VIRGINIA REGISTER OF REGULATIONS

VOL. 35 ISS. 4 PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION OCTOBER 15, 2018

TABLE OF CONTENTS

Register Information Page 503

Publication Schedule and Deadlines 504

Petitions for Rulemaking 505

Regulations 506

2VAC5-115. Regulations for Determining Whether a Facility Meets the Purpose of Finding Permanent Adoptive Homes for Animals (Proposed) 506
4VAC20-510. Pertaining to Amberjack and Cobia (Final) 508
4VAC20-620. Pertaining to Summer Flounder (Final) 509
4VAC25-40. Safety and Health Regulations for Mineral Mining (Fast-Track) 509
9VAC25-20. Fees for Permits and Certificates (Final) 516
9VAC25-610. Groundwater Withdrawal Regulations (Final) 516
9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (Final) 523
9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (Forms) 526
9VAC25-210. Virginia Water Protection Permit Program Regulation (Final) 526
9VAC25-670. Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activity (Final) 526
9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (Final) 526
9VAC25-610. Groundwater Withdrawal Regulations (Final) 540
9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (Final) 542
12VAC5-90. Regulations for Disease Reporting and Control (Final) 558
12VAC5-221. Regulations Governing Cooperative Agreements (Final) 565
12VAC5-391. Regulations for the Licensure of Hospice (Final) 565
12VAC5-410. Regulations for the Licensure of Hospitals in Virginia (Final) 567
12VAC5-412. Regulations for Licensure of Abortion Facilities (Final) 569
12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (Fast-Track) 570
12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (Fast-Track) 575
12VAC35-250. Certification of Peer Recovery and Resiliency Specialists (Notice of Extension of Emergency Regulation) 584
18VAC85-140. Regulations Governing the Practice of Polysomnographic Technologists (Final) 585
18VAC85-160. Regulations Governing the Registration of Surgical Assistants and Surgical Technologists (Final) 585
18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (Notice of Extension of Emergency Regulation) 585
18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (Notice of Extension of Emergency Regulation) 585
20VAC5-316. Regulations Governing Exemptions for Large General Services Customers under § 56-585.1 A 5 c of the Code of Virginia (Final) 586
22VAC30-20. Provision of Vocational Rehabilitation Services (Notice of Extension of Emergency Regulation) 587

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for $263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Easton, MD and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

Table of Contents

24VAC30-151. Land Use Permit Regulations (Final) 587
Governor 589
General Notices/Errata 591

VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the Virginia Register, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE *VIRGINIA REGISTER*

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017,** refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **John S. Edwards,** Chair; **James A. "Jay" Leftwich; Ryan T. McDougle; Rita Davis; Leslie L. Lilley; E.M. Miller, Jr.; Thomas M. Moncure, Jr.; Christopher R. Nolen; Charles S. Sharp; Samuel T. Towell; Mark J. Vucci.**

Staff of the *Virginia Register:* **Karen Perrine,** Registrar of Regulations; **Anne Bloomsburg,** Assistant Registrar; **Alexandra Stewart-Jonte,** Regulations Analyst; **Rhonda Dyer,** Publications Assistant; **Terri Edwards,** Senior Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (http://register.dls.virginia.gov).

October 2018 through December 2019

Volume: Issue	Material Submitted By Noon*	Will Be Published On
35:5	October 10, 2018	October 29, 2018
35:6	October 24, 2018	November 12, 2018
35:7	November 7, 2018	November 26, 2018
35:8	November 19, 2018 **(Monday)**	December 10, 2018
35:9	December 5, 2018	December 24, 2018
35:10	December 14, 2018 **(Friday)**	January 7, 2019
35:11	January 2, 2019	January 21, 2019
35:12	January 16, 2019	February 4, 2019
35:13	January 30, 2019	February18, 2019
35:14	February 13, 2019	March 4, 2019
35:15	February 27, 2019	March 18, 2019
35:16	March 13, 2019	April 1, 2019
35:17	March 27, 2019	April 15, 2019
35:18	April 10, 2019	April 29, 2019
35:19	April 24, 2019	May 13, 2019
35:20	May 8, 2019	May 27, 2019
35:21	May 22, 2019	June 10, 2019
35:22	June 5, 2019	June 24, 2019
35:23	June 19, 2019	July 8, 2019
35:24	July 3, 2019	July 22, 2019
35:25	July 17, 2019	August 5, 2019
35:26	July 31, 2019	August 19, 2019
36:1	August 14, 2019	September 2, 2019
36:2	August 28, 2019	September 16, 2019
36:3	September 11, 2019	September 30, 2019
36:4	September 25, 2019	October 14, 2019
36:5	October 9, 2019	October 28, 2019
36:6	October 23, 2019	November 11, 2019
36:7	November 6, 2019	November 25, 2019
36:8	November 18, 2019 **(Monday)**	December 9, 2019
36:9	December 4, 2019	December 23, 2019

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF LONG-TERM CARE ADMINISTRATORS

Initial Agency Notice

Title of Regulation: **18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators.**

Statutory Authority: §§ 54.1-2400 and 54.1-3102 of the Code of Virginia.

Name of Petitioner: Daniel Cassiere.

Nature of Petitioner's Request: The petitioner requests amendments to (i) allow an administrator with one year of total experience to be a preceptor, (ii) make it mandatory for an employer to inform the board about employee work dates, and (iii) add other types of documents to prove work history.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition was filed with the Registrar of Regulations and posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov. The petition will be published on October 15, 2018, and comment will be requested from interested parties until November 14, 2018. The petition and copies of all comment will be considered by the Board of Long-Term Care Administrators at its meeting scheduled for December 13, 2018. After considering the request and reviewing the comments, the board will decide whether to initiate rulemaking or deny the petition and retain the current requirements.

Public Comment Deadline: November 14, 2018.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4595, or email corie.wolf@dhp.virginia.gov.

VA.R. Doc. No. R19-10; Filed September 13, 2018, 2:44 p.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Proposed Regulation

Title of Regulation: **2VAC5-115. Regulations for Determining Whether a Facility Meets the Purpose of Finding Permanent Adoptive Homes for Animals (adding 2VAC5-115-10, 2VAC5-115-20, 2VAC5-115-30).**

Statutory Authority: § 3.2-6501 of the Code of Virginia.

Public Hearing Information:

December 6, 2018 - 10 a.m. - Patrick Henry Building, West Reading Room, 1111 East Broad Street Richmond, VA

Public Comment Deadline: December 14, 2018.

Agency Contact: Dr. Kathryn MacDonald, Program Manager, Animal Care and Emergency Response, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 692-4001, FAX (804) 371-2380, or email kathryn.macdonald@vdacs.virginia.gov.

Basis: Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services as a policy board. Chapter 319 of the 2016 Acts of Assembly requires the board to "adopt regulations that determine whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals."

Purpose: Legislation approved during the 2015 Session of the General Assembly amended the Virginia Comprehensive Animal Care law's definition for "private animal shelter" to require that a facility that is a private animal shelter be "operated for the purpose of finding permanent adoptive homes for animals." In the year that followed this amendment, significant controversy arose among stakeholders as to what determines a facility's purpose. In response to stakeholders, Chapter 319 of the 2016 Acts of Assembly requires the board to promulgate regulations to determine whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals. This regulatory action does not impact public health or safety; however, general public welfare is protected when regulations are promulgated in compliance with statutory requirements.

Substance: The proposed regulation establishes criteria to determine if a facility is operating for the purpose of finding permanent adoptive homes for animals by requiring that a facility adopt animals and engage in activities that promote adoption, such as being accessible to the public, advertising adoption, transferring animals to other releasing agencies for adoption, temporarily placing animals in foster homes while awaiting adoption, or offering services to keep animals in their permanent homes.

Issues: Chapter 319 of the 2016 Acts of Assembly requires the board to promulgate this proposed regulation to determine whether a facility is operating for the purpose of finding permanent adoptive homes for animals. Identifying potential criteria has proven to be a contentious issue for the interested stakeholders. The regulation will affect private animal shelters, which are regulated by the Virginia Department of Agriculture and Consumer Services (VDACS). Certain private animal shelters that are currently in operation may not be in compliance with the required criteria or may incur increased costs in order to come into compliance with the criteria.

The regulation will also affect VDACS, which will be tasked with ensuring compliance with the criteria determined in the new regulation. VDACS's animal shelter inspector currently inspects all private animal shelters for compliance with Virginia's Comprehensive Animal Care law; once the proposed regulation becomes effective, the inspector will inspect for the required criteria as well.

There is significant disagreement among stakeholders as to the intended purpose behind the 2015 and 2016 legislation. Some stakeholders believe that private animal shelters should operate for adoption only and feel strongly that the criteria should include a metric or required percentage for adoptions or allowable euthanasia. Other stakeholders believe that shelters should be allowed to determine which of the four methods of disposal prescribed in the Comprehensive Animal Care law is appropriate for each individual animal.

Chapter 319 of the 2016 Acts of Assembly consists of one sentence: "That the Board of Agriculture and Consumer Services shall adopt regulations that determine whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals." The General Assembly provided no further guidance to the board to determine the criteria that would serve to determine whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals. Stakeholder opinions on both the legislative intent and the proposed regulation are widely divergent and contentious. Some stakeholders believe the intent of the language is to subject private animal shelters to strict rules regarding euthanasia rates in order to force certain

facilities currently operating with high euthanasia rates to stop operations. Alternatively, some stakeholders believe the intent of the language is unclear, and regulations should not impose any numerical metrics on private animal shelters. VDACS expects that private animal shelters may need to adjust their operations in order to come into compliance with the proposed criteria.

Currently, the Code of Virginia defines a "private animal shelter" as operating for the purpose of finding permanent adoptive homes for animals. This definition does not give VDACS specific guidance on how to interpret whether a private animal shelter is meeting that definition appropriately. The proposed regulation will give VDACS specific criteria to use to determine if a facility meets the definition of being a private animal shelter.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 319 of the 2016 Acts of Assembly,[1] the Board of Agriculture and Consumer Services (the Board) proposes criteria to determine whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Pursuant to Chapter 319 of the 2016 Acts of Assembly, the Board proposes the following:

"A facility that is operated for the purpose of finding permanent adoptive homes for animals shall annually (i) find permanent adoptive homes for animals and (ii) conduct at least three of the following activities:

1. Be accessible to the public to view animals available for adoption;

2. Advertise to the general public animals that are available for adoption;

3. Transfer animals available for adoption to a releasing agency;

4. Utilize a foster care provider for animals temporarily awaiting placement in permanent adoptive homes; or

5. Offer services to the public in an effort to keep animals in their permanent homes."

Of the five activities, the first one is already required by Virginia Code § 3.2-6548(A)[2] which refers to § 3.2-6546 (B).[3] As a result, a facility may, in effect, be deemed to meet the purpose by conducting two of the four remaining activities. There are currently 44 private animal shelters operating in Virginia. The Board staff believes only a handful of them may not be fully meeting the proposed regulation. Those that do not meet the criteria may comply with the regulation by conducting any two of the activities listed in the regulation. Most of the proposed activities do not involve significant costs. For example, establishing a Facebook page stating that animals are available for adoption would satisfy the second activity.[4] Thus, the proposed regulation is not expected to create any significant cost for the private animal shelters currently out of compliance. The proposed regulation is beneficial in the sense that it establishes how a facility may be deemed to meet the purpose of finding permanent adoptive homes for animals as required by the statue.

Businesses and Entities Affected. There are currently 44 private animal shelters. In 2016, 42,897 animals were adopted, transferred, or euthanized at these facilities.

Localities Particularly Affected. The proposed regulation applies statewide.

Projected Impact on Employment. No significant impact on employment is expected.

Effects on the Use and Value of Private Property. No significant impact on the use and value of private property is expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. All of the private animal shelters are nonprofit organizations. Thus, there is no costs and other effects on small businesses.

Alternative Method that Minimizes Adverse Impact. There is no adverse impact on small businesses.

Adverse Impacts:

Businesses. The proposed regulation will not have an adverse impact on non-small businesses.

Localities. The proposed regulation is not expected to adversely affect localities.

Other Entities. The proposed regulation will not adversely affect other entities.

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[1] http://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0319

[2] https://law.lis.virginia.gov/vacode/title3.2/chapter65/section3.2-6548/

[3] https://law.lis.virginia.gov/vacode/title3.2/chapter65/section3.2-6546/

[4] Source: Department of Agriculture and Consumer Services

Agency's Response to Economic Impact Analysis: The agency concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 319 of the 2016 Acts of Assembly, which directed the Board of Agriculture and Consumer Services to promulgate a regulation to determine whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals, the proposed regulation establishes provisions for making such a determination.

CHAPTER 115
REGULATIONS FOR DETERMINING WHETHER A FACILITY MEETS THE PURPOSE OF FINDING PERMANENT ADOPTIVE HOMES FOR ANIMALS

2VAC5-115-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Facility" means a building or portion thereof as designated by the State Veterinarian, other than a private residential dwelling and its surrounding grounds, that is used to contain primary enclosures in which animals are housed or kept.

"Foster care provider" means a person who provides care or rehabilitation for companion animals through an affiliation with a public or private animal shelter, home-based rescue, releasing agency, or other animal welfare organization.

"Private animal shelter" means a facility operated for the purpose of finding permanent adoptive homes for animals that is used to house or contain animals and that is owned or operated by an incorporated, nonprofit, and nongovernmental entity, including a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other similar organization.

"Releasing agency" means (i) a public animal shelter or (ii) a private animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue that releases companion animals for adoption.

2VAC5-115-20. Meeting the purpose of finding permanent adoptive homes for animals.

A facility that is operated for the purpose of finding permanent adoptive homes for animals shall annually (i) find permanent adoptive homes for animals and (ii) conduct at least three of the following activities:

1. Be accessible to the public to view animals available for adoption;

2. Advertise to the general public animals that are available for adoption;

3. Transfer animals available for adoption to a releasing agency;

4. Utilize a foster care provider for animals temporarily awaiting placement in permanent adoptive homes; or

5. Offer services to the public in an effort to keep animals in their permanent homes.

2VAC5-115-30. Failure to meet requirements.

Failure to meet the requirements in this chapter will result in the State Veterinarian or the State Veterinarian's representative determining that the facility does not operate for the purpose of finding permanent adoptive homes for animals and is not a private animal shelter.

VA.R. Doc. No. R17-4927; Filed September 13, 2018, 1:52 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-25).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: September 30, 2018.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment closes the commercial cobia season on October 1, 2018, to mirror the federal waters closure.

4VAC20-510-25. Commercial fishery possession limits and season.

A. It shall be unlawful for any person fishing commercially to possess more than two amberjack or more than two cobia at any time, except as described in 4VAC20-510-33. Any amberjack or cobia caught after the possession limit has been reached shall be returned to the water immediately. When fishing from any boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of

valid commercial fisherman registration licensees on board multiplied by two, except there is a maximum vessel limit of six cobia per vessel per day. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

B. In 2018 it shall be unlawful for any person fishing commercially to harvest or possess any cobia after September 30.

VA.R. Doc. No. R19-5651; Filed September 27, 2018, 2:06 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-30).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: October 1, 2018.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment changes the date dividing the commercial summer flounder allowable landings quota periods.

4VAC20-620-30. Commercial harvest quota and allowable landings.

A. During each calendar year, allowable commercial landings of summer flounder shall be limited to a quota in total pounds calculated pursuant to the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Summer Flounder Fishery Management Plan, as approved by the National Marine Fisheries Service on August 6, 1992 (50 CFR Part 625)~~;~~, and shall be distributed as described in subsections B through G of this section.

B. The commercial harvest of summer flounder from Virginia tidal waters for each calendar year shall be limited to 100,000 pounds of the annual quota described in subsection A of this section.

C. From the first Monday in January through October ~~31~~ 15, the allowable landings of summer flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 60% of the quota described in subsection A of this section after deducting the amount specified in subsection B of this section.

D. From ~~November 1~~ October 16 through December 31, allowable landings of summer flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 40% of the quota as described in subsection A of this section after deducting the amount specified in subsection B of this section, and as may be further modified by subsection E of this section.

E. Should landings from the first Monday in January through October ~~31~~ 15 exceed or fall short of 60% of the quota described in subsection A of this section, any such excess shall be deducted from allowable landings described in subsection D of this section, and any such shortage shall be added to the allowable landings as described in subsection D of this section. Should the commercial harvest specified in subsection B of this section be projected as less than 100,000 pounds, any such shortage shall be added to the allowable landings described in subsection D of this section.

F. The Marine Resources Commission will give timely notice to the industry of the calculated poundages and any adjustments to any allowable landings described in subsections C and D of this section. It shall be unlawful for any person to harvest or to land summer flounder for commercial purposes after the commercial harvest or any allowable landings as described in this section have been attained and announced as such. If any person lands summer flounder after the commercial harvest or any allowable landing have been attained and announced as such, the entire amount of summer flounder in that person's possession shall be confiscated.

G. It shall be unlawful for any buyer of seafood to receive any summer flounder after any commercial harvest or landing quota as described in this section has been attained and announced as such.

VA.R. Doc. No. R19-5689; Filed September 27, 2018, 2:03 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Fast-Track Regulation

Title of Regulation: **4VAC25-40. Safety and Health Regulations for Mineral Mining (amending 4VAC25-40-10, 4VAC25-40-50, 4VAC25-40-100, 4VAC25-40-290, 4VAC25-40-300, 4VAC25-40-380, 4VAC25-40-460, 4VAC25-40-800, 4VAC25-40-810, 4VAC25-40-880, 4VAC25-40-893, 4VAC25-40-910, 4VAC25-40-1580, 4VAC25-40-2015, 4VAC25-40-2550, 4VAC25-40-2580, 4VAC25-40-2600, 4VAC25-40-3328; adding 4VAC25-40-931; repealing 4VAC25-40-90).**

Statutory Authority: §§ 45.1-161.3, 45.1-161.294, and 45.1-161.305 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 14, 2018.

Effective Date: November 30, 2018.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

Basis: The Department of Mines, Minerals and Energy's authority to promulgate these regulations can be found in §§ 45.1-161.3 and 45.1-161.292:19 of the Code of Virginia.

Purpose: These amendments ensure the regulations are clear, align with federal requirements, and codify long-standing agency policies. The amendments are specifically designed to provide operators with the most flexibility possible while maintaining public health, safety, and environmental and economic welfare through effective recordkeeping, reporting, safety precautions, and hazard mitigation. As such, this regulatory action enhances the health, safety, and welfare of the citizens of the Commonwealth.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial as these changes clarify the current requirements, provide some increased flexibility for operators, align with federal requirements, and codify long-standing Department of Mines, Minerals and Energy policies while maintaining health, safety, and environmental and economic welfare in the Commonwealth.

Substance: This regulatory action adds three definitions and changes 20 sections, including repealing and replacing one section. These changes add clarity, provide operators increased flexibility in managing certain work, and increase safety around unattended mine works, blasting, mine equipment, confined spaces, and suspended loads.

Issues: The primary advantages to the public and the Commonwealth are enhanced protection of health and safety through increased clarity as well as consistency with federal requirements and existing agency policies. The primary advantages for the Commonwealth are consistency with federal requirements and existing agency policies as well as enhanced worker safety provisions. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Mines, Minerals and Energy (DMME) proposes to make minor changes to document retention requirements and allow options for work to be performed by competent trained employees when appropriate rather than only by certain certified workers. Further, DMME proposes to update and clarify language to align with federal requirements and to reflect current practices.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. One of the proposed amendments would require that employee training records be kept at the mine site for the duration of the miners employment and for 60 days after termination of employment. The current language requires the records to be kept for two years or for 60 days after termination. The proposed change will make sure that training records will be available up to 60 days post-employment rather than for only two years following training.

Another proposed change would require mine operators to keep a report of all accidents and occupational injuries occurring on the mine property for review for only three years instead of five years as currently required.

The proposed amendments would also provide options for work to be performed by competent trained employees when appropriate rather than only by certain certified workers. For example, any unsafe condition could be reported to a competent person when a certified foreman is not required to be onsite.

The net impact of these changes on mine operators would be negligible. Any additional costs due to the increased training record retention requirement should be offset by the reduced retention requirement for accident and occupational injury records and by allowing additional flexibility for work to be done by competent rather than certified individuals when appropriate.

The remaining proposed changes update and clarify language to align with federal requirements and to reflect current practices. These changes are not expected to create any significant economic impact other than improving the clarity of the regulation.

Businesses and Entities Affected. There are approximately 443 mineral operations in Virginia. Approximately 90 percent of these would qualify as small business.

Localities Particularly Affected. The proposed amendments would affect all localities in the Commonwealth that have mineral mines. According to DMME, 91% of Virginia's counties have mineral mines governed by these regulations.

Projected Impact on Employment. No significant impact on employment is expected.

Effects on the Use and Value of Private Property. No significant impact on the use and value of private property is expected.

Real Estate Development Costs. No significant impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendments do not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. No significant adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. The proposed amendments do not have a significant adverse impact on businesses.

Localities. The proposed amendments will not adversely affect localities.

Other Entities. The proposed amendments will not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The Department of Mines, Minerals and Energy concurs with the economic impact analysis conducted by the Department of Planning and Budget.

Summary:

The amendments clarify regulation provisions, align them with federal requirements, and codify long-standing agency policies, including (i) making minor changes to document retention requirements and (ii) allowing options for work to be performed by competent trained employees when appropriate rather than only by certain certified workers.

Part I
General Administrative Provisions—Surface and Underground

4VAC25-40-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Abandoned mine" means a mine in which all work has stopped on the mine premises and where an office with a responsible person in charge is no longer maintained at the mine.

"Abandoned workings" means deserted mine areas in which further work is not intended.

"Acceptable" means tested and found to be appropriate for a specific purpose by a nationally recognized agency.

"ACGIH" means the American Conference of Governmental Industrial Hygienists.

"Angle of repose" means the maximum slope or angle at which material remains stable.

"Auxiliary fan" means a fan used to deliver air to a working place off the main airstream, generally used with ventilation tubing.

"Barricaded" means physically obstructed to hinder or prevent the passage of persons or vehicles.

"Blast area" means the area of the mine in which concussion or flying material can reasonably be expected to cause injury during detonation.

"Blast site" means the 50-foot perimeter around boreholes being loaded, or 30 feet if demarcated by a barricade, and the 180° free-face area for a distance of at least four times the average depth of the boreholes being loaded.

"Bridle" means a cable or chain used to support a work platform in a raised position with more than three connection points.

"Burden" means the distance in feet between rows of boreholes or between the open face and boreholes.

"Company official" means a member of the company supervisory or technical staff.

"Competent person" means a person having abilities and experience that fully qualify him to perform the duty to which he is assigned.

"Confined space" means an enclosed area that is large enough for an employee to enter fully and perform his assigned work but is not designed for continuous occupancy by the employee and has a limited or restricted means of entry or exit. These spaces may include storage bins, hoppers, silos, tanks, vaults, and other similar areas.

"Department" means the Department of Mines, Minerals and Energy.

"Director" means the Director of the Division of Mineral Mining.

"Distribution box" means an apparatus with an enclosure through which an electric circuit is carried to one or more cables from a single incoming feedline, each cable circuit being connected through individual overcurrent protective devices.

"Division" means the Division of Mineral Mining.

"Escapeway" means a passageway by which persons may leave if the ordinary exit is obstructed.

"Face" or "bank" means that part of any mine where excavating is progressing or was last done.

"Flash point" means the minimum temperature at which sufficient vapor is released to form a flammable vapor-air mixture.

"Free-face" means the face area of a quarry bench to be blasted.

"Flyrock" means any uncontrolled material generated by the effect of a blast that was hazardous to persons, or to property not owned or controlled by the operator.

"Heavy duty mobile equipment" means any equipment used for loading, hauling, or grading and not normally intended for highway use.

"Hoist" means a power-driven windlass or drum used for raising ore, rock, or other material from a mine, and for lowering or raising persons and material.

"Lay" means the distance parallel to the axis of the rope in which a strand makes one complete turn about the axis of the rope.

"Loaded" means containing explosives, blasting agents, or detonators.

"Main fan" means a fan that controls the entire airflow of the mine or the airflow of one of the major air circuits.

"Major electrical installation" means an assemblage of stationary electrical equipment for the generation, transmission, distribution, or conversion of electrical power.

"Mine opening" means any opening or entrance from the surface into a mine.

"Mine vehicle" means any vehicle on the mine site that is utilized by the mine operator or contractors performing excavation, maintenance, or construction at the mine.

"Misfire" means the partial or complete failure of a blast to detonate as planned.

"MSHA" means the Mine Safety and Health Administration.

"Occupational injury" means any injury to a miner which occurs at a mine for which medical treatment is administered, or which results in death or loss of consciousness, inability to perform all job duties on any day after an injury, temporary assignment to other duties, or transfer to another job as specified in the 30 CFR Part 50.2.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a deposit of useful materials or ores that are to be mined.

"Potable" means fit for human consumption and, where required by the Code of Virginia, approved by the Virginia Department of Health.

"Powder chest" means a substantial, nonconductive portable container equipped with a lid and used at blasting sites for explosives other than blasting agents.

"Primer" means a cartridge or package of explosives which contains a detonator or detonating cord.

"Refuse" means mineral processing waste, tailings, silts, sediments, or slimes.

"Rollover protection" means a framework, safety canopy or similar protection for the operator when equipment overturns and which is acceptable for use on that particular type of equipment.

"Safety fuse" means a train of powder enclosed in cotton, jute yarn, and water-proofing compounds, which burns at a uniform rate, used for firing a cap containing the detonating compound which in turn sets off the explosive charge.

"Safety hazard" means any condition, function, or circumstance which may reasonably be expected to cause or assist an accident.

"Scaled distance (Ds)" means the actual distance (D) in feet divided by the square root of the maximum explosive weight (W) in pounds that is detonated per delay period for delay intervals of eight milliseconds or greater; or the total weight of explosive in pounds that is detonated within an interval less than eight milliseconds.

"Scaling" means removal of insecure material from a face or highwall.

"Shaft" means a vertical or inclined shaft, slope, incline, or winze.

"Stemming" means that inert material placed in a borehole after the explosive charge for the purpose of confining the explosion gases in the borehole or that inert material used to separate the explosive charges (decks) in decked holes.

"Substantial construction" means construction of such strength, material, and workmanship that the object will withstand all reasonable shock, wear, and usage to which it will be subjected.

"Suitable" means that which fits and has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

"Switch" means a device used to complete or disconnect an electrical circuit.

"Travelway" means a passage, walk or way regularly used and designated for persons to go from one place to another.

"Wet drilling" means the continuous application of water through the control hole of hollow drill steel to the bottom of the drill hole.

4VAC25-40-50. ~~Duties of mine operators~~ Reporting of accidents and injuries by the operator.

~~Reporting of accidents and injuries by the operator:~~

~~1. Report~~ A. Operators shall report any accident involving serious personal injury or death to any person on the mine property~~. The report shall be made~~ to the division by the quickest available means, and the scene of the accident shall

not be disturbed until an investigation is conducted by the division. For accidents where the injured person is transported to a hospital, but confinement is not expected, the operator may either preserve the scene or collect relevant physical data and photographs as specified by the division. The division shall be notified immediately upon learning that the injured person has been admitted to the hospital for medical treatment. Head injuries that result in loss of consciousness at the site shall be reported immediately.

~~2. Keep~~ B. Operators shall report all other accidents and occupational injuries to the division within 10 days of their occurrence. Operators shall keep on file a report of all accidents and occupational injuries occurring on the mine property for review by the division mine inspector. Such records shall be kept for ~~five~~ three years.

4VAC25-40-90. ~~Documents incorporated by reference.~~ (Repealed.)

~~A. 1996 Threshold Limit Values and Biological Exposure Indices published by the American Conference of Governmental Industrial Hygienists.~~

~~B. American Table of Distances, 1991 edition, published by the Institute of Makers of Explosives.~~

~~C. National Electrical Code, 2008 edition, published by the National Fire Protection Association.~~

~~D. Virginia Department of Labor and Industry, Boiler and Pressure Vessel Safety Division, Boiler and Pressure Vessel Regulations, amended 2007 by the Virginia Department of Labor and Industry.~~

~~E. Bureau of Mines Instruction Guide 19, Mine Emergency Training, U.S. Department of Labor, 1972 edition.~~

~~F. Blasting Guidance Manual, U.S. Department of Interior, Office of Surface Mining Reclamation and Enforcement, 1987 edition.~~

~~G. The American National Standard for Wire Rope for Miners, M11.1 1980, published by the American National Standards Institute.~~

~~H. Addresses for references may be obtained from the division.~~

Part II
General Safety Provisions—Surface and Underground

4VAC25-40-100. Employee training.

New or reassigned employees shall be trained in state and company safety regulations and be task trained prior to being assigned a task or duty. Records of training shall be kept in writing at the mine site for ~~two years or~~ the duration of the miner's employment and for 60 days after termination of employment.

4VAC25-40-290. Restricted access.

Access to unattended mine roads or mine openings shall be restricted by use of gates, doors, or fences and warning signs shall be posted.

4VAC25-40-300. Closure of roads or openings.

Upon abandonment of a mine, the operator shall effectively close or fence all roads ~~or~~, mine openings ~~or pits~~, and surface excavations where hazardous conditions exist and warning signs shall be posted. Upon temporary cessation of mining activities as provided for in § 45.1-181 of the Code of Virginia, the operator shall effectively close or barricade access roads and hazardous areas.

4VAC25-40-380. Stationary grinding machines.

