VIRGINIA REGISTER OF REGULATIONS

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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,** Vice Chair; **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; **Nikki Clemons,** 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).

January 2019 through December 2019

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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 COUNSELING

Initial Agency Notice

Title of Regulation**: 18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.**

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

Name of Petitioner: Michael Hayter.

Nature of Petitioner's Request: To amend regulations to waive the requirement for an examination for licensed clinical social workers who can show clinical experience based in substance abuse services to become licensed substance abuse treatment practitioners. Licensed professional counselors currently have such a waiver.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition will be filed with the Registrar of Regulations and published on January 21, 2019, with public comment requested until February 20, 2019. It will also be placed on the Virginia Regulatory Town Hall and made available for comments to be posted electronically. At its first meeting following the close of comment, scheduled for May 31, 2019, the board will consider the request to amend regulations and all comment received in support or opposition. The petitioner will be informed of the board's response and any action it approves.

Public Comment Deadline: February 20, 2019.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R19-20; Filed December 18, 2018, 8:40 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Agency Decision

Title of Regulation: **24VAC35-30. VASAP Case Management Policy and Procedure Manual.**

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Name of Petitioner: Cynthia Ellen Hites.

Nature of Petitioner's Request: Petition to amend Virginia Administrative Code 24VAC35-30, pursuant to § 2.2-4007. "I, Cynthia Ellen Hites, as a citizen of the Commonwealth of Virginia, pursuant to Virginia Code § 2.2-4007, do humbly submit this petition for the following amendment to Virginia Administrative Code 24VAC35-30 (VASAP Policy and Procedures Manual). Part VII Ignition Interlock Violations: "Under no circumstances shall the ASAP accept any other means of clearing a failing BAC registered on an interlock device other than the interlock device itself. This includes, but is not limited to, preliminary breath machines, urine screens, etc." This clause leaves absolutely no failsafe for the citizens who have not been drinking, yet are violated by the ASAP for readings of alcohols aside from ethanol. The BAIIDs measure all alcohols, therefore a scientific failsafe must be put in place to protect innocent citizens from the devices registering a compound aside from ethanol as drinking liquor, thus creating "false violations." I propose the following language be adopted, in lieu of the current: "Upon client request, the ASAP shall accept proof of a urine screen, or blood test from an accredited lab that results in a negative reading for EtOH for the time frame in question. Also to be considered in conjunction with BAIID data logs are officially filed reports or eyewitness testimony from city police and/or state police that contradict the ignition interlock device." This unethical guessing game of "pin the tail on the alcohol" must cease, because it is making what is inherently objective, subjective to case workers' knowledge, or opinion, of ethanol metabolization. Electrochemical fuel cells are not ethanol specific. The law (Virginia Administrative Code 24VAC35-60-70) is written as such that it fundamentally contradicts itself, rendering it scientifically impossible. One can either have an electrochemical fuel cell, or ethanol specificity, but not both. Only a gas chromatograph - mass spectrometer can distinguish EtOH from its dozens of cousins; and the law, courts, VASAP and ASAPs must take that into account. While completely sober for months, I was held hostage on nine different days, for the duration of twenty-three high BrAC readings, as police administered their PBTs which read ZERO, sometimes simultaneously to the BAIID lockouts, and sometimes only mere minutes after the BAIID gave readings as high as 0.07 BrAC. No ethanol was present during any high BrAC events, and that fact is borne out in the extreme elimination (and impossible absorption) rates. One of the nine events included an initial startup at 0.000 BrAC, then rose within three minutes to 0.07 upon rolling retest, then back to zero, all within a span of 24 minutes. A BrAC for ethanol of 0.07 will take over four hours to achieve total elimination. Also, directly refuting the ignition interlock readings are the contradicting PBTs, the police eyewitness reports, and negative urine screen. If scientific failsafes had been in place, perhaps such an egregious miscarriage of justice would not have occurred in my case, at least not to such an outrageous degree. I beg of the Commission members to take this petition under advisement. Virginians' liberties are being traipsed upon by the ignition interlock companies and by the ASAP's inability to ferret out "real" ethanol violations. Please

begin to utilize science, for the sake of what's right, to help prevent any more collateral damage at the hands of such an unsophisticated and antiquated technology. Humbly and most sincerely, Cynthia Ellen Hites."

Agency Decision: Request denied.

Statement of Reason for Decision: The Commission on VASAP is authorized by the Code of Virginia to develop regulations pertaining to the ignition interlock program. A process is in place to ensure that all positive alcohol readings registered on an ignition interlock device are carefully reviewed by local and state VASAP staff to verify that a violation has occurred. Clients are not sent back to court for noncompliance unless a violation is apparent. Clients who choose to challenge the results of positive ignition interlock tests are welcome to collect (at their own expense) any information to support their contentions. This may include BAC testing (urine, blood, breath) from an independent laboratory, eye witness testimony, and other evidence. This additional evidence will not be considered by VASAP. Such client-provided evidence is best reviewed by the court during the noncompliance hearing for determination of its admissibility and probative value. Accordingly, the petition is denied.

Agency Contact: Richard Foy, Field Service Specialist, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, or email rfoy@vasap.virginia.gov.

VA.R. Doc. No. R18-44; Filed December 17, 2018, 1:37 P.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-125, Regulations for Bedding and Upholstered Furniture Inspection Program**. The purpose of the proposed action is to update the regulation by reducing conflicts with bedding and upholstered furniture regulations of other states, clarifying licensing and permitting requirements and operating standards, and addressing concerns expressed by the Office of the Attorney General and by the General Assembly during the 2018 Session of the General Assembly regarding certain licenses and fees.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 32.1-212 of the Code of Virginia.

Public Comment Deadline: February 20, 2019.

Agency Contact: Olivia McCormick, Program Manager, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8146, FAX (804) 864-7475, or email olivia.mccormick@vdh.virginia.gov.

VA.R. Doc. No. R19-5798; Filed December 28, 2018, 10:33 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Accountancy intends to consider amending **18VAC5-22, Board of Accountancy Regulations**. The purpose of the proposed action is to review and amend the regulation to ensure that the regulation protects the public health, safety, and welfare by requiring continued competency of licensees and preventing deceptive or misleading practices by licensees; addresses changes in statutes and professional standards; and clarifies and codifies longstanding agency policies and practices. The Board of Accountancy may propose other changes the board identifies as necessary during the regulatory review process.

This Notice of Intended Regulatory Action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 54.1-4402 and 54.1-4403 of the Code of Virginia.

Public Comment Deadline: February 20, 2019.

Agency Contact: Rebekah E. Allen, Information and Policy Advisor, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23233, telephone (804) 367-2006, FAX (804) 527-4409, TTY (804) 367-9753, or email rebekah.allen@boa.virginia.gov.

VA.R. Doc. No. R19-5755; Filed January 2, 2019, 8:45 a.m.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-50. Candidate Qualification (amending 1VAC20-50-20).**

Statutory Authority: §§ 24.2-103 and 24.2-506 of the Code of Virginia.

Effective Date: January 1, 2019.

Agency Contact: David Nichols, Director of Election Services, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8952, or email david.nichols@elections.virginia.gov.

Summary:

The amendment clarifies that if the petition signer does not provide the year when dating the petition signature, the signature may still be valid. The other proposed amendment regarding a candidate's residence address was not adopted by the board.

1VAC20-50-20. Material omissions from candidate petitions and petition signature qualifications.

A. Pursuant to the requirements of §§ 24.2-506, 24.2-521, and 24.2-543 of the Code of Virginia, a petition or a petition signature should not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any petition containing such omissions shall be rendered invalid if:

1. The petition submitted is not the double-sided document, or a double-sided copy thereof, provided by the State Board of Elections;

2. The petition does not have the name, or some variation of the name, [and address] of the candidate on the front of the form;

3. The petition fails to identify the office sought on the front of the form;

4. The petition fails to identify the applicable election district in which the candidate is running for office;

5.[~~The candidate 's residence address provided on the petition does not match the candidate 's voter registration record at the time of the petition 's circulation; 6.~~]The circulator has not signed the petition affidavit and provided his current address;

[6. ~~7.~~] The circulator is a minor or a felon whose voting rights have not been restored;

[7. ~~8.~~] The circulator has not signed the petition he circulated in the presence of a notary;

[8. ~~9.~~] The circulator has not had a notary sign the affidavit for each petition submitted;

[9. ~~10.~~] A person other than the circulator signed the petition affidavit;

[10. ~~11.~~] The notary has not affixed a photographically reproducible seal;

[11. ~~12.~~] The notary has not included his registration number and commission expiration date; or

[12. ~~13.~~] Any combination of the scenarios of this subsection exists.

C. The following omissions related to individual petition signatures are always material and any petition signature containing such omission shall be rendered invalid if:

1. The signer is not qualified to cast a ballot for the office for which the petition was circulated;

2. The signer is also the circulator of the petition;

3. The signer provided an accompanying date that is subsequent to the date upon which the notary signed the petition;

4. The signer did not sign the petition; or

5. The signer provided an address that does not match the petition signer 's address in the Virginia voter registration system, unless the signer provided an address that is within the same precinct where a voter is currently registered in the Virginia voter registration system, and the signer can be reasonably identified as the same registered voter.

D. The following omissions shall be treated as nonmaterial provided the general registrar can independently and reasonably verify the validity of the petition or signature:

1. An older version of the petition is used (provided that the information presented complies with current laws, regulations, and guidelines);

2. The "election information" including (i) county, city, or town in which the election will be held; (ii) election type; and (iii) date of election are omitted;

3. The name of the candidate and office sought are omitted from the back of the petition;

4. The circulator has not provided the last four digits of his social security number in the affidavit;

5. The signer omits his first name, provided he provides a combination of his first or middle initials or a middle name and last name and address that matches a qualified voter within the Virginia voter registration system;

6. The signer provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");

7. The signer prints his name on the "Print" line and prints his name on the "Sign" line; ~~or~~

8. The signer fails to provide the date but a period of time that qualifies can affirmatively be established with previous and subsequent dates provided by other signers upon the petition page; or

9. The signer fails to provide the year when signing the petition.

E. A signature upon a petition shall be included in the count toward meeting the petition signature requirements only if:

1. The petition signer is a qualified voter who is maintained on the Virginia voter registration system either (i) with active status or (ii) with inactive status and qualified to vote for the office for which the petition was circulated;

2. The signer provides his name; and

3. The signer provides an address that matches the petition signer 's address in the Virginia voter registration system, or the signer provided an address that is within the same precinct where a voter is currently registered in the Virginia voter registration system, and the signer can be reasonably identified as the same registered voter.

VA.R. Doc. No. R19-5732; Filed December 28, 2018, 10:29 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution 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: **9VAC5-50. New and Modified Stationary Sources (Rev. B18) (amending 9VAC5-50-400).**

9VAC5-60. Hazardous Air Pollutant Sources (Rev. B18) (amending 9VAC5-60-60, 9VAC5-60-90).

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the Clean Air Act; 40 CFR Parts 51 and 60.

Effective Date: February 20, 2019.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, or email karen.sabasteanski@deq.virginia.gov.

Summary:

The amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2018.

Article 5
Environmental Protection Agency Standards of Performance for New Stationary Sources (Rule 5-5)

9VAC5-50-400. General.

The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (NSPSs), as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-50-420. The complete text of the subparts in 9VAC5-50-410 incorporated ~~herein~~ in this regulation by reference is contained in 40 CFR Part 60. The 40 CFR section numbers appearing under each subpart in 9VAC5-50-410 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2017)~~ (2018) in effect July 1, ~~2017~~ 2018. In making reference to the Code of Federal Regulations, 40 CFR Part 60 means Part 60 of Title 40 of the Code of Federal Regulations;

40 CFR 60.1 means 60.1 in Part 60 of Title 40 of the Code of Federal Regulations.

Part II
Emission Standards

Article 1
Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants (Rule 6-1)

9VAC5-60-60. General.

The Environmental Protection Agency (EPA) Regulations on National Emission Standards for Hazardous Air Pollutants (NESHAP), as promulgated in 40 CFR Part 61 and designated in 9VAC5-60-70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-80. The complete text of the subparts in 9VAC5-60-70 incorporated ~~herein~~ in this regulation by reference is contained in 40 CFR Part 61. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2017)~~ (2018) in effect July 1, ~~2017~~ 2018. In making reference to the Code of Federal Regulations, 40 CFR Part 61 means Part 61 of Title 40 of the Code of Federal Regulations; 40 CFR 61.01 means 61.01 in Part 61 of Title 40 of the Code of Federal Regulations.

