Standards: Categorical Standards.

National pretreatment standards included in the regulations incorporated by reference in 9 VAC 25-31-30, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this part.

A. Category Determination Request.

1. Application deadline. Within 60 days after the effective date of a Pretreatment Standard for a subcategory under which an Industrial User may be included, the Industrial User or POTW may request that the Water Management Division Director or Director, as appropriate, provide written certification on whether the Industrial User falls within that particular subcategory. If an existing Industrial User adds or changes a process or operation which may be included in a subcategory, the existing Industrial User must request this certification prior to commencing discharge from the added or changed processes or operation. A New Source must request this certification prior to commencing discharge. Where a certification is submitted by a POTW, the POTW shall notify any affected Industrial User of such submission. The Industrial User may provide written comments on the POTW submission to the Water Management Division Director or Director, as appropriate, within 30 days of notification.

2. Contents of Application. Each request shall contain a statement:

a. Describing which subcategories might be applicable; and

b. Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this section shall make the following certification:

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

3. Deficient requests. The Water Management Division Director or Director will only act on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions will be notified by the Water Management Division Director or Director that their requests are deficient and, unless the time period is extended, will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days or within an extended period allowed by the Water Management Division Director or the Director, the request for a determination shall be denied.

4. Final decision.

a. When the Water Management Division Director or Director receives a submittal he or she will, after determining that it contains all of the information required by paragraph 2 of this section, consider the submission, any additional evidence that may have been requested, and any other available information relevant to the request. The Water Management Division Director or Director will then make a written determination of the applicable subcategory and state the reasons for the determination.

b. Where the request is submitted to the Director, the Director shall forward the determination described in this paragraph to the Water Management Division Director who may make a final determination. If the Water Management Division Director does not modify the Director's decision within 60 days after receipt thereof, or if the Water Management Division Director waives receipt of the determination, the Director's decision is final.

c. Where the request is submitted by the Industrial User or POTW to the Water Management Division Director or where the Water Management Division Director elects to modify the Director's decision, the Water Management Division Director's decision will be final.

d. The Director shall send a copy of the determination to the affected Industrial User and the POTW.

5. Requests for public hearing and/or legal decision. Within 30 days following the date of receipt of notice of the final determination as provided for by paragraph A 4 d of this section, the Requester may submit a petition to reconsider or contest the decision to the Regional Administrator who shall act on such petition expeditiously and state the reasons for his or her determination in writing.

B. Deadline for Compliance with Categorical Standards.

Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the regulations incorporated by reference in 9 VAC 25-31-30. Direct dischargers with VPDES permits modified or reissued to provide a variance pursuant to Section 301(i)(2) of the CWA shall be required to meet compliance dates set in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in 9 VAC 25-31-10. New Sources shall install and have in operating condition, and shall "start up" all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge. Within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable Pretreatment Standards.

C. 1. Concentration and mass limits. Pollutant discharge limits in categorical Pretreatment Standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, state or federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical Pretreatment Standards shall apply to the effluent of the process regulated by the Standard, or as otherwise specified by the standard.

2. When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Control Authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day of effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

3. A Control Authority calculating equivalent mass-per-day limitations under paragraph C 2 of this section shall calculate such limitations by multiplying the limits in the Standard by the Industrial User's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the Industrial User's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

4. A Control Authority calculating equivalent concentration limitations under paragraph C 2 of this section shall calculate such limitations by dividing the mass limitations derived under paragraph C 3 of this section by the average daily flow rate of the Industrial User's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the Industrial User's actual long-term average flow rate, such as the average daily flow rate during the representative year.

5. Equivalent limitations calculated in accordance with paragraphs C 3 and C 4 of this section shall be deemed Pretreatment Standards for the purposes of Section 307(d) of the CWA and this part. Industrial Users will be required to comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

6. Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations. Where such Standards are being applied, the same production of flow figure shall be used in calculating both types of equivalent limitations.

7. Any Industrial User operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the Control Authority within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Control Authority of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.

D. Dilution Prohibited as Substitute for Treatment.

Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The Control Authority (as defined in 9 VAC 25-31-840 A may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations is appropriate.