Stationary grinding machines other than special bit grinders shall be equipped with:

1. Peripheral hoods (less than 90° throat openings) capable of withstanding the force of a bursting wheel;

2. Adjustable tool rests set ~~as close as practical to~~ no further than 1/8 inch from the wheel; and

3. Safety washers.

4VAC25-40-460. Examination for unsafe conditions.

All personnel shall examine their active workings for unsafe conditions prior to starting work and frequently thereafter. Any unsafe condition found shall be corrected or reported to the designated certified mine foreman, or when a certified foreman is not required, a competent person.

4VAC25-40-800. Use of explosives.

A. A certified blaster shall be in direct charge of blasting activities.

B. Persons who assist in blasting activities shall be under the direct supervision of the certified blaster in charge and shall be alerted to the hazards involved.

C. Black powder or safety fuse shall not be used without approval from the director. Special approvals shall specify use restrictions and procedures necessary for safe storage, transportation, and use.

D. The design and loading of a blast shall provide sufficient burden, spacing, and stemming to prevent flyrock or other dangerous effects. Flyrock incidents shall be reported to the division immediately and details noted in the blast record.

E. Boreholes shall not be drilled where there is a danger of intersecting a loaded or misfired hole.

F. No person shall smoke or use an open flame within 50 feet of explosives or detonators.

G. Prior to bringing explosives and detonators to the blast site, the certified blaster in charge shall:

1. Monitor weather conditions to ensure safe loading and firing;

2. Inspect the blast site for hazards;

3. Inspect and clear the boreholes of obstructions; and

4. Remove personnel and equipment, except those used in loading the shot, from the blast site.

H. The certified blaster in charge shall review the drill logs to determine specific downhole conditions prior to loading the shot.

I. Boreholes to be blasted shall be loaded as near to the blasting time as practical. Loaded shots shall be blasted as soon as possible upon completion of loading and connection to the initiation device. Surface blasting shall be conducted during daylight hours only.

J. Explosives shall be kept a safe distance from detonators until they are made into a primer.

K. Primers shall not be made up or assembled in advance of the borehole being loaded.

L. Only wooden or other nonsparking implements shall be used to punch holes in an explosive cartridge.

M. Detonators shall be inserted completely and securely into explosive cartridges used as primers. Priming shall be sufficient to detonate the explosive column in the borehole.

N. Primers shall be inserted into the borehole slowly to prevent accidental detonation from impact, and tamping shall not be done directly on the primer.

O. Tamping poles shall be constructed of wood ~~and/or~~ or nonsparking materials.

P. Unused explosives, detonators, and blasting agents shall be returned to the magazine or storage facility upon completion of loading activities and prior to firing the blast.

Q. Equipment and machinery used to load or stem boreholes shall not be operated over loaded boreholes for any reason. Areas containing loaded boreholes shall be guarded or barricaded and posted to prevent unauthorized entry.

R. Blast warning signals shall be established and posted at the mine. Audible warning signals shall be given prior to firing a blast and shall be loud enough to be heard within the entire blast area.

S. All personnel shall be removed from the blast area prior to connection to the initiation device and the firing of a blast.

T. Blasting personnel shall fire shots from a safe location.

U. A post-blast examination of the blast area shall be made by the certified blaster in charge. Other personnel shall not return to the blasting area until an all clear signal is received from the certified blaster in charge.

4VAC25-40-810. Recordkeeping.

A detailed record of each surface blast shall be prepared immediately by the certified blaster. Records shall be maintained at the mine site for three years and subject to inspection by the division mine inspectors. Records shall contain the following information:

1. Name of company or contractor;

2. Location, date, and time of blast;

3. Name, signature, and certification number of the certified blaster in charge;

4. Type of material blasted;

5. Number of holes, and burden and spacing for each hole;

6. Drill logs of boreholes as required by 4VAC25-40-1095;

7. Types of explosives used;

8. Total amount of explosives used;

9. Maximum amount of explosives per delay period of eight milliseconds or greater;

10. Method of firing and type of circuit;

11. Direction and distance in feet to nearest dwelling house, public building, school, church, commercial or institutional building neither owned nor leased by the person conducting the blasting;

12. Weather conditions (including such factors as wind directions, etc.);

13. Height or length of stemming for each hole;

14. Whether mats or other protections were used;

15. Type of detonators used and timing of detonation for each detonator used;

16. The person taking the seismograph reading shall accurately indicate exact location of seismograph, if used, and shall also show the distance of seismograph from blast;

17. Seismograph records, including ~~seismograph readings, where required~~:

a. Name and signature of the person operating the seismograph;

b. Name of the person analyzing the seismograph record; and

c. Seismograph ~~reading~~ readings;

18. ~~Maximum number of holes per delay period of eight milliseconds or greater; and~~ When a permanently installed seismograph is used to prove compliance, the record shall indicate the:

a. Name of the person and company that installed the seismograph; and

b. Name, signature, and company affiliation of the person validating the authenticity of the seismic data collected and transmitted by the permanent unit.

The information should be attached to the blast record as soon as it is available, but in no instance later than five working days after the shot; and

19. All anomalies or abnormalities occurring during the execution of the blast and actions taken to correct or address them.

4VAC25-40-880. Ground vibration from blasting.

A. Ground vibration, measured as peak particle velocity resulting from blasting, shall not exceed the limits set forth ~~below~~ in Figure 1 at any inhabited building not owned or leased by the operator, without approval of the director. A seismographic record shall be provided for each blast.

~~Distance (D) to nearest inhabited building, feet~~	~~Peak Particle Velocity, inches per second~~
~~0 - 300~~	~~1.25~~
~~301 - 5,000~~	~~1.00~~
~~5,001 and beyond~~	~~0.75~~

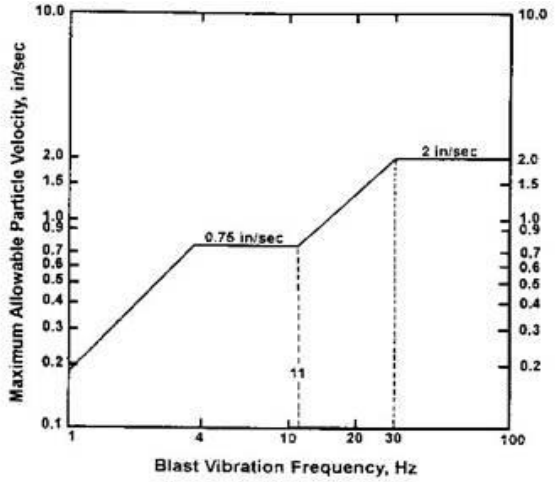


Figure 1. Alternative blasting level criteria.
(Source modified from figure B-1. Bureau of Mines R18507)

B. Seismic monitoring of each blast shall be conducted, unless the blast contains no more than 500 pounds of explosives and the scaled distance, Ds, is 90 feet or more, as calculated with the following scaled distance formulas~~, is 90 or greater~~:

$$W = \left(\frac{D}{Ds}\right)^2 \qquad Ds = \frac{D}{\sqrt{W}}$$

Where:

W = Maximum charge weight of explosives in pounds per delay period of 8.0 milliseconds or more.

D = Distance in feet from the blast site to the nearest inhabited building not owned or leased by the mine operator.

~~C. The operator may use the alternative ground vibration limits shown below to determine the maximum allowable ground vibration. If these limits are used, a seismographic record including both particle velocity and vibration frequency levels shall be kept for each blast. Ground vibration levels and airblast levels are taken from the Blasting Guidance Manual.~~

4VAC25-40-893. Action plans.

Each operator shall maintain a plan to control the effects of blasting on areas adjacent to the operation. ~~This plan will be documented and made available for review by the Division of Mineral Mining upon request~~ In the event of a blasting complaint, accident, or flyrock incident, the plan will be subject to review and approval of the division.

4VAC25-40-910. Seismic testing and evaluation.

Seismic testing and evaluation to determine compliance with blasting regulations shall:

1. Utilize acceptable instrumentation ~~which~~ that measures ground vibration, ~~airblast~~ air overpressure, and vibration frequency ~~when applicable~~;

2. Be conducted and analyzed by a qualified person; and

3. Be conducted whenever directed by the division.

4VAC25-40-931. Blasting complaints.

In the event of a blasting complaint, accident, or flyrock investigation, all available data on the blast, including videos, shall be made available to the division.

4VAC25-40-1580. Backup alarms.

A. An automatic backup alarm ~~which~~ that is audible above surrounding noise levels shall be provided on heavy duty mobile equipment ~~which has~~ and mine vehicles with an obstructed view to the rear.

B. An automatic reverse-activated strobe light may be used at night in lieu of an audible reverse alarm.

Part XII
Electricity—Surface and Underground

4VAC25-40-2015. Installation of electrical circuits; supervision of electrical work.

A. Electrical equipment and circuits shall be installed in accordance with the standards in the National Electrical Code, unless provided for in this part.

B. All work on new electric systems or modifications to existing electric systems performed in accordance with the National Electrical Code and this part shall be done by, or under the direct supervision of, a certified electrical repairman or other appropriately licensed electrical repairman. Routine maintenance of electrical systems and equipment where no changes are being made to the system or the equipment may be performed by a competent person who has received task training in the work from an appropriately licensed or certified electrical repairman.

4VAC25-40-2550. Confined space hazard.

A safety harness attached to an attended life line shall be worn by persons before they enter ~~bins, hoppers, silos, tanks, surge, or storage piles~~ confined spaces. ~~Persons~~ No person shall ~~not~~ enter ~~the above areas~~ any confined space until the supply and discharge of materials has ceased and the supply and discharge equipment ~~is~~ has been locked out and tagged out. No person shall enter an area where they are exposed to entrapment by the caving or sliding of loose, unconsolidated material. ~~Also see 4VAC25-40-1740~~ No person shall enter a confined space unless the area is provided with adequate ventilation.

4VAC25-40-2580. Hitches and slings.

Hitches and slings used to hoist materials shall be of safe design, maintained in a safe condition so as to avoid safety hazards, and used in a safe manner.

4VAC25-40-2600. Suspended loads.

Persons shall stay clear of suspended loads. Suspended loads shall be handled or secured in a manner to prevent their unintentional release.

4VAC25-40-3328. Certified underground blaster.

~~Shots shall be fired by a certified underground blaster~~ A certified underground blaster shall be in direct charge of all blasting activities and shall fire all shots.

DOCUMENTS INCORPORATED BY REFERENCE (4VAC25-40)

1996 Threshold Limit Values and Biological Exposure Indices published by the American Conference of Governmental Industrial Hygienists

American Table of Distances, 1991 edition, published by the Institute of Makers of Explosives

National Electrical Code, 2008 edition, published by the National Fire Protection Association

Bureau of Mines Instruction Guide 19, Mine Emergency Training, U.S. Department of Labor, 1972 edition

Blasting Guidance Manual, U.S. Department of Interior, Office of Surface Mining Reclamation and Enforcement, 1987 edition

The American National Standard for Wire Rope for Miners, M11.1-1980, published by the American National Standards Institute

VA.R. Doc. No. R19-4997; Filed September 24, 2018, 12:02 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC25-20. Fees for Permits and Certificates (amending 9VAC25-20-110).**

9VAC25-610. Groundwater Withdrawal Regulations (amending 9VAC25-610-106, 9VAC25-610-140).

Statutory Authority: §§ 62.1-14.15 and 62.1-44.15:6 of the Code of Virginia (9VAC25-20-110).

§ 62.1-256 of the Code of Virginia (9VAC25-610-106 and 9VAC25-610-140).

Effective Date: November 14, 2018.

Agency Contact: Scott Kudlas, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4456, FAX (804) 698-4032, or email scott.kudlas@deq.virginia.gov.

Summary:

Pursuant to Chapter 424 of the 2018 Acts of Assembly, the amendments change (i) the groundwater withdrawal permit term from a maximum of 10 years to a maximum of 15 years and (ii) effective January 1, 2019, the permit application fees for groundwater withdrawal permits to $9,000.

9VAC25-20-110. Fee schedules for individual VPDES and VPA new permit issuance, and individual VWP, SWW and GWW new permit issuance and existing permit reissuance.

A. Virginia Pollutant Discharge Elimination System (VPDES) permits. The following fee schedules apply to applications for issuance of a new individual VPDES permit

or certificate. (Note: All flows listed in the table below are facility "design" flows.)

VPDES Industrial Major	$24,000
VPDES Municipal Major	$21,300
VPDES Municipal Major Stormwater/MS4	$21,300
VPDES Industrial Minor/No Standard Limits	$10,200
VPDES Industrial Minor/Standard Limits	$3,300
VPDES Industrial Stormwater	$7,200
VPDES Municipal Minor/Greater Than 100,000 GPD	$7,500
VPDES Municipal Minor/10,001 GPD-100,000 GPD	$6,000
VPDES Municipal Minor/1,001 GPD-10,000 GPD	$5,400
VPDES Municipal Minor/1,000 GPD or less	$2,000
VPDES Municipal - The authorization for land application, distribution, or marketing of biosolids or land disposal of sewage sludge	$5,000*
VPDES Municipal Minor Stormwater/MS4	$2,000
*For a new VPDES permit that includes authorization for land application, distribution, or marketing of biosolids or land disposal of sewage sludge, the $5,000 biosolids permit fee will be paid in addition to the required VPDES permit fee.	

B. Virginia Pollution Abatement (VPA) permits. The following fee schedules apply to applications for issuance of a new individual VPA permit or certificate.

VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year	$15,000
VPA Industrial Wastewater Operation/Land Application of Less Than 10 Inches Per Year	$10,500
VPA Industrial Sludge Operation	$7,500
VPA Combined Sludge Operation - Industrial Sludge (excluding water treatment plant residuals) and Municipal Biosolids	$7,500
VPA Municipal Wastewater Operation	$13,500
VPA Municipal Biosolids Operation	$5,000
All other operations not specified above	$750

C. Virginia Water Protection (VWP) permits. The following fee schedules apply to applications for issuance of a new individual and reissuance of an existing individual VWP permit or certificate. Only one permit application fee shall be assessed per application; for a permit application involving more than one of the operations described below, the governing fee shall be based upon the primary purpose of the proposed activity. (Note: Withdrawal amounts shown in the table below are maximum daily withdrawals.)

VWP Individual/Surface Water Impacts (Wetlands, Streams and/or Open Water)	$2,400 plus $220 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) ($60,000 maximum)
VWP Individual/Minimum Instream Flow - Withdrawals equal to or greater than 3,000,000 gallons on any day	$25,000
VWP Individual/Minimum Instream Flow - Withdrawals between 2,000,000 and 2,999,999 gallons on any day	$20,000
VWP Individual/Minimum Instream Flow - Withdrawals between 1,000,000 and 1,999,999 gallons on any day	$15,000
VWP Individual/Minimum Instream Flow - Withdrawals less than 1,000,000 gallons on any day that do not otherwise qualify for a general VWP permit for water withdrawals	$10,000
VWP Individual/Reservoir - Major	$35,000
VWP Individual/Reservoir - Minor	$25,000

VWP Individual/Nonmetallic Mineral Mining	$2,400 plus $220 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) ($7,500 maximum)

D. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia. The following fee schedules apply to applications for issuance of a new individual, and reissuance of an existing individual SWW permit or certificate.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Surface Water Withdrawal	$12,000

E. Groundwater Withdrawal (GWW) permits issued in response to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia. The following fee schedules apply to applications for issuance of a new individual, and reissuance of an existing individual GWW permit or certificate.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Groundwater Withdrawal/Initial Permit for an Existing Withdrawal Based Solely on Historic Withdrawals	$1,200
Groundwater Withdrawal - effective through December 31, 2018	$6,000
Groundwater Withdrawal - effective January 1, 2019	$9,000

9VAC25-610-106. Supplemental drought relief wells.

A. Public water supplies wishing to withdraw groundwater for human consumption during periods of drought through the use of supplemental drought relief wells in any groundwater management area and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

B. A groundwater withdrawal permit application shall be completed and submitted to the board and a groundwater withdrawal permit issued by the board prior to the initiation of any withdrawal not specifically excluded in 9VAC25-610-50.

C. A complete groundwater withdrawal permit application for supplemental drought relief wells shall contain the following:

1. The permit fee as required by the Fees for Permits and Certificates Regulations (9VAC25-20);

2. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality;

3. A signature as described in 9VAC25-610-150;

4. Well construction documentation for all wells associated with the application submitted on the Water Well Completion Report, Form GW2, which includes the following information:

~~(1)~~ a. The depth of the well;

~~(2)~~ b. The diameter, top and bottom, and material of each cased interval;

~~(3)~~ c. The diameter, top and bottom, for each screened interval; and

~~(4)~~ d. The depth of pump intake.

5. The application shall include locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;

6. A map identifying the service areas for public water supplies;

7. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable;

8. A water conservation and management plan as described in 9VAC25-610-100;

9. The application shall include notification from the local governing body in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. If the governing body fails to respond to the applicant's request for certification within 45 days of receipt of the written request, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this chapter. The applicant shall document the local governing body's receipt of the request for certification through the use of certified mail or other means that establishes proof of delivery;

10. A plan to mitigate potential adverse impacts from the proposed withdrawal on existing groundwater users. In lieu of developing individual mitigation plans, multiple applicants may choose to establish a mitigation program to collectively develop and implement a cooperative mitigation plan that covers the entire area of impact of all members of the mitigation program;

11. Documentation on the maximum amount of groundwater needed annually to meet human consumption needs; and

12. Other relevant information that may be required by the board to evaluate the application.

D. Permits issued by the board for groundwater withdrawals from supplemental drought relief wells shall include the following permit conditions:

1. Permits shall include a maximum amount of groundwater allowed to be withdrawn over the term of the permit.

2. The permit shall specify an annual limit on the amount of groundwater to be withdrawn based on the amount of groundwater needed annually to meet human consumption needs. Groundwater withdrawals from supplemental drought relief wells shall be subject to monthly groundwater withdrawal limits.

3. Permits shall specify that groundwater withdrawn from supplemental drought relief wells shall be used to meet human consumption needs.

4. Permits shall specify that groundwater shall only be withdrawn from supplemental drought relief wells after mandatory water restrictions have been implemented pursuant to approved water conservation and management plans as required by § 62.1-265 of the Code of Virginia.

5. A permit shall contain the total depth of each permitted well in feet.

6. A permit shall specify the screened intervals of wells authorized for use by the permit.

7. A permit shall contain the designation of the aquifers to be utilized.

8. A permit may contain conditions limiting the withdrawal amount of a single well or a group of wells within a withdrawal system to a quantity specified by the board.

9. A groundwater withdrawal permit for a public water supply shall contain a condition allowing daily withdrawals at a level consistent with the requirements and conditions contained in the waterworks operation permit, or equivalent, issued by the Virginia Department of Health. This requirement shall not limit the authority of the board to reduce or eliminate groundwater withdrawals by public water suppliers if necessary to protect human health or the environment.

10. The permit shall state that no pumps or water intake devices are to be placed lower than the top of the uppermost confined aquifer that a well utilizes as a groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

11. All permits shall specify monitoring requirements as conditions of the permit.

a. Permitted users shall install in-line totalizing flow meters to read gallons, cubic feet, or cubic meters on each permitted well prior to beginning the permitted use. Such meters shall produce volume determinations within plus or minus 10% of actual flows. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in groundwater withdrawal reports. An alternative method for determining flow may be approved by the board on a case-by-case basis.

b. Permits shall contain requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods when required as a condition of the permit.

c. Permits shall contain required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity and including, when appropriate, continuous monitoring and sampling.

d. Each permitted well shall be equipped in a manner such that water levels can be measured during pumping and nonpumping periods without dismantling any equipment. Any opening for tape measurement of water

levels shall have an inside diameter of at least 0.5 inches and be sealed by a removable plug or cap. The permittee shall provide a tap for taking raw water samples from each permitted well.

12. All permits shall prohibit withdrawals from wells not authorized in the permit.

13. All permits shall include requirements to report the amount of water withdrawn from each permitted well or well system on forms provided by the board with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year.

14. Groundwater withdrawal permits issued under this chapter shall have an effective and expiration date that will determine the life of the permit. Groundwater withdrawal permits shall be effective for a fixed term not to exceed ~~10~~ 15 years. Permit duration of less than the maximum period of time may be recommended in areas where hydrologic conditions are changing or are not adequately known. The term of any permit shall not be extended by modification beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and issuance of a new permit.

15. Each permit shall have a condition allowing the reopening of the permit for the purpose of modifying the conditions of the permit to meet new regulatory standards duly adopted by the board.

16. Each well that is included in a groundwater withdrawal permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records the Department of Environmental Quality well identification number, the groundwater withdrawal permit number, the total depth of the well, and the screened intervals in the well, at a minimum. Such well identification plates shall be in a format specified by the board and are available from the Department of Environmental Quality.

E. The permit shall address variations in the groundwater withdrawal amounts that may occur.

F. In addition to the permit conditions listed in subsection D of this section, the board may issue any permit with terms, conditions, or limitations necessary to protect the public welfare, safety, and health, or to protect the resource.

G. The board shall evaluate the application for supplemental drought relief wells based on the following criteria:

1. The applicant demonstrates that no pumps or water intake devices are placed lower than the top of the uppermost confined aquifer that a well utilizes as a groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

2. The applicant demonstrates that the amount of groundwater withdrawal requested is the smallest amount of withdrawal necessary to support human consumption when mandatory water use restrictions have been implemented.

3. The applicant provides a water conservation and management plan as described in 9VAC25-610-100 and implements the plan as an enforceable condition of the groundwater withdrawal permit.

4. The applicant provides certification by the local governing body that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

5. The board's technical evaluation demonstrates that the area of impact of the proposed withdrawal will remain on property owned by the applicant or that there are no existing groundwater withdrawers within the area of impact of the proposed withdrawal.

In cases where the area of impact does not remain on the property owned by the applicant or existing groundwater withdrawers will be included in the area of impact, the applicant shall provide and implement a plan to mitigate all adverse impacts on existing groundwater users. Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as enforceable permit conditions:

a. The rebuttable presumption that water level declines that cause adverse impacts to existing wells within the area of impact are due to the proposed withdrawal;

b. A commitment by the applicant to mitigate undisputed adverse impacts due to the proposed withdrawal in a timely fashion;

c. A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant; and

d. The requirement that the claimant provide documentation that he is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens, and any other construction information that the claimant possesses; the location of the well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.

6. The board conducts a technical evaluation of the effects of the proposed withdrawal with the stabilized cumulative effects of all existing lawful withdrawals to identify if the withdrawal will lower water levels in any confined aquifer below a point that represents 80% of the distance between the land surface and the top of the aquifer.

7. The board's technical evaluation demonstrates that the proposed groundwater withdrawal will not result in salt water intrusion or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing groundwater users or the groundwater resource. This provision shall not exclude the withdrawal of brackish water provided that the proposed withdrawal will not result in unmitigated adverse impacts.

9VAC25-610-140. Establishing applicable standards, limitations or other permit conditions.

A. In addition to the conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-120, and 9VAC25-610-130, each permit shall include conditions with the following requirements:

1. A permit shall contain the total depth of each permitted well in feet;

2. A permit shall specify the screened intervals of wells authorized for use by the permit;

3. A permit shall contain the designation of the aquifers to be utilized;

4. A permit shall contain conditions limiting the withdrawal amount of a single well or a group of wells that comprise a withdrawal system to a quantity specified by the board. A permit shall contain a maximum annual withdrawal and a maximum monthly groundwater withdrawal limit;

5. A groundwater withdrawal permit for a public water supply shall contain a condition allowing daily withdrawals at a level consistent with the requirements and conditions contained in the waterworks operation permit, or equivalent, issued by the Virginia Department of Health. This requirement shall not limit the authority of the board to reduce or eliminate groundwater withdrawals by public water suppliers if necessary to protect human health or the environment;

6. The permit shall state that no pumps or water intake devices are to be placed lower than the top of the uppermost confined aquifer that a well utilizes as a groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

7. All permits shall specify monitoring requirements as conditions of the permit.

a. Permitted users who are issued groundwater withdrawal permits based on 9VAC25-610-110 B 3 and C 2 shall install either in-line totalizing flow meters or hour meters that record the hours of operation of withdrawal pumps on each permitted well prior to beginning the permitted use. Flow meters shall produce volume determinations within plus or minus 10% of actual flows. Hour meters shall produce run times within plus or minus 10% of actual run times. Hour meter readings will be multiplied by the maximum capacity of the withdrawal pump to determine withdrawal amounts. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in groundwater withdrawal reports. An alternative method for determining flow may be approved by the board on a case-by-case basis.

b. Permitted users who are issued groundwater withdrawal permits based on any section of this chapter not included in subdivision 7 a of this subsection shall install in-line totalizing flow meters to read gallons, cubic feet, or cubic meters on each permitted well prior to beginning the permitted use. Such meters shall produce volume determinations within plus or minus 10% of actual flows. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in groundwater withdrawal reports. An alternative method for determining flow may be approved by the board on a case-by-case basis.

c. Permits shall contain requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods when required as a condition of the permit.

d. Permits shall contain required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring and sampling.

e. Each permitted well shall be equipped in a manner such that water levels can be measured during pumping and nonpumping periods without dismantling any equipment. Any opening for tape measurement of water levels shall have an inside diameter of at least 0.5 inches

and be sealed by a removable plug or cap. The permittee shall provide a tap for taking raw water samples from each permitted well.

8. All permits shall prohibit withdrawals from wells not authorized in the permit.

9. All permits shall include requirements to report the amount of water withdrawn from each permitted well and well system on forms provided by the board with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year.

10. Groundwater withdrawal permits issued under this chapter shall have an effective and expiration date which will determine the life of the permit. Groundwater withdrawal permits shall be effective for a fixed term not to exceed ~~10~~ 15 years. Permit duration of less than the maximum period of time may be recommended in areas where hydrologic conditions are changing or are not adequately known. The term of any permit shall not be extended by modification beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and issuance of a new permit.

11. Each permit shall have a condition allowing the reopening of the permit for the purpose of modifying the conditions of the permit to meet new regulatory standards duly adopted by the board.

12. Each well that is included in a groundwater withdrawal permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records the Department of Environmental Quality well identification number, the groundwater withdrawal permit number, the total depth of the well and the screened intervals in the well, at a minimum. Such well identification plates shall be in a format specified by the board and are available from the Department of Environmental Quality.

B. In addition to the conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-120, 9VAC25-610-130, and subsection A of this section, each permit may include conditions with the following requirements where applicable:

1. A withdrawal limit may be placed on one or more of the wells that constitute a withdrawal system;

2. A permit may contain quarterly, monthly, or daily withdrawal limits or withdrawal limits based on any other frequency as determined by the board;

3. A permit may contain conditions requiring water quality and water levels monitoring at specified intervals in any wells deemed appropriate by the board;

4. A permit may contain conditions specifying water levels and water quality action levels in pumping and observation/monitoring wells to protect against or mitigate water quality levels or aquifer degradation. The board may require permitted users to initiate control measures which include~~, but are not limited to,~~ the following:

a. Pumping arrangements to reduce groundwater withdrawal in areas of concentrated pumping;

b. Location of wells to eliminate or reduce groundwater withdrawals near saltwater-freshwater interfaces;

c. Requirement of selective withdrawal from other available aquifers than those presently used or proposed;

d. Selective curtailment, reduction or cessation of groundwater withdrawals to protect the public welfare, safety, or health or to protect the resource;

e. Conjunctive use of freshwater and saltwater aquifers, or waters of less desirable quality where water quality of a specific character is not essential;

f. Construction and use of observation or monitoring wells;

g. Well construction techniques that prohibit the hydraulic connection of aquifers that contain different quality waters, such as gravel packing, that could result in deterioration of water quality in an aquifer; and

h. Such other necessary control or abatement techniques as are practicable to protect and beneficially utilize the groundwater resource.

5. A permit may contain conditions limiting water level declines in pumping wells and observation wells;

6. All permits may include requirements to report water quality and water level information on forms provided by the board with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year; and

7. Permits shall require implementation of water conservation and management plans developed to comply with requirements of 9VAC25-610-100.

C. In addition to conditions described in 9VAC25-610-130 and subsections A and B of this section, the board may issue any groundwater withdrawal permit with any terms, conditions and limitations necessary to protect the public welfare, safety, and health or to protect the resource.

VA.R. Doc. No. R19-5490; Filed September 26, 2018, 8:06 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board

will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-290).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, 124, 403, and 503.

Effective Date: November 14, 2018.

Agency Contact: Emilee Adamson, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 527-5072, or email emilee.adamson@deq.virginia.gov.

Summary:

Pursuant to Chapter 552 of the 2018 Acts of Assembly, the amendment authorizes, if the permit applicant so elects, for minor industrial Virginia Pollutant Discharge Elimination System permit actions the newspaper publication of an abbreviated public notice that contains a link to the full public notice on the Department of Environmental Quality's website.

9VAC25-31-290. Public notice of permit actions and public comment period.

A. Scope.

1. The department shall give public notice that the following actions have occurred:

a. A draft permit has been prepared under 9VAC25-31-260 D;

b. A public hearing has been scheduled under 9VAC25-31-310; or

c. A VPDES new source determination has been made under 9VAC25-31-180.

2. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under 9VAC25-31-370 B. Written notice of that denial shall be given to the requester and to the permittee.

3. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

4. Public notices may describe more than one permit or permit actions.

B. Timing.

1. Public notice of the preparation of a draft permit required under subsection A of this section shall allow at least 30 days for public comment.

2. Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

C. Methods. Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:

1. By mailing, either by electronic or postal delivery, a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subdivision may waive his ~~or her~~ rights to receive notice for any classes and categories of permits):

a. The applicant (except for VPDES general permits when there is no applicant);

b. Any other agency which the department knows has issued or is required to issue a VPDES, biosolids management permit;

c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);

d. Any state agency responsible for plan development under § 208(b)(2), § 208(b)(4) or § 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service;

e. Any user identified in the permit application of a privately owned treatment works;

f. Persons on a mailing list developed by:

(1) Including those who request in writing to be on the list;

(2) Soliciting persons for area lists from participants in past permit proceedings in that area; and

(3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as EPA regional and state funded newsletters, environmental bulletins, or state law journals. (The department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request.);

g. Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

h. Each state agency having any authority under state law with respect to the construction or operation of such facility;

2. Except for permits for concentrated animal feeding operations as defined in 9VAC25-31-10 or designated in accordance with 9VAC25-31-130 B, by publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. However, if the applicant so chooses for industrial minor permit actions, an abbreviated public notice shall be published in such newspaper, listing the name of the permitted facility, the type of discharge, and a link to the department's website where the full public notice consistent with subsection D of this section is posted. The cost of public notice shall be paid by the owner; and

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

a. Name and address of the office processing the permit action for which notice is being given;

b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of VPDES draft general permits;

c. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for VPDES general permits when there is no application;

d. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application;

e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

f. A general description of the location of each existing or proposed discharge point ~~and~~, the name of the receiving water ~~and~~, the biosolids use and sewage sludge disposal practice ~~or practices and~~, the location of each sludge treatment works treating domestic sewage, and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area;

g. Requirements applicable to cooling water intake structures under § 316 of the CWA, in accordance with 9VAC25-31-165; and

h. Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under 9VAC25-31-310 shall contain the following information:

a. Reference to the date of previous public notices relating to the permit;

b. Date, time, and place of the public hearing;

c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and

d. A concise statement of the issues raised by the persons requesting the public hearing.

3. Public notice of a VPDES draft permit for a discharge where a request for alternate thermal effluent limitations has been filed shall include:

a. A statement that the thermal component of the discharge is subject to effluent limitations incorporated in 9VAC25-31-30 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under §§ 301 or ~~§~~ 306 of the CWA;

b. A statement that an alternate thermal effluent limitation request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the law and § 316(a) of the CWA and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

c. If the applicant has filed an early screening request for a CWA § 316(a) variance, a statement that the applicant has submitted such a plan.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a, b, c, and d of this section shall be mailed, by electronic or postal delivery, a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any).

F. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the department shall:

1. Notify, in writing, the locality wherein the discharge or, as applicable, the associated land application of biosolids, or land disposal of treated sewage, stabilized sewage

sludge, or stabilized septage does or is proposed to take place of, at a minimum:

a. The name of the applicant;

b. The nature of the application and proposed discharge;

c. The availability and timing of any comment period; and

d. Upon request, any other information known to, or in the possession of, the board or the department regarding the applicant not required to be held confidential by this chapter.

2. Except for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge or stabilized septage, make a good faith effort to provide this same notice and information to (i) each locality and riparian property owner to a distance one-quarter mile downstream and one-quarter mile upstream or to the fall line whichever is closer on tidal waters and (ii) each locality and riparian property owner to a distance one-half mile downstream on nontidal waters. Distances shall be measured from the point, or proposed point, of discharge. If the receiving river at the point or proposed point of discharge is two miles wide or greater, the riparian property owners on the opposite shore need not be notified. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the commissioners of the revenue or the tax assessor's office of the affected jurisdictions upon request by the board.

G. Whenever the department receives an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, or an application to reissue with the addition of sites increasing acreage by 50% or more of that authorized by the initial permit, the department shall establish a date for a public meeting to discuss technical issues relating to proposals for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The department shall not issue the permit until the public meeting has been held and comment has been received from the local governing body or until 30 days have lapsed from the date of the public meeting.

H. Following the submission of an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, the department shall make a good faith effort to notify or cause to be notified persons residing on property bordering the sites that contain the proposed land application fields. This notification shall be in a manner selected by the department. For the purposes of this subsection, "site" means all contiguous land under common ownership, but which may contain more than one tax parcel.

I. Following the submission of an application to add a site that is not contiguous to sites included in an existing permit authorizing the land application of biosolids:

1. The department shall notify persons residing on property bordering such site and shall receive written comments from those persons for a period of 30 days. Based upon written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application at the site.

2. An application for any permit amendment to increase the acreage authorized by the initial permit by 50% or more shall be considered a major modification and shall be treated as a new application for purposes of public notice and public hearings. The increase in acreage for the purpose of determining the need for the public meeting is the sum of all acreage that has been added to the permit since the last public meeting, plus that proposed to be added.

J. Before issuing any permit, if the board finds that there are localities particularly affected by the permit, the board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged.

2. Mail, by electronic or postal delivery, the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

3. Accept written comments for at least 15 days after any public hearing on the permit, unless the board votes to shorten the period.

4. For the purposes of this section, consider the term "locality particularly affected" to mean any locality that bears any identified disproportionate material water quality impact that would not be experienced by other localities.

VA.R. Doc. No. R19-5628; Filed September 26, 2018, 7:57 a.m.

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also

available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation.**

Effective Date: October 15, 2018.

Contact Information: Christina Wood, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4263, or email christina.wood@deq.virginia.gov.

FORMS (9VAC25-32)

Virginia Pollution Abatement Permit Application, General Instructions (rev. 5/2014)

Virginia Pollution Abatement Permit Application, Form A, All Applicants (rev. 6/2014)

Virginia Pollution Abatement (VPA) Permit Application, Form B, Animal Feeding Operations (AFOs) (rev. 2/2013)

Virginia Pollution Abatement Permit Application, Form C, Industrial Waste (rev. 10/1995)

Virginia Pollution Abatement Permit Application, Form D, Municipal Effluent and Biosolids Cover Page (rev. 6/2013):

Part D-I: Land Application of Municipal Effluent (rev. 4/2009)

~~Part D-II: Land Application of Biosolids (rev. 10/2013)~~

Part D-II: Land Application of Biosolids (rev. 9/2018)

Part D-II: Worksheet (eff. 9/2018)

Part D-III: Effluent Characterization Form (rev.4/2009)

~~Part D-IV: Biosolids Characterization Form (rev. 6/2013)~~

Part D-IV: Biosolids Characterization Form (rev. 9/2018)

Part D-V: Non-Hazardous Waste Declaration (rev. 6/2013)

~~Part D-VI: Land Application Agreement - Biosolids and Industrial Residuals (rev. 9/2012)~~

Part D-VI: Land Application Agreement - Biosolids and Industrial Residuals (rev. 6/2018)

Application for Land Application Supervisor Certification (rev. 2/2011)

Application for Renewal of Land Application Supervisor Certification (rev. 2/2011)

Request for Extended Setback from Biosolids Land Application Field (rev. 8/2015)

Sludge Disposal Site Dedication Form, Form A-1 (rev. 11/2009)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form I, Insurance Liability Endorsement (rev. 10/2013)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form II, Certificate of Liability Insurance (rev. 10/2013)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form III, Corporate Letter (rev. 11/2009)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form IV, Corporate Guarantee (rev. 11/2009)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form V, Letter of Credit (rev. 11/2009)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VI, Trust Agreement (rev. 11/2009)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VII, Local Government Financial Test (rev. 10/2013)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VIII, Local Government Guarantee (rev. 10/2013)

VA.R. Doc. No. R19-5673; Filed September 14, 2018, 2:02 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC25-210. Virginia Water Protection Permit Program Regulation (amending 9VAC25-210-10, 9VAC25-210-50, 9VAC25-210-60, 9VAC25-210-130).**

9VAC25-670. Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activity (amending 9VAC25-670-30, 9VAC25-670-40).

9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (amending 9VAC25-690-30, 9VAC25-690-40).

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: November 14, 2018.

Agency Contact: Dave Davis, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, FAX (804) 698-4032, or email dave.davis@deq.virginia.gov.

Summary:

Pursuant to Chapters 114 and 636 of the 2018 Acts of Assembly, the amendments (i) add the requirement that issuance of both a Virginia Water Protection (VWP) Permit and an additional water quality certification for upland conditions together constitute the federal Clean Water Act § 401 certification for construction of certain natural gas pipelines, (ii) add requirements for an individual VWP permit for construction of certain natural gas pipelines, (iii) add a permit exclusion for impacts to a stormwater management facility on dry land, and (iv) add a limitation to the State Water Control Board's authority for issuance of VWP general permits.

Part I
VWP Permit Program Definitions, Exclusions, Prohibitions and Requirements

9VAC25-210-10. Definitions.

A. Definitions specific to surface water withdrawals are in 9VAC25-210-300.

B. Unless a different meaning is required by the context, the following terms as used in this chapter shall have the following meanings:

"Adjacent" means bordering, contiguous, or neighboring wetlands separated from other surface water by man-made dikes or barriers, natural river berms, sand dunes, and the like.

"Administratively withdrawn" means a decision by the board that permanently discontinues the review or processing of a VWP permit application or request to modify a VWP permit.

"Applicant" means a person applying for a VWP individual permit or for coverage under a VWP general permit.

"Aquatic environment" means surface waters and the habitat they provide, including both plant and animal communities.

"Avoidance" means not taking or modifying a proposed action or parts of an action so that there is no adverse impact to the aquatic environment.

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

"Best management practices" or "BMPs" means a schedule of activities, prohibition of practices, maintenance procedures, and other management practices that prevent or reduce the pollution of surface waters.

"Board" means the State Water Control Board.

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning, or paving certain areas.

"Compensation" or "compensatory mitigation" means (i) the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, or in certain circumstances preservation of aquatic resources or (ii) in certain circumstances an out-of-kind measure having a water quality, habitat, or other desirable benefit for the purposes of offsetting unavoidable adverse impacts to aquatic resources that remain after all appropriate and practicable avoidance and minimization has been achieved.

"Construction site" means any site where land-disturbing activity is conducted or physically located for the purpose of erecting buildings, roads, or other discrete structures, including on-site or off-site areas used for dependent, support facilities, such as quarries, mines, or temporary stormwater management or erosion control structures.

"Conversion" means those impacts to surface waters that permanently change an existing wetland or aquatic resource type to a different wetland or aquatic resource type.

"Coverage" means authorization to conduct a project in accordance with a VWP general permit.

"Cowardin classification" or "Cowardin classification method," unless otherwise specified in this chapter, means the waters classification system in Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, Lewis M. II, et al., U.S. Fish and Wildlife Service, December 1979, Reprinted 1992).

"Creation" means the establishment of a wetland or other aquatic resource where one did not formerly exist.

"Cross-sectional drawing" means a scaled graph or plot that represents the plane made by cutting across an object at right angles to its length. Objects may include~~, but are not limited to,~~ a surface water body or a portion of it, a man-made

channel, an above-ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

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

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

"Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of any pollutant or combination of pollutants, to state waters.

"Draft VWP permit" means a document indicating the board's tentative decision relative to a VWP permit action.

"Draining" means human-induced activities such as ditching, excavation, installation of tile drains, hydrologic modification by surface water runoff diversion, pumping water from wells, or similar activities such that the activities have the effect of artificially dewatering the wetland or altering its hydroperiod.

"Dredged material" means material that is excavated or dredged from surface waters.

"Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

"Ecologically preferable" means capable of providing a higher likelihood than alternative proposals of replacing existing wetland acreage and functions, stream functions, water quality, and fish and wildlife resources.

"Emergent wetland" means a class of wetlands dominated by erect, rooted, herbaceous plants growing in water or on a substrate, excluding mosses and lichens. This vegetation is present for most of the growing season in most years and is usually dominated by perennial plants.

"Enhancement" means activities conducted in existing wetlands or other portions of the aquatic environment that increase one or more aquatic functions.

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

"Fill" means replacing portions of surface water with upland, or raising the bottom elevation of a surface water for any purpose, by placement of any pollutant or material including ~~but not limited to~~ rock, sand, earth, and man-made materials and debris.

"Fill material" means any pollutant that replaces portions of surface water with dry land or that raises the bottom elevation of a surface water for any purpose.

"Forested wetland" means a class of wetlands dominated by woody vegetation that is approximately 20 feet (six meters) tall or taller and three inches (7.6 centimeters) or larger in diameter at breast height (DBH). These areas typically possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

"Impacts" means results caused by those activities specified in § 62.1-44.15:20 A of the Code of Virginia.

"Impairment" means the damage, loss, or degradation of the acreage or functions of wetlands or the functions of state waters.

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a phased development project that depend upon other phases of the project do not have independent utility. Portions of a phased development project that would be constructed even if the other phases are not built can be considered as separate single complete projects with independent public and economic utility.

"In-lieu fee program" means a program operated by a nonprofit organization or governmental agency that receives moneys from persons impacting wetlands or streams pursuant to an authorized, permitted activity and that expends the moneys received to provide consolidated compensatory mitigation for permitted wetland or stream impacts.

"Isolated wetlands of minimal ecological value" means those wetlands that (i) do not have a surface water connection to other state waters, (ii) are less than one-tenth of an acre (0.10 acre or 4,356 square feet) in size, (iii) are not located in a Federal Emergency Management Agency designated 100-year floodplain, (iv) are not identified by the Virginia Natural Heritage Program as a rare or state significant natural community, (v) are not forested, and (vi) do not contain listed federal or state threatened or endangered species.

"Joint Permit Application" or "JPA" means an application form that is used to apply for permits from the Norfolk District Army Corps of Engineers, the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and local wetland boards for work in waters of the United States and in surface waters of Virginia.

"Law" means the State Water Control Law of Virginia.

"Legal name" means the full legal name of an individual, business, or other organization. For an individual, legal name means the first name, middle initial, last name, and suffix. For an entity authorized to do business in Virginia, the legal name means the exact name set forth in the entity's articles of

incorporation, organization or trust, or formation agreement, as applicable.

"Minimization" means lessening impacts by reducing the degree or magnitude of the proposed action and its implementation.

"Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent practicable, and then compensating for remaining unavoidable impacts of a proposed action.

"Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is developed and approved in accordance with all applicable federal and state laws or regulations for the establishment, use, and operation of mitigation banks and is operating under a signed banking agreement.

"Mitigation banking" means compensating for unavoidable wetland or stream losses in advance of development actions through the sale or purchase of credits from a mitigation bank.

"Nationwide permit" means a general permit issued by the U.S. Army Corps of Engineers (USACE) under 33 CFR Part 330 and, except where suspended by individual USACE Corps Districts, applicable nationwide.

"Nontidal wetland" means those wetlands other than tidal wetlands that are inundated or saturated by surface water 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, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 40 CFR 230.3(t). Wetlands generally include swamps, marshes, bogs, and similar areas.

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

"Normal residential gardening and lawn and landscape maintenance" means ongoing noncommercial residential activities conducted by or on behalf of an individual occupant, including mowing; planting; fertilizing; mulching; tilling; vegetation removal by hand or by hand tools; and placement of decorative stone, fencing, and play equipment. Other appurtenant noncommercial activities, provided that they do not result in the conversion of a wetland to upland or to a different wetland type, may also be included.

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

"Notice of project completion" means a statement submitted by the permittee or authorized agent that the authorized activities and any required compensatory mitigation have been completed.

"Open water" means an area that, during a year with normal patterns of precipitation, has standing water for sufficient duration to establish an ordinary high water mark. The term "open water" includes lakes and ponds but does not include ephemeral waters, stream beds, or wetlands.

"Ordinary high water" or "ordinary high water mark" means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

"Out-of-kind compensatory mitigation" or "out-of-kind mitigation" means a measure that does not replace the same type of wetland or surface water as was impacted but does replace lost wetland or surface water functions or provide a water quality, habitat, or other desirable benefit.

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the stream bed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permanent flooding or impounding" means a permanent increase in the duration or depth of standing water on a land surface, such as from a dam. Permanent increases in duration or depth of standing water that result from extended-detention basins and enhanced extended-detention basins, when designed, constructed, and maintained to function in accordance with Virginia Department of Conservation and Recreation (DCR) standards for such facilities (Virginia Stormwater Management Handbook, First Edition, 1999, Volume 1, Chapter 3), or when designed in accordance with local standards that, at a minimum, meet the DCR standards, are not considered to be permanent flooding and impounding.

"Permanent impacts" means those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters or of the acreage or functions of a wetland.

"Permittee" means the person who holds a VWP individual or general permit.

"Permittee-responsible compensatory mitigation" or "permittee-responsible mitigation" means compensation or compensatory mitigation, as defined in this section, that is undertaken by the permittee, or an authorized agent or contractor, for which the permittee retains full responsibility.

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

"Phased development" means more than one project proposed for a single piece of property or an assemblage of contiguous properties under consideration for development by the same person, or by related persons, that will begin and be completed at different times. Depending on the relationship between the projects, a phased development may be considered a single and complete project or each project may be considered a single and complete project if each project has independent utility, as defined in this section.

"Plan view drawing" means a scaled graph or plot that represents the view of an object as projected onto orthogonal planes. Objects may include~~, but are not limited to,~~ structures, contours, or boundaries.

"Pollutant" means any substance, radioactive material, or heat that causes or contributes to or may cause or contribute to pollution.

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

"Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

"Preservation" means the protection of resources in perpetuity through the implementation of appropriate legal and physical mechanisms.

"Profile drawing" means a scaled graph or plot that represents the side view of an object. Objects may include~~, but are not limited to,~~ a surface water body or a portion of it, a man-made channel, an above-ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views, and comments to the board pursuant to § 62.1-44.15:02 of the Code of Virginia.

"Regional permit" means a general permit issued by the U.S. Army Corps of Engineers under 33 CFR Part 330 and applicable within a specified geographic area.

"Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered, or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

"Riprap" means a layer of nonerodible material such as stone or chunks of concrete.

"Section 401" means § 401 of the Clean Water Act, or 33 USC § 1341, as amended in 1987.

"Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation, excluding woody vines, approximately three to 20 feet (one to six meters) tall. The species include true shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

"Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions.

"Single and complete project" means the total project proposed or accomplished by a person, which also has independent utility as defined in this section. For linear projects, the single and complete project (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single water body) and to multiple crossings of the same water body at separate and distinct locations. Phases of a project that have independent utility may each be considered single and complete.

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

"Stream bed" or "stream channel" means the substrate of a stream, as measured between the ordinary high water mark along each side of a stream. The substrate may consist of organic matter, bedrock, or inorganic particles that range in

size from clay to boulders, or a combination of both. Areas contiguous to the stream bed, but outside of the ordinary high water mark along each side of a stream, are not considered part of the stream bed.

"Surface water" means all state waters that are not groundwater as groundwater is defined in § 62.1-255 of the Code of Virginia.

"Suspend" or "suspension" means a decision by the board that stops the review or processing of a permit application or request to modify a permit or permit coverage until such time that information requested by the board is provided, reviewed, and deemed adequate.

"Temporary impacts" means impacts to wetlands or other surface waters that do not cause a permanent alteration of the physical, chemical, or biological properties of surface waters or the permanent alteration or degradation of existing wetland acreage or functions. Temporary impacts include activities in which the impact area is restored to its preconstruction elevations and contours with topsoil from the impact area where practicable, such that previous wetland acreage and functions or surface water functions are restored.

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

"Toxic pollutant" means any agent or material including~~, but not limited to,~~ those listed under § 307(a) of the Water Pollution Prevention and Control Act (33 USC § 1317(a)), which after discharge will, on the basis of available information, cause toxicity. Toxicity means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health, or other adverse environmental effects.

"Undesirable plant species" means any species that invades, naturally colonizes, or otherwise dominates a compensatory mitigation site or mitigation bank, such that it causes or contributes to the failure of the vegetative success criteria for a particular compensatory mitigation site, mitigation bank, or in-lieu fee program project, or it otherwise prohibits the restoration of the same vegetation cover type that was originally present.

"VWP general permit" means the general permit text, terms, requirements, and conditions set forth in a regulation that constitutes a VWP permit authorizing a specified category of activities.

"VWP permit" means an individual or general permit issued by the board under § 62.1-44.15:20 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's § 401 certification. For any applicant to the Federal Energy Regulatory Commission for a certificate of public convenience and necessity pursuant to § 7c of the federal Natural Gas Act (15 USC § 717f(c)) to construct any natural gas transmission pipeline greater than 36 inches inside diameter, issuance of an individual VWP permit pursuant to this chapter and a certification issued pursuant to Article 2.6 (§ 62.1-44.15:80 et seq.) of the State Water Control Law shall together constitute the certification required under § 401 of the federal Clean Water Act.

"Water quality standards" means water quality standards adopted by the board and approved by the administrator of the U.S. Environmental Protection Agency under § 303 of the Clean Water Act as defined in 9VAC25-260-10.

"Watershed approach" means an analytical process for making compensatory mitigation decisions that support the sustainability or improvement of aquatic resources in a watershed and that ensures authorized impacts and mitigation have been considered on a watershed scale.

"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.

9VAC25-210-50. Prohibitions and requirements for VWP permits.

A. Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; excavate in wetlands; or on or after October 1, 2001, conduct the following activities in a wetland:

1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

2. Filling or dumping;

3. Permanent flooding or impounding; or

4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

B. No VWP permit shall be issued:

1. Where the proposed activity or the terms or conditions of the VWP permit do not comply with state law or regulations including~~, but not limited to,~~ § 10.1-1408.5 of the Code of Virginia;

2. For the discharge of any radiological, chemical, or biological warfare agent or high level radioactive material into surface waters.

C. An individual VWP permit shall be required for impacts to state waters for the construction of any natural gas transmission pipeline greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 USC § 717f(c)). For purposes of this subsection:

1. Each wetland and stream crossing shall be considered as a single and complete project; however, only one individual VWP permit addressing all such crossings shall be required for any such pipeline. Notwithstanding the requirement for only one such individual permit addressing all such crossings, individual review of each proposed water body crossing with an upstream drainage area of five square miles or greater shall be performed.

2. All pipelines shall be constructed in a manner that minimizes temporary and permanent impacts to state waters and protects water quality to the maximum extent practicable, including by the use of applicable best management practices that the board determines to be necessary to protect water quality.

3. The department shall assess an administrative charge to any applicant for such project to cover the direct costs of services rendered associated with its responsibilities pursuant to this subsection. This administrative charge shall be in addition to any fee assessed pursuant to § 62.1-44.15:6 of the Code of Virginia and as provided in 9VAC25-20.

9VAC25-210-60. Exclusions.

The activities in this section do not require a VWP permit but may require other permits under state and federal law. Upon request by the board, any person claiming one of these exclusions shall demonstrate to the satisfaction of the board that he qualifies for the exclusion. Exclusions pertaining to surface water withdrawals are established in 9VAC25-210-310.

1. Discharges of dredged or fill material into state waters, except wetlands, which are addressed under a USACE Regional, General, or Nationwide Permit, and for which no § 401 Water Quality Certificate is required.

2. Any discharge of stormwater from municipal separate storm sewer systems or land disturbing activities authorized by 9VAC25-870, or the discharge of sewage, industrial wastes, or other wastes or any noxious or deleterious substances into surface waters that is authorized by a Virginia Pollutant Discharge Elimination System (VPDES) permit in accordance with 9VAC25-31 or a Virginia Pollution Abatement (VPA) permit in accordance with 9VAC25-32.

3. Any activity governed under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, unless state certification is required by § 401 of the Clean Water Act. State certification is waived if the activity meets the provisions of subdivision 10 a of this section. The activity does not require a VWP permit pursuant to § 62.1-44.15:21 G of the Code of Virginia.

4. Normal residential gardening and lawn and landscape maintenance in a wetland, or other similar activity, that is incidental to an occupant's ongoing residential use of property and is of minimal ecological impact. The criteria governing this exclusion are set forth in the definition of "normal residential gardening and lawn and landscape maintenance" in 9VAC25-210-10.

5. Maintenance of currently serviceable structures, such as purpose-built stormwater and utility structures, transportation structures, dikes, groins, levees, dams, riprap breakwaters, causeways, or bridge abutments or approaches. Maintenance includes the emergency reconstruction of recently damaged parts but does not include modifications that change the character, scope, or size of the original design. If the original design is not available, the permittee shall submit the best available information on the design for consideration and approval by the board. In order to quality for this exclusion, emergency reconstruction shall occur as soon as practicable after damage occurs.

6. Impacts to open waters that do not have a detrimental effect on public health, animal life, or aquatic life or to the uses of such waters for domestic or industrial consumption, recreation, or other uses.

7. Flooding or back-flooding impacts to surface waters resulting from the construction of temporary sedimentation basins on a construction site when such structures are necessary for erosion and sediment control or stormwater management purposes.

8. Normal agriculture and silviculture activities in a wetland such as plowing; seeding; cultivating; minor drainage and harvesting for the production of food, fiber, and forest products; or upland soil and water conservation practices.

a. To fall under this exclusion, the activities specified in this subdivision 8 must be part of an established (i.e., ongoing) agriculture or silviculture operation, and must be in accordance with applicable best management practices set forth in either Forestry Best Management Practices for Water Quality in Virginia Technical Guide (Fourth Edition, July 2002) or Virginia Agricultural BMP Manual (2000), which facilitate compliance with the § 404(b)(1) Guidelines (40 CFR Part 230). Activities on areas lying fallow as part of a conventional, rotational cycle are part of an established operation.

b. Activities which bring a new area into agricultural or silvicultural use are not part of an established operation. An operation ceases to be established when the area in

which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If the activity takes place outside surface waters, it does not need a VWP permit, whether or not it is part of an established agriculture or silviculture operation.

c. For the purposes of this subdivision 8, cultivating, harvesting, minor drainage, plowing, and seeding are defined as follows:

(1) "Cultivating" means physical methods of soil treatment employed within established agriculture and silviculture lands on farm or forest crops to aid and improve their growth, quality, or yield.

(2) "Harvesting" means physical measures employed directly upon farm, forest, or crops within established agricultural and silviculture lands to bring about their removal from farm or forest land, but does not include the construction of farm or forest roads.

(3) "Minor drainage" means:

(a) The discharge of dredged or fill material incidental to connecting upland drainage facilities to surface waters, adequate to effect the removal of excess soil moisture from upland croplands. Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops;

(b) The discharge of dredged or fill material for the purpose of installing ditching or other water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, or other wetland crop species, where these activities and the discharge occur in surface waters which are in established use for such agricultural and silviculture wetland crop production;

(c) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments that have been constructed in accordance with applicable requirements of the Clean Water Act, and that are in established use for the production of rice, or other wetland crop species;

(d) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting, or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year after such blockages are discovered in order to be eligible for exclusion; and

(e) Minor drainage in surface waters is limited to drainage within areas that are part of an established agriculture or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland (for example, wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to agriculture). In addition, minor drainage does not include the construction of any canal, ditch, dike, or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog, or any other wetland or aquatic area constituting surface water. Any discharge of dredged or fill material into surface water incidental to the construction of any such structure or waterway requires a VWP permit, unless otherwise excluded or exempted by this chapter.

(4) "Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm or forest land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of surface water to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities does not constitute plowing. Plowing as described above will never involve a discharge of dredged or fill material.

(5) "Seeding" means the sowing of seed and placement of seedlings to produce farm or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

9. Discharges of dredged or fill material into wetlands when addressed under a U.S. Army Corps of Engineers Regional, General, or Nationwide Permit and that meet the provisions of subdivision 10 a of this section.

10. Construction or maintenance of farm ponds or impoundments, stock ponds or impoundments, or irrigation ditches, or the maintenance (but not construction) of drainage ditches.

a. The exclusion for the construction and maintenance of farm or stock ponds and farm or stock impoundments applies to those structures that are operated for normal

agricultural or silvicultural purposes, and are less than 25 feet in height or create a maximum impoundment capacity smaller than 100 acre-feet.

b. The exclusion for the construction and maintenance of farm or stock ponds and farm or stock impoundments does not include the impacts associated with the withdrawal of surface water from, within, or behind such structures. A VWP permit may be required for the surface water withdrawal.

c. Discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exclusion.

d. The maintenance dredging of existing ditches is included in this exclusion provided that the final dimensions of the maintained ditch do not exceed the average dimensions of the original ditch. This exclusion does not apply to the construction of new ditches or to the channelization of streams.

11. Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with applicable best management practices (BMPs) set forth in either Forestry Best Management Practices for Water Quality in Virginia, Technical Guide, Fourth Edition, July 2002, or Virginia Agricultural BMP Manual, 2000, to ensure that flow and circulation patterns and chemical and biological characteristics of surface waters are not impaired, that the reach of such waters is not reduced, and that any adverse effect on the aquatic environment will otherwise be minimized. The BMPs which must be applied to satisfy this provision include the following baseline provisions:

a. Permanent roads (for agriculture or forestry activities), temporary access roads (for mining, forestry, or farm purposes), and skid trails (for logging) in surface waters shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific agriculture, silviculture or mining operations, and local topographic and climatic conditions;

b. All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into surface waters;

c. The road fill shall be bridged, piped, culverted, or otherwise designed to prevent the restriction of expected flood flows;

d. The fill shall be properly stabilized and maintained to prevent erosion during and following construction;

e. Discharges of dredged or fill material into surface waters to construct road fill shall be made in a manner which minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within state waters (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

f. In designing, constructing, and maintaining roads, vegetative disturbance in surface waters shall be kept to a minimum;

g. The design, construction, and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

h. Borrow material shall be taken from upland sources whenever feasible;

i. The discharge shall not take, or jeopardize the continued existence of a state-listed or federally-listed threatened or endangered species as defined under the Endangered Species Act (16 USC § 1531 et seq.), in § 29.1-566 of the Code of Virginia and in 4VAC15-20-130 B and C, except as provided in § 29.1-568 of the Code of Virginia, or adversely modify or destroy the critical habitat of such species;

j. Discharges into the nesting and breeding areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical on-site or off-site alternatives exist;

k. The discharge shall not be located in proximity of a public water supply or intake;

l. The discharge shall not occur in areas of concentrated shellfish production;

m. The discharge shall not occur in a component to the National Wild and Scenic River System;

n. The discharge material shall consist of suitable material free from toxic pollutants in toxic amounts; and

o. All temporary fills shall be removed in their entirety and the area restored to its original elevation.