Article 2
Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories (Rule 6-2)

9VAC5-60-90. General.

The Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR Part 63 and designated in 9VAC5-60-100 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-110. The complete text of the subparts in 9VAC5-60-100 incorporated ~~herein~~ in this regulation by reference is contained in 40 CFR Part 63. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2017)~~ (2018) in effect July 1, ~~2017~~ 2018. In making reference to the Code of Federal Regulations, 40 CFR Part 63 means Part 63 of Title 40 of the Code of Federal Regulations; 40 CFR 63.1 means 63.1 in Part 63 of Title 40 of the Code of Federal Regulations.

VA.R. Doc. No. R19-5784; Filed December 21, 2018, 12:27 p.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: **9VAC5-91. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area.**

Contact Information: Gary E. Graham, Regulatory Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219,telephone (804) 698-4103, or email gary.graham@deq.virginia.gov.

FORMS (9VAC5-91)

~~Application for Official Emissions Inspection Station, MSOS 101 (rev. 12/00).~~

~~Application for Official Virginia Certified Emissions Repair Facility, MSOS 201 (rev. 1/01).~~

~~Vehicle Emissions Inspector License Application, MSOS 1001 (rev. 7/98).~~

~~Inspector License Extension Request, MSOS 1101 (12/00)~~

~~Certified Emissions Repair Technician Application, MSOS 701 (rev. 2/01).~~

~~National Institute for Automotive Service Excellence Transcript Request Form (9/01).~~

~~Field Inspection Report (9/01).~~

~~Inspection Station Notice of Violation (6/99).~~

~~Consent Order (9/01).~~

~~Letter of Reprimand (9/01).~~

~~Vehicle Emissions Inspection Report (1998)~~

~~Notice of Rejection from Vehicle Emissions Testing (9/01).~~

~~Request for Deferral of Vehicle Emissions Inspection Requirement, MSOS 1 (rev. 8/00).~~

Application for Emissions Inspection Station and/or Certified Emissions Repair Facility, MSOS 102 (rev. 6/2010)

Vehicle Emissions Inspector License Application, MSOS-1001 (rev. 12/2014)

Inspector License Extension Request, MSOS-1101 (rev. 2/2017)

Certified Emissions Repair Technician Application, MSOS-701 (rev. 6/2010)

Vehicle Emissions Inspection Report, NVAS 101 (rev. 11/2018)

Pre-test Evaluation Rejection from Vehicle Emissions Testing, NVAS 201 (rev. 11/2018)

Request for Deferral of Vehicle Emissions Inspection Requirement, MSOS-1 (rev. 9/2011)

Fleet Facility Compliance Report for Vehicle Emissions Inspection and Maintenance Program, MSOS-FL-1.2 (rev. 2/2016)

OBD Rejection from Testing Report, NVAS 151 (rev. 11/2018)

Emissions Related Repair Data Form, NVAS 202 (rev. 11/2018)

VA.R. Doc. No. R19-5417; Filed December 27, 2018, 11:16 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

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: **9VAC20-81. Solid Waste Management Regulations.**

Contact Information: Debra Harris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4209, FAX (804) 698-4319, or email debra.harris@deq.virginia.gov.

FORMS (9VAC20-81)

Annual Report QA/QC Submission Checklist, DEQ Form ARSC-01 (rev. 7/2011)

Solid Waste Management Facility Permit Applicant's Disclosure Statement, DEQ Form DISC-01 (rev. 8/2018)

Solid Waste Management Facility Permit Applicant - Key Personnel Disclosure Statement, DEQ Form DISC-02 (rev. 8/2018)

Solid Waste Management Facility Disclosure Statement - Quarterly Update, DEQ Form DISC-03 (rev. 8/2018)

Request for Certification (Local Government), DEQ Form SW-11-1 (rev. 6/2016)

Special Waste Disposal Request, DEQ Form SWDR (rev. 8/2018)

Solid Waste Part A Application, DEQ Form SW PTA (rev. 3/2011)

Solid Waste Disposal Facility Part B Application, DEQ Form SW PTB (rev. 3/2011)

~~Solid Waste Information and Assessment Program Reporting Table, Form DEQ 50-25 with Statement of Economic Benefits Form and Instructions (rev. 11/2014)~~

Solid Waste Information and Assessment Program Reporting Table - Form DEQ 50-25 with Statement of Economic Benefits Form and Instructions (rev. 12/2018)

Exempt Yard Waste Composting Annual Report, DEQ Form YW-2 (rev. 7/2011)

Exempt Yard Waste Compost Facility - Notice of Intent and Certification, DEQ Form YW-3 (rev. 7/2011)

Exempt Yard Waste & Herbivorous Manures Compost Facility - Notice of Intent and Certification, DEQ Form YW-4 (rev. 7/2011)

VA.R. Doc. No. R19-5786; Filed December 18, 2018, 1:56 p.m.

Forms

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Title of Regulation: **9VAC20-130. Solid Waste Planning and Recycling Regulations.**

Contact Information: Gary E. Graham, Regulatory Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4103, or email gary.graham@deq.virginia.gov.

FORMS (9VAC20-130)

~~Locality Recycling Rate Report for Calendar Year 2017, DEQ Form 50-30 (rev. 9/2017)~~

Locality Recycling Rate Report, DEQ Form 50-30 (rev. 12/2018)

VA.R. Doc. No. R19-5781; Filed December 19, 2018, 3:04 p.m.

STATE WATER CONTROL BOARD

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: **9VAC25-200. Water Withdrawal Reporting.**

Contact Information: Gary E. Graham, Regulatory Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4103, or email gary.graham@deq.virginia.gov.

FORMS (9VAC25-200)

~~DEQ Annual Report of Water Withdrawal (all users except agricultural), Form OWRP 3N (eff. 12/94).~~

~~DEQ Annual Report of Water Withdrawal (agricultural users), OWRP 3N (eff. 5/94).~~

Annual Water Withdrawal Reporting Form OWS-3N Instructions (eff. 12/2018)

Annual Water Withdrawal Reporting Form OWS-3N, For the Period January 1 to December 31 (eff. 12/2018)

VA.R. Doc. No. R19-5515; Filed December 20, 2018, 8:52 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.

Titles of Regulations: **9VAC25-210. Virginia Water Protection Permit Program Regulation.**

9VAC25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half Acre.

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 Activities.

9VAC25-680. Virginia Water Protection General Permit for Linear Transportation Projects.

9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities.

Contact Information: Gary E. Graham, Regulatory Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4103, or email gary.graham@deq.virginia.gov.

FORMS (9VAC25-210)

Department of Environmental Quality Water Division Permit Application Fee Form, Form 5 (rev. 10/2018)

~~Standard Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (rev. 5/2017)~~

Standard Joint Permit Application for Projects in Waters and Wetlands of the Commonwealth of Virginia (rev. 9/2018)

Virginia Department of Transportation, Inter-Agency Coordination Meeting Joint Permit Application (eff. 6/2008)

~~Tidewater Joint Permit Application for Projects Involving Tidal Waters, Tidal Wetlands and/or Dunes and Beaches in Virginia (rev. 5/2017)~~

Tidewater Joint Permit Application for Projects Involving Tidal Waters, Tidal Wetlands and/or Dunes and Beaches in Virginia (rev. 9/2018)

Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide (eff. 8/2007)

FORMS (9VAC25-660)

Department of Environmental Quality Water Division Permit Application Fee Form, Form 5 (rev. 10/2018)

~~Standard Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (rev. 5/2017)~~

Standard Joint Permit Application for Projects in Waters and Wetlands of the Commonwealth of Virginia (rev. 9/2018)

Virginia Department of Transportation, Inter-Agency Coordination Meeting Joint Permit Application (eff. 6/2008)

Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide (eff. 8/2007)

FORMS (9VAC25-670)

Department of Environmental Quality Water Division Permit Application Fee Form, Form 5 (rev. 10/2018)

~~Standard Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (rev. 5/2017)~~

Standard Joint Permit Application for Projects in Waters and Wetlands of the Commonwealth of Virginia (rev. 9/2018)

Virginia Department of Transportation, Inter-Agency Coordination Meeting Joint Permit Application (eff. 6/2008)

Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide (eff. 8/2007)

FORMS (9VAC25-680)

Department of Environmental Quality Water Division Permit Application Fee Form, Form 5 (rev. 10/2018)

~~Standard Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (rev. 5/2017)~~

Standard Joint Permit Application for Projects in Waters and Wetlands of the Commonwealth of Virginia (rev. 9/2018)

Virginia Department of Transportation, Inter-Agency Coordination Meeting Joint Permit Application (eff. 6/2008)

Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide (eff. 8/2007)

FORMS (9VAC25-690)

Department of Environmental Quality Water Division Permit Application Fee Form, Form 5 (rev. 10/2018)

~~Standard Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (rev. 5/2017)~~

Standard Joint Permit Application for Projects in Waters and Wetlands of the Commonwealth of Virginia (rev. 9/2018)

Virginia Department of Transportation, Inter-Agency Coordination Meeting Joint Permit Application (eff. 6/2008)

Monthly Reporting of Impacts Less than or Equal to One-Tenth Acre Statewide (eff. 8/2007)

VA.R. Doc. No. R19-5797; Filed December 28, 2018, 11:35 a.m.

Proposed Regulation

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-310).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1251 et seq. of the Clean Water Act; 40 CFR Part 131.

Public Hearing Information:

February 26, 2019 - 1 p.m. - Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA

Public Comment Deadline: March 22, 2019.

Agency Contact: Tish Robertson, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4309, FAX (804) 698-4116, or email tish.robertson@deq.virginia.gov.

Basis: Section 62.1-44.15 of the Code of Virginia mandates and authorizes the State Water Control Board to establish water quality standards and policies for any state waters consistent with the purpose and general policy of the State Water Control Law and to modify, amend, or cancel any such standards or policies established. Section 303(c) of the federal Clean Water Act mandates the State Water Control Board to review and, as appropriate, modify and adopt water quality standards. The promulgating entity is the State Water Control Board.

The corresponding federal water quality standards regulation at 40 CFR 131.6 describes the minimum requirements for water quality standards. The minimum requirements are use designations, water quality criteria to protect the designated uses, and an antidegradation policy.

The Environmental Protection Agency (EPA) Water Quality Standards regulation (40 CFR 131.11) is the regulatory basis for the EPA requiring the states to establish water quality criteria to protect designated uses, and the criteria are used to assess whether or not a waterbody is meeting those uses.

Purpose: The proposed amendments to the special standards and requirements section (9VAC25-260-310) of the Virginia Water Quality Standards Regulation reflects new understanding resulting from a seven-year study aimed at updating the chlorophyll a criteria for the tidal James River with best available science. Chlorophyll a criteria, which enable the regulatory management of nutrients (nitrogen and phosphorus), were adopted for the tidal James River in 2005. The scientific basis of the existing James River chlorophyll a criteria was questioned in response to the stringent nutrient load reductions determined by the EPA to be necessary for attainment of these criteria.

The study of the existing regulation revealed some substantial weaknesses. First, the existing chlorophyll a criteria were developed from datasets that were relatively limited in scope and were drawn from areas of the Chesapeake Bay that may not be representative of the James River. Secondly, while the existing criteria were developed to promote a balanced phytoplankton assemblage that is relatively free from harmful taxa, the absence of clear relationships between chlorophyll a and phytoplankton composition necessitated some subjective decision-making in the selection of thresholds. Also, physicochemical effects stemming from algal blooms, like poor water clarity and high pH, were not considered when the existing criteria were developed. Thirdly, the study found that the existing criteria must be assessed as geometric means (as directed by implementation guidance specified in 9VAC25-260-185 D) even though they were developed as arithmetic means. Research conducted by the EPA-Chesapeake Bay Program Office in 2010 determined that the geometric mean is the more appropriate statistic for characterizing James River chlorophyll a central tendency. Finally, the existing assessment methodology and the rules used to delineate allowable exceedance frequency, both described in references cited in 9VAC25-260-185 D, were developed separately from the existing criteria and were found to be ill-suited for a parameter like chlorophyll a, which can vary considerably in

space and time even under ideal conditions. The mismatch between these elements and the existing criteria likely accounts for some of the stringency of the nutrient load reductions determined by the EPA under the Chesapeake Bay total maximum daily load (TMDL) to be necessary for criteria attainment. Another factor was that the modeling framework used at the time had limitations in its ability to accurately predict chlorophyll concentrations resulting from simulated nutrient reduction scenarios. An enhanced model is now being used in the analysis with improved calibration and validity.