E. Combined wastestream formula.

Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the Control Authority, as defined in 9 VAC 25-31-840 A, or by the Industrial User with the written concurrence of the Control Authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the Control Authority or Industrial User shall calculate both an alternative daily maximum value using the daily maximum value(s) specified in the appropriate categorical Pretreatment Standard(s) and an alternative consecutive sampling day average value using the monthly average value(s) specified in the appropriate categorical Pretreatment Standard(s). The Industrial User shall comply with the alternative daily maximum and monthly average limits fixed by the Control Authority until the Control Authority modifies the limits or approves an Industrial User modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An Industrial User must immediately report any such material or significant change to the Control Authority. Where appropriate new alternative categorical limits shall be calculated within 30 days.

1. Alternative limit calculation. For purposes of these formulas, the "average daily flow" means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:

a. Alternative concentration limit.

$$C_T = \left(\frac{\sum_{i=1}^{N} C_i F_i}{\sum_{i=1}^{N} F_i} \right) \left(\frac{F_T - F_D}{F_T} \right)$$

where:

C_T = the alternative concentration limit for the combined wastestream.

C_i = the categorical Pretreatment Standard concentration limit for a pollutant in the regulated stream i.

F_i = the average daily flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from: (i) Boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (ii) sanitary wastestreams where such streams are not regulated by a Categorical Pretreatment Standard; or (iii) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards for one or more of the following reasons (see Appendix D of 40 CFR Part 403 ~~(1995)~~(1999):

(1) The pollutants of concern are not detectable in the effluent from the Industrial User;

(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;

(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator; or

(4) The wastestream contains only pollutants which are compatible with the POTW.

F_T = The average daily flow (at least a 30-day average) through the combined treatment facility (includes F_i, F_D and unregulated streams).

N = The total number of regulated streams.

b. Alternative mass limit.

$$M_T = \left(\sum_{i=1}^{N} M_i\right)\left(\frac{F_T - F_D}{\sum_{i=1}^{N} F_i}\right)$$

where:

M_T = the alternative mass limit for a pollutant in the combined wastestream.

M_i = the categorical Pretreatment Standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).

F_i = the average flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from: (i) boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (ii) sanitary wastestreams where such streams are not regulated by a categorical Pretreatment Standard; or (iii) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards for one or more of the following reasons (see Appendix D of 40 CFR Part 403 ~~(1995)~~(1999)):

(1) The pollutants of concern are not detectable in the effluent from the Industrial User;

(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;

(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator; or

(4) The wastestream contains only pollutants which are compatible with the POTW.

F_T = The average flow (at least a 30-day average) through the combined treatment facility (includes F_i, F_D and unregulated streams).

N = The total number of regulated streams.

2. Alternate limits below detection limit. An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

3. Self-monitoring. Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements of 9 VAC 25-31-840 G.

4. Choice of monitoring location. Where a treated regulated process wastestream is combined prior to treatment with wastewaters other than those generated by the regulated process, the Industrial User may monitor either the segregated process wastestream or the combined wastestream for the purpose of determining compliance with applicable Pretreatment Standards. If the Industrial User chooses to monitor the segregated process wastestream, it shall apply the applicable categorical Pretreatment Standard. If the User chooses to monitor the combined wastestream, it shall apply an alternative discharge limit calculated using the combined wastestream formula as provided in this section. The Industrial User may change monitoring points only after receiving approval from the Control Authority. The Control Authority shall ensure that any change in an Industrial User's monitoring point(s) will not allow the User to substitute dilution for adequate treatment to achieve compliance with applicable Standards.

9 VAC 25-31-800. Pretreatment Program Requirements: Development and Implementation by POTW.

A. POTWs required to develop a pretreatment program.

Any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than 5 million gallons per day (mgd) and receiving from Industrial Users pollutants which Pass Through or Interfere with the operation of the POTW or are otherwise subject to Pretreatment Standards will be required to establish a POTW Pretreatment Program unless the Director exercises his or her option to assume local responsibilities. The Regional Administrator or Director may require that a POTW with a design flow of 5 mgd or less develop a POTW Pretreatment Program if he or she finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, violations of water quality standards, or other circumstances warrant in order to prevent Interference with the POTW or Pass Through.