12. Wetland and open water impacts to a stormwater management facility that was created on dry land for the purpose of conveying, treating, or storing stormwater.

9VAC25-210-130. VWP general permits.

A. The board may issue VWP general permits by regulation for certain specified categories of activities as it deems appropriate, except as limited by subdivision D 2 of § 62.1-44.15:21 of the State Water Control Law.

B. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require individual applications and

VWP individual permits rather than approving coverage under a VWP general permit regulation. Cases where an individual VWP permit may be required include the following:

1. Where the activity may be a significant contributor to pollution;

2. Where the applicant or permittee is not in compliance with the conditions of the VWP general permit regulation or coverage;

3. When an applicant or permittee no longer qualifies for coverage under the VWP general permit; and

4. When a permittee operating under VWP general permit coverage requests to be excluded from coverage by applying for a VWP individual permit.

C. When a VWP individual permit is issued to a permittee, the applicability of the VWP general permit coverage to the individual permittee is automatically terminated on the effective date of the VWP individual permit.

D. When a VWP general permit regulation is issued, which applies to a permittee that is already covered by a VWP individual permit, such person may request exclusion from the provisions of the VWP general permit regulation and subsequent coverage under a VWP individual permit.

E. VWP general permit coverage may be revoked from an individual permittee for any of the reasons set forth in 9VAC25-210-180 subject to appropriate opportunity for a hearing.

F. The permittee shall be required to submit a written notice of project completion and request a permit termination by consent within 30 days following the completion of all activities in all permitted impact areas in accordance with subsection 90 A of the applicable VWP general permit regulation.

G. Activities authorized under a VWP general permit and general permit regulation shall be authorized for the fixed term stated in the applicable VWP general permit and VWP general permit regulation.

H. ~~The~~ Unless prohibited from coverage under a VWP general permit, the board may certify or certify with conditions a general, regional, or nationwide permit proposed by the U.S. Army Corps of Engineers (USACE) in accordance with § 401 of the federal Clean Water Act as meeting the requirements of this chapter and a VWP general permit, provided that the nationwide or regional permit and the certification conditions:

1. Require that wetland or stream impacts be avoided and minimized to the maximum extent practicable;

2. Prohibit impacts that cause or contribute to a significant impairment of state waters or fish and wildlife resources;

3. Require compensatory mitigation sufficient to achieve no net loss of existing wetland acreage and functions or stream functions and water quality benefits; ~~and~~

4. Require that compensatory mitigation for unavoidable wetland impacts be provided in accordance with 9VAC25-210-116~~.~~; and

5. Require that compensatory mitigation for unavoidable stream impacts be provided in accordance with 9VAC25-210-116, including ~~but not limited to~~ an analysis of stream impacts utilizing a stream impact assessment methodology approved by the board.

I. The certifications allowed by subsection H of this section may be provided only after the board has advertised and accepted public comment on its intent to provide certification for at least 30 days.

J. Coverage under a general, regional, or nationwide permit promulgated by the USACE and certified by the board in accordance with this section shall be deemed coverage under a VWP general permit regulation upon submission of proof of coverage under the general, regional, or nationwide permit and any other information required by the board through the certification process. Notwithstanding the provisions of 9VAC25-20, no fee shall be required from applicants seeking coverage under this subsection.

9VAC25-670-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit effective August 2, 2016, may permanently or temporarily impact up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and other utility line activities, provided that:

1. The applicant submits notification as required in 9VAC25-670-50 and 9VAC25-670-60.

2. The applicant remits any required permit application fee.

3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.

4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit or coverage under another applicable VWP general permit in lieu of this VWP general permit.

5. Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.

a. Where a utility line has multiple crossings of surface waters (several single and complete projects) with more than minimal impacts, the board may at its discretion require a VWP individual permit for the project.

b. Where an access road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require a VWP individual permit.

6. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations.

7. When functions of surface waters are permanently adversely affected, such as for conversion of forested to emergent wetlands in a permanently maintained utility right-of-way, compensation shall be required for impacts outside of a 20-foot wide permanently maintained corridor. Compensation shall not be required for impacts within the 20-foot wide portion of permanently maintained corridor. For example, with a 50-foot wide, permanently maintained corridor, compensation on each side of the 20-foot portion would be required for impacts that occur between the 20-foot and the 50-foot marks.

8. When required, compensation for unavoidable impacts is provided in accordance with 9VAC25-670-70 and 9VAC25-210-116.

B. Activities that may be granted coverage under this VWP general permit include the following:

1. The construction, maintenance, or repair of utility lines, including outfall structures and the excavation, backfill, or bedding for utility lines provided there is no change in preconstruction contours.

2. The construction, maintenance, or expansion of a substation facility or pumping station associated with a power line or utility line.

3. The construction or maintenance of foundations for overhead utility line towers, poles, or anchors, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a single pad) are used where feasible.

4. The construction of access roads for the construction or maintenance of utility lines including overhead power lines and utility line substations, provided the activity in combination with any substation does not exceed the threshold limit of this VWP general permit.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the board, any person claiming this waiver shall demonstrate to the satisfaction of the board that he qualifies for the waiver.

D. Coverage under this VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued § 401 certification in accordance with 9VAC25-210-130 H as of August 2, 2016, shall constitute coverage under this VWP general permit~~,~~ unless (i) a state program general permit (SPGP) is required and granted for the activity or impact; or (ii) coverage under a VWP general permit is not allowed pursuant to subdivision D 2 of § 62.1-44.15:21 of the State Water Control Law.

F. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require a VWP individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this VWP general permit.

9VAC25-670-40. Exceptions to coverage.

A. Coverage under this VWP general permit is not required if the activity is excluded from permitting in accordance with 9VAC25-210-60.

B. Coverage under this VWP general permit cannot be used in combination with coverage under other VWP general permits in order to impact greater than one acre of nontidal wetlands or open water or greater than 1,500 linear feet of nontidal stream bed. Granting coverage under this VWP general permit more than once for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the limits specified here.

C. The activity to impact surface waters shall not have been prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260).

D. The board shall deny application for coverage under this VWP general permit to any applicant conducting activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to significantly affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

E. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that cause more than minimal degradation of the water quality of a stream.

F. Coverage under this VWP general permit shall not be granted for:

1. Construction of a stormwater management facility in perennial streams or in waters designated as oxygen-impaired or temperature-impaired (does not include wetlands).

2. Any water withdrawal activities.

3. The pouring of wet or uncured concrete in state waters, unless the area is contained within a cofferdam or the work is performed in the dry or unless approved by the Department of Environmental Quality.

4. Dredging or maintenance dredging.

5. Any activity in surface waters that will impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species in accordance with the following:

a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568 of the Code of Virginia.

b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any state listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

6. Any activity in wetlands composed of 10% or more, singularly or in combination, based upon either basal area or percent areal cover in the area of impact, in a vegetative stratum: Atlantic white cedar (Chamaecyparis thyoides), bald cypress (Taxodium distichum), water tupelo (Nyssa aquatica), or overcup oak (Quercus lyrata).

7. Any activity in tidal waters.

8. Impacts to state waters for the construction of any natural gas transmission pipeline that is greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 USC § 717f(c)).

9VAC25-690-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit effective August 2, 2016, may permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for general development and certain mining activities, provided that:

1. The applicant submits notification as required in 9VAC25-690-50 and 9VAC25-690-60.

2. The applicant remits any required permit application fee.

3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.

4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another applicable VWP general permit, in lieu of coverage under this VWP general permit.

5. Impacts, both temporary and permanent, result from a single and complete project including all attendant features.

a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require a VWP individual permit.

b. For the purposes of this chapter, when an interchange has multiple crossings of surface waters, the entire interchange shall be considered the single and complete project.

6. The stream impact criterion applies to all components of the project, including structures and stream channel manipulations.

7. Dredging does not exceed 5,000 cubic yards.

8. When required, compensation for unavoidable impacts is provided in accordance with 9VAC25-690-70 and 9VAC25-210-116.

B. Activities that may be granted coverage under this VWP general permit include the following:

1. Residential, commercial, institutional. The construction or expansion of building foundations, building pads, and attendant features for residential, commercial, and institutional development activities.

a. Residential developments include both single and multiple units.

b. Commercial developments include~~, but are not limited to,~~ retail stores, industrial facilities, restaurants, business parks, office buildings, and shopping centers.

c. Institutional developments include~~, but are not limited to,~~ schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.

d. Attendant features include~~, but are not limited to,~~ roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities (such as playgrounds, playing fields, and golf courses). Attendant features must be necessary for the use and maintenance of the structures.

2. Recreational facilities. The construction or expansion of recreational facilities and small support facilities.

a. Recreational facilities include~~, but are not limited to,~~ hiking trails, bike paths, horse paths, nature centers, and campgrounds (but not trailer parks). Boat ramps (concrete or open-pile timber), boathouses, covered boat lifts, mooring piles and dolphins, fender piles, camels (wooden floats serving as fenders alongside piers), and open-pile piers (including floating piers, travel-lift piers, etc.) associated with recreational facilities are also included.

b. Recreational facilities do not include as a primary function the use of motor vehicles, buildings, or impervious surfaces.

c. Golf courses and ski area expansions may qualify as recreational facilities provided the construction of the proposed facility does not result in a substantial deviation from the natural contours and the facility is designed to minimize adverse effects on state waters and riparian areas. Measures that may be used to minimize adverse effects on waters and riparian areas include the implementation of integrated pest management plans, adequate stormwater management, vegetated buffers, and fertilizer management plans.

d. Small support facilities are authorized provided they are directly related to the recreational activity. Small support facilities include~~, but are not limited to,~~ maintenance storage buildings and stables.

e. The following do not qualify as recreational facilities: hotels, restaurants, playing fields (e.g., baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, or new ski areas.

f. The recreational facility must have an adequate water quality management plan, such as a stormwater management plan, to ensure that the recreational facility results in no substantial adverse effects to water quality.

3. Stormwater management facilities. The construction, maintenance, and excavation of stormwater management facilities; the installation and maintenance of water control structures, outfall structures, and emergency spillways; and the maintenance dredging of existing stormwater management facilities.

a. Stormwater management facilities include stormwater ponds and facilities, detention basins, retention basins, traps, and other facilities designed to reduce pollutants in stormwater runoff.

b. The stormwater management facility must:

(1) To the maximum extent practicable, be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates).

(2) Not permanently restrict or impede the passage of normal or expected high flows, unless the primary purpose of the facility is to impound waters.

(3) Withstand expected high flows.

(4) To the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and not increase water flows from the project site, relocate water, or redirect flow beyond preconstruction conditions.

(5) To the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the facility is part of a larger system designed to manage water flows.

(6) Be designed using best management practices (BMPs) and watershed protection techniques. Examples of such BMPs are described in the Virginia Stormwater Management Handbook and include~~, but are not limited to,~~ forebays, vegetated buffers, bioengineering methods, and siting considerations to minimize adverse effects to aquatic resources.

c. Maintenance excavation shall be in accordance with the original facility maintenance plan, or when unavailable, an alternative plan approved by the Department of Environmental Quality, and shall not exceed to the maximum extent practicable, the character, scope, or size detailed in the original design of the facility.

4. Mining facilities. The construction or expansion of mining facilities and attendant features for a single and complete project. This general permit may not be used to authorize impacts from in-stream mining activities or operations as defined in 9VAC25-690-10.

a. Mining facilities include activities directly associated with aggregate mining (e.g., sand, gravel, and crushed or broken stone); hard rock/mineral mining (e.g., metalliferous ores); and surface coal, natural gas, and coalbed methane gas mining, as authorized by the Virginia Department of Mines, Minerals and Energy.

b. Attendant features are authorized provided they are directly related to the mining facility, and include~~, but are not limited to,~~ access road construction, parking lots, offices, maintenance shops, garages, and stormwater management facilities.

c. Both direct impacts (e.g., footprints of all fill areas, road crossings, sediment ponds, and stormwater management facilities; mining through state waters; stockpile of overburden, and excavation) and indirect impacts (e.g., diversion of surface water and reach of state waters affected by sediment pond pool and sediment transport) shall be considered when granting coverage under this general permit.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the board, any person claiming this waiver shall demonstrate to the satisfaction of the board that he qualifies for the waiver.

D. Coverage under VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued § 401 certification in accordance with 9VAC25-210-130 H as of August 2, 2016, shall constitute coverage under this VWP general permit~~,~~ unless (i) a state program general permit (SPGP) is required and granted for the activity or impact; or (ii) coverage under a VWP general permit is not allowed pursuant to subdivision D 2 of § 62.1-44.15:21 of the State Water Control Law.

F. Coverage under a permit issued by the Department of Mines, Minerals and Energy under the Virginia Coal Surface Mining Control and Reclamation Act, Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia, where such permit authorizes activities that may be permitted by this chapter and contains a mitigation plan for the impacts from the mining activities, shall also constitute coverage under this VWP general permit.

G. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require a VWP individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this VWP general permit.

9VAC25-690-40. Exceptions to coverage.

A. Coverage under this VWP general permit is not required if the activity is excluded from permitting in accordance with 9VAC25-210-60.

B. Coverage under this VWP general permit cannot be used in combination with coverage under other VWP general permits in order to impact greater than two acres of nontidal wetlands or open water or greater than 1,500 linear feet of nontidal stream bed. Granting coverage under this VWP general permit more than once for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the limits specified here.

C. This VWP general permit cannot be used for an activity in a phased development that would cause the aggregate total loss of nontidal wetlands or open water in the subdivision to exceed two acres or to exceed 1,500 linear feet of nontidal stream bed.

D. The activity to impact surface waters shall not have been prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260).

E. The board shall deny application for coverage under this VWP general permit to any applicant conducting activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to significantly affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

F. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that cause more than minimal degradation of the water quality of a stream.

G. Coverage under this VWP general permit shall not be granted for:

1. Construction of a stormwater management facility in perennial streams or in waters designated as oxygen-impaired or temperature-impaired (does not include wetlands).

2. The construction of an irrigation impoundment on a perennial stream.

3. Any water withdrawal activities.

4. The location of animal feeding operations or waste storage facilities in state waters.

5. The pouring of wet or uncured concrete in state waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless approved by the Department of Environmental Quality.

6. Return flow discharges from dredge disposal sites.

7. Overboard disposal of dredge materials.

8. Dredging in marinas.

9. Dredging of shellfish areas, submerged aquatic vegetation beds, or other highly productive areas.

10. Federal navigation projects.

11. The construction of new ski areas.

12. Any activity in surface water that will impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species in accordance with the following:

a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568 of the Code of Virginia.

b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any state listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

13. Any activity in wetlands composed of 10% or more, singularly or in combination, based upon either basal area or percent areal cover in the area of impact, in a vegetative stratum: Atlantic white cedar (Chamaecyparis thyoides), bald cypress (Taxodium distichum), water tupelo (Nyssa aquatica), or overcup oak (Quercus lyrata).

14. Any activity in wetlands underlain by histosols.

15. Any activity in tidal waters.

16. Impacts to state waters for the construction of any natural gas transmission pipeline that is greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 USC § 717f(c)).

VA.R. Doc. No. R19-5622; Filed September 26, 2018, 8:02 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-610. Groundwater Withdrawal Regulations (amending 9VAC25-610-10; adding 9VAC25-610-44).**

Statutory Authority: § 62.1-256 of the Code of Virginia.

Effective Date: November 14, 2018.

Agency Contact: Scott Kudlas, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4456, FAX (804) 698-4032, or email scott.kudlas@deq.virginia.gov.

Summary:

Pursuant to Chapter 427 of the 2018 Acts of Assembly, the amendments require a new subdivision located in a designated groundwater management area to apply for a technical evaluation from the Department of Environmental Quality (DEQ) prior to final subdivision plat approval if 30 or more lots within the subdivision will be served by private wells. The technical evaluation recommendation is nonbinding, however, the developer must prepare and submit a mitigation plan to DEQ and record a mitigation plan approved by DEQ with the subdivision plat prior to constructing any private wells within the subdivision. The amendments also add a definition of "surficial aquifer."

Part I
General

9VAC25-610-10. Definitions.

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

"Act" means the Ground Water Management Act of 1992, Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Adverse impact" means reductions in groundwater levels or changes in groundwater quality that limit the ability of any existing groundwater user lawfully withdrawing or authorized to withdraw groundwater at the time of permit or special exception issuance to continue to withdraw the quantity and quality of groundwater required by the existing use. Existing groundwater users include all those persons who have been granted a groundwater withdrawal permit subject to this chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

"Agricultural use" means utilizing groundwater for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations. Agricultural use includes withdrawals for turf farm operations, but does not include withdrawals for landscaping activities or turf installment and maintenance associated with landscaping activities.

"Applicant" means a person filing an application to initiate or enlarge a groundwater withdrawal in a groundwater management area.

"Area of impact" means the areal extent of each aquifer where more than one foot of drawdown is predicted to occur due to a proposed withdrawal.

"Beneficial use" includes~~, but is not limited to~~ domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Consumptive use" means the withdrawal of groundwater, without recycle of said waters to their source of origin.

"Department" means the Department of Environmental Quality.

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

"Draft permit" means a prepared document indicating the board's tentative decision relative to a permit action.

"Geophysical investigation" means any hydrogeologic evaluation to define the hydrogeologic framework of an area or determine the hydrogeologic properties of any aquifer or confining unit to the extent that withdrawals associated with such investigations do not result in unmitigated adverse impacts to existing groundwater users. Geophysical investigations include~~, but are not limited to,~~ pump tests and aquifer tests.

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

"Human consumption" means the use of water to support human survival and health, including drinking, bathing, showering, cooking, dishwashing, and maintaining hygiene.

"Mitigate" means to take actions necessary to assure that all existing groundwater users at the time of issuance of a permit or special exception who experience adverse impacts continue to have access to the amount and quality of groundwater needed for existing uses.

"Permit" means a groundwater withdrawal permit issued under the Ground Water Management Act of 1992 permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Permittee" means a person that currently has an effective groundwater withdrawal permit issued under the Ground Water Act of 1992.

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

"Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

"Private well" means, as defined in § 32.1-176.3 of the Code of Virginia, any water well constructed for a person on land that is owned or leased by that person and is usually intended for household, groundwater source heat pump, agricultural use, industrial use, or other nonpublic water well.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views, and comments to the board pursuant to § 62.1-44.15:02 of the Code of Virginia.

"Salt water intrusion" means the encroachment of saline waters in any aquifer that creates adverse impacts to existing groundwater users or is counter to the public interest.

"Special exception" means a document issued by the board for withdrawal of groundwater in unusual situations where requiring the user to obtain a groundwater withdrawal permit would be contrary to the purpose of the Ground Water Management Act of 1992. Special exceptions allow the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Supplemental drought relief well" means a well permitted to withdraw a specified amount of groundwater to meet human consumption needs during declared drought conditions after mandatory water use restrictions have been implemented.

"Surface water and groundwater conjunctive use system" means an integrated water supply system wherein surface water is the primary source and groundwater is a supplemental source that is used to augment the surface water source when the surface water source is not able to produce the amount of water necessary to support the annual water demands of the system.

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

"Water well systems provider" means any individual who is certified by the Board for Contractors in accordance with § 54.1-1128 et seq. of the Code of Virginia and who is engaged in drilling, installation, maintenance, or repair of water wells, water well pumps, ground source heat exchangers, and other equipment associated with the construction, removal, or repair of water wells, water well systems, and ground source heat pump exchangers to the point of connection to the ground source heat pump.

"Well" means any artificial opening or artificially altered natural opening, however made, by which groundwater is sought or through which groundwater flows under natural pressure or is intended to be withdrawn.

"Withdrawal system" means (i) one or more wells or withdrawal points located on the same or contiguous properties under common ownership for which the withdrawal is applied to the same beneficial use or (ii) two or more connected wells or withdrawal points which are under common ownership but are not necessarily located on contiguous properties.

9VAC25-610-44. Technical evaluation of withdrawals for subdivisions with 30 or more lots served by private wells.

A. On or after July 1, 2018, the developer of a subdivision, as defined in § 15.2-2201 of the Code of Virginia, located in a groundwater management area, shall apply for a technical evaluation from the department prior to final subdivision plat approval if there will be 30 or more lots within the subdivision served by private wells, as defined in § 32.1-176.3 of the Code of Virginia. This requirement shall not apply to the developer of a subdivision who constructs all of the private wells within the subdivision in the surficial aquifer.

B. The application for a technical evaluation shall be on a form established by the department and shall include a geophysical log from a geophysical borehole located within the subdivision. Such borehole may subsequently be utilized as a groundwater supply for a dwelling unit or for other appropriate purpose within the subdivision.

C. Within 60 days of receiving a complete application for a technical evaluation, the department shall perform a technical evaluation and provide to the developer a recommendation sufficient to serve the water needs of each dwelling unit in the subdivision that specifies the aquifers that will minimize unmitigated impacts to groundwater resources and any offsite impacts to existing groundwater users.

D. The recommendation to the developer shall be nonbinding; however, any such developer who constructs one or more private wells in the subdivision in an aquifer inconsistent with the department's recommendation shall prepare and submit a mitigation plan to the department, consistent with requirements for mitigation plans established by the board, and record a mitigation plan approved by the department with the subdivision plat prior to constructing any private wells within the subdivision.

E. The department shall charge the developer a fee not to exceed $5,000 to recover the cost of performing the technical evaluation. The fee shall be paid prior to the department providing the developer with the recommendation of the technical evaluation.

VA.R. Doc. No. R19-5516; Filed September 26, 2018, 8:09 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (amending 9VAC25-870-10, 9VAC25-870-51, 9VAC25-870-66, 9VAC25-870-103, 9VAC25-870-148; adding 9VAC25-870-52).**

Statutory Authority: §§ 62.1-44.15:25 and 62.1-44.15:28 of the Code of Virginia.

Effective Date: November 14, 2018.

Agency Contact: Jaime Robb, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4416, or email jaime.robb@deq.virginia.gov.

Summary:

Pursuant to Chapters 154 and 155 of the 2018 Acts of Assembly, the amendments authorize any rural Tidewater locality, in order for land-disturbing activities that disturb an area of 2,500 square feet or more but less than one acre to comply with the water quantity technical criteria in the Stormwater Management Act, to (i) adopt a tiered approach to manage water quantity based on the percentage of impervious cover in the watershed; and (ii) require a licensed professional retained by the applicant to submit a set of plans and supporting calculations that bear a certification and are signed and sealed by the licensed professional and accept such plans in satisfaction of the local plan review requirements.

Pursuant to Chapter 630 of the 2018 Acts of Assembly, the amendments require a Virginia Stormwater Management Program (VSMP) Authority to recommend that the Department of Environmental Quality terminate coverage under a General Permit for Discharges of Stormwater from Construction Activities within 60 days of receiving a complete notice of termination from the operator of the construction activity. Additional provisions specify that such permit coverage shall be deemed terminated 90 days after the receipt by the VSMP authority of a complete notice of termination and requires any VSMP authority receiving incomplete notice to inform the operator within a reasonable time and provide a detailed list of the missing elements.

Part I
Definitions, Purpose, and Applicability

9VAC25-870-10. Definitions.

The following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise.

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

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

"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

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

"Approval authority" means the State Water Control Board or its designee.

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

"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 practice" or "BMP" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater systems.

"Board" means the State Water Control Board.

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

"Channel" means a natural or manmade waterway.

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

"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830) adopted pursuant to the Chesapeake Bay Preservation Act.

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

"Chesapeake Bay watershed" means all land areas draining to the following Virginia river basins: Potomac River Basin, James River Basin, Rappahannock River Basin, Chesapeake Bay and its small coastal basins, and York River Basin.

"Common plan of development or sale" means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

"Comprehensive stormwater management plan" means a plan, which may be integrated with other land use plans or regulations, that specifies how the water quality components, quantity components, or both of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

"Construction activity" means any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.

"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 (37 FR 11906 June 15, 1972).

"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.

"Control measure" means any BMP, stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

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

"Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 et seq.), 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, or any subsequent revisions thereto.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this chapter, 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 Department of Environmental Quality.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The regulation of discharges from development, for purposes of this chapter, does not include the exemptions found in 9VAC25-870-300.

"Direct discharge" means the discharge of a pollutant.

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

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

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to state 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 that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that 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" or "DMR" means the form supplied by the department, or an equivalent form developed by the operator and approved by the board, for the reporting of self-monitoring results by operators.

"Draft state permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a state individual or general permit. A notice of intent to deny a state individual or general permit is a type of draft state permit. A denial of a request for modification, revocation and reissuance, or termination is not a draft state permit.

"Drainage area" means a land area, water area, or both from which runoff flows to a common point.

"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 § 304(b) of the CWA to adopt or revise effluent limitations.

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

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

"ESC" means erosion and sediment control.

"Existing state permit" means for the purposes of this chapter a state permit issued by the board and currently held by a state permit applicant.

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

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that 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.

"Facility or activity" means any 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 VSMP.

"Flood fringe" means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes~~, but is not limited to,~~ the flood or floodway fringe designated by the Federal Emergency Management Agency.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Floodplain" means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes~~, but is not limited to,~~ the floodplain designated by the Federal Emergency Management Agency.

"Flood-prone area" means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include~~, but are not limited to,~~ the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes~~, but is not limited to,~~ the floodway designated by the Federal Emergency Management Agency.

"General permit" means a state permit authorizing a category of discharges under the CWA and the Act within a geographical area.

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

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified as another order.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or state permit (other than the state permit for discharges from the municipal separate storm sewer), discharges resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-870-400 D 2 c (3).

"Impervious cover" means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

"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 discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works (POTW)."

"Inspection" means an on-site review of the project's compliance with the permit or the state permit, the VSMP, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the Act and this chapter.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by 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.

"Karst area" means any land area predominantly underlain at the surface or shallow subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface karst features.

"Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in § 62.1-44.15:34 of the Code of Virginia.

"Large construction activity" means construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area. Large 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. Large 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.

"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 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);

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

3. Owned or operated by a municipality other than those described in subdivision 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 subdivision 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 subdivision 1 of this definition;

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

d. The nature of the receiving surface waters; and

e. Other relevant factors;

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 stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Layout" means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; (iii) highway construction projects; (iv) construction of stormwater channels and stream restoration activities; and (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

"Locality" means a county, city, or town.

"Localized flooding" means smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

"Main channel" means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events.

"Major facility" means any facility or activity classified as such by the regional administrator in conjunction with the board.

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing state permit before its expiration that is not a minor modification as defined in this regulation.

"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 stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with 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 two acres or more).

"Manmade" means constructed by man.

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

"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

"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 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G);

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

3. Owned or operated by a municipality other than those described in subdivision 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 subdivision 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 subdivision 1 of this definition;

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

d. The nature of the receiving surface waters; or

e. Other relevant factors;

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 stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2, and 3 of this definition.

"Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practicable.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing state permit before its expiration for the reasons listed at 40 CFR 122.63 and as specified in 9VAC25-870-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including~~, but not limited to,~~ changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor state permit modification or amendment does not substantially alter state permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

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

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

4. That is not part of a publicly owned treatment works.

"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 9VAC25-870-380 A 1.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a state permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"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 § 208 of the CWA.

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

"Natural channel design concepts" means the utilization of engineering analysis based on fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that

conveys its bankfull storm event within its banks and allows larger flows to access its floodplain.

"Natural stream" means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams; however, channels designed utilizing natural channel design concepts may be considered natural streams.

"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 separate VPDES or state permit for discharges at that site.

This definition includes an indirect discharger that 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 separate VPDES or state 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 permit" means, for the purposes of this chapter, a state permit issued by the board to a state permit applicant that does not currently hold and has never held a state permit of that type, for that activity, at that location. An application for a new permit issued pursuant to this chapter, 9VAC25-880, or 9VAC25-890 shall not be subject to §§ 62.1-44.15:3 A and 62.1-44.15:4 D of the Code of Virginia.

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA that are applicable to such source; or

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

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"Oil and gas exploration, production, processing, or treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity. (33 USC § 1362(24))

"Operator" means the owner or operator of any facility or activity subject to the Act and this chapter. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other state permit or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

"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 or pollutants to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in

contravention of § 62.1-44.5 of the Code of Virginia, the Act and this chapter.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of general permit coverage has been provided where applicable.

"Permittee" means the person to whom the state permit or VSMP authority permit is issued, including any owner or operator whose construction site is covered under a state construction general permit.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including a federal, state, or local entity as applicable, any interstate body or any other legal entity.

"Point of discharge" means a location at which concentrated stormwater runoff is released.

"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 stormwater 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 USC § 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 that 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 groundwater or surface water resources.

"Pollutant discharge" means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

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

"Postdevelopment" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site.

"Predevelopment" refers to the conditions that exist at the time that plans for the land development of a tract of land are submitted to the VSMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the first item being submitted shall establish predevelopment conditions.