The proposed amendments to the regulation address these weaknesses. DEQ staff have concluded that implementation of the proposed amendments will benefit the health, safety, and welfare of the citizens of the Commonwealth by protecting the water quality and living resources of the tidal James River from the harmful effects of excessive nutrients.

Substance: New text in 9VAC25-260-310 provides the criteria for site-specific chlorophyll a levels in the tidal James River (excluding tributaries) and contains a table listing two seasonal mean criteria (spring and summer) for each of the five James River segments (delineated by salinity regime), for a total of 10 paired sets of criteria. The proposed amendments would lower eight of these values and raise two of them. Compliance with these revised criteria should minimize both long-term and short-term effects on aquatic life attributable to algal blooms. Additionally, a new table of criteria that apply only during the summer would be inserted. Compliance with these new criteria should minimize short-term effects on aquatic life stemming from potentially toxic harmful algal blooms. Finally, the proposed amendments remove the reference to 9VAC25-260-185 D and insert new language stipulating that (i) seasonal means should be calculated as geometric means; (ii) the allowable exceedance frequencies of both sets of criteria and the length of the assessment period over which they should be evaluated; (iii) the manner in which chlorophyll a data should be aggregated and how segments should be subdivided for the purposes of data aggregation; and (iv) the reference to the EPA technical document that provides the boundaries of the James River segments.

Issues: There are a number of advantages of the proposed amendments. First, DEQ will be able to better detect potentially harmful changes to the tidal James River stemming from excessive nitrogen and phosphorus loads that may affect the aquatic life designated use. DEQ will also be able to produce more confident assessments so that the public can be properly informed about the status of water quality in the tidal James River. Additionally, the proposed amendments strengthen the technical defensibility of the regulation so that the regulated community and resource managers can better understand the benefits expected to be gained with regulatory compliance. More defensible permit limits and nonpoint source management plans will result from the adoption of these amendments. A final benefit is that the costs needed to attain the proposed criteria may be less than what attainment of the existing criteria have been estimated to cost.

There is no disadvantage to the agency or the Commonwealth that will result from the adoption of the amendments.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to amend the Chlorophyll-a water quality criteria applicable to the tidal James River to reflect findings from a comprehensive scientific study overseen by the Department of Environmental Quality (DEQ) that focused on chlorophyll-a dynamics and linkages to aquatic life effects in the James River.

Result of Analysis. The proposed regulation would pave the way to provide a cost avoidance of a possible $695.3 million for 36 industrial and municipal point sources while adequately protecting the water quality of the James River.

Estimated Economic Impact. Chlorophyll is the green pigment found within the cells of algae and plants. It is a commonly used indicator of phytoplankton biomass in surface waters of large rivers, lakes, estuaries, and oceans. High concentrations of chlorophyll are indicative of nutrient pollution in the water. Based on a comprehensive analysis, the Board proposes to amend all ten of the current established chlorophyll-a criteria in this regulation, which represent five segments of the James River across two seasons, March 1 - May 31 (spring) and July 1 - September 30 (summer). The proposed changes to the ten criteria would lower the magnitude of the acceptable chlorophyll content (micrograms per liter) for eight of the criteria and would raise it for the other two criteria. The Board also proposes to revise the allowed exceedances (frequency) and the assessment methodology. The proposed allowable exceedance frequency is less stringent[1] than the rule applied to the current criteria, resulting in a less stringent standard overall. DEQ believes that despite this reduced stringency, the protection to aquatic life is maintained.

Less stringent chlorophyll criteria would lead to lower reductions in total nutrient (nitrogen and phosphorus) loads for compliance. DEQ estimates that attainment of the proposed criteria would require point source annual discharges up to 10.1 million pounds of nitrogen and 580.5 thousand pounds of phosphorus compared to 8.7 million pounds of nitrogen and 490.7 thousand pounds of phosphorus required to achieve the current criteria.

Lower nutrient reductions would reduce capital and operation and maintenance (O&M) costs associated with pollution controls. Affected facilities have been required to comply with the current more stringent standard as soon as possible, but not later than January 1, 2023. Based on a 2002 study

adjusted for inflation,[2] DEQ estimates that the proposed change has the potential to reduce total future capital costs of 11 industrial point sources from $98.1 million to $51.7 million and O&M costs from $6.4 million to $3.4 million. Similarly, aggregate future capital and O&M costs of 25 municipal point sources may be reduced from $784.8 million to $171.6 million and from $59.5 million to $26.7 million, respectively. The total future compliance costs for all point sources could decrease from $948.8 million to $253.5 million, a possible $695.3 million or a 73.2% cost avoidance. However, these cost avoidances would be realized by point sources, not upon promulgation of this regulation, but instead when their permits are revised to reflect the less stringent chlorophyll-a criteria, which could take two to four years. In other words, this regulation sets the stage for the potential reductions in point source pollution control costs but cannot reduce those costs without further action by DEQ. The proposed regulation is beneficial in that it paves the way for potential cost avoidances to be eventually realized by the affected point sources.

It should be noted that while there is the potential for lower compliance costs to control the point source nutrient discharges to the James River, wastewater facilities are not the only source of nitrogen and phosphorus loads that can lead to excessive chlorophyll levels. A large part of the total loadings comes in the form of nonpoint source runoff from agricultural land, urban/suburban land, air deposition and even forested land. It remains to be determined, through the development of Virginia's Bay Watershed Implementation Plan what the respective load reduction responsibilities will be for the point sources and nonpoint sources in the James River basin.

Businesses and Entities Affected. There are 11 industrial and 25 municipal point sources that would eventually be affected by the proposed less stringent criteria. None of the affected industrial facilities are small businesses.

Localities Particularly Affected. The 38 counties and 17 cities that drain into the James River are Counties of Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Botetourt, Buckingham, Campbell, Charles City, Chesterfield, Craig, Cumberland, Dinwiddie, Fluvanna, Giles, Goochland, Greene, Hanover, Henrico, Highland, Isle of Wight, James City, Louisa, Montgomery, Nelson, New Kent, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Roanoke, Rockbridge, Surry, and York and Cities of Buena Vista, Charlottesville, Chesapeake, Colonial Heights, Covington, Hampton, Hopewell, Lexington, Lynchburg, Newport News, Norfolk, Petersburg, Portsmouth, Richmond, Suffolk, Williamsburg, and Virginia Beach.

The 36 affected industrial dischargers and municipal wastewater plants are located in Counties of Albemarle, Alleghany, Amherst, Bedford, Campbell, Chesterfield, Fluvanna, Hanover, Henrico, James City, Nottoway, Powhatan, Prince Edward, and Rockbridge and Cities of Buena Vista, Covington, Hopewell, Lexington, Lynchburg, Newport News, Norfolk, Petersburg, Richmond, Suffolk, and Virginia Beach.

Projected Impact on Employment. The proposed regulation is not expected to have an impact on employment upon promulgation. However, when individual permits are revised, the demand for labor associated with reduced need for capital investment and O&M efforts may decrease. On the other hand, cost avoidances made possible by the criteria change may avoid possible facility downsizing or even closures and avoid a possible negative impact on employment.

Effects on the Use and Value of Private Property. The proposed regulation is not expected to have an impact on the use and value of private property upon promulgation. The potential cost avoidances for industrial point sources would likely avoid a possible future negative effect on their asset values.

Real Estate Development Costs. The proposed regulation is unlikely to affect real estate development costs. Albeit less stringent criteria, DEQ concludes that the proposed criteria is adequately protective of James River water quality.

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 regulation would not create costs and other effects for small businesses.

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. In fact, it is expected to have a positive impact on municipal point sources in terms of reduced future capital and O&M costs of pollution control.

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

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[1]Change from no more than 10% space-time exceedance rate over three consecutive summer seasons to no more than two exceedances over six consecutive spring or summer seasons.

[2]https://www.chesapeakebay.net/content/publications/cbp%2013136.pdf

Agency's Response to Economic Impact Analysis: The board has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The proposed amendments modify and add site-specific chlorophyll a criteria applicable to the tidal James River to enable watershed management of nitrogen and phosphorus, nutrients that drive algal blooms in the tidal James River. The proposed amendments are the result of a comprehensive scientific study overseen by the Department of Environmental Quality that focused on chlorophyll a dynamics and linkages to aquatic life effects in the James River and include (i) modifying seasonal mean criteria, of which eight are lower than the existing criteria and two are higher; (ii) adding a new short-duration criteria intended to protect aquatic life from the effects of toxic algae; and (iii) inserting two new sets of criteria: a description of how data should be analyzed and the allowable exceedance frequencies.

Part VII
Special Standards and Scenic Rivers Listings

9VAC25-260-310. Special standards and requirements.

The special standards are shown in small letters to correspond to lettering in the basin tables. The special standards are as follows:

a. Shellfish waters. In all open ocean or estuarine waters capable of propagating shellfish or in specific areas where public or leased private shellfish beds are present, including those waters on which condemnation classifications are established by the Virginia Department of Health, the following criteria for fecal coliform bacteria will apply:

The geometric mean fecal coliform value for a sampling station shall not exceed an MPN (most probable number) or MF (membrane filtration using mTEC culture media) of 14 per 100 milliliters (ml) of sample and the estimated 90th percentile shall not exceed an MPN of 43 per 100 ml for a 5-tube decimal dilution test or an MPN of 49 per 100 ml for a 3-tube decimal dilution test or MF test of 31 CFU (colony forming units) per 100 ml.

The shellfish area is not to be so contaminated by radionuclides, pesticides, herbicides, or fecal material that the consumption of shellfish might be hazardous.

b. Policy for the Potomac Embayments. At its meeting on September 12, 1996, the board adopted a policy (9VAC25-415. Policy for the Potomac Embayments) to control point source discharges of conventional pollutants into the Virginia embayment waters of the Potomac River, and their tributaries, from the fall line at Chain Bridge in Arlington County to the Route 301 bridge in King George County. The policy sets effluent limits for BOD_5, total suspended solids, phosphorus, and ammonia, to protect the water quality of these high profile waterbodies.

c. Canceled.

d. Canceled.

e. Canceled.

f. Canceled.

g. Occoquan watershed policy. At its meeting on July 26, 1971 (Minute 10), the board adopted a comprehensive pollution abatement and water quality management policy for the Occoquan watershed. The policy set stringent treatment and discharge requirements in order to improve and protect water quality, particularly since the waters are an important water supply for Northern Virginia. Following a public hearing on November 20, 1980, the board, at its December 10-12, 1980 meeting, adopted as of February 1, 1981, revisions to this policy (Minute 20). These revisions became effective March 4, 1981. Additional amendments were made following a public hearing on August 22, 1990, and adopted by the board at its September 24, 1990, meeting (Minute 24) and became effective on December 5, 1990. Copies are available upon request from the Department of Environmental Quality.

h. Canceled.

i. Canceled.

j. Canceled.

k. Canceled.

l. Canceled.

m. The following effluent limitations apply to wastewater treatment facilities treating an organic nutrient source in the entire Chickahominy watershed above Walker's Dam (this excludes discharges consisting solely of stormwater):

CONSTITUENT	CONCENTRATION
1. Biochemical oxygen demand 5-day	6 mg/l monthly average, with not more than 5% of individual samples to exceed 8 mg/l.
2. Settleable solids	Not to exceed 0.1 ml/l monthly average.
3. Suspended solids	5.0 mg/l monthly average, with not more than 5% of individual samples to exceed 7.5 mg/l.
4. Ammonia nitrogen	Not to exceed 2.0 mg/l monthly average as N.
5. Total phosphorus	Not to exceed 0.10 mg/l monthly average for all discharges with the exception of Tyson Foods, Inc., which shall meet 0.30 mg/l monthly average and 0.50 mg/l daily maximum.