B. Deadline for Program Approval.

POTWs identified as being required to develop a POTW Pretreatment Program under paragraph A of this section shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the Director of such identification. The approved program shall be in operation within two years of the effective date of the permit. The POTW Pretreatment Program shall meet the criteria set forth in paragraph F of this section and shall be administered by the POTW to ensure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

C. Incorporation of approved programs in permits.

A POTW may develop an appropriate POTW Pretreatment Program any time before the time limit set forth in paragraph B of this section. The POTW's VPDES Permit will be reissued or modified to incorporate the approved Program as enforceable conditions of the Permit. The modification of a POTW's VPDES Permit for the purposes of incorporating a POTW Pretreatment Program approved in accordance with the procedures in 9 VAC 25-31-830 shall be deemed a minor Permit modification subject to the procedures in 9 VAC 25-31-400.

D. Incorporation of compliance schedules in permits.

[Reserved]

E. Cause for revocation and reissuance or modification of permits.

Under the authority of the Law and Section 402 (b)(1)(C) of the CWA, the Director may modify, or alternatively, revoke and reissue a POTW's Permit in order to:

1. Put the POTW on a compliance schedule for the development of a POTW Pretreatment Program where the addition of pollutants into a POTW by an Industrial User or combination of Industrial Users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

2. Coordinate the issuance of Section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW Pretreatment Program;

3. Incorporate a modification of the permit approved under Section 301(h) or 301(i) of the CWA;

4. Incorporate an approved POTW Pretreatment Program in the POTW permit;

5. Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit; or

6. Incorporate the removal credits (established under 9 VAC 25-31-790) in the POTW permit.

F. POTW pretreatment requirements.

A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

1. Legal authority. The POTW shall operate pursuant to legal authority enforceable in federal, state or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of Sections 307(b), (c) and (d), and 402(b)(8) of the CWA and any regulations implementing those sections. Such authority may be contained in a statute or ordinances which the POTW is authorized to enact, enter into or implement, and which are authorized by state law. At a minimum, this legal authority shall enable the POTW to:

a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its VPDES permit;

b. Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;

c. Control through permit, or order the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under 9 VAC 25-31-10, this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:

(1) Statement of duration (in no case more than five years);

(2) Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

(3) Effluent limits based on applicable general pretreatment standards in this part, categorical pretreatment standards, local limits, and the Law;

(4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in this part, categorical pretreatment standards, local limits, and the Law;

(5) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements; and

(6) Any applicable compliance schedules, which may not extend beyond applicable federal deadlines;

d. Require:

(1) The development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements; and

(2) The submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in 9 VAC 25-31-840;

e. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under 9 VAC 25-31-840 O to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under Section 308 of the CWA;

f. Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of $1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements. Pretreatment requirements which will be enforced through the remedies set forth in this paragraph, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or this part. The POTW shall have authority and procedures (after informal notice to the discharger) to immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The Director shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the Director believes to be insufficient; and

g. Comply with the confidentiality requirements set forth in 9 VAC 25-31-860.

2. Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program. At a minimum, these procedures shall enable the POTW to:

a. Identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program. Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Regional Administrator or Department upon request;

b. Identify the character and volume of pollutants contributed to the POTW by the Industrial Users identified under paragraph F 2 a of this section. This information shall be made available to the Regional Administrator or Department upon request;

c. Notify Industrial Users identified under paragraph F 2 a of this section, of applicable Pretreatment Standards and any applicable requirements under Sections 204(b) and 405 of the CWA and Subtitles C and D of the Resource Conservation and Recovery Act. Within 30 days of approval pursuant to 9 VAC 25-31-800 F 6, of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status;

d. Receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in 9 VAC 25-31-840;

e. Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each Significant Industrial User at least once a year. Evaluate, at least once every two years, whether each such Significant Industrial User needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or non-customary batch discharge. The results of such activities shall be available to the Department upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

(1) Description of discharge practices, including non-routine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 9 VAC 25-31-770 B, with procedures for follow-up written notification within five days; and