"Prior developed lands" means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

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

"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the CWA that is owned by a state or municipality (as defined by § 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 § 502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Qualified personnel" means a person knowledgeable in the principles and practices of erosion and sediment and

stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity. For VSMP authorities this requires the use of a person who holds a certificate of competency from the board in the area of project inspection for ESC and project inspection for SWM or combined administrator for ESC and combined administrator for SWM as defined in 9VAC25-850-10 or a combination of ESC and SWM qualifications from these two areas.

"Recommencing discharger" means a source that 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.

"Revoked state permit" means, for the purposes of this chapter, an existing state permit that is terminated by the board before its expiration.

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

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Runoff characteristics" includes maximum velocity, peak flow rate, volume, and flow duration.

"Runoff volume" means the volume of water that runs off the site from a prescribed design storm.

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia) and (ii) eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2 of the Code of Virginia.

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

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

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that 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.

"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 § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

"Site hydrology" means the movement of water on, across, through, and off the site as determined by parameters including~~, but not limited to,~~ soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results 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 stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved "total maximum daily load" (TMDL) that addresses the ~~pollutant(s)~~ pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the ~~pollutant(s)~~ pollutants 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 subdivision, the ~~pollutant(s)~~ pollutants 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 stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the waiver shall be submitted electronically by the owner or operator to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

2. Any other construction activity designated by 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.

"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, stormwater, 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 § 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 9VAC25-870-380 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 highway 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.

"State" means the Commonwealth of Virginia.

"State application" or "application" means the standard form or forms, including any additions, revisions, or modifications to the forms, approved by the administrator and the board for applying for a state permit.

"State/EPA agreement" means an agreement between the EPA regional administrator and the state that coordinates EPA and state activities, responsibilities, and programs including those under the CWA and the Act.

"State permit" means an approval to conduct a land-disturbing activity issued by the board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Act, and this chapter. As the mechanism that imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, a state permit for stormwater discharges from an MS4 and, after June 30, 2014, a state permit for conducting a land-disturbing activity issued pursuant to the Act, are also types of Virginia Pollutant Discharge Elimination System (VPDES) Permits. State permit does not include any state permit that has not yet been the subject of final board action, such as a draft state permit. Approvals issued pursuant to this chapter, 9VAC25-880, and 9VAC25-890 are not issuances of a permit under § 62.1-44.15.01 of the Code of Virginia.

"State project" means any land development project that is undertaken by any state agency, board, commission, authority, or any branch of state government, including state-supported institutions of higher learning.

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

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

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater conveyance system" means a combination of drainage components that are used to convey stormwater discharge, either within or downstream of the land-disturbing activity. This includes:

1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;

2. "Natural stormwater conveyance system" means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or

3. "Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

"Stormwater discharge associated with construction activity" means a discharge of stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

"Stormwater management facility" means a control measure that controls stormwater runoff and changes the characteristics of that runoff including~~, but not limited to,~~ the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a ~~document(s)~~ document containing material for describing methods for complying with the requirements of the VSMP or this chapter. An agreement in lieu of a stormwater management plan as defined in this chapter shall be considered to meet the requirements of a stormwater management plan.

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures~~,~~ and shall include~~, but not be limited to the inclusion of,~~ or ~~the incorporation~~ incorporate by reference ~~of~~ an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that 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. That 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. That 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 subdivisions 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 subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the 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 CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

"SWM" means stormwater management.

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

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action plans may be implemented in multiple phases over more than one state permit cycle.

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

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based state permit effluent limitations because of factors beyond the reasonable control of the operator. 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 § 301 or § 316 of the CWA or under 40 CFR Part 125, or in the applicable federal effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i), or § 316(a) of the CWA.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in the Erosion and Sediment Control Act and its attendant regulations, and evaluation consistent with the requirements of the Erosion and Sediment Control Act and its attendant regulations.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an authority approved by the board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

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

"Virginia Stormwater BMP Clearinghouse Website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the board after September 13, 2011, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the Act and associated regulations, and evaluation consistent with the requirements of the SWM Act and associated regulations.

"VSMP authority" means an authority approved by the board after September 13, 2011, to operate a Virginia Stormwater Management Program or the department. An authority may include a locality as set forth in § 62.1-44.15:27 of the Code of Virginia; state entity, including the department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 62.1-44.15:31 of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. Prior to approval, the board must find that the ordinances adopted by the locality's VSMP authority are consistent with the Act and this chapter including the General Permit for Discharges of Stormwater from Construction Activities (9VAC25-880).

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Act (§ 62.1-44.15:24 et seq. of the Code of Virginia), and the CWA (33 USC § 1251 et seq.).

"Water quantity technical criteria" means standards that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.

"Wetlands" means those areas that are inundated or saturated by surface water 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.

9VAC25-870-51. Chesapeake Bay Preservation Act land-disturbing activity.

A. In order to protect the quality of state waters and to control the discharge of stormwater pollutants from land-disturbing activities, runoff associated with Chesapeake Bay Preservation Act land-disturbing activities shall be regulated by localities subject to the Chesapeake Bay Preservation Act or, in the case of state and federal agency projects, the department. In regulating such land-disturbing activities in accordance with subsection B of this section, localities shall have the same authority and responsibilities as set forth in these regulations for VSMP authorities.

B. After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage under the General Permit for Discharges of Stormwater from Construction Activities but shall be subject to the following technical criteria and program and administrative requirements:

1. An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during land disturbing activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.

2. A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during the land-disturbing activity. The stormwater management plan shall be developed and submitted in accordance with 9VAC25-870-55. Prior to land disturbance, this plan must be approved by the VSMP authority.

3. Exceptions may be requested in accordance with 9VAC25-870-57.

4. Long-term maintenance of stormwater management facilities shall be provided for and conducted in accordance with 9VAC25-870-58.

5. Water quality design criteria in 9VAC25-870-63 shall be applied to the site.

6. Water quality compliance shall be achieved in accordance with 9VAC25-870-65.

7. Channel protection and flood protection shall be achieved in accordance with 9VAC25-870-66 or as permitted by subsection B of 9VAC25-870-52.

8. Offsite compliance options in accordance with 9VAC25-870-69 shall be available to Chesapeake Bay Preservation Act land-disturbing activities.

9. Such land-disturbing activities shall be subject to the design storm and hydrologic methods set out in 9VAC25-870-72, linear development controls in 9VAC25-870-76, and criteria associated with stormwater impoundment structures or facilities in 9VAC25-870-85.

9VAC25-870-52. Chesapeake Bay Preservation Act land-disturbing activities in rural Tidewater localities.

A. Acceptance of signed and sealed plans in lieu of local plan review. In lieu of a local plan review or retaining a local certified plan reviewer, a rural Tidewater locality may accept plans and supporting calculations for erosion and sediment control and stormwater management for any land-disturbing activity equal to or greater than 2,500 square feet but less than one acre if the following criteria are met:

1. The plans are prepared and submitted by a professional licensed to engage in practice in the Commonwealth under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia and who shall hold a certificate of competence in the appropriate subject area, as provided in § 62.1-44.15:30 of the Code of Virginia; and

2. The plan and supporting calculations are appropriately signed and sealed by the professional with a certification that states: "This plan is designed in accordance with applicable state law and regulations."

B. Tiered approach to water quantity technical criteria compliance.

1. A rural Tidewater locality may adopt the following tiered approach to water quantity management based on the percent impervious cover of the watershed in accordance with this subsection for land-disturbing activities that disturb an area of 2,500 square feet or more but less than one acre:

a. For less than 5.0% impervious cover, apply the Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July 1, 2014, adopted by the board pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, for the protection of downstream properties and waterways from sediment deposition, erosion, and damage due to increases in volume, velocity, and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration.

b. For 5.0% or more impervious cover but less than 7.5%, detain and release over a 24-hour period the

expected rainfall resulting from the one year, 24-hour storm, which practices shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

c. For 7.5% impervious cover or more, apply the water quantity technical criteria in accordance with 9VAC25-870-66.

2. The establishment and conduct of the tiered approach by the locality pursuant to this section shall be subject to review by the department.

3. Prior to the adoption and implementation of the tiered approach to water quantity management, the local governing body shall:

a. Develop a watershed map that includes the following:

(1) The boundaries of the locality and each watershed located partially or wholly within the locality based on the most recent version of Virginia's 6th order National Watershed Boundary Dataset;

(2) The percentage of impervious cover within each watershed. Data provided by the Virginia Geographic Information Network (VGIN) shall be sufficient for the initial determination of impervious cover percentage at the time of the initial adoption of the map; and

(3) The locations at which the governing body expects or proposes that development should occur and may indicate the projected future percentage of impervious cover based on proposed development. The governing body may designate certain areas within a watershed in which it proposes that denser-than-average development shall occur and may designate environmentally sensitive areas in which the water quantity technical criteria in 9VAC25-870-66 shall apply.

b. After the watershed map has been developed, the governing body may then approve and adopt the map by a majority vote of its membership and publish it as the official watershed map of the locality. No official watershed map shall be adopted by the governing body or have any effect until it is approved by an ordinance duly passed by the governing body of the locality after a public hearing, preceded by public notice as required by § 15.2-2204 of the Code of Virginia. Within 30 days after adoption of the official watershed map, the governing body shall file the watershed map in the office of the clerk of the circuit court.

4. At least once per year, the governing body shall by majority vote make additions to or modifications of the official watershed map to reflect actual development projects. The governing body shall change the indication on the map of the impervious cover percentage within a watershed where the percentage has changed and shall update the map and supporting datasets with actual development project information, including single-family housing projects and any projects covered by the General VPDES Permit for Discharges of Stormwater from Construction Activities and administered by the department for opt-out localities pursuant to § 62.1-44.15:27 of the Code of Virginia. The governing body may incorporate into the official watershed map the most recent VGIN data, including data on state and federal projects that are not reviewed or approved by the locality. The governing body shall keep current its impervious cover percentage for each watershed located within the locality, as reflected in the official watershed map, and shall make the map and such percentages available to the public.

5. The locality shall notify the department and update the official watershed map within 12 months of the approval of the development plan for any project that exceeds the percent impervious cover percentage of the watershed in which it is located and causes the impervious cover percentage for the watershed to increase such that the watershed percent impervious cover is categorized by the next higher tier pursuant to subdivision B 1 of this section.

6. No official watershed map or its adopting or amending ordinance shall take precedence over any duly adopted zoning ordinance, comprehensive plan, or other local land-use ordinance, and in the case of a conflict, the official watershed map or ordinance shall yield to such land-use ordinance.

9VAC25-870-66. Water quantity.

A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of § 62.1-44.15:28 of the Code of Virginia or as permitted in accordance with § 62.1-44.15:27.2 of the Code of Virginia. Nothing in this section shall prohibit a locality's VSMP authority from establishing a more stringent standard in accordance with § 62.1-44.15:33 of the Code of Virginia especially where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters. Compliance with the minimum standards set out in this section shall be deemed to satisfy the requirements of subdivision 19 of 9VAC25-840-40 (Minimum standards; Virginia Erosion and Sediment Control Regulations).

B. Channel protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet the criteria in subdivision 1, 2, or 3 of this subsection, where applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this subsection.

1. Manmade stormwater conveyance systems. When stormwater from a development is discharged to a manmade stormwater conveyance system, following the land-disturbing activity, either:

a. The manmade stormwater conveyance system shall convey the postdevelopment peak flow rate from the two-year 24-hour storm event without causing erosion of the system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VSMP authority; or

b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

2. Restored stormwater conveyance systems. When stormwater from a development is discharged to a restored stormwater conveyance system that has been restored using natural design concepts, following the land-disturbing activity, either:

a. The development shall be consistent, in combination with other stormwater runoff, with the design parameters of the restored stormwater conveyance system that is functioning in accordance with the design objectives; or

b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

3. Natural stormwater conveyance systems. When stormwater from a development is discharged to a natural stormwater conveyance system, the maximum peak flow rate from the one-year 24-hour storm following the land-disturbing activity shall be calculated either:

a. In accordance with the following methodology:

$Q_{Developed} \leq I.F.*(Q_{Pre\text{-}developed}* RV_{Pre\text{-}Developed})/RV_{Developed}$

Under no condition shall $Q_{Developed}$ be greater than $Q_{Pre\text{-}Developed}$ nor shall $Q_{Developed}$ be required to be less than that calculated in the equation $(Q_{Forest} * RV_{Forest})/RV_{Developed}$; where

I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.

$Q_{Developed}$ = The allowable peak flow rate of runoff from the developed site.

$RV_{Developed}$ = The volume of runoff from the site in the developed condition.

$Q_{Pre\text{-}Developed}$ = The peak flow rate of runoff from the site in the pre-developed condition.

$RV_{Pre\text{-}Developed}$ = The volume of runoff from the site in pre-developed condition.

Q_{Forest} = The peak flow rate of runoff from the site in a forested condition.

RV_{Forest} = The volume of runoff from the site in a forested condition; or

b. In accordance with another methodology that is demonstrated by the VSMP authority to achieve equivalent results and is approved by the board.

4. Limits of analysis. Unless subdivision 3 of this subsection is utilized to show compliance with the channel protection criteria, stormwater conveyance systems shall be analyzed for compliance with channel protection criteria to a point where either:

a. Based on land area, the site's contributing drainage area is less than or equal to 1.0% of the total watershed area; or

b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior to the implementation of any stormwater quantity control measures.

C. Flood protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of acceptable hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to stormwater conveyance systems that currently do not experience localized flooding during the 10-year 24-hour storm event: The point of discharge releases stormwater into a stormwater conveyance system that, following the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VSMP authority.

2. Concentrated stormwater flow to stormwater conveyance systems that currently experience localized flooding during the 10-year 24-hour storm event: The point of discharge either:

a. Confines the postdevelopment peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system to avoid the localized flooding. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the VSMP authority; or

b. Releases a postdevelopment peak flow rate for the 10-year 24-hour storm event that is less than the predevelopment peak flow rate from the 10-year 24-hour storm event. Downstream stormwater conveyance systems do not require any additional analysis to show compliance with flood protection criteria if this option is utilized.

3. Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with the flood protection

criteria, stormwater conveyance systems shall be analyzed for compliance with flood protection criteria to a point where:

a. The site's contributing drainage area is less than or equal to 1.0% of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system;

b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or

c. The stormwater conveyance system enters a mapped floodplain or other flood-prone area, adopted by ordinance, of any locality.

D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down-gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a stormwater management facility or a stormwater conveyance system that conveys the runoff without causing down-gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

E. For purposes of computing predevelopment runoff, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the VSMP authority that actual site conditions warrant such considerations.

F. Predevelopment and postdevelopment runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices. Guidance provided in the Virginia Stormwater Management Handbook and on the Virginia Stormwater BMP Clearinghouse Website shall be considered appropriate practices.

9VAC25-870-103. Requirements for Chesapeake Bay Preservation Act land-disturbing activities.

A. Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated with Chesapeake Bay Preservation Act land-disturbing activities in accordance with the following:

1. After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage under the General Permit for Discharges of Stormwater from Construction Activities but shall be subject to the technical criteria and program and administrative requirements set out in 9VAC25-870-51.

2. A local or VSMP authority permit, as applicable, shall be issued permitting the land-disturbing activity.

3. The locality shall regulate such land-disturbing activities in compliance with the:

a. Program requirements in 9VAC25-870-104;

b. Plan review requirements in 9VAC25-870-108 with the exception of subsection D of 9VAC25-870-108 or as allowed in subsection A of 9VAC25-870-52;

c. Long-term stormwater management facility requirements of 9VAC25-870-112;

d. Inspection requirements of 9VAC25-870-114 with the exception of subdivisions A 3 and A 4 of 9VAC25-870-114;

e. Enforcement components of 9VAC25-870-116;

f. Hearing requirements of 9VAC25-870-118;

g. Exception conditions of 9VAC25-870-122 excluding subsection C of 9VAC25-870-122 which is not applicable; and

h. Reporting and recordkeeping requirements of 9VAC25-870-126 with the exception of subdivision B 3 of 9VAC25-870-126.

B. A locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance that incorporates the components of this section.

C. In accordance with subdivision A 5 of § 62.1-44.15:28 of the Code of Virginia, a locality's VSMP authority may collect a permit issuance fee from the applicant of $290 and an annual maintenance fee of $50 for such land-disturbing activities.

9VAC25-870-148. Virginia stormwater management program administrative requirements.

A. A VSMP shall provide for the following:

1. Identification of the authority accepting complete registration statements and of the authorities completing plan review, plan approval, inspection, and enforcement;

2. Submission and approval of erosion and sediment control plans in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations and the submission and approval of stormwater management plans;

3. Requirements to ensure compliance with 9VAC25-870-54, 9VAC25-870-55, and 9VAC25-870-56;

4. Requirements for inspections and monitoring of construction activities by the operator for compliance with local ordinances;

5. Requirements for long-term inspection and maintenance of stormwater management facilities;

6. Collection, distribution to the state if required, and expenditure of fees;

7. Enforcement procedures and civil penalties where applicable;

8. Policies and procedures to obtain and release bonds, if applicable; and

9. Procedures for complying with the applicable reporting and recordkeeping requirements in 9VAC25-870-126.

B. A locality's VSMP authority shall adopt and enforce an ~~ordinance(s)~~ ordinance that ~~incorporate(s)~~ incorporates the components set out in subdivisions 1 through 5 and 7 of subsection A of this section. Other VSMP authorities shall provide supporting documentation that incorporates the components set out in subdivisions 1 through 5 of subsection A of this section in a format acceptable to the department.

C. Notice of termination of general permit coverage.

1. A VSMP authority shall recommend that the department terminate coverage under a General VPDES Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) within 60 days of receiving a complete notice of termination from the operator of the construction activity.

2. Coverage under a Construction General Permit shall be deemed to be terminated 90 days after the receipt by the VSMP authority of a complete notice of termination from the operator of the construction activity.

3. If a VSMP authority receives a notice of termination of a Construction General Permit that it determines to be incomplete, the VSMP authority shall, within a reasonable time, inform the operator of the construction activity of such incompleteness and provide the operator with a detailed list itemizing the elements of information that are missing from the notice.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-870)

Virginia Runoff Reduction Method: Instructions & Documentation, March 28, 2011

Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July 1, 2014

VA.R. Doc. No. R19-5657; Filed September 26, 2018, 8:12 a.m.

◆

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 22 of the Code of Virginia, which exempts the State Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § 32.1-35 of the Code of Virginia. The State Board of Health is also claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-90. Regulations for Disease Reporting and Control (amending 12VAC5-90-80).**

Statutory Authority: § 32.1-35 of the Code of Virginia.

Effective Date: November 14, 2018.

Agency Contact: Tim Powell, Acting Director, Division of Surveillance and Investigation, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7760, or email tim.powell@vdh.virginia.gov.

Summary:

The amendments (i) remove acquired immunodeficiency syndrome and Creutzfeldt-Jakob disease from the reportable disease list; (ii) add infection or colonization with Candida auris and any carbapenemase-producing organism to the reportable disease list; (iii) add the name of the reportable organism next to disease names on the reportable disease list and conditions reportable by laboratory directors; (iv) replace specific laboratory methods from the list of conditions reportable by laboratory directors with a requirement for directors of laboratories to report based on any laboratory method if the method indicates the presence of a reportable organism; (v) update the list of conditions reportable by laboratory directors to reflect current laboratory technology and public health standards, including reporting of all lead blood levels, viral loads for persons who test positive for hepatitis C, liver enzyme results for persons who test positive for hepatitis B, and gram negative diplococci; (vi) remove Creutzfeldt-Jakob disease from the list of conditions reportable by laboratory directors; (vii) reorder subsections E through I; (viii) move certain language from the list of isolates or other specimens that must be submitted to the Division of Consolidated Laboratory Services in 12VAC5-90-90 B to

12VAC5-90-80 D and update it; and (ix) add the names of reportable organisms next to disease names so that the isolate submission list is aligned with the reportable disease list and list of conditions reportable by laboratory directors.

Part III
Reporting of Disease

12VAC5-90-80. Lists of diseases that shall be reported.

A. Reportable disease list. The board declares suspected or confirmed cases of the following named diseases, toxic effects, and conditions to be reportable by the persons enumerated in 12VAC5-90-90. Conditions identified by an asterisk (*) require immediate communication to the local health department by the most rapid means available upon suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis, unless otherwise specified in this section. Neonatal Abstinence Syndrome shall be reported as specified in subsection E of this section.

~~Acquired immunodeficiency syndrome (AIDS)~~

Amebiasis (Entamoeba histolytica)

*Anthrax (Bacillus anthracis)

Arboviral infections (e.g., CHIK, dengue, EEE, LAC, SLE, WNV, Zika)

Babesiosis (Babesia spp.)

*Botulism (Clostridium botulinum)

*Brucellosis (Brucella spp.)

Campylobacteriosis (Campylobacter spp.)

Candida auris, infection or colonization

Carbapenemase-producing organism, infection or colonization

Chancroid (Haemophilus ducreyi)

Chickenpox ~~(Varicella)~~ (Varicella virus)

Chlamydia trachomatis infection

*Cholera (Vibrio cholerae O1 or O139)

*Coronavirus infection, severe

~~Creutzfeldt-Jakob disease if younger than 55 years of age~~

Cryptosporidiosis (Cryptosporidium spp.)

Cyclosporiasis (Cyclospora spp.)

*Diphtheria (Corynebacterium diphtheriae)

*Disease caused by an agent that may have been used as a weapon

Ehrlichiosis/Anaplasmosis (Ehrlichia spp., Anaplasma phagocytophilum)

~~Escherichia coli infection, Shiga toxin-producing~~

Giardiasis (Giardia spp.)

Gonorrhea (Neisseria gonorrhoeae)

Granuloma inguinale (Calymmatobacterium granulomatis)

*Haemophilus influenzae infection, invasive

Hantavirus pulmonary syndrome

Hemolytic uremic syndrome (HUS)

*Hepatitis A

Hepatitis B (acute and chronic)

Hepatitis C (acute and chronic)

Hepatitis, other acute viral

Human immunodeficiency virus (HIV) infection

Influenza, confirmed

*Influenza-associated deaths ~~in children~~ if younger than 18 years of age

Lead, ~~reportable~~ blood levels

Legionellosis (Legionella spp.)

Leprosy (Hansen's disease) (Mycobacterium leprae)

Leptospirosis (Leptospira interrogans)

Listeriosis (Listeria monocytogenes)

Lyme disease (Borrelia spp.)

Lymphogranuloma venereum (Chlamydia trachomatis)

Malaria (Plasmodium spp.)

*Measles (Rubeola)

*Meningococcal disease (Neisseria meningitidis)

Mumps

Neonatal abstinence syndrome (NAS)

Ophthalmia neonatorum

*Outbreaks, all (including foodborne, ~~healthcare-associated~~ health care-associated, occupational, toxic substance-related, waterborne, and ~~waterborne)~~ any other outbreak)

*Pertussis (Bordetella pertussis)

*Plague (Yersinia pestis)

*Poliovirus infection, including poliomyelitis

*Psittacosis (Chlamydophila psittaci)

*Q fever (Coxiella burnetii)

*Rabies, human and animal

Rabies treatment, post-exposure

*Rubella, including congenital rubella syndrome

Salmonellosis (Salmonella spp.)

Shiga toxin-producing Escherichia coli infection

Shigellosis (Shigella spp.)

*Smallpox ~~(Variola)~~ (Variola virus)

Spotted fever rickettsiosis (Rickettsia spp.)

~~Staphylococcus aureus infection, vancomycin intermediate or vancomycin resistant~~

Streptococcal disease, Group A, invasive or toxic shock

Streptococcus pneumoniae infection, invasive~~, in children~~ if younger than five years of age

Syphilis ~~(report *primary and *secondary syphilis by rapid means)~~ (Treponema pallidum) report *congenital, *primary, *secondary, and other

Tetanus (Clostridium tetani)

Toxic substance-related illness

Trichinosis (Trichinellosis) (Trichinella spiralis)

*Tuberculosis, active disease (Mycobacterium tuberculosis complex)

Tuberculosis infection ~~in children younger than four years of age~~

*Tularemia (Francisella tularensis)

*Typhoid/Paratyphoid ~~fever~~ infection (Salmonella Typhi, Salmonella Paratyphi)

*Unusual occurrence of disease of public health concern

*Vaccinia, disease or adverse event

Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection

~~*Vibrio infection~~ *Vibriosis (Vibrio spp.)

*Viral hemorrhagic fever

*Yellow fever

Yersiniosis (Yersinia spp.)

B. Conditions reportable by directors of laboratories. Laboratories shall report all test results indicative of and specific for the diseases, infections, microorganisms, conditions, and toxic effects specified in this subsection for humans. Such tests include microbiological culture, isolation, or identification; assays for specific antibodies; and identification of specific antigens, toxins, or nucleic acid sequences. Additional condition-specific requirements are noted in this subsection and subsection D of this section. Conditions identified by an asterisk (*) require immediate communication to the local health department by the most rapid means available upon suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis.

Amebiasis ~~– by microscopic examination, culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection~~ (Entamoeba histolytica)

*Anthrax ~~– by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection~~ (Bacillus anthracis)

Arboviral infection, for example, CHIK, dengue, EEE, LAC ~~(also known as California encephalitis)~~, SLE, WNV, or Zika ~~– by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection~~

Babesiosis ~~– by culture, antigen detection, nucleic acid detection, microscopic examination, or serologic results consistent with recent infection~~ (Babesia spp.)

*Botulism ~~– by culture, nucleic acid detection, or identification of neurotoxin in a clinical specimen~~ (Clostridium botulinum)

*Brucellosis ~~– by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection~~ (Brucella spp.)

Campylobacteriosis ~~– by culture or culture independent diagnostic test (CIDT) (i.e., antigen detection or nucleic acid detection). For CIDT, also submit all available culture results (positive or negative) associated with a positive result.~~ (Campylobacter spp.)

Candida auris - Include available antimicrobial susceptibility findings in report.

Carbapenemase-producing organism - Include available antimicrobial susceptibility findings in report.

Chancroid ~~– by culture, antigen detection, or nucleic acid detection~~ (Haemophilus ducreyi)

Chickenpox ~~(Varicella) – by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection~~ (Varicella virus)

Chlamydia trachomatis infection ~~– by culture, antigen detection, nucleic acid detection or, for lymphogranuloma venereum, serologic results consistent with recent infection~~

*Cholera ~~– by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection~~ (Vibrio cholerae O1 or O139)

*Coronavirus infection, severe ~~- by culture, nucleic acid detection, or serologic results consistent with recent infection~~ (e.g., SARS-CoV, MERS-CoV)

~~Creutzfeldt-Jakob disease if younger than 55 years of age by histopathology in patients under the age of 55 years~~

Cryptosporidiosis ~~- by microscopic examination, antigen detection, or nucleic acid detection~~ (Cryptosporidium spp.)

Cyclosporiasis ~~- by microscopic examination or nucleic acid detection~~ (Cyclospora spp.)

*Diphtheria ~~- by culture or histopathology~~ (Corynebacterium diphtheriae)

Ehrlichiosis/Anaplasmosis ~~- by culture, nucleic acid detection, microscopic examination, or serologic results consistent with recent infection~~ (Ehrlichia spp., Anaplasma phagocytophilum)

~~Escherichia coli infection, Shiga toxin-producing - by culture, Shiga toxin detection (e.g., nucleic acid detection, EIA), or serologic results consistent with recent infection~~

Giardiasis ~~- by microscopic examination, antigen detection, or nucleic acid detection~~ (Giardia spp.)

Gonorrhea ~~- by microscopic examination of a urethral smear (males only) or endocervical smear (females only), culture, antigen detection, or nucleic acid detection.~~ (Neisseria gonorrhoeae) - Include available antimicrobial susceptibility findings in report.

*Haemophilus influenzae infection, invasive ~~- by culture, antigen detection, or nucleic acid detection from a normally sterile site~~

Hantavirus pulmonary syndrome ~~- by antigen detection (immunohistochemistry), nucleic acid detection, or serologic results consistent with recent infection~~

*Hepatitis A ~~- by detection of IgM antibodies~~

Hepatitis B (acute and chronic) - ~~by detection of HBsAg, HBeAg, or IgM antibodies or nucleic acid detection.~~ For ~~any reportable hepatitis finding, submit~~ All hepatitis B patients, also report available results of serum alanine aminotransferase (ALT) and all available results from the hepatitis panel.

Hepatitis C (acute and chronic) - ~~by hepatitis C virus antibody (anti-HCV) positive, HCV antigen positive, or HCV RNA positive by nucleic acid test.~~ For all ~~hepatitis C~~ patients with any positive HCV test, also report all results of HCV viral load tests, including undetectable viral loads and report available results of serum alanine aminotransferase (ALT) and all available results from the hepatitis panel.

Hepatitis, other acute viral - ~~any~~ Any finding indicative of acute infection with hepatitis D, E, or other cause of viral hepatitis. For any reportable hepatitis finding, submit all available results from the hepatitis panel.

Human immunodeficiency virus (HIV) infection - ~~by culture, antigen detection, nucleic acid detection, or detection of antibody.~~ For HIV-infected patients, report all results of CD4 and HIV viral load tests, including undetectable viral loads. For HIV-infected patients, report all HIV genetic nucleotide sequence data associated with HIV drug resistance tests by electronic submission. For children younger than three years of age, report all tests regardless of the test findings (e.g., negative or positive).

Influenza, confirmed - ~~by~~ By culture, antigen detection by direct fluorescent antibody (DFA), or nucleic acid detection.