6. Other physical and chemical constituents	Other physical or chemical constituents not specifically mentioned will be covered by additional specifications as conditions detrimental to the stream arise. The specific mention of items 1 through 5 does not necessarily mean that the addition of other physical or chemical constituents will be condoned.

n. No sewage discharges, regardless of degree of treatment, should be allowed into the James River between Bosher and Williams Island Dams.

o. The concentration and total amount of impurities in Tuckahoe Creek and its tributaries of sewage origin shall be limited to those amounts from sewage, industrial wastes, and other wastes ~~which~~ that are now present in the stream from natural sources and from existing discharges in the watershed.

p. Canceled.

q. Canceled.

r. Canceled.

s. Canceled.

t. Canceled.

u. Maximum temperature for the New River Basin from the Virginia-West Virginia state line upstream to the Giles-Montgomery County line:

The maximum temperature shall be 27°C (81°F) unless caused by natural conditions; the maximum rise above natural temperatures shall not exceed 2.8°C (5°F).

This maximum temperature limit of 81°F was established in the 1970 water quality standards amendments so that Virginia temperature criteria for the New River would be consistent with those of West Virginia, since the stream flows into that state.

v. The maximum temperature of the New River and its tributaries (except trout waters) from the Montgomery-Giles County line upstream to the Virginia-North Carolina state line shall be 29°C (84°F).

w. Canceled.

x. Clinch River from the confluence of Dumps Creek at river mile 268 at Carbo downstream to river mile 255.4. The special water quality criteria for copper (measured as total recoverable) in this section of the Clinch River are 12.4 µg/l for protection from chronic effects and 19.5 µg/l for protection from acute effects. These site-specific criteria are needed to provide protection to several endangered species of freshwater mussels.

y. Tidal freshwater Potomac River and tidal tributaries that enter the tidal freshwater Potomac River from Cockpit Point (below Occoquan Bay) to the fall line at Chain Bridge. During November 1 through February 14 of each year the 30-day average concentration of total ammonia nitrogen (in mg N/L) shall not exceed, more than once every three years on the average, the following chronic ammonia criterion:

$$\left(\frac{0.0577}{1 + 10^{7.688\text{-pH}}} + \frac{2.487}{1 + 10^{\text{pH-}7.688}} \right) \times 1.45(10^{0.028(25\text{-MAX})})$$

MAX = temperature in °C or 7, whichever is greater.

The default design flow for calculating steady state wasteload allocations for this chronic ammonia criterion is the 30Q10, unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of this water quality criterion.

z. A site specific dissolved copper aquatic life criterion of 16.3 µg/l for protection from acute effects and 10.5 µg/l for protection from chronic effects applies in the following area:

Little Creek to the Route 60 (Shore Drive) bridge including Little Channel, Desert Cove, Fishermans Cove, and Little Creek Cove.

Hampton Roads Harbor including the waters within the boundary lines formed by I-664 (Monitor-Merrimac Memorial Bridge Tunnel) and I-64 (Hampton Roads Bridge Tunnel), Willoughby Bay, and the Elizabeth River and its tidal tributaries.

This criterion reflects the acute and chronic copper aquatic life criterion for saltwater in 9VAC25-260-140 B X a water effect ratio. The water effect ratio was derived in accordance with 9VAC25-260-140 F.

aa. The following site-specific dissolved oxygen criteria apply to the tidal Mattaponi and Pamunkey Rivers and their tidal tributaries because of seasonal lower dissolved oxygen concentration due to the natural oxygen depleting processes present in the extensive surrounding tidal wetlands. These criteria apply June 1 through September 30 to Chesapeake Bay segments MPNTF, MPNOH, PMKTF, PMKOH and are implemented in accordance with subsection D of 9VAC25-260-185. These criteria supersede the open water criteria listed in subsection A of 9VAC25-260-185.

Designated use	Criteria Concentration/Duration	Temporal Application
Open water	30 day mean ≥ 4.0 mg/l	June 1 - September 30
	Instantaneous minimum ≥ 3.2 mg/l at temperatures <29°C Instantaneous minimum ≥ 4.3 mg/l at temperatures ≥ 29°C	

A site-specific pH criterion of 5.0-8.0 applies to the tidal freshwater Mattaponi Chesapeake Bay segment MPNTF to reflect natural conditions.

bb. The following site-specific seasonal mean criteria should not be exceeded in the specified tidal James River segment more than twice over six consecutive spring or summer seasons.

Designated Use	Chlorophyll a µ/l	Chesapeake Bay Program Segment	Temporal Application
Open water	8	JMSTF2	March 1 - May 31 (spring)
	10	JMSTF1	
	13	JMSOH	
	7	JMSMH	
	8	JMSPH	
	21	JMSTF2	July 1 - September 30 (summer)
	24	JMSTF1	
	11	JMSOH	
	7	JMSMH	
	7	JMSPH	

The following site-specific chlorophyll a concentrations at the specified duration should not occur more than 10% of the time over six consecutive summer seasons in the specified area of the tidal James River. These criteria protect against aquatic life effects due to harmful algal blooms. Such effects have not been documented in the upper portion of JMSTF2 or in JMSOH.

Chlorophyll a µg/l	Chesapeake Bay Program Segment	Spatial Application	Duration
--	JMSTF2	Upstream boundary of JMSTF2 to river mile 95	--
52	JMSTF2	River mile 95 to downstream boundary of JMSTF2	1-month median
52	JMSTF1	Upstream boundary of JMSTF1 to river mile 67	1-month median
34	JMSTF1	River mile 67 to downstream boundary of JMSTF1	1-month median
--	JMSOH	Entire segment	--
59	JMSMH	Entire segment	1-day median
20	JMSPH	Entire segment	1-day median

(1) The ~~following site specific~~ site-specific numerical chlorophyll a criteria apply ~~March 1 through May 31 and July 1 through September 30 as seasonal means~~ to the tidal James River segments (excludes tributaries) ~~segments~~ JMSTF2, JMSTF1, JMSOH, JMSMH, and JMSPH ~~and are implemented in accordance with subsection D of 9VAC25-260-185~~, the boundaries of which are described in EPA 903-R-05-004.

~~Designated Use~~	~~Chlorophyll a µ/l~~	~~Chesapeake Bay Program Segment~~	~~Temporal Application~~
~~Open water~~	~~10~~	~~JMSTF2~~	~~March 1 - May 31~~
	~~15~~	~~JMSTF1~~	
	~~15~~	~~JMSOH~~	
	~~12~~	~~JMSMH~~	
	~~12~~	~~JMSPH~~	
	~~15~~	~~JMSTF2~~	~~July 1 - September 30~~
	~~23~~	~~JMSTF1~~	
	~~22~~	~~JMSOH~~	
	~~10~~	~~JMSMH~~	
	~~10~~	~~JMSPH~~	

(2) For segments JMSOH, JMSMH, and JMSPH, the median of same-day samples collected one meter or less in a segment should be calculated to represent the chlorophyll a expression of a segment over that day, and the median of same-month chlorophyll a values should be calculated to represent the chlorophyll a expression of a segment over that month. The seasonal geometric mean shall be calculated from the monthly chlorophyll a values for a segment.

(3) For segment JMSTF2, chlorophyll a data collected in the "upper zone" (from the upstream boundary at the fall line to approximately river mile 95 (N37° 23' 15.27" / W77° 18' 45.05" to N37° 23' 19.31" / W77° 18' 54.03")) should be pooled, in the manner described in subdivision bb (2) of this section, separately from chlorophyll a data collected in the "lower zone" (from river mile 95 to the downstream boundary of JMSTF2). The seasonal geometric mean for each of these zones should be calculated from their respective monthly chlorophyll a values. To calculate the seasonal segment-wide geometric mean, an area-weighted average of the zonal geometric means should be calculated using the following equation:

Upper Zone Geometric Mean x 0.41 + Lower Zone Geometric Mean x 0.59

(4) For segment JMSTF1, chlorophyll a data collected in the "upper zone" (from the upstream boundary of JMSTF1 to approximately river mile 67 (N37° 17' 46.21" / W77° 7' 9.55" to N37° 18' 58.94" / W77° 6' 57.14")) should be pooled, in the manner described in subdivision bb (2) of this section, separately from chlorophyll a data collected in the "lower zone" (between river mile 67 to the downstream boundary of JMSTF1). The seasonal geometric mean for each of these zones should be calculated from their respective monthly chlorophyll a values. To calculate the seasonal segment-wide geometric mean, an area-weighted average of the zonal geometric means should be calculated using the following equation:

Upper Zone Geometric Mean x 0.49 + Lower Zone Geometric Mean x 0.51

cc. For Mountain Lake in Giles County, chlorophyll a shall not exceed 6 µg/L at a depth of six meters and orthophosphate-P shall not exceed 8 µg/L at a depth of one meter or less.

dd. For Lake Drummond, located within the boundaries of Chesapeake and Suffolk in the Great Dismal Swamp, chlorophyll a shall not exceed 35 µg/L and total phosphorus shall not exceed 40 µg/L at a depth of one meter or less.

ee. Maximum temperature for these seasonally stockable trout waters is 26°C and applies May 1 through October 31.

ff. Maximum temperature for these seasonally stockable trout waters is 28°C and applies May 1 through October 31.

gg. Little Calfpasture River from the Goshen Dam to 0.76 miles above its confluence with the Calfpasture River has a stream condition index (A Stream Condition Index for Virginia Non-Coastal Streams, September 2003, Tetra Tech, Inc.) of at least 20.5 to protect the subcategory of aquatic life that exists in this river section as a result of the hydrologic modification. From 0.76 miles to 0.02 miles above its confluence with the Calfpasture River, aquatic life conditions are expected to gradually recover and meet the general aquatic life uses at 0.02 miles above its confluence with the Calfpasture River.

hh. Maximum temperature for these seasonally stockable trout waters is 31°C and applies May 1 through October 31.

VA.R. Doc. No. R12-2932; Filed December 28, 2018, 11:24 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 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit. 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: **9VAC25-800. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters (amending 9VAC25-800-10 through 9VAC25-800-60).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act.

Effective Date: March 1, 2019.

Agency Contact: Peter Sherman, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4044, FAX (804) 698-4032, or email peter.sherman@deq.virginia.gov.

Summary:

The Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters has existed since 2011. This general permit contains effluent limitations, monitoring requirements, and special conditions for discharges of pesticides to surface waters. The amendments reissue this general permit and include changing the effective dates and two definitions, clarifying two points, and making minor changes to the duty to reapply and the transfer of permit coverage. No substantive changes are made to the existing regulation. The only change to the regulatory action since the proposed stage is the effective date.

CHAPTER 800
VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT REGULATION FOR DISCHARGES RESULTING FROM THE APPLICATION OF PESTICIDES TO SURFACE WATERS

9VAC25-800-10. Definitions.

The words and terms used in this chapter shall have the same meanings as given in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the VPDES Permit Regulation (9VAC25-31), unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Action threshold" means the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current or past environmental factors that are or have been demonstrated to be conducive to pest emergence or growth, as well as past or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

"Active ingredient" means any substance (or group of structurally similar substances if specified by the federal Environmental Protection Agency (EPA) that will prevent, destroy, repel, or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of § 2(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) ~~(7 USC § 136 et seq.)~~ (40 CFR 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance (40 CFR 174.3).

"Adverse incident" means an unusual or unexpected incident that the operator observes upon inspection or of which otherwise becomes aware, in which there is evidence that:

1. A person or nontarget organism has likely been exposed to a pesticide residue; and

2. The person or nontarget organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within surface waters on nontarget plants, fish, or wildlife that are unusual or unexpected (e.g., effects are to organisms not described on the pesticide product labels or not expected to be present) as a result of exposure to a pesticide residue and may include:

1. Distressed or dead juvenile and small fishes;

2. Washed up or floating fish;

3. Fish swimming abnormally or erratically;

4. Fish lying lethargically at water surface or in shallow water;

5. Fish that are listless or nonresponsive to disturbance;

6. Stunting, wilting, or desiccation of nontarget submerged or emergent aquatic plants; and

7. Other dead or visibly distressed nontarget aquatic or semi-aquatic organisms (amphibians, turtles, invertebrates, etc.).

The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes)~~,~~ or domesticated animals ~~or wildlife~~ (e.g., vomiting, lethargy) that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to surface waters that are temporally and spatially related to exposure to a pesticide residue.

"Biological control" means organisms that can be introduced to sites, such as herbivores, predators, parasites, and hyperparasites.

"Biological pesticides" or "biopesticides" includes microbial pesticides, biochemical pesticides, and plant-incorporated protectants (PIP).

1. "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, that:

a. Is a eukaryotic microorganism, including ~~but not limited to~~ protozoa, algae, and fungi;

b. Is a prokaryotic microorganism, including ~~but not limited to~~ Eubacteria and Archaebacteria; or

c. Is a parasitically replicating microscopic element, including ~~but not limited to~~ viruses.