(4) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment necessary for emergency response;

f. Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under 9 VAC 25-31-840, or indicated by analysis, inspection, and surveillance activities described in paragraph F 2 e of this section. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

g. Comply with the public participation requirements of the Code of Virginia and 40 CFR Part 25 ~~(1995)~~(1999) in the enforcement of national pretreatment standards. These procedures shall include provision for at least annual public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at any time during the previous twelve months were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(3) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph F 1 f of this section to halt or prevent such a discharge;

(5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or

(8) Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

3. Funding. The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in paragraphs F 1 and 2 of this section. In some limited circumstances, funding and personnel may be delayed where (i) the POTW has adequate legal authority and procedures to carry out the Pretreatment Program requirements described in this section, and (ii) a limited aspect of the Program does not need to be implemented immediately (see 9 VAC 25-31-810 B).

4. Local limits. The POTW shall develop local limits as required in 9 VAC 25-31-770 C 1, using current influent, effluent and sludge data, or demonstrate that they are not necessary.

5. The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

a. Describe how the POTW will investigate instances of noncompliance;

b. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

c. Identify (by title) the official(s) responsible for each type of response; and

d. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 9 VAC 25-31-800 F 1 and F 2.

6. The POTW shall prepare and maintain a list of its Significant Industrial Users. The list shall identify the criteria in the definition of Significant Industrial User in Part I which are applicable to each Industrial User and, for Industrial Users meeting the criteria in paragraph 2 of that definition, shall also indicate whether the POTW has made a determination pursuant to paragraph 3 of that definition that such Industrial User should not be considered a Significant Industrial User. This list shall be submitted to the Department as a nonsubstantial program modification pursuant to 9 VAC 25-31-900 D. Modifications to the list shall be submitted to the Department pursuant to 9 VAC 25-31-840 I 1.

9 VAC 25-31-810. POTW Pretreatment Programs and/or Authorization to Revise Pretreatment Standards: Submission for Approval.

A. Who approves Program.

A POTW requesting approval of a POTW Pretreatment Program shall develop a program description which includes the information set forth in paragraphs B 1 through 4 of this section. This description shall be submitted to the Department which will make a determination on the request for program approval in accordance with the procedures described in 9 VAC 25-31-830.

B. Contents of POTW program submission.

The program description must contain the following information:

1. A statement from the City Solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTW has authority adequate to carry out the programs described in 9 VAC 25-31-800. This statement shall:

a. Identify the provision of the legal authority under 9 VAC 25-31-800 F 1 which provides the basis for each procedure under 9 VAC 25-31-800 F 2;

b. Identify the manner in which the POTW will implement the program requirements set forth in 9 VAC 25-31-800, including the means by which Pretreatment Standards will be applied to individual Industrial Users (e.g., by order, permit, ordinance, etc.); and

c. Identify how the POTW intends to ensure compliance with Pretreatment Standards and Requirements, and to enforce them in the event of noncompliance by Industrial Users;

2. A copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the Program which meet the requirements of 9 VAC 25-31-800 F 1. This Submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW Pretreatment Program if approved;

3. A brief description (including organization charts) of the POTW organization which will administer the Pretreatment Program. If more than one agency is responsible for administration of the Program the responsible agencies shall be identified, their respective responsibilities delineated, and their procedures for coordination set forth in an inter-jurisdictional agreement; and

4. A description of the funding levels and full and part-time manpower available to implement the Program.

C. Conditional POTW program approval.

The POTW may request conditional approval of the Pretreatment Program pending the acquisition of funding and personnel from certain elements of the Program. The request for conditional approval must meet the requirements set forth in paragraph B of this section except that the requirements of paragraph B of this section, may be relaxed if the Submission demonstrates that:

1. A limited aspect of the Program does not need to be implemented immediately;

2. The POTW had adequate legal authority and procedures to carry out those aspects of the Program which will not be implemented immediately; and

3. Funding and personnel for the Program aspects to be implemented at a later date will be available when needed. The POTW will describe in the Submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Director will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the POTW Pretreatment Program and any removal allowances granted to the POTW may be modified or withdrawn.

D. Content of removal allowance submission.

The request for authority to revise categorical Pretreatment Standards must contain the information required in 9 VAC 25-31-790 D.