Lead, ~~reportable~~ blood levels - ~~by any detectable blood lead level in children ages 0-15 years or levels greater than or equal to five µg/dL in persons older than 15 years of age~~ All lead results from tests of venous or capillary blood performed by a laboratory certified by the Centers for Medicare and Medicaid Services in accordance with 42 USC § 263a, the Clinical Laboratory Improvement Amendment of 1988 (CLIA-certified).

Legionellosis ~~- by culture, antigen detection (including urinary antigen), nucleic acid detection, or serologic results consistent with recent infection~~ (Legionella spp.)

Leptospirosis ~~- by culture, microscopic examination by dark field microscopy, nucleic acid detection, or serologic results consistent with recent infection~~ (Leptospira interrogans)

Listeriosis ~~- by culture from a normally sterile site. If associated with miscarriage or stillbirth, by culture from placental or fetal tissue~~ (Listeria monocytogenes), invasive or if associated with miscarriage or stillbirth from placental or fetal tissue

Lyme disease ~~- by culture, antigen detection, or detection of antibody confirmed with a supplemental test~~ (Borrelia spp.)

Malaria ~~- by microscopic examination, antigen detection, or nucleic acid detection~~ (Plasmodium spp.)

*Measles (Rubeola) ~~- by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection~~

*Meningococcal disease ~~- by culture, nucleic acid detection, or antigen detection from a normally sterile site~~ (Neisseria meningitidis), invasive - Include identification of gram-negative diplococci.

Mumps ~~- by culture, nucleic acid detection, or serologic results consistent with recent infection~~

*Mycobacterial diseases - (See 12VAC5-90-225 B) Report any of the following:

1. Acid fast bacilli ~~by microscopic examination~~;

2. ~~Mycobacterial identification - preliminary and final identification by culture or nucleic acid detection~~ M. tuberculosis complex or any other mycobacteria;

3. ~~Drug~~ Antimicrobial susceptibility ~~test~~ results for M. tuberculosis complex.

*Pertussis ~~- by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection~~ (Bordetella pertussis)

*Plague ~~- by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection~~ (Yersinia pestis)

*Poliovirus infection ~~- by culture~~

*Psittacosis ~~- by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection~~ (Chlamydophila psittaci)

*Q fever ~~- by culture, antigen detection, nucleic acid detection, immunohistochemical methods, or serologic results consistent with recent infection~~ (Coxiella burnetii)

*Rabies, human and animal ~~- by culture, antigen detection by direct fluorescent antibody test, nucleic acid detection, or, for humans only, serologic results consistent with recent infection~~

*Rubella ~~- by culture, nucleic acid detection, or serologic results consistent with recent infection~~

Salmonellosis ~~- by culture, antigen detection, or nucleic acid detection~~ (Salmonella spp.)

Shiga toxin-producing Escherichia coli infection

Shigellosis ~~- by culture, antigen detection, or nucleic acid detection~~ (Shigella spp.)

*Smallpox ~~(Variola) - by culture or nucleic acid detection~~ (Variola virus)

Spotted fever rickettsiosis ~~- by culture, antigen detection (including immunohistochemical staining), nucleic acid detection, or serologic results consistent with recent infection~~ (Rickettsia spp.)

~~Staphylococcus aureus infection, resistant, specifically:~~

~~Vancomycin intermediate or vancomycin resistant Staphylococcus aureus infection - by antimicrobial susceptibility testing of a Staphylococcus aureus isolate, with a vancomycin susceptibility result of intermediate or resistant, cultured from a clinical specimen. Include available antimicrobial susceptibility findings in report.~~

Streptococcal disease, Group A, invasive or toxic shock ~~- for invasive disease, by culture from a normally sterile site; for streptococcal toxic shock, by culture from any body site~~

Streptococcus pneumoniae infection, invasive~~, in children~~ if younger than five years of age ~~- by culture from a normally sterile site in a child under~~ the ~~age of five years~~

*Syphilis ~~- by darkfield microscopy, antigen detection, nucleic acid detection, or serology by either treponemal or nontreponemal methods~~ (Treponema pallidum)

Toxic substance-related illness - ~~by~~ By blood or urine laboratory findings above the normal range, including ~~but not limited to~~ heavy metals, pesticides, and industrial-type solvents and gases. When applicable and available, report speciation of metals when blood or urine levels are elevated in order to differentiate the chemical species (elemental, organic, or inorganic).

Trichinosis (Trichinellosis) ~~- by microscopic examination of a muscle biopsy or serologic results consistent with recent infection~~ (Trichinella spiralis)

Tuberculosis infection

*Tularemia ~~- by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection~~ (Francisella tularensis)

*Typhoid/Paratyphoid ~~fever~~ infection ~~- by culture, antigen detection, or nucleic acid detection~~ (Salmonella Typhi, Salmonella Paratyphi A, Salmonella Paratyphi B, Salmonella Paratyphi C)

*Vaccinia, disease or adverse event ~~- by culture or nucleic acid detection~~

Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection - Include available antimicrobial susceptibility findings in report.

~~*Vibrio infection - isolation of any species of the family Vibrionaceae (other than toxigenic Vibrio cholera O1 or O139, which are reportable as cholera) from a clinical specimen by culture, antigen detection, or nucleic acid detection~~ *Vibriosis (Vibrio spp., Photobacterium damselae, Grimontia hollisae), other than toxigenic Vibrio cholera O1 or O139, which are reportable as cholera

*Viral hemorrhagic fever ~~- by culture, antigen detection (including immunohistochemical staining), nucleic acid detection, or serologic results consistent with recent infection~~

*Yellow fever ~~- by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection~~

Yersiniosis ~~- by culture, nucleic acid detection, or serologic results consistent with recent infection~~ (Yersinia spp.)

C. Reportable diseases requiring rapid communication. Certain of the diseases in the list of reportable diseases~~,~~ because of their extremely contagious nature ~~or their~~, potential for greater harm, or ~~both,~~ availability of a specific intervention that must be administered in a timely manner require immediate identification and control. Reporting of persons confirmed or suspected of having these diseases, listed in this subsection, shall be made immediately by the most rapid means available, preferably by telephone to the local health department. (These same diseases are also identified by an asterisk (*) in subsections A and B, where applicable, of this section.)

Anthrax (Bacillus anthracis)

Botulism (Clostridium botulinum)

Brucellosis (Brucella spp.)

Cholera (Vibrio cholerae O1 or O139)

Coronavirus infection, severe

Diphtheria (Corynebacterium diphtheriae)

Disease caused by an agent that may have been used as a weapon

Haemophilus influenzae infection, invasive

Hepatitis A

Influenza-associated deaths ~~in children~~ if younger than 18 years of age

Influenza A, novel virus

Measles ~~(Rubeola)~~ (Rubeola virus)

Meningococcal disease (Neisseria meningitidis)

Outbreaks, all

Pertussis (Bordetella pertussis)

Plague (Yersinia pestis)

Poliovirus infection, including poliomyelitis

Psittacosis (Chlamydophila psittaci)

Q fever (Coxiella burnetii)

Rabies, human and animal

Rubella, including congenital rubella syndrome

Smallpox ~~(Variola)~~ (Variola virus)

Syphilis, congenital, primary, and secondary (Treponema pallidum)

Tuberculosis, active disease (Mycobacterium tuberculosis complex)

Tularemia (Francisella tularensis)

Typhoid/Paratyphoid ~~fever~~ infection (Salmonella Typhi, Salmonella Paratyphi (all types))

Unusual occurrence of disease of public health concern

Vaccinia, disease or adverse event

~~Vibrio infection~~ Vibriosis (Vibrio spp., Photobacterium damselae, Grimontia hollisae), other than toxigenic Vibrio cholerae O1 or O139, which are reportable as cholera

Viral hemorrhagic fever

Yellow fever

~~D. Toxic substance-related illnesses. All toxic substance-related illnesses, including pesticide and heavy metal poisoning or illness resulting from exposure to an occupational dust or fiber or radioactive substance, shall be reported.~~

~~If such illness is verified or suspected and presents an emergency or a serious threat to public health or safety, the report of such illness shall be made immediately by the most rapid means available, preferably by telephone.~~

~~E. Outbreaks. The occurrence of outbreaks or clusters of any illness that may represent a group expression of an illness that may be of public health concern shall be reported to the local health department immediately by the most rapid means available, preferably by telephone.~~

~~F. Unusual or ill-defined diseases or emerging or reemerging pathogens. Unusual or emerging conditions of public health concern shall be reported to the local health department immediately by the most rapid means available, preferably by telephone. In addition, the commissioner or his designee may establish surveillance systems for diseases or conditions that are not on the list of reportable diseases. Such surveillance may be established to identify cases (delineate the magnitude of the situation), to identify the mode of transmission and risk factors for the disease, and to identify and implement appropriate action to protect public health. Any person reporting information at the request of the department for special surveillance or other epidemiological studies shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.~~

D. Submission of initial isolate or other specimen for further public health testing. A laboratory identifying evidence of any of the conditions in this subsection shall notify the local health department of the positive culture or other positive test result within the timeframes specified in subsection B of this section and submit the initial isolate (preferred) or other initial specimen to the Division of Consolidated Laboratory Services or other public health laboratory where specified in this subsection within seven days of identification. All specimens must be identified with the patient and physician information required in 12VAC5-90-90 B.

Anthrax (Bacillus anthracis)

Botulism (Clostridium botulinum)

Brucellosis (Brucella sp.)

Candida auris

Candida haemulonii

Carbapenem-resistant Enterobacteriaceae

Carbapenem-resistant Pseudomonas aeruginosa

Cholera (Vibrio cholerae O1 or O139)

Coronavirus infection, severe (e.g., SARS-CoV, MERS-CoV)

Diphtheria (Corynebacterium diphtheriae)

Haemophilus influenzae infection, invasive

Influenza, unsubtypeable

Listeriosis (Listeria monocytogenes)

Meningococcal disease (Neisseria meningitidis)

Plague (Yersinia pestis)

Poliovirus infection

Q fever (Coxiella burnetii)

Salmonellosis (Salmonella spp.)

Shiga toxin-producing E. coli infection (Laboratories that identify a Shiga toxin but do not perform simultaneous culture for Shiga toxin-producing E. coli should forward all positive stool specimens or positive enrichment broths to the Division of Consolidated Laboratory Services for confirmation and further characterization.)

Shigellosis (Shigella spp.)

Streptococcal disease, Group A, invasive

Tuberculosis (A laboratory identifying Mycobacterium tuberculosis complex (see 12VAC5-90-225) shall submit a representative and viable sample of the initial culture to the Division of Consolidated Laboratory Services or other laboratory designated by the board to receive such specimen.)

Tularemia (Francisella tularensis)

Typhoid/Paratyphoid infection (Salmonella Typhi, Salmonella Paratyphi (all types))

Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection

Vibriosis (Vibrio spp., Photobacterium damselae, Grimontia hollisae)

Yersiniosis (Yersinia spp.)

Other diseases as may be requested by the health department.

~~G.~~ E. Neonatal abstinence syndrome. Neonatal abstinence syndrome shall be reported by physicians and directors of medical care facilities when a newborn has been diagnosed with neonatal abstinence syndrome, a condition characterized by clinical signs of withdrawal from exposure to prescribed or illicit drugs. Reports shall be submitted within one month of diagnosis by entering the information into the Department of Health's online Confidential Morbidity Report portal (http://www.vdh.virginia.gov/clinicians).

F. Outbreaks. The occurrence of outbreaks or clusters of any illness that may represent a group expression of an illness that may be of public health concern shall be reported to the local health department immediately by the most rapid means available, preferably by telephone.

G. Toxic substance-related illnesses. All toxic substance-related illnesses, including pesticide and heavy metal poisoning or illness resulting from exposure to an occupational dust or fiber or radioactive substance, shall be reported.

If such illness is verified or suspected and presents an emergency or a serious threat to public health or safety, the report of such illness shall be made immediately by the most rapid means available, preferably by telephone.

H. Unusual occurrence of disease of public health concern. Unusual or emerging conditions of public health concern shall be reported to the local health department immediately by the most rapid means available, preferably by telephone. In addition, the commissioner or the commissioner's designee may establish surveillance systems for diseases or conditions that are not on the list of reportable diseases. Such surveillance may be established to identify cases (delineate the magnitude of the situation), to identify the mode of transmission and risk factors for the disease, and to identify and implement appropriate action to protect public health. Any person reporting information at the request of the department for special surveillance or other epidemiological studies shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

VA.R. Doc. No. R19-5640; Filed September 13, 2018, 2:00 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-221. Regulations Governing Cooperative Agreements (amending 12VAC5-221-40).**

Statutory Authority: § 32.1-12 of the Code of Virginia.

Effective Date: November 14, 2018.

Agency Contact: Robert Payne, Director, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2109, FAX (804) 527-4502, or email robert.payne@vdh.virginia.gov.

Summary:

Pursuant to Chapter 371 of the 2018 Acts of Assembly, the amendments establish requirements associated with Department of Health approval of cooperative agreements between hospitals, including reimbursement of the State Health Commissioner for costs necessary to examine, review, and supervise a cooperative agreement; reasonable notice to the parties of a cooperative agreement of the anticipated costs of the agreement, such as costs associated with the use of experts and consultants and the proposed scope of the work; provision by the parties of the cooperative agreement of alternatives to the use of experts and consultants; commissioner review of the alternatives; and recordkeeping and reporting of costs and reimbursements.

12VAC5-221-40. Fee schedule.

A. Fees shall be remitted only by certified check, cashier's check, bank money order, or other methods approved by the department. Fees shall be made payable to the department.

B. The application fee shall be $50,000 and shall be due to the department upon its receipt of a recommendation for approval from the authority.

C. If the commissioner should determine after review of the application that the actual cost incurred by the department is less than $50,000, the applicant shall be reimbursed the amount that is greater than the actual cost. If the commissioner should determine that the actual cost incurred by the department is greater than $50,000, the applicant shall pay any additional amounts due as instructed by the department. ~~The application fee shall not exceed $75,000.~~

D. The commissioner shall be reimbursed from applicants seeking approval of a cooperative agreement for all reasonable and actual costs incurred by the commissioner in the commissioner's review of the application, including costs of experts and consultants retained by the commissioner. The commissioner shall incur only those costs necessary to adequately review the application as determined in the commissioner's sole discretion. The commissioner shall maintain detailed records of all costs incurred for which reimbursement is sought.

E. The commissioner shall determine the activities needed to actively supervise an approved cooperative agreement and may incur only those expenses necessary for such supervision as determined in the commissioner's sole discretion. The commissioner shall be entitled to reimbursement from the parties for all reasonable and actual costs incurred by the commissioner in the supervision of an approved cooperative agreement, including costs of experts and consultants retained by the commissioner. Prior to contracting with experts or consultants, the commissioner shall provide reasonable notice to the parties describing the proposed scope of work and anticipated costs of such experts and consultants. The parties shall be given a reasonable time period to provide to the commissioner possible alternatives to the use of such experts and consultants. The commissioner shall consider information submitted by the parties in determining whether to retain an expert or consultant.

F. The commissioner shall maintain detailed records of all costs incurred for which the commissioner seeks reimbursement from the parties. The commissioner shall provide the parties a written quarterly report detailing all costs incurred by the commissioner related to the supervision of the cooperative agreement for which the commissioner seeks reimbursement. This report shall be provided to the parties within 30 days of the end of each quarter. Within 30 days of receipt of a request for reimbursement, the parties shall make payment to the department.

VA.R. Doc. No. R19-5677; Filed September 26, 2018, 1:39 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-391. Regulations for the Licensure of Hospice (amending 12VAC5-391-190).**

Statutory Authority: §§ 32.1-12 and 32.1-162.5 of the Code of Virginia.

Effective Date: November 14, 2018.

Agency Contact: Robert Payne, Director, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2109, FAX (804) 527-4502, or email robert.payne@vdh.virginia.gov.

Summary:

Pursuant to Chapter 95 of the 2018 Acts of Assembly, the amendments establish policies and procedures for the

disposal of drugs dispensed as part of the hospice plan of care, which shall include requirements that such disposal be (i) performed in a manner that complies with all state and federal requirements for the safe disposal of drugs by a licensed nurse, physician assistant, or physician who is employed by or has entered into a contract with the hospice program; (ii) witnessed by a member of the patient's family or a second employee of the hospice program who is licensed by a health regulatory board within the Department of Health Professions; and (iii) documented in the patient's medical record.

12VAC5-391-190. Written policies and procedures.

A. The hospice program shall implement written policies and procedures approved by the governing body.

B. All policies and procedures shall be reviewed at least annually, with recommended changes submitted to the governing body for approval, as necessary.

C. Administrative and operational policies and procedures shall include~~, but are not limited to~~:

1. Administrative records;

2. Admission and discharge criteria;

3. Informed consent;

4. Advance directives, including Durable Do Not Resuscitate Orders;

5. Patient rights;

6. Pain assessment and management;

7. Medical supplies and appliances including drugs and biologicals, disposal of controlled drugs when no longer needed by patients, and handling of medications procured from a pharmacy of the patient's choice;

8. Contract services;

9. Transfer of patients to an inpatient facility including arrangements for an ambulance and the patient escort, when appropriate, to the facility by a professional staff member of the hospice program;

10. Medical social services;

11. Quality improvement;

12. Communicable and reportable diseases;

13. Post-mortem activities;

14. Mandated reporting of abuse, neglect, and exploitation pursuant to § 63.2-1606 of the Code of Virginia;

15. Medical records, including confidentiality;

16. Record retention, including termination of services;

17. Supervision and delivery of services;

18. Interdisciplinary group duties and responsibilities;

19. Bereavement and spiritual services;

20. Volunteer services;

21. Infection control;

22. Special services;

23. Emergency preparedness;

24. Handling consumer complaints; and

25. Approved variances.

D. Financial policies and procedures shall include~~, but are not limited to~~:

1. Admission agreements;

2. Data collection and verification of services delivered;

3. Methods of billing for services by the hospice program and contractors;

4. Patient notification of changes in fees and charges;

5. Refund policy and correction of billing errors; and

6. Collection of delinquent patient accounts.

E. Personnel policies and procedures shall include~~, but are not limited to,~~ a:

1. Written job description specifying responsibility, qualifications, and authority for each job classification;

2. Process for obtaining a criminal background check;

3. Process for maintaining an accurate, complete, and current personnel record for each employee;

4. Process for verifying current professional credentials and training of employees, or independent contractors;

5. Process for annually evaluating employee performance and competency;

6. Process for verifying that contractors and their employees meet the personnel qualifications of the hospice program; and

7. Process for reporting licensed and certified medical personnel for violations of the licensing or certification to the appropriate ~~Board~~ board within the Department of Health Professions.

F. Admission and discharge policies and procedures shall include~~, but are not limited to~~:

1. Criteria for accepting patients;

2. The process for assessing a patient and maintaining a plan of care;

3. Criteria for determining discharge from hospice and referral to other agencies or community services; and

4. Process for notifying patients of intent to discharge or refer, including:

a. Oral and written notice and explanation of the reason for discharge or referral;

b. The name, address, telephone number, and contact name at the referral hospice program; and

c. Documentation in the medical record of the referral or notice.

G. Policies shall be made available for review, upon request, to patients and their designated representatives.

H. Policies and procedures shall be readily available for staff use at all times.

I. The hospice program shall establish policies and procedures for the disposal of drugs dispensed as part of the hospice plan of care to include:

1. Disposal shall be performed by a licensed nurse, physician assistant, or physician employed by or under contract with the hospice program;

2. Disposal shall be witnessed by a patient's family member or another employee of the hospice program who is licensed by a health regulatory board within the Department of Health Professions;

3. Disposal shall be documented in the patient's medical record; and

4. Disposal shall comply with all state and federal requirements for the safe disposal of drugs.

VA.R. Doc. No. R19-5608; Filed September 26, 2018, 3:19 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-410. Regulations for the Licensure of Hospitals in Virginia (amending 12VAC5-410-230, 12VAC5-410-280, 12VAC5-410-450).**

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Effective Date: November 14, 2018.

Agency Contact: Robert Payne, Director, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-2109, FAX (804) 527-4502, or email robert.payne@vdh.virginia.gov.

Summary:

The amendments implement several acts of the 2018 Session of the General Assembly that require hospitals to (i) establish a policy regarding the withholding of care when it has been determined by the physician to be medically or ethically inappropriate for the patient (Chapters 368 and 565); (ii) establish a protocol for every refusal to admit a patient for whom there is a question of medical stability or medical appropriateness for admission due to a situation involving results of a toxicology screening (Chapter 791); (iii) require posting of a notice of the existence of the human trafficking hotline (Chapter 571); and (iv) require a hospital with an emergency department to establish protocols to ensure that security personnel of the emergency department receive training appropriate to the populations served by the emergency department (Chapter 454).

Article 2
Patient Care Services

12VAC5-410-230. Patient care management.

A. All patients shall be under the care of a member of the medical staff.

B. Each hospital shall have a plan that includes effective mechanisms for the periodic review and revision of patient care policies and procedures.

C. Each hospital shall establish a protocol relating to the rights and responsibilities of patients based on Joint Commission on Accreditation of Healthcare Organizations' 2000 Hospital Accreditation Standards, January 2000. The protocol shall include a process reasonably designed to inform patients of their rights and responsibilities. Patients shall be given a copy of their rights and responsibilities upon admission.

D. No medication or treatment shall be given except on the signed order of a person lawfully authorized by state statutes.

1. Hospital personnel, as designated in medical staff bylaws, rules and regulations, or hospital policies and procedures, may accept emergency telephone and other verbal orders for medication or treatment for hospital patients from physicians and other persons lawfully authorized by state statute to give patient orders.

2. As specified in the hospital's medical staff bylaws, rules and regulations, or hospital policies and procedures, emergency telephone and other verbal orders shall be signed within a reasonable period of time not to exceed 72 hours, by the person giving the order, or, when such person is not available, cosigned by another physician or other person authorized to give the order.

E. Each hospital shall have a reliable method for identification of each patient, including newborn infants.

F. Each hospital shall include in its visitation policy a provision allowing each adult patient to receive visits from any individual from whom the patient desires to receive visits, subject to other restrictions contained in the visitation policy including~~, but not limited to,~~ the patient's medical condition and the number of visitors permitted in the patient's room simultaneously.

G. Each hospital that is equipped to provide life-sustaining treatment shall develop a policy to determine the medical or ethical appropriateness of proposed medical care, which shall include:

1. A process for obtaining a second opinion regarding the medical and ethical appropriateness of proposed medical care in cases in which a physician has determined proposed care to be medically or ethically inappropriate;

2. Provisions for review of the determination that proposed medical care is medically or ethically inappropriate by an interdisciplinary medical review committee and a determination by the interdisciplinary medical review committee regarding the medical and ethical appropriateness of the proposed health care of the patient;

3. Requirements for a written explanation of the decision of the interdisciplinary medical review committee, which shall be included in the patient's medical record; and

4. Provisions to ensure the patient, the patient's agent, or the person authorized to make the patient's medical decisions in accordance with § 54.1-2986 of the Code of Virginia is informed of the patient's right to obtain the patient's medical record and the right to obtain an independent medical opinion and afforded reasonable opportunity to participate in the medical review committee meeting.

The policy shall not prevent the patient, the patient's agent, or the person authorized to make the patient's medical decisions from obtaining legal counsel to represent the patient or from seeking other legal remedies, including court review, provided that the patient, the patient's agent, person authorized to make the patient's medical decisions, or legal counsel provide written notice to the chief executive officer of the hospital within 14 days of the date of the physician's determination that proposed medical treatment is medically or ethically inappropriate as documented in the patient's medical record.

12VAC5-410-280. Emergency service.

A. Hospitals with an emergency department/service shall have 24-hour staff coverage and shall have at least one physician on call at all times. Hospitals without emergency service shall have written policies governing the handling of emergencies.

B. No less than one registered nurse shall be assigned to the emergency service on each shift. Such assignment need not be exclusive of other duties, but must have priority over all other assignments.

C. Those hospitals that provide ambulance services shall comply with Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia and 12VAC5-31.

D. The hospital shall provide equipment, drugs, supplies, and ancillary services commensurate with the scope of anticipated needs, including radiology and laboratory services and facilities for handling and administering of blood and blood products. Emergency drugs and equipment shall remain accessible in the emergency department at all times.

E. Current roster of medical staff members on emergency call, including alternates and medical specialists or consultants shall be posted in the emergency department.

F. Hospitals shall make special training available, as required, for emergency department personnel.

G. Toxicology reference material and poison antidote information shall be available along with telephone numbers of the nearest poison control centers.

H. Each emergency department shall post notice of the existence of a human trafficking hotline to alert possible witnesses or victims of human trafficking to the availability of a means to gain assistance or report crimes. This notice shall be in a place readily visible and accessible to the public, such as the patient admitting area or public or patient restrooms. The notice shall meet the requirements of § 40.1-11.3 C of the Code of Virginia.

I. Every hospital with an emergency department shall establish protocols to ensure that security personnel of the emergency department receive training appropriate to the populations served by the emergency department. This training may include training based on a trauma-informed approach in identifying and safely addressing situations involving patients or other persons who pose a risk of harm to themselves or others due to mental illness or substance abuse or who are experiencing a mental health crisis.

12VAC5-410-450. Psychiatric service.

A. The psychiatric service shall be under the supervision of a physician, licensed by the Board of Medicine, who meets the qualifications of the medical staff bylaws.

B. Psychiatric units shall conform to the applicable licensure requirements pursuant to 12VAC35-105.

C. Every hospital that provides inpatient psychiatric services shall establish written policies for denial of admission of medically stable patients in its psychiatric unit. The policies shall include language that:

1. If a medically stable patient is referred to a hospital's psychiatric unit and denied admission, the referring

physician may request direct verbal communication with the on-call physician at the referral hospital; and

2. Prohibits on-call physicians or other hospital staff from refusing a request from the referring physician for direct verbal communication.

D. Every hospital that provides inpatient psychiatric services shall establish a protocol that requires for any refusal to admit a patient for whom there is a question regarding the medical stability or medical appropriateness of admission for inpatient psychiatric services due to a situation involving results of a toxicology screening, the on-call physician in the psychiatric unit to which the patient is sought to be transferred to participate in direct verbal communication, either in person or via telephone, with a clinical toxicologist or other person who is a certified specialist in poison information employed by a poison control center that is accredited by the American Association of Poison Control Centers to review the results of the toxicology screen and determine whether a medical reason for refusing admission to the psychiatric unit related to the results of the toxicology screen exists if requested by the referring physician.

VA.R. Doc. No. R19-5661; Filed September 25, 2018, 4:15 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-412. Regulations for Licensure of Abortion Facilities (amending 12VAC5-412-140).**

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Effective Date: November 14, 2018.

Agency Contact: Robert Payne, Director, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2109, FAX (804) 527-4502, or email robert.payne@vdh.virginia.gov.

Summary:

Pursuant to Chapter 571 of the 2018 Acts of Assembly, the amendment requires posting of a notice of the human trafficking hotline in each abortion facility in a location readily visible to the public.

Part II
Organization and Management

12VAC5-412-140. Management and administration.

A. The abortion facility shall comply with:

1. This chapter (12VAC5-412);

2. Other applicable federal, state, or local laws and regulations; and

3. The abortion facility's policies and procedures.

B. The abortion facility shall submit or make available reports and information necessary to establish compliance with this chapter and applicable law.

C. The abortion facility shall permit OLC inspectors to conduct inspections to:

1. Verify application information;

2. Determine compliance with this chapter and applicable law;

3. Review necessary records and documents; and

4. Investigate complaints.

D. An abortion facility shall give written notification 30 calendar days in advance of implementing any of the following planned changes:

1. Change of location.

2. Change of ownership.

3. Change of name.

4. Voluntary closure.

5. Change of administrator.

6. Change of operator.

Notices shall be sent to the attention of the director of the OLC.

E. The current license from the department shall be posted at all times in a place readily visible and accessible to the public.

F. Each abortion facility shall post notice of the existence of a human trafficking hotline to alert possible witnesses or victims of human trafficking to the availability of a means to gain assistance or report crimes. This notice shall be in a place readily visible and accessible to the public, such as the patient admitting area or public or patient restrooms. The notice shall meet the requirements of § 40.1-11.3 C of the Code of Virginia.

VA.R. Doc. No. R19-5601; Filed September 26, 2018, 1:29 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 14, 2018.

Effective Date: November 29, 2018.

Agency Contact: Emily McClellan, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of Department of Medical Assistance Services to administer and amend the State Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: The purpose of this action is to add additional text to the existing regulation for greater specificity. This update is not a change in practice or policy but is being made to clarify existing procedures. This action is essential to protect the health, safety, and welfare of Medicaid recipients by ensuring that providers are aware of the current rates and units of service paid for Medicaid services.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is being promulgated as a fast-track rulemaking action because it is not expected to be controversial. There is no fiscal or budgetary impact as the clarification changes being made are already part of the agency's current practice.

Substance: Regulations at 12VAC30-80-30 are being updated to include a description of the rates currently in place for the following mental health services: professional services provided by nonphysicians, intensive in-home services, therapeutic day treatment, therapeutic group home services, therapeutic day treatment or partial hospitalization services, psychosocial rehabilitation services, crisis intervention services, intensive community treatment, crisis stabilization, and independent living and recovery services.

Additional language has been added pertaining to dental services, clarifying where service limits and provider qualifications may be found and identifying the location of the dental fee schedule.

Issues: The advantages to the Commonwealth include an alignment of the rate and unit information in the Medicaid state plan and the Virginia Administrative Code. These changes create no disadvantages to the public, the agency, the Commonwealth, or the regulated community.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medical Assistance Services (Board) proposes to clarify existing Medicaid rates, methodologies, and billing units for dental and community mental health services.