2. "Biochemical pesticide" means a pesticide that:

a. Is a naturally occurring substance or structurally similar and functionally identical to a naturally occurring substance;

b. Has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically derived biochemical pesticide, is equivalent to a naturally occurring substance that has such a history; and

c. Has a nontoxic mode of action to the target ~~pest(s)~~ pests.

3. "Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant or produce thereof.

"Chemical pesticides" means all pesticides not otherwise classified as biological pesticides.

"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Declared pest emergency situation" means an event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than 10 days after identification of the need for pest control. This public declaration may be based on:

1. Significant risk to human health;

2. Significant economic loss; or

3. Significant risk to:

a. Endangered species;

b. Threatened species;

c. Beneficial organisms; or

d. The environment.

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

"Discharge of a pollutant" means the addition of any "pollutant" or combination of pollutants to surface waters from any point source, or the addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source.

"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act (7 USC § 136 et seq.) as amended.

"Impaired water" or "water quality impaired water" or "water quality limited segment" means any stream segment where the water quality does not or will not meet applicable water quality standards, even after the application of technology-based effluent limitations required by §§ 301(b) and 306 of the Clean Water Act (CWA) (33 USC § 1251 et seq. as of 1987). Impaired waters include both impaired waters with approved or established TMDLs, and impaired waters for which a TMDL has not yet been approved or established.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by EPA), other than an active ingredient, that is intentionally included in a pesticide product. Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient.

"Integrated pest management" or "IPM" means an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment.

"Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.

"Labeling" means all labels and other written, printed, or graphic matter:

1. Upon the pesticide or device or any of its containers or wrappers;

2. Accompanying the pesticide or device at any time; or

3. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Virginia Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such states are authorized by law to conduct research in the field of pesticides.

~~"Mechanical/physical~~ "Mechanical or physical methods" means mechanical tools or physical alterations of the environment~~,~~ for pest prevention or removal.

"Minimize" means to reduce or eliminate pesticide discharges to surface waters through the use of pest management measures to the extent technologically available and economically practicable and achievable.

"Nontarget organisms" means the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

"Operator" means any person involved in the application of a pesticide that results in a discharge to surface waters that meets either or both of the following two criteria:

1. The person who has control over the financing for or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions; or

2. The person who performs the application of a pesticide or who has day-to-day control of the application (e.g., they are authorized to direct workers to carry out those activities that result in discharges to surface waters).

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

"Pest" means any deleterious organism that is:

1. Any vertebrate animal other than man;

2. Any invertebrate animal excluding any internal parasite of living man or other living animals;

3. Any plant growing where not wanted, and any plant part such as a root; or

4. Any bacterium, virus, or other microorganisms, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined by the federal Food, Drug, and Cosmetic Act at 21 USC § 321(g)(1)), and cosmetics (as defined by the federal Food, Drug, and Cosmetic Act at 21 USC § 321(i)).

Any organism classified by state or federal law or regulation as endangered or threatened shall not be deemed a pest for the purposes of this chapter.

"Pest management area" means the area of land, including any water, for which pest management activities covered by this permit are conducted.

"Pest management measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards, and recommended industry practices related to the application of pesticides, relevant legal requirements, and other provisions that a prudent operator would implement to reduce or eliminate pesticide discharges to surface waters.

"Pesticide" means:

1. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Commissioner of Agriculture and Consumer Services shall declare to be a pest;

2. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

3. Any substance which is intended to become an active ingredient thereof.

Pesticides that are used or applied shall only be those that are approved and registered for use by the Virginia Department of Agriculture and Consumer Services.

"Pesticide product" means a pesticide in the particular form (including active and inert ingredients, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide research and development" means activities undertaken on a systematic basis to gain new knowledge (research) or apply research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development).

"Pesticide residue" means that portion of a pesticide application that has been discharged from a point source to surface waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

"Point source" means any discernible, confined, and discrete conveyance including~~, but not limited to,~~ any pipe, ditch, channel, tunnel, conduit, or container from which pollutants are or may be discharged. This includes biological pesticides or ~~pesticide residuals~~ chemical pesticides that leave a residue coming from a container or nozzle of a pesticide application device. This term does not include return flows from irrigated agriculture or agricultural ~~storm water~~ stormwater run-off.

"Pollutant" means biological pesticides and any pesticide residue resulting from use of a chemical pesticide.

"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.

Surface waters do not include wastewater treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (CWA) and the law. 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.

"Target pest" means the organism toward which pest management measures are being directed.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background or both, and must include a margin of safety (MOS) and account for seasonal variations.

"Treatment area" means the area of land including any waters, or the linear distance along water or water's edge, to which pesticides are being applied. Multiple treatment areas may be located within a single pest management area.

Treatment area includes the entire area, whether over land or water, where the pesticide application is intended to provide pesticidal benefits. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal should be calculated by multiplying the width of the canal by the length over which the pesticide is intended to control weeds. The treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

Treatment area calculations for pesticide applications that occur at water's edge, where the discharge of pesticides directly to waters is unavoidable, are determined by the linear distance over which pesticides are applied.

"VDACS" means the Virginia Department of Agriculture and Consumer Services. VDACS administers the provisions of Virginia's pesticide statute, Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control Board. VDACS also has delegated authority to enforce the provisions of FIFRA. As such, VDACS is the primary agency for the regulatory oversight of pesticides in the Commonwealth.

"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.

9VAC25-800-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated ~~herein~~ in this chapter, that regulation shall be as it exists and has been published as of the July 1, ~~2012~~ 2018, CFR update.

9VAC25-800-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs discharges resulting from the application of pesticides to surface waters.

B. The Director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This ~~general~~ VPDES general permit will become effective on [~~January~~ March] 1, ~~2014~~ 2019, and expire on [~~December 31~~ February 29], ~~2018~~ [~~2023~~ 2024].

9VAC25-800-30. Authorization to discharge.

A. Any operator that meets the eligibility requirements in subsection B of this section is hereby authorized for his discharges resulting from the application of pesticides to surface waters of the Commonwealth of Virginia.

The definition of operator in 9VAC25-800-10 provides that more than one person may be responsible for the same discharge resulting from pesticide application. Any operator authorized to discharge under this general permit is responsible for compliance with the terms of this permit for discharges resulting from the application of pesticides.

B. Eligibility. This permit is available to operators who discharge to surface waters from the application of (i) biological pesticides, or (ii) chemical pesticides that leave a residue ~~(hereinafter collectively "pesticides")~~ (pesticides), when the pesticide application is for one of the following pesticide use patterns:

1. Mosquito and other flying insect pest control - to control public ~~health/nuisance~~ health, nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water.

2. Weed and algae pest control - to control weeds, algae, and pathogens that are pests in surface waters.

3. Animal pest control - to control animal pests in surface waters.

4. Forest canopy pest control - application of a pesticide to the forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to surface water.

5. Intrusive vegetation pest control - to control vegetation along roads, ditches, canals, waterways, and utility rights of way where to target the intrusive pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to surface water.

C. Operators applying pesticides are required to maintain a pesticide discharge management plan (PDMP) if they exceed the annual calendar year treatment area thresholds in Table 1 of this subsection:

Table 1. Annual Treatment Area Thresholds

Pesticide Use	Annual Threshold
Mosquito and Other Flying Insect Pest Control	6400 acres of treatment area[1]
Weed and Algae Pest Control	80 acres of treatment area[1] or 20 linear miles of treatment area[2]
Animal Pest Control	80 acres of treatment area[1] or 20 linear miles of treatment area[2]
Forest Canopy Pest Control	6400 acres of treatment area[1]
Intrusive Vegetation Pest Control	6400 acres of treatment area[1] or 20 linear miles of treatment area[2]

[1]Calculations include the area of the applications made to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a 10-acre site is counted as 20 acres of treatment area.

[2]Calculations include the extent of the application made to linear features (e.g., roads, ditches, canals, waterways, and utility rights of way) or along the water's edge adjacent to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity or area as a separate activity. For example, applying pesticides twice a year to a one mile linear feature (e.g., ditch) equals two miles of treatment area regardless of whether one or both sides of the ditch are treated. Applying pesticides twice a year along one mile of lake shoreline equals two miles of treatment area.

D. An operator's discharge resulting from the application of pesticides is not authorized under this permit in the event of any of the following:

1. The operator is required to obtain an individual VPDES permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation.

2. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards. Discharges resulting from the application of pesticides are temporary and allowable in exceptional waters (see 9VAC25-260-30 A 3 (b) (3)).

3. The operator is proposing a discharge from a pesticide application to surface waters that have been identified as impaired by that pesticide or its degradates. Impaired waters include both impaired waters with board-adopted, EPA-approved or EPA-imposed TMDLs, and impaired waters for which a TMDL has not yet been approved, established, or imposed.

If the proposed discharge would not be eligible for coverage under this permit because the surface water is listed as impaired for that specific pesticide, but the applicant has evidence that shows the water is no longer impaired, the applicant may submit this information to the board and request that coverage be allowed under this permit.

E. Discharge authorization date. Operators are not required to submit a registration statement and are authorized to discharge under this permit immediately upon the permit's effective date of [~~January~~ March] 1, ~~2014~~ 2019.

F. Compliance with this general permit constitutes compliance with the federal Clean Water Act (33 USC § 1251 et seq.) and the State Water Control Law with the exceptions

stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this ~~general~~ VPDES general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation. For example, this permit does not negate the requirements under FIFRA and its implementing regulations to use registered pesticides consistent with the product's labeling. It also does not negate the requirement to fully comply with applicable state wetland program requirements administered by DEQ and the Virginia Marine Resources Commission.

G. Continuation of permit coverage.

1. This general permit shall expire on [~~December 31~~ February 29], ~~2018~~ [~~2023~~ 2024], except that the conditions of the expired pesticides general permit will continue in force for an operator until coverage is granted under a reissued pesticides general permit if the board, through no fault of the operator, does not reissue a pesticides general permit on or before the expiration date of the expiring general permit.

2. General permit coverages continued under this section remain fully effective and enforceable.

3. When the operator that was covered under the expiring or expired pesticides general permit is not in compliance with the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the pesticides general permit that has been continued;

b. Issue a notice of intent to deny coverage under a reissued pesticides general permit. If the general permit coverage is denied, the operator would then be required to cease the activities authorized by the continued general permit or be subject to enforcement action for operating without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-800-40. Registration statement.

Operators are not required to submit a registration statement to apply for coverage under this ~~general~~ VPDES general permit for discharges resulting from the application of pesticides to surface waters.

9VAC25-800-50. Termination of permit coverage.

Operators are not required to submit a notice of termination to terminate permit coverage under this ~~general~~ VPDES general permit for discharges resulting from the application of pesticides to surface waters.

9VAC25-800-60. General permit.

Any operator who is authorized to discharge shall comply with the requirements contained ~~herein~~ in this general permit and be subject to all requirements of 9VAC25-31-170.

General Permit No.: VAG87
Effective Date: [~~January~~ March] 1, ~~2014~~ 2019
Expiration Date: [~~December 31~~ February 29], ~~2018~~ [~~2023~~ 2024]

GENERAL PERMIT FOR DISCHARGES RESULTING FROM THE APPLICATION OF PESTICIDES TO SURFACE WATERS OF VIRGINIA

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act (33 USC § 1251 et seq.), as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, operators that apply pesticides that result in a discharge to surface waters are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia.

The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations, Monitoring Requirements, and Special Conditions, and Part II-Conditions Applicable to All VPDES Permits, as set forth ~~herein~~ in this general permit. Coverage under this ~~general~~ VPDES general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation, including the pesticide product label.