E. Approval authority action.

Any POTW requesting POTW Pretreatment Program approval shall submit to the Department three copies of the submission described in paragraph B, and if appropriate, D of this section. Within 60 days after receiving the Submission, the Director shall make

a preliminary determination of whether the Submission meets the requirements of paragraph B and, if appropriate, D of this section. If the Director makes the preliminary determination that the Submission meets these requirements, the Director shall:

1. Notify the POTW that the Submission has been received and is under review; and

2. Commence the public notice and evaluation activities set forth in 9 VAC 25-31-830.

F. Notification where submission is defective.

If, after review of the Submission as provided for in paragraph E of this section, the Director determines that the Submission does not comply with the requirements of paragraph B or C of this section, and, if appropriate, paragraph D, of this section, the Director shall provide notice in writing to the applying POTW and each person who has requested individual notice. This notification shall identify any defects in the Submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of paragraphs B, C of this section, and, if appropriate, paragraph D of this section.

G. Consistency with water quality management plans.

1. In order to be approved the POTW Pretreatment Program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR Parts 130, 131 ~~(1995)~~(1999), as revised, where such 208 plan includes Management Agency designations and addresses pretreatment in a manner consistent with this part. In order to assure such consistency the Director shall solicit the review and comment of the appropriate 208 Planning Agency during the public comment period provided for in 9 VAC 25-31-830 B 1 b prior to approval or disapproval of the Program.

2. Where no 208 plan has been approved or where a plan has been approved but lacks Management Agency designations or does not address pretreatment in a manner consistent with this part, the Director shall nevertheless solicit the review and comment of the appropriate 208 planning agency.

9 VAC 25-31-840. Reporting Requirements for POTWs and Industrial Users.

A. Definition.

The term "Control Authority" as it is used in this section refers to:

1. The POTW if the POTW's Submission for its pretreatment program, as defined in 9 VAC 25-31-10, has been approved in accordance with the requirements of 9 VAC 25-31-830; or

2. The Director if the Submission has not been approved.

B. Reporting requirements for industrial users upon effective date of categorical pretreatment standard baseline report.

Within 180 days after the effective date of a categorical Pretreatment Standard, or 180 days after the final administrative decision made upon a category determination submission under 9 VAC 25-31-780 A 4, whichever is later, existing Industrial Users subject to such categorical Pretreatment Standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraphs B 1 through 7 of this section. At least 90 days prior to commencement of discharge, New Sources, and sources that become Industrial Users subsequent to the promulgation of an

applicable categorical Standard, shall be required to submit to the Control Authority a report which contains the information listed in paragraphs B 1 through 5 of this section. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in paragraphs B 4 and 5 of this section:

1. Identifying information. The User shall submit the name and address of the facility including the name of the operator and owners;

2. Permits. The User shall submit a list of any environmental control permits held by or for the facility;

3. Description of operations. The User shall submit a brief description of the nature, average rate of production, and Standard Industrial Classification of the operation(s) carried out by such Industrial User. This description should include a schematic process diagram which indicates points of Discharge to the POTW from the regulated processes;

4. Flow measurement. The User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

a. Regulated process streams; and

b. Other streams as necessary to allow use of the combined wastestream formula of 9 VAC 25-31-780 E. (See paragraph B 5 e of this section.) The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations;

5. Measurement of pollutants.

a. The user shall identify the Pretreatment Standards applicable to each regulated process;

b. In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Standard or Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations;

c. A minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Control Authority may waive flow-proportional composite sampling for any Industrial User that demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the User demonstrates that this will provide a representative sample of the effluent being discharged;

d. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph;

e. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User shall measure the flows and concentrations necessary to allow use of the combined wastestream formula of 9 VAC 25-31-780 E in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 9 VAC 25-31-780 E this adjusted limit along with supporting data shall be submitted to the Control Authority;

f. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 ~~(1995)~~(1999) and amendments thereto. Where 40 CFR Part 136 ~~(1995)~~(1999) does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the Part 136 sampling and analytical techniques are inappropriate

for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator;

g. The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures; and

h. The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW;

6. Certification. A statement, reviewed by an authorized representative of the Industrial User (as defined in paragraph L of this section) and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements; and