Result of Analysis. The benefits likely exceed the costs for the proposed regulation.

Estimated Economic Impact. This regulation contains details about rates, methodologies, and billing units for dental and community mental health services. Some of these details are not as clearly stated as they could have been and may be confusing. For example, the proposed new language specifies that one unit of therapeutic day treatment is 2 to 2.99 hours; two units are 3 to 4.99 hours; and 5 plus hours per day are three units. Without the additional detail, it is difficult to find out what the billing unit for services are. In fact, according to the Department of Medical Assistance Services (DMAS), the Centers for Medicare and Medicaid has requested the proposed clarifications. The proposed new language does not represent any change in current rates, methodologies, or units of service. Thus, the proposed regulation is not expected to create a significant economic impact other than improving the clarity of the regulation.

Businesses and Entities Affected. According to DMAS, the proposed regulation applies to 2,055 dental and 1,700 community mental health providers.

Localities Particularly Affected. The proposed regulation does not disproportionately affect particular localities.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

Real Estate Development Costs. The proposed regulation does not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and

(ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. Many of the affected providers are likely to be small businesses. The proposed regulation clarifies their rates, methodologies, and billable units of service.

Alternative Method that Minimizes Adverse Impact. The proposed regulation does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed regulation does not adversely affect businesses.

Localities. The proposed regulation does not adversely affect localities.

Other Entities. The proposed regulation does not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

The amendments (i) add a description of reimbursement rates and methodologies for certain community mental health services to reflect current practices and (ii) clarify where service limits, provider qualifications, and the fee schedule may be found for fee-for-service dental service providers.

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public). Except as otherwise noted in this section, state developed fee schedule rates are the same for both governmental and private individual practitioners. ~~Fee schedules and any annual or periodic adjustments to the fee schedules are~~ The state agency fee schedule is published on the DMAS website at ~~http://www.dmas.virginia.gov~~ http://www.dmas.virginia.gov/#/searchcptcodes.

1. Physicians' services. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public).

2. Dentists' services. Dental services, dental provider qualifications, and dental service limits are identified in 12VAC30-50-190. Dental services are paid based on procedure codes, which are listed in the agency's fee schedule. Except as otherwise noted, state-developed fee schedule rates are the same for both governmental and private individual practitioners.

3. Mental health services ~~including: (i) community mental health services, (ii) services of a licensed clinical psychologist, (iii) mental health services provided by a physician, or (iv) peer support services~~.

a. ~~Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.~~ Professional services furnished by nonphysicians as described in 12VAC30-50-150. These services are reimbursed using current procedural technology (CPT) codes. The agency's fee schedule rate is based on the methodology as described in subsection A of this section.

(1) Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists in subdivision A 1 of this section.

~~b.~~ (2) Services provided by independently enrolled licensed clinical social workers, licensed professional counselors ~~or~~, licensed clinical nurse specialists-psychiatric, or licensed marriage and family therapists shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

b. Intensive in-home services are reimbursed on an hourly unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

c. Therapeutic day treatment services are reimbursed based on the following units of service: one unit equals two to 2.99 hours per day; two units equals three to 4.99 hours per day; three units equals five or more hours per day. No room and board is included in the rates for therapeutic day treatment. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

d. Therapeutic group home services (formerly called level A and level B group home services) shall be reimbursed based on a daily unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

e. Therapeutic day treatment or partial hospitalization services shall be reimbursed based on the following units of service: one unit equals two to three hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

f. Psychosocial rehabilitation services shall be reimbursed based on the following units of service: one unit equals two to 3.99 hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July

1, 2011, and are effective for services on or after that date.

g. Crisis intervention services shall be reimbursed on the following units of service: one unit equals two to 3.99 hours per day; two units equals four to 6.99 hours per day; three units equals seven or more hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

h. Intensive community treatment services shall be reimbursed on an hourly unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

i. Crisis stabilization services shall be reimbursed on an hourly unit of service. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

j. Independent living and recovery services (previously called mental health skill building services) shall be reimbursed based on the following units of service: one unit equals one to 2.99 hours per day; two units equals three to 4.99 hours per day. The agency's rates are set as of July 1, 2011, and are effective for services on or after that date.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME) and supplies.

Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

"DMERC" means the Durable Medical Equipment Regional Carrier rate as published by the Centers for Medicare and Medicaid Services at http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSched/DMEPOS-Fee-Schedule.html.

"HCPCS" means the Healthcare Common Procedure Coding System, Medicare's National Level II Codes, HCPCS 2006 (Eighteenth edition), as published by Ingenix, as may be periodically updated.

a. Obtaining prior authorization shall not guarantee Medicaid reimbursement for DME.

b. The following shall be the reimbursement method used for DME services:

(1) If the DME item has a DMERC rate, the reimbursement rate shall be the DMERC rate minus 10%. For dates of service on or after July 1, 2014, DME items subject to the Medicare competitive bidding program shall be reimbursed the lower of:

(a) The current DMERC rate minus 10% or

(b) The average of the Medicare competitive bid rates in Virginia markets.

(2) For DME items with no DMERC rate, the agency shall use the agency fee schedule amount. The reimbursement rates for DME and supplies shall be listed in the DMAS Medicaid Durable Medical Equipment (DME) and Supplies Listing and updated periodically. The agency fee schedule shall be available on the agency website at www.dmas.virginia.gov.

(3) If a DME item has no DMERC rate or agency fee schedule rate, the reimbursement rate shall be the manufacturer's net charge to the provider, less shipping and handling, plus 30%. The manufacturer's net charge to the provider shall be the cost to the provider minus all available discounts to the provider. Additional information specific to how DME providers, including manufacturers who are enrolled as providers, establish and document their cost or costs for DME codes that do not have established rates can be found in the relevant agency guidance document.

c. DMAS shall have the authority to amend the agency fee schedule as it deems appropriate and with notice to providers. DMAS shall have the authority to determine alternate pricing, based on agency research, for any code that does not have a rate.

d. The reimbursement for incontinence supplies shall be by selective contract. Pursuant to § 1915(a)(1)(B) of the Social Security Act and 42 CFR 431.54(d), the Commonwealth assures that adequate services or devices shall be available under such arrangements.

e. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services or durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed

at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital). The agency's rates for clinical laboratory services were set as of July 1, 2014, and are effective for services on or after that date.

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-ray services.

11. Optometry services.

12. Reserved.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90, except for services in ambulatory surgery clinics reimbursed under 12VAC30-80-35.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. Effective January 3, 2012, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 181% of Medicare rates. Effective January 1, 2013, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 197% of Medicare rates. Effective April 8, 2014, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 201% of Medicare rates.

c. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

d. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter.

e. Payment will not be made to the extent that the payment would duplicate payments based on physician costs covered by the supplemental payments.

17. Supplemental payments for services provided by physicians at Virginia freestanding children's hospitals.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS provides supplemental payments to Virginia freestanding children's hospital physicians providing services at freestanding children's hospitals with greater than 50% Medicaid inpatient utilization in state fiscal year 2009 for furnished services provided on or after July 1, 2011. A freestanding children's hospital physician is a member of a practice group (i) organized by or under control of a qualifying Virginia freestanding children's hospital, or

(ii) who has entered into contractual agreements for provision of physician services at the qualifying Virginia freestanding children's hospital and that is designated in writing by the Virginia freestanding children's hospital as a practice plan for the quarter for which the supplemental payment is made subject to DMAS approval. The freestanding children's hospital physicians also must have entered into contractual agreements with the practice plan for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 1, 2011, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 143% of Medicare rates as defined in the supplemental payment calculation described in the Medicare equivalent of the average commercial rate methodology (see 12VAC30-80-300), subject to the following reduction. Final payments shall be reduced on a prorated basis so that total payments for freestanding children's hospital physician services are $400,000 less annually than would be calculated based on the formula in the previous sentence. Effective July 1, 2015, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 178% of Medicare rates as defined in the supplemental payment calculation for Type I physician services. Payments shall be made on the same schedule as Type I physicians.

18. Supplemental payments for services provided by physicians affiliated with Eastern Virginia Medical Center.

a. In addition to payments for physician services specified elsewhere in this chapter, the Department of Medical Assistance Services provides supplemental payments to physicians affiliated with Eastern Virginia Medical Center for furnished services provided on or after October 1, 2012. A physician affiliated with Eastern Virginia Medical Center is a physician who is employed by a publicly funded medical school that is a political subdivision of the Commonwealth of Virginia, who provides clinical services through the faculty practice plan affiliated with the publicly funded medical school, and who has entered into contractual arrangements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective October 1, 2015, the supplemental payment amount shall be the difference between the Medicaid payments otherwise made for physician services and 137% of Medicare rates. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

c. Supplemental payments shall be made quarterly, no later than 90 days after the end of the quarter.

19. Supplemental payments for services provided by physicians at freestanding children's hospitals serving children in Planning District 8.

a. In addition to payments for physician services specified elsewhere in this chapter, DMAS shall make supplemental payments for physicians employed at a freestanding children's hospital serving children in Planning District 8 with more than 50% Medicaid inpatient utilization in fiscal year 2014. This applies to physician practices affiliated with Children's National Health System.

b. The supplemental payment amount for qualifying physician services shall be the difference between the Medicaid payments otherwise made and 178% of Medicare rates but no more than $551,000 for all qualifying physicians. The methodology for determining allowable percent of Medicare rates is based on the Medicare equivalent of the average commercial rate described in this chapter.

c. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter. Any quarterly payment that would have been due prior to the approval date shall be made no later than 90 days after the approval date.

20. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or government-operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or government-operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 20 d of this subsection and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 20 b (1) of this subsection for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision 20 b (2) of this subsection by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section will be made annually in a lump sum during the last quarter of the fiscal year.

d. To determine the aggregate upper payment limit referred to in subdivision 20 b (3) of this subsection, Medicaid payments to nonstate government-owned or government-operated clinics will be divided by the "additional factor" whose calculation is described in 12VAC30-80-190 B 2 in regard to the state agency fee schedule for Resource Based Relative Value Scale. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

21. Personal assistance services (PAS) for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the DMAS website at http://www.dmas.virginia.gov.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

VA.R. Doc. No. R19-5398; Filed September 24, 2018, 3:42 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-20).**

Statutory Authority: § 37.2-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 14, 2018.

Effective Date: November 29, 2018.

Agency Contact: Emily Bowles, Legal Coordinator, Office of Licensing, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218, telephone (804) 225-3281, FAX (804) 692-0066, TTY (804) 371-8977, or email emily.bowles@dbhds.virginia.gov.

Basis: Sections 37.2-203 and 37.2-304 of the Code of Virginia authorize the State Board of Behavioral Health and Developmental Services to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner and the department. Chapter 572 of the 2018 Acts of Assembly directs the state board to promulgate regulations within 280 days.

Purpose: Licensed behavior analysts (LBAs) are one of the main professions providing behavioral services in Virginia. People with disabilities in need of services provided by licensed mental health professionals will receive services more promptly due to increased workforce resources, thus directly improving the health, safety, and welfare of individuals needing those services.

Rationale for Using Fast-Track Rulemaking Process: These amendments are noncontroversial. LBAs have been a licensed profession in Virginia since the 2012 Session of the General Assembly established the profession (Chapter 3 of the 2012 Acts of Assembly) and since then, LBAs have been active in the Department of Behavioral Health and Developmental Services system.

Substance: The current Licensing Regulations will be amended as follows:

"Licensed mental health professional (LMHP)" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, or certified psychiatric clinical nurse specialist, or licensed behavior analyst.

Issues: The primary advantage of the regulatory action is that, according to the national Behavior Analyst Certification Board, LBAs develop methods to change certain problematic behaviors. These preventive therapies help individuals avoid crises and have a better quality of life overall. There is no identified disadvantage to the public or the Commonwealth in making this change.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 572 of the 2018 Acts of Assembly,[1] the State Board of Behavioral Health and Developmental

Services (Board) proposes to include "licensed behavior analyst" (LBA) in the definition of licensed mental health professional (LMHP).

Result of Analysis. The benefits likely exceed the costs for the proposed amendment.

Estimated Economic Impact.

Background: Department of Behavioral Health and Developmental Services (DBHDS) regulations require supervision of mental health, substance abuse, or co-occurring services that are of an acute or clinical nature such as outpatient, inpatient, intensive in-home, or day treatment to be provided by an LMHP or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions. DBHDS regulations currently include the following professions as LMHPs: physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, or certified psychiatric clinical nurse specialist.

Analysis: Adding licensed behavior analysts to the definition of licensed mental health professionals would allow LBAs to supervise and shape services and to effectively include their practice methods into the services provided to individuals. LBAs would be able to supervise and direct courses of treatment for individuals receiving mental health, substance abuse, or co-occurring services that are of an acute or clinical nature. This would enable service providers more options for staff that can supervise direct courses of treatment. LBAs may only supervise work that falls within their scope of practice.

Allowing providers more options for staff that can supervise direct courses of treatment would be beneficial for providers. Enabling LBAs to perform work that the current regulation does not permit would be beneficial for these professionals. Since LBAs may only supervise work that falls within their scope of practice, there is no increased risk to patients. Thus, the proposed amendment would likely produce a net benefit.

Businesses and Entities Affected. The proposed amendment potentially affects the approximate 1,300 service providers,[2] 893 LBAs, and patients served by the service providers. The majority of the service providers would qualify as a small business.[3]

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment may increase employment opportunities for LBAs.

Effects on the Use and Value of Private Property. The proposed amendment may increase demand for services from LBAs. Consequently, the value of firms that employ LBAs may moderately increase.

Real Estate Development Costs. The proposed amendment does not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. By allowing providers more options for staff that can supervise direct courses of treatment, the proposed amendment may reduce costs for some small service providers.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

Other Entities. The proposed amendment does not adversely affect other entities.

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[1]See http://leg1.state.va.us/cgi-bin/legp504.exe?181+ful+CHAP0572

[2]Provider is defined as "any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders), (ii) services to individuals who receive day support, in-home support, or crisis stabilization services funded through the IFDDS Waiver, or (iii) residential services for individuals with brain injury…" See http://townhall.virginia.gov/L/ViewXML.cfm?textid=12463

[3]Data Source: Department of Behavioral Health and Developmental Services

Agency's Response to Economic Impact Analysis: The agency concurs with economic impact analysis of the Department of Planning and Budget.

Summary:

In compliance with Chapter 572 of the 2018 Acts of Assembly, the amendment adds licensed behavior analysts to the definition of licensed mental health professional.

Article 2
Definitions

12VAC35-105-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Abuse" (§ 37.2-100 of the Code of Virginia) means any act or failure to act by an employee or other person responsible

for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to a person receiving care or treatment for mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders). Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates, or humiliates the person;

4. Misuse or misappropriation of the person's assets, goods, or property;

5. Use of excessive force when placing a person in physical or mechanical restraint;

6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or the person's individualized services plan;

7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and includes bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Admission" means the process of acceptance into a service as defined by the provider's policies.

"Authorized representative" means a person permitted by law or 12VAC35-115 to authorize the disclosure of information or consent to treatment and services or participation in human research.

"Behavior intervention" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior intervention principles and methods must be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting individuals to achieve the following:

1. Improved behavioral functioning and effectiveness;

2. Alleviation of symptoms of psychopathology; or

3. Reduction of challenging behaviors.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders or injuries induced by birth trauma.

"Care" or "treatment" means the individually planned therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" means services that can include assistance to individuals and their family members in assessing needed services that are responsive to the person's individual needs. Case management services include: identifying potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. "Case management service" does not include maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clinical experience" means providing direct services to individuals with mental illness or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community gero-psychiatric residential services" means 24-hour care provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually age 65 or older in a geriatric setting that is less intensive than a psychiatric hospital but more intensive than a nursing home or group home. Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavior interventions, nursing, and other health related services.

"Community intermediate care facility/mental retardation (ICF/MR)" means a residential facility in which care is provided to individuals who have mental retardation (intellectual disability) or a developmental disability who need more intensive training and supervision than may be available in an assisted living facility or group home. Such facilities shall comply with Title XIX of the Social Security Act standards and federal certification requirements, provide health or rehabilitative services, and provide active treatment to individuals receiving services toward the achievement of a more independent level of functioning or an improved quality of life.

"Complaint" means an allegation of a violation of these regulations or a provider's policies and procedures related to these regulations.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders); brain injury; or developmental disability.

"Co-occurring services" means individually planned therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the regulatory authority. A corrective action plan must be completed within a specified time.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Crisis" means a deteriorating or unstable situation often developing suddenly or rapidly that produces acute, heightened, emotional, mental, physical, medical, or behavioral distress; or any situation or circumstance in which the individual perceives or experiences a sudden loss of his ability to use effective problem-solving and coping skills.

"Crisis stabilization" means direct, intensive nonresidential or residential direct care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Day support service" means structured programs of activity or training services for adults with an intellectual disability or a developmental disability, generally in clusters of two or more continuous hours per day provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.

"Department" means the Virginia Department of Behavioral Health and Developmental Services.

"Developmental disabilities" means autism or a severe, chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:

1. Attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, that is found to be closely related to mental retardation (intellectual disability) because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of individuals with mental retardation (intellectual disability) and requires treatment or services similar to those required for these individuals;

2. Manifested before the individual reaches age 18;

3. Likely to continue indefinitely; and

4. Results in substantial functional limitations in three or more of the following areas of major life activity:

a. Self-care;

b. Understanding and use of language;

c. Learning;

d. Mobility;

e. Self-direction; or

f. Capacity for independent living.

"Discharge" means the process by which the individual's active involvement with a service is terminated by the provider, individual, or authorized representative.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery. (§ 54.1-3400 et seq. of the Code of Virginia.)

"Emergency service" means unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, available 24 hours a day and seven days per week. Emergency services also may include walk-ins, home visits, jail interventions, and preadmission screening activities associated with the judicial process .

"Group home or community residential service" means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes noncenter-based day support, supportive in-home, and intensive in-home services.

"IFDDS Waiver" means the Individual and Family Developmental Disabilities Support Waiver.

"Individual" or "individual receiving services" means a person receiving services that are licensed under this chapter whether that person is referred to as a patient, consumer, client, resident, student, individual, recipient, family member, relative, or other term. When the term is used, the requirement applies to every individual receiving licensed services from the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care, which are all considered individualized service plans.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance use disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intensive Community Treatment (ICT) service" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illness especially those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including individuals who also have a diagnosis of mental retardation (intellectual disability). Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding an alleged violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report, or other information that comes to the attention of the department.

"Licensed mental health professional ~~(LMHP)~~" or "LMHP" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, ~~or~~ certified psychiatric clinical nurse specialist, or licensed behavior analyst.

"Location" means a place where services are or could be provided.

"Medically managed withdrawal services" means detoxification services to eliminate or reduce the effects of alcohol or other drugs in the individual's body.

"Mandatory outpatient treatment order" means an order issued by a court pursuant to § 37.2-817 of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, ingestion, or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted treatment (Opioid treatment service)" means an intervention strategy that combines outpatient treatment with the administering or dispensing of synthetic narcotics, such as methadone or buprenorphine (suboxone), approved by the federal Food and Drug Administration for the purpose of replacing the use of and reducing the craving for opioid substances, such as heroin or other narcotic drugs.

"Medication error" means an error in administering a medication to an individual and includes when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the wrong method is used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service (MHCSS)" means the provision of recovery-oriented services to individuals with long-term, severe mental illness. MHCSS includes skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in the individualized services plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental retardation (intellectual disability)" means a disability originating before the age of 18 years characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills (§ 37.2-100 of the Code of Virginia).

"Neglect" means the failure by an individual or a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of a person receiving care or treatment for mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders).

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

"Outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. "Outpatient service" specifically includes:

1. Services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient

services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is focused on individuals with serious mental illness, substance abuse (substance use disorders), or co-occurring disorders at risk of hospitalization or who have been recently discharged from an inpatient setting.

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

"Program of Assertive Community Treatment (PACT) service" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full- or part-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses, including those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders), (ii) services to individuals who receive day support, in-home support, or crisis stabilization services funded through the IFDDS Waiver, or (iii) residential services for individuals with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601 and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation service" means a program of two or more consecutive hours per day provided to groups of adults in a nonresidential setting. Individuals must demonstrate a clinical need for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. This service provides education to teach the individual about mental illness, substance abuse, and appropriate medication to avoid complication and relapse and opportunities to learn and use independent skills and to enhance social and interpersonal skills within a consistent program structure and environment. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified Mental Health Professional-Adult (QMHP-A)" means a person in the human services field who is trained and experienced in providing psychiatric or mental health services to individuals who have a mental illness; including (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) an individual with a master's degree in psychology from an accredited college or university with at least one year of clinical experience; (iv) a social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to individuals with a diagnosis of mental illness; (v) a person with at least a bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits (or equivalent) in a human services field and who has at least three years of clinical experience; (vi) a Certified Psychiatric Rehabilitation Provider (CPRP) registered with the United States Psychiatric Rehabilitation Association (USPRA); (vii) a registered nurse licensed in Virginia with at least one year of clinical experience; or (viii) any other licensed mental health professional.

"Qualified Mental Health Professional-Child (QMHP-C)" means a person in the human services field who is trained and experienced in providing psychiatric or mental health services to children who have a mental illness. To qualify as a QMHP-C, the individual must have the designated clinical experience and must either (i) be a doctor of medicine or osteopathy licensed in Virginia; (ii) have a master's degree in psychology from an accredited college or university with at least one year of clinical experience with children and adolescents; (iii) have a social work bachelor's or master's degree from an accredited college or university with at least one year of documented clinical experience with children or adolescents; (iv) be a registered nurse with at least one year of clinical experience with children and adolescents; (v) have at least a bachelor's degree in a human services field or in special education from an accredited college with at least one year of clinical

experience with children and adolescents, or (vi) be a licensed mental health professional.

"Qualified Mental Health Professional-Eligible (QMHP-E)" means a person who has: (i) at least a bachelor's degree in a human service field or special education from an accredited college without one year of clinical experience or (ii) at least a bachelor's degree in a nonrelated field and is enrolled in a master's or doctoral clinical program, taking the equivalent of at least three credit hours per semester and is employed by a provider that has a triennial license issued by the department and has a department and DMAS-approved supervision training program.

"Qualified Mental Retardation Professional (QMRP)" means a person who possesses at least one year of documented experience working directly with individuals who have mental retardation (intellectual disability) or other developmental disabilities and one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, or (iii) completion of at least a bachelor's degree in a human services field, including, but not limited to sociology, social work, special education, rehabilitation counseling, or psychology.

"Qualified Paraprofessional in Mental Health (QPPMH)" means a person who must, at a minimum, meet one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iii) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-Adult providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance abuse (substance use disorders), recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with mental retardation (intellectual disability), the concept of recovery does not apply in the sense that individuals with mental retardation (intellectual disability) will need supports throughout their entire lives although these may change over time. With supports, individuals with mental retardation (intellectual disability) are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others whom they know.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to nonhospitalized individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group or community homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, community intermediate care facility-MR, sponsored residential homes, medical and social detoxification, neurobehavioral services, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health, substance abuse, or neurobehavioral service, or services for co-occurring disorders in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or a sponsored residential home.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the individual's freedom of movement or functioning of a limb or portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the

administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntary restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Screening" means the process or procedure for determining whether the individual meets the minimum criteria for admission.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical means so that the individual cannot leave it.

"Serious injury" means any injury resulting in bodily damage, harm, or loss that requires medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner while the individual is supervised by or involved in services, such as attempted suicides, medication overdoses, or reactions from medications administered or prescribed by the service.

"Service" or "services" means (i) planned individualized interventions intended to reduce or ameliorate mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders) through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders). Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, halfway house, and other residential services; (ii) day support, in-home support, and crisis stabilization services provided to individuals under the IFDDS Waiver; and (iii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports or in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Social detoxification service" means providing nonmedical supervised care for the individual's natural process of withdrawal from use of alcohol or other drugs.

"Sponsored residential home" means a service where providers arrange for, supervise, and provide programmatic, financial, and service support to families or persons (sponsors) providing care or treatment in their own homes for individuals receiving services.

"State board" means the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

"State methadone authority" means the Virginia Department of Behavioral Health and Developmental Services that is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse (substance use disorders)" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii), because of such substance abuse, requires care and treatment

for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse intensive outpatient service" means treatment provided in a concentrated manner for two or more consecutive hours per day to groups of individuals in a nonresidential setting. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide. Substance abuse intensive outpatient services include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, treatment, counseling, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals, to strengthen individual skills, and that provide environmental supports necessary to attain and sustain independent community residential living. Services include drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care, and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through age 17 and under certain circumstances up to 21 with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through age seven who are at risk of serious emotional disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

VA.R. Doc. No. R19-5447; Filed September 24, 2018, 12:16 p.m.

Notice of Extension of Emergency Regulation

Title of Regulation: **12VAC35-250. Certification of Peer Recovery and Resiliency Specialists (adding 12VAC35-250-10, 12VAC35-250-20, 12VAC35-250-30, 12VAC35-250-40, 12VAC35-250-50).**

Statutory Authority: §§ 37.2-203 and 37.2-304 of the Code of Virginia.

Expiration Date Extended Through: May 10, 2019.

The Governor has approved the request of the Department of Behavioral Health and Developmental Services to extend the expiration date of the emergency regulation. Therefore, the emergency regulation will continue in effect until May 10, 2019. The extension is required to prevent a gap in services or funding for peer recovery services or peer recovery specialists. The emergency regulation was published in 33:20 VA.R. 2251-2252 May 29, 2017.

Agency Contact: Ruth Anne Walker, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 11th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 786-8623, TTY (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

VA.R. Doc. No. R17-4808; Filed September 24, 2018, 12:22 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Final Regulation

REGISTRAR'S NOTICE: The Board of Medicine is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Medicine will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC85-140. Regulations Governing the Practice of Polysomnographic Technologists (adding 18VAC85-140-45).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.15 of the Code of Virginia.

Effective Date: November 14, 2018.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

Pursuant to Chapter 98 of the 2018 Acts of Assembly, a student enrolled in an educational program in polysomnographic technology or a person engaged in a traineeship is not required to hold a license to practice polysomnographic technology, provided that such student or trainee is under the direct supervision of a licensed polysomnographic technologist or a licensed doctor of medicine or osteopathic medicine.

Part II
Requirements for Licensure as a Polysomnographic Technologist

18VAC85-140-45. Practice as a student or trainee.

A student enrolled in an educational program in polysomnographic technology or a person engaged in a traineeship is not required to hold a license to practice polysomnographic technology, provided that such student or trainee is under the direct supervision of a licensed polysomnographic technologist or a licensed doctor of medicine or osteopathic medicine.

1. Any student or trainee shall be identified to patients as a student or trainee in polysomnographic technology.

2. A student or trainee is required to have a license to practice after 18 months from the start of the educational program or traineeship or six months from the conclusion of such program or traineeship, whichever is earlier.

VA.R. Doc. No. R19-5579; Filed September 13, 2018, 10:39 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Medicine is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Medicine will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC85-160. Regulations Governing the Registration of Surgical Assistants and Surgical Technologists (adding 18VAC85-160-60).**

Statutory Authority: §§ 54.1-2400 and 54.1-2956.13 of the Code of Virginia.

Effective Date: November 14, 2018.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

Pursuant to Chapter 374 of the 2018 Acts of Assembly, a surgical assistant who was registered based on a national credential is required to attest to maintenance of that credential in order to renew the registration.

18VAC85-160-60. Renewal of registration for a surgical assistant.

A surgical assistant who was registered based on a credential as a surgical assistant or surgical first assistant issued by the National Board of Surgical Technology and Surgical Assisting, the National Surgical Assistant Association, or the National Commission for the Certification of Surgical Assistants or their successors shall attest that the credential is current at the time of renewal.

VA.R. Doc. No. R19-5575; Filed September 13, 2018, 10:41 a.m.

BOARD OF NURSING

Notice of Extension of Emergency Regulation

Titles of Regulations: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-220).**

18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-10; adding 18VAC90-40-150 through 18VAC90-40-290).

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Expiration Dated Extended Through: May 6, 2019.

The Governor approved the request of the Board of Nursing to extend the expiration date of the emergency regulation for six months as provided by § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulations will continue in effect through May 6, 2019. The emergency regulations relate to the prescribing of opioids by nurse practitioners. The emergency regulations were published in 33:20 VA.R. 2265-2269 May 29, 2017, and amended in 34:2 VA.R. 365-368 September 18, 2017.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300,

Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R17-5096; Filed September 24, 2018, 12:20 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **20VAC5-316. Regulations Governing Exemptions for Large General Services Customers under § 56-585.1 A 5 c of the Code of Virginia (repealing 20VAC5-316-10 through 20VAC5-316-50).**

Statutory Authority: §§ 12.1-13 and 56-585.1 of the Code of Virginia.

Effective Date: October 1, 2018.

Agency Contact: Andrea B. Macgill, Associate General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9064, FAX (804) 371-9240, or email andrea.macgill@scc.virginia.gov.

Summary:

Chapter 296 of the 2018 Acts of Assembly repeals the provisions (i) requiring a large general service customer with a verifiable history of using more than 500 kilowatts, that does not wish to participate in an electric utility's energy efficiency program, to demonstrate that it has implemented an energy efficiency program, at the customer's expense, that has produced or will produce measured and verified results and (ii) requiring the State Corporation Commission to promulgate regulations regarding the process under which such large general service customers file notice of such exemption. Therefore, the Large General Service Customer Exemption Rules (20VAC5-316, Regulations Governing Exemptions for Large General Services Customers under § 56-585.1 A 5 c of the Code of Virginia) are repealed.