Part I
Effluent Limitations, Monitoring Requirements, and Special Conditions

A. Effluent limitations.

1. Technology-based effluent limitations. To meet the effluent limitations in this permit, the operator shall implement pest management measures that minimize discharges of pesticides to surface waters.

a. Minimize pesticide discharges to surface waters. All operators who perform the application of pesticides or who have day-to-day control of applications shall minimize the discharge of pollutants resulting from the application of pesticides, and:

(1) Use the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label;

(2) No person shall apply, dispense, or use any pesticide in or through any equipment or application apparatus unless the equipment or apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material. All pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall be leak proof. All spray distribution systems shall be leak proof, and any pumps that these systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of pesticide application;

(3) All pesticide application equipment shall be equipped with cut-off valves and discharge orifices to enable the operator to pass over nontarget areas without contaminating them. All hoses, pumps, or other equipment used to fill pesticide handling, storage, or application equipment shall be fitted with an effective valve or device to prevent backflow into water supply systems, streams, lakes, other sources of water, or other materials. However, these backflow devices or valves are not required for separate water storage tanks used to fill pesticide application equipment by gravity systems when the fill spout, tube, or pipe is not allowed to contact or fall below the water level of the application equipment being filled, and no other possible means of establishing a back siphon or backflow exists; and

(4) Assess weather conditions (e.g., temperature, precipitation, and wind speed) in the treatment area to ensure application is consistent with product label requirements.

b. Integrated pest management (IPM) practices. The operator with control over the financing for or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions, shall to the extent practicable consider integrated pest management practices to ensure that discharges resulting from the application of pesticides to surface waters are minimized. Operators that exceed the annual treatment area thresholds established in 9VAC25-800-30 C are also required to maintain a pesticide discharge management plan (PDMP) in accordance with Part I C of this permit. The PDMP documents the operator's IPM practices.

The operator's IPM practices shall consider the following for each pesticide use pattern:

(Note: If the operator's discharge of pollutants results from the application of a pesticide that is being used solely for the purpose of "pesticide research and development," as defined in 9VAC25-800-10, the operator is only required to fully implement IPM practices to the extent that the requirements do not compromise the research design.)

(1) Mosquito and other flying insect pest control. This subpart applies to discharges resulting from the application of pesticides to control public ~~health/nuisance~~ health, nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target pests;

(ii) Establish densities for pest populations or identify environmental conditions, either current or based on historical data, to serve as action thresholds for implementing pest management measures;

(iii) Identify known breeding sites for source reduction, larval control program, and habitat management;

(iv) Analyze existing surveillance data to identify new or unidentified sources of pest problems as well as sites that have recurring pest problems; and

(v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in ~~subdivision~~ Part I A 1 b (1) (a) ~~above~~.

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective pest management measures that minimize discharges resulting from application of pesticides to control mosquitoes or other flying insect pests. In developing these pest management measures, the operator shall evaluate the following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Cultural methods;

(v) Biological control; and

(vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage mosquitoes or flying insect pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct larval or adult surveillance in an area that is representative of the pest problem or evaluate existing larval surveillance data, environmental conditions, or data from adjacent areas prior to each pesticide application to assess the pest management area and to determine when the action threshold is met;

(ii) Reduce the impact on the environment and on nontarget organisms by applying the pesticide only when the action threshold has been met;

(iii) In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when larval action thresholds have been met; and

(iv) In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control when adult action thresholds have been met.

(2) Weed and algae pest control. This subpart applies to discharges resulting from the application of pesticides to control weeds, algae, and pathogens that are pests in surface waters.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target pests;

(ii) Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);

(iii) Identify possible factors causing or contributing to the pest problem (e.g., nutrients, invasive species, etc.);

(iv) Establish past or present pest densities to serve as action thresholds for implementing pest management strategies; and

(v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in ~~subdivision~~ Part I A 1 b (2) (a) ~~above~~.

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement, for each pest management area, efficient and effective pest management measures that minimize discharges resulting from application of pesticides to control pests. In developing these pest management measures, the operator shall evaluate the following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Cultural methods;

(v) Biological control; and

(vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application to assess the pest management area and to determine when the action threshold is met that necessitates the need for pest management; and

(ii) Reduce the impact on the environment and nontarget organisms by applying the pesticide only when the action threshold has been met.

(3) Animal pest control. This subpart applies to discharges resulting from the application of pesticides to control animal pests in surface waters.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target pests;

(ii) Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);

(iii) Identify possible factors causing or contributing to the problem (e.g., nutrients and invasive species);

(iv) Establish past or present pest densities to serve as action thresholds for implementing pest management strategies; and

(v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in ~~subdivision~~ Part I A 1 b (3) (a) ~~above~~.

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each year thereafter prior to the first pesticide application during that calendar year, the operator shall select and implement, for each pest management area, efficient and effective pest management measures that minimize discharges resulting from application of pesticides to control animal pests. In developing these pest management measures, the operator shall evaluate the following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Biological control; and

(v) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage animal pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct surveillance prior to each application to assess the pest management area and to determine when the action threshold is met that necessitates the need for pest management; and

(ii) Reduce the impact on the environment and nontarget organisms by evaluating site restrictions, application timing, and application method in addition to applying the pesticide only when the action threshold has been met.

(4) Forest canopy pest control. This subpart applies to discharges resulting from the application of pesticides to the forest canopy to control the population of a pest species where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to surface waters.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target pests;

(ii) Establish target pest densities to serve as action thresholds for implementing pest management measures;

(iii) Identify current distribution of the target pest and assess potential distribution in the absence of pest management measures; and

(iv) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in ~~subdivision~~ Part I A 1 (b) (4) (a) ~~above~~.

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective pest management measures that minimize discharges resulting from application of pesticides to control forestry pests. In developing these pest management measures, the operator shall evaluate the following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Cultural methods;

(v) Biological control; and

(vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage forestry pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct surveillance prior to each application to assess the pest management area and to determine when the pest action threshold is met that necessitates the need for pest management;

(ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in the treatment area to identify conditions that support target pest development and are conducive for treatment activities;

(iii) Reduce the impact on the environment and nontarget organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action thresholds have been met; and

(iv) Evaluate using pesticides against the most susceptible developmental stage.

(5) Intrusive vegetation pest control. This subpart applies to discharges resulting from the application of pesticides along roads, ditches, canals, waterways, and utility rights of way where, to target the intrusive pests effectively, a portion of the pesticide will unavoidably be applied over and deposited to surface waters.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target pests;

(ii) Establish target pest densities to serve as action thresholds for implementing pest management measures;

(iii) Identify current distribution of the target pest and assess potential distribution in the absence of pest management measures; and

(iv) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in ~~subdivision~~ Part I A 1 (b) (5) (a) ~~above~~.

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective pest management measures that minimize discharges resulting from application of pesticides to intrusive vegetation pests. In developing these pest management measures, the operator shall evaluate the following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Cultural methods;

(v) Biological control; and

(vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage intrusive vegetation pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct surveillance prior to each application to assess the pest management area and to determine when the pest action threshold is met that necessitates the need for pest management;

(ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in the treatment area to identify conditions that support target pest development and are conducive for treatment activities;

(iii) Reduce the impact on the environment and nontarget organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action thresholds have been met; and

(iv) Evaluate using pesticides against the most susceptible developmental stage.

2. Water quality-based effluent limitations. The operator's discharge of pollutants must be controlled as necessary to meet applicable numeric and narrative water quality standards for any discharges authorized under this permit, with compliance required upon beginning such discharge.

If at any time the operator become aware, or the board determines, that the operator's discharge of pollutants causes or contributes to an excursion of applicable water quality standards, corrective action must be taken as required in Part I D 1 of this permit.

B. Monitoring requirements.

All operators covered under this permit must conduct a visual monitoring assessment (i.e., spot checks in the area to and around where pesticides are applied) for possible and observable adverse incidents caused by application of pesticides, including ~~but not limited to~~ the unanticipated death or distress of nontarget organisms and disruption of wildlife habitat, recreational, or municipal water use.

A visual monitoring assessment is only required during the pesticide application when feasibility and safety allow. For example, visual monitoring assessment is not required during the course of treatment when that treatment is performed in darkness as it would be infeasible to note adverse effects under these circumstances. Visual monitoring assessments of the application site must be performed:

1. During any post-application surveillance or efficacy check that the operator conducts, if surveillance or an efficacy check is conducted.

2. During any pesticide application, when considerations for safety and feasibility allow.

C. Pesticide discharge management plan (PDMP). Any operator applying pesticides and exceeding the annual application thresholds established in 9VAC25-800-30 C must prepare a PDMP for the pest management area. The plan must be kept up-to-date thereafter for the duration of coverage under this general permit, even if discharges subsequently fall

below the annual application threshold levels. The operator applying pesticides shall develop a PDMP consistent with the deadline outlined in Table I-1 below.

Table I-1. Pesticide Discharge Management Plan Deadline

Category	PDMP Deadline
Operators who know prior to commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.	Prior to first pesticide application covered under this permit.
Operators who do not know until after commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.	Prior to exceeding an annual treatment area threshold.
Operators commencing discharge in response to a declared pest emergency situation as defined in 9VAC25-800-10 that will cause the operator to exceed an annual treatment area threshold.	No later than 90 days after responding to declared pest emergency situation.

The PDMP does not contain effluent limitations; the limitations are contained in Parts I A 1 and I A 2 of the permit. The PDMP documents how the operator will implement the effluent limitations in Parts I A 1 and I A 2 of the permit, including the evaluation and selection of pest management measures to meet those effluent limitations and minimize discharges. In the PDMP, the operator may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If other documents are being relied upon by the operator to describe how compliance with the effluent limitations in this permit will be achieved, such as a pre-existing integrated pest management (IPM) plan, a copy of the portions of any documents that are being used to document the implementation of the effluent limitations shall be attached to the PDMP. The pest management measures implemented must be documented and the documentation must be kept up to date.

1. Contents of the pesticide discharge management plan. The PDMP must include the following elements:

a. Pesticide discharge management team;

b. Problem identification;

c. Pest management options evaluation;

d. Response procedures:

(1) Spill response procedures;

(2) Adverse incident response procedures; and

e. Signature requirements.

2. PDMP team. The operator shall identify all the persons (by name and contact information) who compose the team as well as each person's individual responsibilities, including:

a. Persons responsible for managing pests in relation to the pest management area;

b. Persons responsible for developing and revising the PDMP; and

c. Persons responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements.

3. Problem identification. The operator shall document the following:

a. Pest problem description. Describe the pest problem at the pest management area, including identification of the target pests, sources of the pest problem, and sources of data used to identify the problem in ~~Parts~~ Part I A 1 b (1)~~, I A 1 b (2), I A 1 b (3), I A 1 b (4) and I A 1~~ through b (5).

b. Action thresholds. Describe the action thresholds for the pest management area, including how they were determined.

c. General location map. Include a general location map that identifies the geographic boundaries of the area to which the plan applies and location of major surface waters.

4. Integrated pest management options evaluation. Operators shall document the evaluation of the pest management options, including a combination of the pest management options, to control the target pests. Pest management options include the following: no action, prevention, ~~mechanical/physical~~ mechanical or physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, decision makers shall consider the impact to water quality, impact to nontarget organisms, feasibility, cost effectiveness, and any relevant previous pest management measures.

5. Response procedures. Document the following procedures in the PDMP:

a. Spill response procedures. At a minimum the PDMP must have:

(1) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to surface waters. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and

have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.

(2) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.

b. Adverse incident response procedures. At a minimum the PDMP must have:

(1) Procedures for responding to any incident resulting from pesticide applications; and

(2) Procedures for notification of the incident, both internal to the operator's agency or organization and external. Contact information for DEQ, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

6. PDMP signature requirements.

a. The PDMP, including changes to the PDMP to document any corrective actions taken as required by Part I D 1, and all reports submitted to the department must be signed by a person described in Part II G 1 or by a duly authorized representative of that person described in Part II G 2.

b. All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.

c. Any person signing documents in accordance with ~~subdivision~~ Part I C 6 a ~~above~~ must include the certification from Part II G 4.

7. PDMP modifications and availability.

a. PDMP modifications. The operator shall modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in Part I D 1 a, or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, as soon as possible thereafter. The revised PDMP must be signed and dated in accordance with Part II G.