7. Compliance schedule. If additional pretreatment and/or O and M will be required to meet the Pretreatment Standards; the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O and M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard.

a. Where the Industrial User's categorical Pretreatment Standard has been modified by a removal allowance (9 VAC 25-31-790), the combined wastestream formula (9 VAC 25-31-780 E), and/or a Fundamentally Different Factors variance (9 VAC 25-31-850) at the time the User submits the report required by paragraph B of this section, the information required by paragraphs B 6 and 7 of this section shall pertain to the modified limits.

b. If the categorical Pretreatment Standard is modified by a removal allowance (9 VAC 25-31-790), the combined wastestream formula (9 VAC 25-31-780 E), and/or a Fundamentally Different Factors variance (9 VAC 25-31-850) after the User submits the report required by paragraph B of this section, any necessary amendments to the information requested by paragraphs B 6 and 7 of this section shall be submitted by the User to the Control Authority within 60 days after the modified limit is approved.

C. Compliance schedule for meeting categorical Pretreatment Standards.

The following conditions shall apply to the schedule required by paragraph B 7 of this section:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Industrial User to meet the applicable categorical Pretreatment Standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.);

2. No increment referred to in paragraph C 1 of this section shall exceed 9 months; and

3. Not later than 14 days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority.

D. Report on compliance with categorical pretreatment standard deadline.

Within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the Control Authority a report containing the information described in paragraphs B 4

through 6 of this section. For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in 9 VAC 25-31-780 C, this report shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period.

E. Periodic reports on continued compliance.

1. Any Industrial User subject to a categorical Pretreatment Standard, after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Director, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in paragraph B 4 of this section except that the Control Authority may require more detailed reporting of flows. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may agree to alter the months during which the above reports are to be submitted.

2. Where the Control Authority has imposed mass limitations on Industrial Users as provided for by 9 VAC 25-31-780 D, the report required by paragraph E 1 of this section shall indicate the mass of pollutants regulated by Pretreatment Standards in the Discharge from the Industrial User.

3. For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in 9 VAC 25-31-780 C, the report required by paragraph E 1 shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by paragraph E 1 shall include the User's actual average production rate for the reporting period.

F. Notice of potential problems, including slug loading.

All categorical and non-categorical Industrial Users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by 9 VAC 25-31-770 B, by the Industrial User.

G. Monitoring and analysis to demonstrate continued compliance with Pretreatment Standards and Requirements.

1. The reports required in paragraphs B, D, and E of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. This sampling and analysis may be performed by the Control Authority in lieu of the Industrial User. Where the POTW performs the required sampling and analysis in lieu of the Industrial User, the User will not be required to submit the compliance certification required under 9 VAC 25-31-840 B 6 and D. In addition, where the POTW itself collects all the information required for the report, including flow data, the Industrial User will not be required to submit the report.

2. If sampling performed by an Industrial User indicates a violation, the user shall notify the Control Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat

analysis to the Control Authority within 30 days after becoming aware of the violation, except the Industrial User is not required to resample if:

a. The Control Authority performs sampling at the Industrial User at a frequency of at least once per month; or

b. The Control Authority performs sampling at the User between the time when the User performs its initial sampling and the time when the User receives the results of this sampling.

3. The reports required in paragraph E of this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

4. All analyses shall be performed in accordance with procedures contained in 40 CFR Part 136 ~~(1995)~~(1999) and amendments thereto or with any other test procedures approved by EPA, and shall be reported to the Control Authority. Sampling shall be performed in accordance with EPA approved techniques. Where 40 CFR Part 136 ~~(1995)~~(1999) does not include sampling or analytical techniques for the pollutants in question, or where EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by EPA.

5. If an Industrial User subject to the reporting requirement in paragraph E of this section monitors any pollutant more frequently than required by the Control Authority, using the procedures prescribed in paragraph G 4 of this section, the results of this monitoring shall be included in the report.

H. Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards.