AT RICHMOND, SEPTEMBER 21, 2018

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2018-00126

Ex Parte: In the matter of repealing Regulations Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code of Virginia

ORDER REPEALING REGULATIONS

The Regulations Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code of Virginia ("Code"), 20 VAC 5-316-10 et seq. ("LGS Customer Exemption Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-585.1 of the Virginia Electric Utility Regulation Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code, apply to the large general service customers of Virginia's electric utilities subject to the provisions of § 56-585.1 A 5 c that have verifiable histories of using more than 500 kilowatts but no more than 10 megawatts of demand from a single metering point. The LGS Customer Exemption Rules establish requirements for such large general service customers to request exemption from any rate adjustment clause approved by the Commission pursuant to § 56-585.1 A 5 c of the Code, if the customer can demonstrate that it has implemented an energy efficiency program, at the customer's expense, that has produced or will produce measured and verified results.[1]

On August 13, 2018, the Commission entered an Order for Notice and Comment ("Order") to consider repealing the LGS Customer Exemption Rules to reflect statutory changes enacted by Chapter 296 of the 2018 Acts of Assembly ("Chapter 296"), which amended § 56-585.1 A 5 c of the Code to state, in part:

> None of the costs of new energy efficiency programs of an electric utility, including recovery of revenue reductions, shall be assigned to any large general service customer. A large general service customer is a customer that has a verifiable history of having used more than 500 kilowatts of demand from a single meter of delivery.

Chapter 296 eliminated from Code § 56-585.1 A 5 c the language requiring a large general service customer with a verifiable history of using more than 500 kW, who does not wish to participate in an electric utility's energy efficiency program or programs, to demonstrate that it has implemented an energy efficiency program, at the customer's expense, that has produced or will produce measured and verified results. Chapter 296 also eliminated the language in § 56-585.1 A 5 c that required the Commission to "promulgate rules and regulations to accommodate the process under which such large general service customers shall file notice of such exemption . . ." Accordingly, there appears to be no need to retain the LGS Customer Exemption Rules.

The Commission appended to its Order a proposed repeal of the LGS Customer Exemption Rules ("Proposed Repeal") to reflect the statutory changes resulting from Chapter 96.

Interested persons were directed to file any comments and requests for hearing on the Proposed Repeal on or before September 17, 2018.

Notice of the proceeding and the Proposed Repeal were published in the Virginia Register of Regulations on September 3, 2018.

Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("DEV") filed comments stating that DEV does not oppose the Proposed Repeal. No one requested a hearing on the Proposed Repeal.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Regulations Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code, 20 VAC 5-316-10 et seq., shall be repealed, as reflected in Appendix A, attached hereto.

Accordingly, IT IS ORDERED THAT:

(1) The Regulations Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code, 20 VAC 5-316-10 et seq., hereby are repealed, effective as of October 1, 2018.

(2) A copy of this Order with Appendix A shall be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) On or before December 1, 2018, each utility in the Commonwealth subject to Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code shall file with the Clerk of the Commission, in this docket, one (1) original document containing any revised tariff provisions necessary to reflect the repeal approved herein, and each such utility also shall file a copy of the document containing the revised tariff provisions with the Commission's Division of Public Utility Regulation. The Clerk of the Commission need not distribute copies but shall make such filings available for public inspection in the Clerk's Office and post them on the Commission's website at: http://www.scc.virginia.gov/case.

(4) This docket shall remain open to receive the filings from electric utilities pursuant to Ordering Paragraph (3).

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on Attachment A hereto and C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424. A copy hereof shall be delivered to the Commission's Office of General Counsel and the Divisions of Public Utility Regulation and Utility Accounting and Finance.

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[1] See 20 VAC 5-316-10.

VA.R. Doc. No. R19-5630; Filed September 21, 2018, 1:01 p.m.

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TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Notice of Extension of Emergency Regulation

Title of Regulation: **22VAC30-20. Provision of Vocational Rehabilitation Services (amending 22VAC30-20-90).**

Statutory Authority: §§ 51.5-118 and 51.5-131 of the Code of Virginia.

Expiration Date Extended Through: April 15, 2019.

The Governor approved the request of the Department for Aging and Rehabilitative Services to extend this emergency regulation for six months as provided in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation will continue in effect through April 15, 2019. The emergency regulation, which reduces the number of department priority of service categories from four to three, was published in 33:19 VA.R. 2141-2142 May 15, 2017.

Agency Contact: Leah Mills, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7610, FAX (804) 662-7663, TTY (800) 464-9950, or email leah.mills@dars.virginia.gov.

VA.R. Doc. No. R17-4951; Filed September 24, 2018, 12:15 p.m.

◆

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Commonwealth Transportation Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **24VAC30-151. Land Use Permit Regulations (amending 24VAC30-151-730).**

Statutory Authority: § 33.2-210 of the Code of Virginia.

Effective Date: November 14, 2018.

Agency Contact: Robert W. Hofrichter, Assistant Director for Land Use, Transportation and Mobility Planning Division, Department of Transportation, 1401 East Broad Street,

Richmond, VA 23219, telephone (804) 786-0780, FAX (804) 786-0628, or email robert.hofrichter@vdot.virginia.gov.

Summary:

The amendments (i) make the annual wireless support structure public right-of-way use fees consistent with the fees in Chapters 837 and 848 of the 2018 Acts of Assembly, which replace all fees of general application, except permit processing and other plan review fees, with specific fees; and (ii) specify a $14,000 annual fee for colocations of non-small-cell communications equipment on an existing tower. The acts allow the Virginia Department of Transportation to continue to enforce existing permits or agreements for wireless communication towers and the annual fees charged in those permits or agreements until the current terms of those permits or agreements ends.

24VAC30-151-730. Accommodation fees.

~~After initial installation, the~~ The Commissioner of Highways or a designee shall determine the annual compensation for the use of the right-of-way by a utility, except as provided in 24VAC30-151-740. The rates shall be established on the following basis:

1. Limited Access Crossings - $50 per crossing.

2. Limited Access Longitudinal Installation - $250 per mile annual use payment.

3. Wireless Communication ~~Tower~~ Facility Sites (limited and nonlimited access):

a. $24,000 annual use payment for a ~~communication tower site, and~~ wireless support structure permitted prior to July 1, 2018, until the permit expires or is terminated;

b. $14,000 annual use payment for ~~colocation~~ non-small-cell colocation on a ~~tower site~~ wireless support structure. This payment does not include equipment mounted to an existing wooden utility pole~~.~~; and

c. A wireless support structure installed under a land use permit issued on or after July 1, 2018, shall have an annual use payment based upon the following, which shall be adjusted every five years in accordance with § 56-484.32 of the Code of Virginia:

(1) $1,000 for any wireless support structure at or below 50 feet in height;

(2) $3,000 for any wireless support structure above 50 feet and at or below 120 feet in height;

(3) $5,000 for any wireless support structure above 120 feet in height; and

(4) $1.00 per square foot for any other equipment, shelter, or associated facilities constructed on the ground.

VA.R. Doc. No. R19-5645; Filed September 24, 2018, 3:48 p.m.

EXECUTIVE ORDER NUMBER NINETEEN (2018)

Cloud Service Utilization and Readiness

Importance of the Initiative

The Commonwealth of Virginia must ensure that we are continuously evaluating how information technology services are delivered to those who live and work in our state. Services provided by the Commonwealth must keep pace with the marketplace. A key part of achieving this goal is to ensure that the Commonwealth of Virginia aggressively incorporates the use of cloud technologies into Commonwealth information technology service delivery models. The Commonwealth's definition of cloud services can be found in the VITA Information Technology Resource Management (ITRM) Policies, Standards and Guidelines (https://www.vita.virginia.gov/it-governance/itrm-policies-standards/).

As with any technology, cloud services must be implemented in a manner that continues to ensure the availability, security, and privacy of Commonwealth and citizen data. This requires ongoing oversight and management to ensure compliance through Service Level Agreements and other means.

Leveraging cloud services models will allow the Commonwealth to:

- Speed up delivery of business solutions through faster paths to production;
- Provide flexible solutions capable of quickly adapting to new and changing business solutions;
- Reduce operations and maintenance requirements for basic needs such as power and space;
- Provide transparency so that customers are more aware of what they get for their money;
- Provide service elasticity to support increased citizen needs at peak times; and
- Provide a structure that allows for a more resilient environment in the case of a disaster or service outage.

Within 60 days of this Executive Order, the Virginia Information Technologies Agency (VITA) shall adopt a model for evaluating and incorporating cloud services where appropriate to support information technology (IT) services.

VITA shall also develop governance documents in support of this cloud approach that address requirements for evaluating new and existing IT for cloud readiness. This process, which shall apply to Executive Branch agencies as defined in § 2.2-2006 of the Code of Virginia, will include details regarding the following areas:

Development of New IT Applications and Solutions

- As of the effective date of this Executive Order, all new IT solutions proposed for development must either be cloud-enabled or have a documented exemption approved by the Commonwealth Chief Information Officer (CIO).
- Agencies shall minimize in-house development of custom IT solutions and applications and leverage cloud solutions if recommended by VITA's cloud governance process.

Existing Systems/Applications Cloud Enablement

- Agencies shall evaluate the continued use of dedicated hardware supporting premise-based IT solutions.
- Agencies shall develop formal processes to enable application development and business services to evaluate cloud service options when deploying, updating, or investing in existing IT solutions.

All agency cloud solutions shall adhere to VITA security and infrastructure policies, standards, and guidelines that will be located in the ITRM Policies, Standards and Guidelines. All agency cloud solutions shall be obtained through VITA's services as outlined by the agency unless otherwise approved by the CIO.

Agency Reporting

- VITA shall collect information from each agency indicating the percentage of physical and virtually deployed IT system components as well as cloud-ready workloads.
- By December 1, 2018, and annually thereafter, each agency shall identify each system's cloud-readiness status (cloud-ready or not cloud-ready) and report this information to VITA, unless granted a temporary or permanent exemption by the CIO.
- By January 15, 2019, agencies shall provide to VITA information regarding resource requirements necessary to make systems cloud-ready within their IT strategic plans, unless granted an exemption by the CIO.
    - This information shall be evaluated by VITA for cloud-readiness as part of the IT strategic planning process.
- By June 1, 2019, VITA shall report to the Secretary of Administration on the status of identifying cloud-ready systems within the Commonwealth.
- Beginning September 1, 2019, VITA shall report annually to the Secretary of Administration on the progress of migrating systems identified as appropriate for cloud solutions.

Effective Date of the Executive Order

This Executive Order shall be effective upon signing and shall remain in full force and effect until December 31, 2021, unless amended or rescinded by further Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 17th Day of September, 2018.

/s/ Ralph S. Northam
Governor

EXECUTIVE ORDER NUMBER TWENTY (2018)

Transfer of the Department of Military Affairs to the Secretary of Veterans and Defense Affairs

Importance of the Initiative

The Commonwealth of Virginia is home to many of our nation's most important national defense assets. The Commonwealth takes pride in protecting our defense forces' ability to train for our nation's security while also providing the service members and their families with an unmatched quality of life. By working collaboratively with our military installations, the Commonwealth is able to sustain our current economic infrastructure, while also jointly identifying areas of future advancement. Growing the military mission in the Commonwealth also includes growing the Virginia National Guard. Our Virginia National Guard has seen increased demands on its members with more frequent deployments and longer training periods. Ensuring the Virginia National Guard continues to meet end strength goals and remain a competitive recruiter is more important than ever. In order to achieve these goals, operations and collaboration with the federal government must be as efficient as possible.

The Secretary of Veterans and Defense Affairs elevates issues and coordinates policy for veterans and transitioning service members in the Commonwealth and serves as the Governor's liaison to the federal defense establishment. As described in § 2.2-231 of the Code of Virginia, the Secretary is to "provide active outreach to the U.S. Department of Defense and the defense establishment in Virginia to support the military installations and activities in the Commonwealth…"

Duties of the Department of Military Affairs (DMA), as outlined in § 44-11.1 of the Code of Virginia, consist of administering the Virginia Militia and integrating Department of Defense capabilities into state operations. DMA has extensive involvement with federal defense entities, an area where the Office of the Secretary of Veterans and Defense Affairs is deeply engaged. Transferring DMA to the Secretary of Veterans and Defense Affairs will streamline communications with federal defense entities on matters directly affecting the Virginia National Guard. More streamlined communications are critical as a significant part of the budget for the Virginia National Guard comes from federal sources.

The Virginia Department of Veterans Services (DVS), another agency under the Office of the Secretary of Veterans and Defense Affairs, is charged with supporting and enhancing the benefits provided to members of the Guard and their families. When members of the Guard and other service members transition from active service, DVS is there to assist them and their families with their transitions to civilian life, particularly in the areas of employment, education, benefits, housing, and behavioral health and rehabilitative services. Moving DMA under the Office of the Secretary of Veterans and Defense Affairs will better align resources and missions for our Guardsmen and their families.

The Department of Military Affairs will continue performing all existing duties in accordance with Virginia law, including working with other agencies in disaster preparedness, maintaining order and public safety in coordination with law enforcement, and developing and executing contingency plans for homeland defense.

Transfer of the Agency

By virtue of the authority vested in me as Governor under § 2.2-230 of the Code of Virginia, I hereby authorize the transfer of administrative authority of the Department of Military Affairs from the Secretary of Public Safety and Homeland Security to the Secretary of Veterans and Defense Affairs.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in force and effect unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 24th day of September, 2018.

/s/ Ralph S. Northam
Governor

BOARD OF ACCOUNTANCY

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Accountancy is conducting a periodic review and small business impact review of **18VAC5-22, Board of Accountancy Regulations**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 5, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Rebekah E. Allen, Information and Policy Advisor, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23233, telephone (804) 367-2006, FAX (804) 527-4207, or email rebekah.allen@boa.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Audiology and Speech-Language Pathology is conducting a periodic review and small business impact review of **18VAC30-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

BOARD OF COUNSELING

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Counseling is conducting a periodic review and small business impact review of **18VAC115-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments

may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

BOARD OF DENTISTRY

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Dentistry is conducting a periodic review and small business impact review of **18VAC60-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Bedford Solar Center LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - City of Chesapeake

Bedford Solar Center LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a renewable energy project (solar) in the City of Chesapeake pursuant to 9VAC15-60. Sited on approximately 475 acres, the project is located in the City of Chesapeake adjacent to Blue Ridge Road near the Naval Auxiliary Landing Field Fentress. The project will have a maximum capacity of 70 megawatts alternating current and, depending on final design, consist of approximately 244,570 solar photovoltaic modules installed on single-axis tracking racking structures and inverters installed on approximately 28 separate concrete pads.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

Depot Solar Center LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Campbell County

Depot Solar Center LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a renewable energy project (solar) in Campbell County pursuant to 9VAC15-60. Sited on approximately 150 acres, the project is located in Campbell County adjacent to Depot Road. The project will have a maximum capacity of 15 megawatts alternating current and, depending on final design, consist of approximately 61,490 solar photovoltaic modules installed on single-axis tracking racking structures and inverters installed on approximately six separate concrete pads.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

Dragonfly Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Campbell County

Dragonfly Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Campbell County pursuant to 9VAC15-60. Dragonfly Solar is proposed as an 80 megawatts alternating current solar photovoltaic generating facility, consisting of approximately 315,000 solar panels. The project is located on approximately 1,200 acres of privately-owned land in southwestern Campbell County,

north of Bedford Highway, south of Bishop Creek Road, and east of Leesville Road. Approximate coordinates are 37°08'43"N, 79°21'13"W. Dragonfly Solar is committed to responsibly developing the facility and complying with local, state, and federal permit requirements to ensure the project is a long-term benefit to both Campbell County and the Commonwealth of Virginia.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Funeral Directors and Embalmers is conducting a periodic review and small business impact review of **18VAC65-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

BOARD OF HEALTH PROFESSIONS

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Health Professions is conducting a periodic review and small business impact review of **18VAC75-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

DEPARTMENT OF HEALTH PROFESSIONS

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Health Professions is conducting a periodic review and small business impact review of **18VAC76-31, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any

issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Long-Term Care Administrators is conducting a periodic review and small business impact review of **18VAC95-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on September 26, 2018. The orders may be viewed at the Virginia Lottery, 600 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia.

Director's Order Number One Hundred Thirty-Two (18)

Virginia Lottery "30th Birthday Promotional Scratcher Giveaway Promotion" (effective September 1, 2018)

Director's Order Number One Hundred Thirty-Four (18)

Virginia Lottery's Scratch Game 1902 "Win A Spin" Final Rules for Game Operation (this Director's Order is effective nunc pro tunc to September 4, 2018, fully replaces any and all prior "Win a Spin" Scratch Game rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Thirty-Five (18)

Virginia Lottery's Scratch Game 1945 "We're Game for Education" Final Rules for Game Operation (this Director's Order becomes effective nunc pro tunc to August 21, 2018, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Medical Assistance Services is conducting a periodic review and small business impact review of **12VAC30-135, Demonstration Services Waiver**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 5, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Emily McClellan, Regulatory Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-4981, or email emily.mcclellan@dmas.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Draft CCC Plus Waiver Manual

The draft chapters (Chapters 2, 4, 5, and 6) of the Provider Manual are posted on the DMAS website at http://www.dmas.virginia.gov/#/manualdraft.

The CCC Plus Waiver Provider Manual will be finalized and officially posted by October 24, 2018, at https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/ProviderManual.

The Elderly or Disabled with Consumer Directed Services (EDCD) and the Technology Assisted (TECH) Waiver and Private Duty Nursing Services Provider Manuals are now obsolete. These two former waivers are now combined into the CCC Plus Waiver and into the new CCC Plus Waiver Provider Manual.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

Virginia Creating Opportunities for Medicaid Participants to Achieve Self-Sufficiency (COMPASS)

On June 7, 2018, Governor Northam signed Chapter 2 of the 2018 Acts of Assembly (2018 Appropriations Act) directing the Department of Medical Assistance Services (DMAS) to submit a Medicaid § 1115 Demonstration Waiver seeking federal approval for new Medicaid program features "designed to empower individuals to improve their health and well-being and gain employer sponsored coverage or other commercial health insurance coverage, while simultaneously ensuring the program's long-term fiscal sustainability."

Pursuant to 42 CFR 431.408, DMAS is providing notice of intent to submit to the federal Centers for Medicare and Medicaid Services a request to extend for five years the Medicaid § 1115 Demonstration Waiver, the Virginia Governor's Access Plan (GAP) and Addiction and Recovery Treatment Services (ARTS) Delivery System Transformation.

Virginia's current demonstration waiver, which expires on December 31, 2019, includes the GAP program, the ARTS demonstration, and Medicaid coverage authority to former foster care youth who have aged out of foster care in another state but now reside in Virginia. Because the Commonwealth is in the process of expanding Medicaid on January 1, 2019, to nondisabled, nonpregnant adults ages 19 to 64 with income up to 138% of the federal poverty level (FPL), the GAP program is being phased out, and GAP enrollees will be transitioned to the new adult Medicaid eligibility group.

Through the five-year extension, which will be called the Virginia Creating Opportunities for Medicaid Participants to Achieve Self Sufficiency (COMPASS) Waiver, the Commonwealth will continue to provide essential substance use disorder services to all Medicaid enrollees through ARTS and maintain authority for Medicaid coverage for former foster care youth. In addition, as directed by state legislation, the Commonwealth will (i) implement a work and community engagement program in which participation is a condition of Medicaid eligibility for certain adults with income up to 138% of the FPL; (ii) implement premiums and copayments for nonemergency use of the emergency department and incentivize healthy behaviors through health and wellness accounts for certain adults with income between 100% and 138% of the FPL; and (iii) create a new housing and employment supports benefit for high-need populations.

The DMAS website includes a detailed public notice with more information about the extension request as well as the draft waiver application at www.dmas.virginia.gov/#/1115waiver. Public comments may be submitted until midnight (Eastern Time) on Saturday, October 20, 2018, by email at 1115Implementation@dmas.virginia.gov, by regular mail to Virginia Department of Medical Assistance Services, Attn: Virginia COMPASS, 600 East Broad Street, Richmond, VA 23219, or in person at the public hearings listed below and at

Virginia Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219.

DMAS will host four public hearings during the public notice and comment period at the following times and locations:

Tuesday, September 25, 2018, 10 a.m. - 12 p.m. - Medical Assistance Services Board (DMAS Board) Meeting, 600 East Broad Street, Richmond, VA 23219. If unable to attend in-person, you may:

- Participate online by clicking the link below from a PC, Mac, iPhone, or Android device at https://webinar.ringcentral.com/j/1495928570
- Join by phone at (646) 357 3664 or Webinar ID 149 592 8570
- For a toll free audio-only option, dial (866) 842-5779 and when prompted, enter 3284486931

Wednesday, October 3, 2018, 3:30 p.m. - 5 p.m. - Roanoke Elks Lodge No. 197, 1147 Persinger Road, Southwest, Roanoke, VA 24015

Tuesday, October 9, 2018, 3:30 p.m. - 5 p.m. - Great Falls Library, 9830 Georgetown Pike, Great Falls, VA 22066

Thursday, October 11, 1:30 p.m. - 3 p.m. - MEO Central Library, 4100 Virginia Beach Boulevard, Virginia Beach, VA 23452

Contact Information: Susan Puglisi, Senior Advisor, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 225-2726, or email susie.puglisi@dmas.virginia.gov.

BOARD OF MEDICINE

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Medicine is conducting a periodic review and small business impact review of **18VAC85-11, Public Participation Guidelines.** The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

BOARD OF NURSING

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Nursing is conducting a periodic review and small business impact review of **18VAC90-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the

public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

BOARD OF OPTOMETRY

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Optometry is conducting a periodic review and small business impact review of **18VAC105-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

BOARD OF PHARMACY

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Pharmacy is conducting a periodic review and small business impact review of **18VAC110-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

BOARD OF PHYSICAL THERAPY

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Physical Therapy is conducting a periodic review and small business impact review of **18VAC112-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

BOARD OF PSYCHOLOGY

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Psychology is conducting a periodic review and small business impact review of **18VAC125-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

STATE BOARD OF SOCIAL SERVICES

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services is conducting a periodic review and small business impact review of **22VAC40-35, Virginia Independence Program**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 5, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Mark Golden, TANF Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7184, or email mark.golden@dss.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services is conducting a periodic review and small business impact review of **22VAC40-400, Funding Limitation for the Refugee Resettlement Program**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 5, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Penny Boyd, Refugee Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7933, FAX (804) 726-7088, or email penny.boyd@dss.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

BOARD OF SOCIAL WORK

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Social Work is conducting a periodic review and small business impact review of **18VAC140-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

BOARD OF VETERINARY MEDICINE

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Veterinary Medicine is conducting a periodic review and small business impact review of **18VAC150-11, Public Participation Guidelines**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 15, 2018, and ends November 14, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for HBKC II LLC

An enforcement action has been proposed for HBKC II LLC for violations of the State Water Control Law at the Matthews Property in Suffolk, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jennifer Coleman, Esq. will accept comments by email at jennifer.coleman@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from October 15, 2018, to November 14, 2018.

Proposed Enforcement Action for Richmond Cold Storage LLC dba Lineage Logistics

An enforcement action has been proposed for Richmond Cold Storage LLC dba Lineage Logistics for violations of the Ground Water Management Act. A description of the proposed actions is available online at www.deq.virginia.gov/Programs/Enforcement/PublicNotices.aspx. Lee Crowell will accept comments by email at lee.crowell@deq.virginia.gov or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23219, from October 15, 2018, through November 14, 2018.

Proposed Consent Special Order for Wells Realty and Insurance Co.

An enforcement action has been proposed for Wells Realty and Insurance Co. (Wells) for alleged violations resulting from a spill at 12442 Richmond Street, Chester, VA 23831. The State Water Control Board proposes to issue a consent special order to Wells to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jeff Reynolds will accept comments by email at jefferson.reynolds@deq.virginia.gov, or by mail at Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, from October 15, 2018, to November 14, 2018.

Public Meeting for Total Maximum Daily Loads for the Russell Fork River, Hurricane Creek, and Indian Creek Watersheds

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) for the Russell Fork River, Hurricane Creek, and Indian Creek Watersheds. These streams are listed on the 2016 § 303(d) TMDL Priority List and Report as impaired due to exceedances of the state's water quality standards for bacteria in Buchanan and Dickenson Counties in Virginia. In addition, Indian Creek, Sullivan Branch, and Fryingpan Creek are listed as impaired for failure to support the aquatic life use and are also located in Buchanan and Dickenson Counties in Virginia.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law requires DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) Priority List and Report.

The impaired segments include: 7.05 miles, including the Russell Fork mainstem from Hollow Poplar Creek downstream, following the Buchanan and Dickenson County line, to the confluence of Pawpaw Creek near Cannady; 9.30 miles of the Russell Fork headwaters, on Big A Mountain, downstream through Davenport to the confluence of Hollow Poplar Creek; 4.35 miles, including the upper mainstem from the confluence of Pawpaw Creek downstream to the Fryingpan Creek confluence; 3.83 miles, including the mainstem from the Pound River confluence near Bartlick upstream through Splashdam to the McClure River confluence; 2.25 miles from the Kentucky state line upstream 2.2 miles to protect Elkhorn City, Kentucky raw water intake; 0.86 miles of Hurricane Creek from the confluence of Carver Branch downstream to the confluence with the Russell Fork in Davenport; 2.7 miles of Indian Creek, a Russell Fork tributary, from the Cane Creek confluence at Duty downstream to the Russell Fork confluence at the Buchanan and Dickenson County line; 1.63 miles of Sullivan Branch, an Indian Creek tributary, from its headwaters on Long Ridge, north of Duty, and 9.70 miles of Fryingpan Creek from the headwaters on Sandy Ridge near Carrie downstream to the Priest Fork confluence, near Sportsman Lake.

The first public meeting on the development of the TMDL to address the bacteria and aquatic life impairments for these segments will be held on October 18, 2018, from 6 p.m. to 8 p.m. at the Haysi Town Hall, 322 Main Street, Haysi, VA 24256.

The public comment period will begin October 18, 2018, and end November 19, 2018. An advisory committee to assist in development of this TMDL will be established. Persons interested in assisting should notify the DEQ contact person by the end of the comment period and provide their name, address, phone number, email address, and the organization representing (if any). Notification of the composition of the panel will be sent to all applicants.

A component of a TMDL is the wasteload allocations (WLAs); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Administrative Process Act for any future adoption of the TMDLs associated WLAs. Information on the development of the TMDLs for these impairments is available upon request. Questions, information requests, and all written comments should be addressed to Martha Chapman, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA

24210, telephone (276) 676-4800, or email martha.chapman@deq.virginia.gov.

Public Meeting for Total Maximum Daily Load Implementation Plan for Woods Creek

Purpose of notice: The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of a total maximum daily load (TMDL) implementation plan for the Woods Creek watershed in Rockbridge County and the City of Lexington, Virginia.

A public meeting will be held on October 24, 2018, at 6 p.m. (student research showcase starting at 5:30 p.m.) at Waddell Elementary School, 100 Pendleton Place, Lexington, VA 24450.

Meeting description: DEQ and its contractor, Virginia Tech's Biological Systems Engineering Department, will discuss the process that will be used to complete a water quality improvement plan, known as a TMDL implementation plan, for Woods Creek and its tributaries. Prior to the meeting, students from Lexington schools will showcase their recent studies of Woods Creek water quality. This is an opportunity for local residents to learn about the condition of the creek, share information about the area, and become involved in the process of local water quality improvement. Volunteers will be solicited to assist with TMDL implementation plan development by serving on working groups. A public comment period will follow the meeting. The public comment period begins October 25, 2018, and ends November 30, 2018.

In case of inclement weather, the meeting will be held at the same time and location on October 30, 2018.

Description of study: A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. Woods Creek was listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of Virginia's water quality standards for bacteria for recreational use. DEQ completed the bacteria TMDL study for Woods Creek in 2017. The Woods Creek TMDL was approved by the Environmental Protection Agency (EPA) in February 2018. Section 62.1-44.19:7 C of the Code of Virginia requires expeditious implementation of TMDLs when appropriate. To restore water quality, bacteria levels need to be reduced to the amount established in the TMDL. The TMDL implementation plan should provide measurable goals and the date of expected achievement of water quality objectives. The TMDL implementation plan should also include the corrective actions needed and their associated costs, benefits, and environmental impacts. DEQ will collaborate with local stakeholders to develop a TMDL implementation plan that meets these criteria.

How to comment and participate: All meetings in support of TMDL implementation plan development are open to the public and all interested parties are welcome. Written comments will be accepted through November 30, 2018, and should include the name, address, and telephone number of the person submitting the comments. For more information, or to submit written comments, please contact Sara Bottenfield, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7872, FAX (540) 574-7878, or email sara.bottenfield@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

MARINE RESOURCES COMMISSION

Title of Regulation: **4VAC20-510. Pertaining to Amberjack and Cobia.**

Publication: 35:2 VA.R. 166 September 17, 2018

Correction to Emergency Regulation:

Page 166, 4VAC20-510-25 B, at the end of line 2, change "October 1" to "September 30"

VA.R. Doc. No. R19-5651; Filed September 27, 2018

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.**

Publication: 33:22 VA.R. 2431-2492 June 26, 2017

Correction to Final Regulation:

Page 2432, 9VAC25-31-110 E line 8, after "Subpart D)" insert "are met for that submission"

VA.R. Doc. No. R17-4807; Filed September 14, 2018