The operator shall review the PDMP at a minimum once per calendar year and whenever necessary to update the pest problem identified and pest management strategies evaluated for the pest management area.

b. PDMP availability. The operator shall retain a copy of the current PDMP, along with all supporting maps and documents. The operator shall make the PDMP and supporting information available to the department upon request. The PDMP is subject to the provisions and exclusions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

D. Special conditions.

1. Corrective action.

a. Situations requiring revision of pest management measures. If any of the following situations occur, the operator shall review and, as necessary, revise the evaluation and selection of pest management measures to ensure that the situation is eliminated and will not be repeated in the future:

(1) An unauthorized release or discharge associated with the application of pesticides occurs (e.g., spill, leak, or discharge not authorized by this or another VPDES permit);

(2) The operator becomes aware, or the board concludes, that the pest management measures are not adequate or sufficient for the discharge of pollutants to meet applicable water quality standards;

(3) Any monitoring activities indicate that the operator failed to meet the technology-based effluent limitations in Part I A 1 a of this permit;

(4) An inspection or evaluation of the operator's activities by DEQ, VDACS, EPA, or a locality reveals that modifications to the pest management measures are necessary to meet the non-numeric effluent limits in this permit; or

(5) The operator observes (e.g., during visual monitoring that is required in Part I B) or is otherwise made aware of an adverse incident.

b. Corrective action deadlines. If the operator determines that changes to the pest management measures are necessary to eliminate any situation identified in Part I D 1 a, such changes must be made before the next pesticide application that results in a discharge if practicable, or if not, as soon as possible thereafter.

2. Adverse incident documentation and reporting.

a. Twenty-four-hour adverse incident notification. If the operator observes or is otherwise made aware of an adverse incident that may have resulted from a discharge from the operator's pesticide application, the operator shall immediately notify the department (see Part I D 5). This notification must be made within 24 hours of when the operator becomes aware of the adverse incident and must include at least the following information:

(1) The caller's name and telephone number;

(2) Operator's name and mailing address;

(3) The name and telephone number of a contact person if different than the person providing the 24-hour notice;

(4) How and when the operator became aware of the adverse incident;

(5) Description of the location of the adverse incident;

(6) Description of the adverse incident identified and the EPA pesticide registration number for each product that was applied in the area of the adverse incident; and

(7) Description of any steps the operator has taken or will take to correct, repair, remedy, cleanup, or otherwise address any adverse effects.

If the operator is unable to notify the department within 24 hours, notification shall be made as soon as possible and the rationale for why the notification was not possible within 24 hours shall be provided.

The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA § 6(a)(2) and its implementing regulations at 40 CFR Part 159.

b. Reporting of adverse incidents is not required under this permit in the following situations:

(1) The operator is aware of facts that clearly establish that the adverse incident was not related to toxic effects or exposure from the pesticide application.

(2) The operator has been notified in writing by the board that the reporting requirement has been waived for this incident or category of incidents.

(3) The operator receives notification of a potential adverse incident but that notification and supporting information are clearly erroneous.

(4) An adverse incident occurs to pests that are similar in kind to pests identified as potential targets.

c. Five-day adverse incident written report. Within five days of a reportable adverse incident pursuant to Part I D 2 a, the operator shall provide a written report of the adverse incident to the appropriate DEQ regional office at the address listed in Part I D 5. The adverse incident report must include at least the following information:

(1) Information required to be provided in Part I D 2 a;

(2) Date and time the operator contacted DEQ notifying the department of the adverse incident, and with whom the operator spoke at DEQ, and any instructions the operator received from DEQ;

(3) Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc.);

(4) A description of the circumstances of the adverse incident including species affected, estimated number of individuals, and approximate size of dead or distressed organisms;

(5) Magnitude and scope of the affected area (e.g., aquatic square area or total stream distance affected);

(6) Pesticide application rate, intended use site, method of application, and name of pesticide product, description of pesticide ingredients, and EPA registration number;

(7) Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);

(8) If laboratory tests were performed, indicate what tests were performed, and when, and provide a summary of the test results within five days after they become available;

(9) If applicable, explain why it is believed the adverse incident could not have been caused by exposure to the pesticide;

(10) Actions to be taken to prevent recurrence of adverse incidents; and

(11) Signed and dated in accordance with Part II G.

The operator shall report adverse incidents even for those instances when the pesticide labeling states that adverse effects may occur.

d. Adverse incident to threatened or endangered species or critical habitat.

(1) Notwithstanding any of the other adverse incident notification requirements of this section, if the operator becomes aware of an adverse incident to threatened or endangered species or critical habitat that may have resulted from a discharge from the operator's pesticide application, the operator shall immediately notify the:

(a) National Marine Fisheries Service (NMFS) and the Virginia Department of Game and Inland Fisheries (DGIF) in the case of an anadromous or marine species;

(b) U.S. Fish and Wildlife Service (FWS) and the DGIF in the case of an animal or invertebrate species; or

(c) FWS and the Virginia Department of Agriculture and Consumer Services in the case of plants or insects.

(2) Threatened or endangered species or critical habitats include the following:

(a) Federally listed threatened or endangered species;

(b) Federally designated critical habitat;

(c) State-listed threatened or endangered species; and

(d) Tier I (critical conservation need)~~,~~ or Tier II (very high conservation need) species of greatest conservation need (SGCN) as defined in Virginia's Wildlife Action Plan (http://lis.virginia.gov/000/noc/www.bewildvirginia.org).

(3) This notification must be made by telephone immediately upon the operator becoming aware of the adverse incident and must include at least the following information:

(a) The caller's name and telephone number;

(b) Operator's name and mailing address;

(c) The name of the affected species, size of area impacted, and if applicable, the approximate number of animals affected;

(d) How and when the operator became aware of the adverse incident;

(e) Description of the location of the adverse incident;

(f) Description of the adverse incident, including the EPA pesticide registration number for each product the operator applied in the area of the adverse incident;

(g) Description of any steps the operator has taken or will take to alleviate the adverse impact to the species; and

(h) Date and time of application. Additional information on federally listed threatened or endangered species and federally designated critical habitat is available from NMFS (http://lis.virginia.gov/000/noc/www.nmfs.noaa.gov) for anadromous or marine species or FWS (http://lis.virginia.gov/000/noc/www.fws.gov) for terrestrial or freshwater species. Additional information on state-listed threatened or endangered wildlife species is available through the Virginia Fish and Wildlife Information Service (http://www.dgif.virginia.gov/). Listing of state threatened or endangered plants and insects can be found in §§ 3.2-1000 through 3.2-1011 of the Code of Virginia and 2VAC5-320-10 of the Virginia Administrative Code (both the Code of Virginia and the Virginia Administrative Code must be referenced in order to obtain the complete plant and insect list). (Contact information for these agencies can be found on the contact information form or through the DEQ website.)

3. Reportable spills and leaks.

a. Spill, leak, or other unauthorized discharge notification. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 117, or 302 occurs in any 24-hour period, the operator shall notify the department (see Part I D 2) as soon as the operator has knowledge of the release. Department contact information must be kept in locations that are readily accessible and available in the area where a spill, leak, or other unpermitted discharge may occur.

b. Five-day spill, leak, or other unauthorized discharge report. Within five days of the operator becoming aware of a spill, leak, or other unauthorized discharge triggering the notification in subdivision 3 of this subsection, the operator shall submit a written report to the appropriate DEQ regional office at the address listed in Part I D 5. The report shall contain the following information:

(1) A description of the nature and location of the spill, leak, or discharge;

(2) The cause of the spill, leak, or discharge;

(3) The date on which the spill, leak, or discharge occurred;

(4) The length of time that the spill, leak, or discharge continued;

(5) The volume of the spill, leak, or discharge;

(6) If the discharge is continuing, how long it is expected to continue and what the expected total volume of the discharge will be;

(7) A summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and

(8) Any steps planned or taken to prevent recurrence of such a spill, leak, or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

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

The board may waive the written report on a case-by-case basis for reports of noncompliance if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

4. Recordkeeping and annual reporting. The operator shall keep records as required in this permit. These records must be accurate, complete, and sufficient to demonstrate compliance with the conditions of this permit. The operator can rely on records and documents developed for other obligations, such as requirements under FIFRA and state or local pesticide programs, provided all requirements of this permit are satisfied. The board recommends that all operators covered under this permit keep records of acres or linear miles treated for all applicable use patterns covered under this general permit.

a. All operators must keep the following records:

(1) A copy of any adverse incident reports (see Part I D 2 c).

(2) The operator's rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Part I D 2 b.

b. Any operator performing the application of a pesticide or who has day-to-day control of the application and exceeding the annual application thresholds established in 9VAC25-800-30 C must also maintain a record of each pesticide applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

(1) Name, address, and telephone number of customer and address or location, if different, of site of application;

(2) Name and VDACS certification number of the person making the application or certification number of the supervising certified applicator;

(3) Day, month, and year of application;

(4) Type of plants, crop, animals, or sites treated and principal pests to be controlled;

(5) Acreage, area, or number of plants or animals treated;

(6) Brand name or common product name;

(7) EPA registration number;

(8) Amount of pesticide concentrate and amount of diluting used, by weight or volume, in mixture applied; and

(9) Type of application equipment used.

c. All required records must be assembled as soon as possible but no later than 30 days following completion of such activity. The operator shall retain any records required under this permit for at least three years from the date of the pesticide application. The operator shall make available to the board, including an authorized representative of the board, all records kept under this permit upon request and provide copies of such records, upon request.

d. Annual reporting.

(1) Any operator applying pesticides that reports an adverse incident as described in Part I D 2 must submit an annual report to the department no later than February 10 of the following year (and retain a copy for the operator's records).

(2) The annual report must contain the following information:

(a) Operator's name;

(b) Contact person name, title, email address (where available), and phone number;

(c) A summary report of all adverse incidents that occurred during the previous calendar year; and

(d) A summary of any corrective actions, including spill responses, in response to adverse incidents, and the rationale for such actions.

5. DEQ contact information and mailing addresses.

a. All incident reports under Part I D 2 must be sent to the appropriate DEQ regional office within five days of the operator becoming aware of the adverse incident.

b. All other written correspondence concerning discharges must be sent to the address of the appropriate DEQ regional office listed in Part I D 5 c.

NOTE: The immediate (within 24-hours) reports required in Part I D 2 may be made to the department's regional office. Reports may be made by telephone, fax, or online (http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx). For reports outside normal working hours, leave a message, and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

c. DEQ regional office addresses.

~~(1) Blue Ridge Regional Office - Lynchburg (BRRO-L)~~

~~7705 Timberlake Road~~

~~Lynchburg, VA 24502~~

~~(434) 582-5120~~

~~(2)~~ (1) Blue Ridge Regional Office ~~- Roanoke (BRRO-R)~~ (BRRO)

3019 Peters Creek Road

Roanoke, VA 24019

(540) 562-6700

~~(3)~~ (2) Northern Virginia Regional Office (NVRO)

13901 Crown Court

Woodbridge, VA 22193

(703) 583-3800

~~(4)~~ (3) Piedmont Regional Office (PRO)

4949-A Cox Road

Glen Allen, VA 23060

(804) 527-5020

~~(5)~~ (4) Southwest Regional Office (SWRO)

355 Deadmore St.

P.O. Box 1688

Abingdon, VA 24212

(276) 676-4800

~~(6)~~ (5) Tidewater Regional Office (TRO)

5636 Southern Blvd.

Virginia Beach, VA 23462

(757) 518-2000

~~(7)~~ (6) Valley Regional Office (VRO)

4411 Early Road

Mailing address: P.O. Box 3000

Harrisonburg, VA 22801

(540) 574-7800

Part II
Conditions Applicable to all VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The ~~individual(s)~~ individuals who performed the sampling or measurements;

c. The ~~date(s)~~ dates and ~~time(s)~~ times analyses were performed;

d. The ~~individual(s)~~ individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and copies of all reports required by this permit for a period of at least three years from the date that coverage under this permit expires. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the board.

C. Reporting monitoring results. Monitoring results under this permit are not required to be submitted to the department. However, should the department request that the operator submit monitoring results, the following subdivisions would apply.

1. The operator shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved, or specified by the department.

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

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

D. Duty to provide information. The operator shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for ~~modifying, revoking and reissuing, or~~ terminating coverage under this permit or to determine compliance with this permit. The board may require the operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from ~~his~~ the permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The operator shall also furnish to the department, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

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

2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, recreation, or other uses.

G. Signature requirements.

1. The PDMP, including changes to the PDMP to document any corrective actions taken as required by Part I D 1, and all reports submitted to the department must be signed by a person described in this subsection or by a duly authorized representative of that person described in subdivision 2 of this subsection.

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

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit or the agency.

2. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in subdivision 1 of this subsection;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated activity such as the position of superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The signed and dated written authorization is included in the PDMP. A copy of this authorization must be submitted to the department if requested.

3. All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.

4. Any person signing documents in accordance with subdivision 1 or 2 of this subsection must include the following certification:

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

H. Duty to comply. The operator shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the federal Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action~~;~~, for permit coverage termination, ~~revocation and reissuance, or modification;~~ or denial of ~~a~~ permit coverage renewal ~~application~~.