The Control Authority shall require appropriate reporting from those Industrial Users with discharges that are not subject to categorical Pretreatment Standards. Significant Noncategorical Industrial Users shall submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. These reports shall be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the techniques described in 40 CFR Part 136 ~~(1995)~~(1999) and amendments thereto. Where 40 CFR Part 136 ~~(1995)~~(1999) does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the Administrator. This sampling and analysis may be performed by the Control Authority in lieu of the significant noncategorical industrial user. Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

I. Annual POTW reports.

POTWs with approved Pretreatment Programs shall provide the Department with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter, and shall include, at a minimum, the following:

1. An updated list of the POTW's Industrial Users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which Industrial Users are subject to categorical pretreatment Standards and specify which Standards are applicable to each Industrial User. The list shall indicate which Industrial Users are subject to local standards that are more stringent than the categorical Pretreatment Standards. The POTW shall also list the Industrial Users that are subject only to local Requirements;

2. A summary of the status of Industrial User compliance over the reporting period;

3. A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period;

4. A summary of changes to the POTW's pretreatment program that have not been previously reported to the Department; and

5. Any other relevant information requested by the Director.

J. Notification of changed discharge.

All Industrial Users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under the Code of Virginia and 9 VAC 25-31-840.

K. Compliance schedule for POTW's.

The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW Pretreatment Program required by 9 VAC 25-31-800:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW Pretreatment Program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

2. No increment referred to in paragraph H 1 of this section shall exceed nine months; and

3. Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the Department including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Department.

L. Signatory requirements for industrial user reports.

The reports required by paragraphs B, D, and E of this section shall include the certification statement as set forth in 9 VAC 25-31-780 A 2 b, and shall be signed as follows:

1. By a responsible corporate officer, if the Industrial User submitting the reports required by paragraphs B, D and E of this section is a corporation. For the purpose of this paragraph, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

2. By a general partner or proprietor if the Industrial User submitting the reports required by paragraphs B, D and E of this section is a partnership or sole proprietorship respectively;

3. By a duly authorized representative of the individual designated in paragraph L 1 or L 2 of this section if:

a. The authorization is made in writing by the individual described in paragraph L 1 or L 2;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

c. The written authorization is submitted to the Control Authority; or

4. If an authorization under paragraph L 3 of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph L 3 of this section must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.

M. Signatory requirements for POTW reports.

Reports submitted to the Department by the POTW in accordance with paragraph I of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

N. Provision Governing Fraud and False Statements.

The reports and other documents required to be submitted or maintained under this section shall be subject to:

1. The provisions of 18 U.S.C. Section 1001 relating to fraud and false statements;

2. The provisions of the Law or Sections 309(c)(4) of the CWA, as amended, governing false statements, representation or certification; and

3. The provisions of Section 309(c)(6) of the CWA regarding responsible corporate officers.

O. Record-keeping requirements.

1. Any Industrial User and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

a. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

b. The dates analyses were performed;

c. Who performed the analyses;

d. The analytical techniques/methods use; and

e. The results of such analyses.

2. Any Industrial User or POTW subject to the reporting requirements established in this section shall be required to retain for a minimum of 3 years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the Director and the Regional Administrator (and POTW in the case of an Industrial User). This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or POTW or when requested by the Director or the Regional Administrator.

3. Any POTW to which reports are submitted by an Industrial User pursuant to paragraphs B, D, E, and H of this section shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Director and the Regional Administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User or the operation of the POTW Pretreatment Program or when requested by the Director or the Regional Administrator.

P. 1. The Industrial User shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under the Code of Virginia and 40 CFR Part 261 ~~(1995)~~(1999). Such notification must include the name of the hazardous waste as set forth in the Code of Virginia and 40 CFR Part 261 ~~(1995)~~(1999), the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 9 VAC 25-31-840 J. The notification requirement in this section does not apply to pollutants already reported under self-monitoring requirements of 9 VAC 25-31-840 B, D, and E.

2. Dischargers are exempt from the requirements of paragraph P 1 of this section during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR Parts 261.30(d) and 261.33(e) ~~(1995)~~(1999). Discharge of more than 15 kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR Parts 261.30(d) and 261.33(e) ~~(1995)~~(1999), requires a one-time notification. Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the POTW, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

4. In the case of any notification made under paragraph P of this section, the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

Certified true and accurate: _____

Dennis H. Treacy, Director, DEQ

Date: _____