The operator shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.

I. Duty to reapply. ~~1.~~ If the operator wishes to continue an activity regulated by this permit after the expiration date of this permit, ~~and the operator does not qualify for automatic permit coverage renewal, the operator shall submit a registration statement at least 30 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later~~

~~than the expiration date of the existing~~ the operator must have coverage under a new permit.

~~2. An operator qualifies for automatic permit coverage renewal and is not required to submit a registration statement if:~~

~~a. The operator information has not changed since this general permit went into effect on October 31, 2011; and~~

~~b. The board has no objection to the automatic permit coverage renewal for this operator based on performance issues or enforcement issues. If the board objects to the automatic renewal, the operator will be notified in writing.~~

~~Any operator that does not qualify for automatic permit coverage renewal shall submit a new registration statement in accordance with Part II I 1.~~

J. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state, or local law or regulations.

K. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Nothing in this permit shall be construed to relieve the operator from civil and criminal penalties for noncompliance.

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

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

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

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

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

Q. Inspection and entry. The operator shall allow the director, or an authorized representative (including an authorized contractor acting as a representative of the director), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the operator premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours~~, and~~ or whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

R. Permit actions. ~~Permits~~ Permit coverage may be ~~modified, revoked and reissued, or~~ terminated for cause. The filing of a request by the operator for a permit ~~modification, revocation and reissuance,~~ termination~~,~~ or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

S. Transfer of ~~permits~~ permit coverage. Permits are not transferable to any person except after notice to the department. The transfer of permit coverage under this pesticide general permit is not anticipated since coverage is automatic where an operator meets the permit eligibility requirements.

~~Coverage under this permit may be automatically transferred to a new operator if:~~

~~1. The current operator notifies the department at least 30 days in advance of the proposed transfer of the title to the~~

~~facility or property unless permission for a later date has been granted by the board;~~

~~2. The notice includes a written agreement between the existing and new operator's containing a specific date for transfer of permit responsibility, coverage, and liability between them; and~~

~~3. The board does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subdivision 2 of this subsection.~~

T. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

VA.R. Doc. No. R17-5142; Filed December 21, 2018, 11:57 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: **9VAC25-890. General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems.**

Contact Information: Gary E. Graham, Regulatory Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4103, or email gary.graham@deq.virginia.gov.

FORMS (9VAC25-890)

~~Application Form 1 — General Information, Consolidated Permits Program, EPA Form 3510-1 (eff. 8/1990)~~

MS4 Nutrient Credit Acquisition Form, MS4-SCAFv1 (eff. 9/2018)

MS4 Sediment Credit Acquisition Form, MS4-SCAFv1 (eff. 9/2018)

VA.R. Doc. No. R19-5788; Filed December 20, 2018, 10:50 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Proposed Regulation

Title of Regulation: **12VAC30-120. Waivered Services (adding 12VAC30-120-600 through 12VAC30-120-690).**

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: March 22, 2019.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, 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 the Department of Medical Assistance Services (DMAS) 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.

Item 306 JJJ 3 of Chapter 780 of the 2016 Acts of the Assembly and Item 306 JJJ 3 of Chapter 836 of the 2017 Acts of Assembly direct the agency to "include all remaining Medicaid populations and services, including long-term care and home- and community-based waiver services into cost-effective, managed and coordinated delivery systems. . . DMAS shall promulgate regulations to implement these provisions within 280 days of its enactment."

DMAS promulgated emergency regulations, which are currently in place, and these proposed regulations follow the emergency regulations.

Purpose: The General Assembly directed DMAS to transition individuals from the fee-for-service delivery model into the managed care model to achieve high quality care and budget predictability. Managed care offers better care coordination and integration of care, which can address rising health care costs and the growing population eligible for Medicaid. This regulatory action is essential to protect the health, safety, and welfare of citizens who are receiving Medicaid long-term services and supports (LTSS) by enabling them to receive high quality care and care coordination services.

Substance: Under the policy that was in effect prior to the Commonwealth Coordinated Care (CCC) Plus emergency

regulations, individuals receiving LTSS were served primarily under the fee-for-service system. The fee-for-service system lacks comprehensive care coordination, the flexibility to provide innovative benefit plans and value-based payment strategies, and budget predictability. Spending trends for LTSS were unsustainable.

Consistent with Virginia General Assembly and Medicaid reform initiatives, DMAS is transitioning individuals from fee-for-service delivery models into managed care.

The CCC Plus program includes many of the core program values from the Commonwealth Coordinated Care Program (CCC). CCC launched in March 2014 and is a Centers for Medicare and Medicaid Services (CMS) Medicare-Medicaid Financial Alignment Demonstration. CCC operates as a voluntary managed care program with three health plans and includes a strong, person-centered care coordination component, integration with an array of provider types for continuity of care, ongoing stakeholder participation, outreach and education, and the ability for innovation to meet the needs of the population. The CCC demonstration operated through December 31, 2017. CCC populations will transition to CCC Plus effective January 1, 2018.

DMAS has worked collaboratively with stakeholders over the past two years on every aspect of the CCC Plus program development, including the program design, model of care, CMS waiver, the request for proposal (RFP) content, and the CCC Plus managed care contract development.

CCC Plus launched in phases across six regions of the Commonwealth as shown in the table provided. The final implementation phase occurs in January 2018 and will include individuals transitioning from CCC as well as aged, blind, and disabled (ABD) populations from Medallion 3.0. The third column of the table (i.e., Enrolled Regional Launch Populations as of Dec. 8, 2017) reflects the population totals by month of implementation. The far right column of the table (i.e., Total Populations by Region as of Jan. 2018) reflects the populations enrolled in CCC Plus by region as of January 2018, including populations transitioning from CCC and Medallion 3.0.

CCC Plus Enrollment By Region* and Launch Date

Date	Regions	Enrolled Regional Launch Populations as of Dec. 8, 2017	Total Populations by Region as of Jan. 2018 (Includes CCC and ABD)
August 1, 2017	Tidewater	20,422	46, 811
September 1, 2017	Central	23,027	52,698
October 1, 2017	Charlottesville/Western	16,634	30,114
November 1, 2017	Roanoke/Alleghany	11,214	26,014
November 1, 2017	Southwest	12,207	21,767
December 1, 2017	Northern/Winchester	25,799	39,447
January 2018	CCC Demonstration	22,586	
January 2018	ABD from Medallion 3.0)	79,191	
Total	All Regions	211,080	216,851

*Represents the total anticipated population by region including CCC demo and ABD transition from Medallion 3.0

Virginia's managed long-term services and supports efforts are consistent with national trends. Many states are moving LTSS into managed care programs and toward payment or outcome driven delivery models because (i) LTSS spending trends are unsustainable, (ii) managed care offers flexibility not otherwise available through fee-for-service, and (iii) there is an emphasis on care coordination and integration of care.

Issues: The primary advantages to Medicaid members and the Commonwealth are achieving high quality long-term services and supports and budget predictability. Managed care offers better care coordination and integration of care, which can address rising health care costs and the growing population eligible for Medicaid. There are no disadvantages to the public, the agency, or the Commonwealth.

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 permanently adopt emergency regulations that establish Commonwealth Coordinated Care Plus (CCC Plus).

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

Estimated Economic Impact. The 2016 Acts of Assembly, Chapter 780, Item 306.JJJ (3)[1] and the 2017 Acts of

Assembly, Chapter 836, Item 306.JJJ (3)[2] directed the Department of Medical Assistance Services (DMAS) to transition individuals receiving long-term services and supports (LTSS) from the fee-for-service delivery model into the managed care model. In order to achieve that goal, DMAS implemented emergency regulations establishing CCC Plus.[3] The fee-for-service model is a payment method in which doctors and other health care providers are paid separately for each service performed. In the managed care model, a fixed fee is paid to a managed care organization per person per month regardless of that person's individual use of services.

The CCC Plus program includes many of the core program values from the Commonwealth Coordinated Care program (CCC). CCC launched in March 2014 as a voluntary participation managed care program with three health plans. CCC Plus started on June 16, 2017 in phases across six regions of the Commonwealth. The final implementation phase occurred in January 2018 and included individuals transitioning from CCC as well as aged, blind, and disabled populations from the Medallion 3.0 managed care program. Enrollment into CCC Plus is required for qualifying populations. As of June 26, 2018, 207,448 individuals receiving LTSS have transitioned from the fee-for-service delivery model into the managed care model.

All programs authorized under section 1915(b) of the Social Security Act waiver authority, which this program is, must at least be budget neutral (no new costs). There are no additional projected costs related to implementing CCC Plus. This change is projected to shift $2,644,980,037 from calendar year 2018 fee-for-service expenditures into the CCC Plus managed care expenditures. Also, $1,286,348,313 is projected to shift into CCC Plus from other managed care programs. The total CCC Plus expenditures for calendar year 2018 is projected to be $3,931,328,350, which represents a budget neutral change.

While the overall expenditures are projected to remain the same, the providers receiving these funds will likely be different. However, the network of providers in the fee-for-service and managed care delivery models generally overlap to some degree. Thus, some providers will likely be affected more than others, depending on whether they are in the CCC Plus managed care network.

CCC Plus is also expected to benefit LTSS recipients. According to DMAS, managed care offers care coordination and integration of care, which leads to better health outcomes and lower health care costs. Additionally, CCC Plus managed care organizations have the flexibility to provide innovative benefit plans and value based payment strategies that are not available under the fee-for-service delivery model. For example, coverage in CCC Plus can include dental and vision services as well as gym membership, and DMAS can withhold a portion of capitation payments if certain quality benchmarks are not met.

Another expected benefit is improved budget predictability. Under the fee-for-service model, the Commonwealth retains all financial risk associated with expenditure fluctuations due to changes in utilization per recipient. Under the managed care model, managed care organizations assume that risk because the capitation payment they receive remains the same regardless of the utilization at the individual recipient level.

Finally, DMAS notes that Virginia's managed long-term services and supports efforts are consistent with national trends. Many states are moving LTSS into managed care programs and toward payment/outcome driven delivery models because (i) LTSS spending trends are unsustainable; (ii) managed care offers flexibility not otherwise available through fee-for-service; and (iii) there is an emphasis on care coordination/integration of care.

Businesses and Entities Affected. There are six managed care organizations contracted to implement CCC Plus. These organizations are: Aetna Better Health of Virginia, Anthem Health Keepers Plus, Magellan Complete Care of Virginia, Optima Health Community Care, UnitedHealthCare, and Virginia Premier Elite Plus. These managed care organizations have contracts with qualified providers of medical, long-term care and behavioral health services. Individuals enrolled in CCC Plus are already eligible for Medicaid (no new Medicaid eligibility standards have been created through this regulation); roughly half will also have Medicare; most will utilize long-term care services, most will be over 21, and most will be considered aged, blind or disabled. This population typically makes up roughly 30 percent of the current Medicaid population. As of June 26, 2018, 207,448 individuals receiving LTSS have transitioned from the fee-for-service delivery model into the managed care model.

Localities Particularly Affected. The CCC plus program does not particularly affect any locality.

Projected Impact on Employment. The impact on total employment is uncertain. DMAS plans redirecting any administrative staff savings from implementation of CCC Plus toward improving health care outcomes and efficiencies through monitoring managed care organizations. Managed care organizations would likely increase their demand for labor to manage long-term care needs of over 207,000 individuals. An efficient management of long-term care needs of over 207,000 individuals may reduce the demand for health care services and providers.

Effects on the Use and Value of Private Property. Generally, a positive impact on asset values of the six managed care organizations and long-term care providers partnering with the six managed care organizations may be expected due to likely increase in demand for their services. Conversely, a negative impact on asset values of fee-for-service long-term care providers that would no longer serve CCC Plus population should be 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. The effects of CCC Plus on small business long-term care providers that are in and out of the network of six managed care organizations are the same as stated above.

Alternative Method that Minimizes Adverse Impact. There is no known alternative method that minimizes the adverse impact on out-of-managed-care-network small businesses while accomplishing the same goal.

Adverse Impacts:

Businesses. The proposed CCC Plus program may reduce the demand for services of those businesses that are outside the network of six managed care organizations contracted.

Localities. The proposed regulation does not adversely affect localities.

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

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[1]https://budget.lis.virginia.gov/item/2016/1/HB30/Chapter/1/306/

[2]https://budget.lis.virginia.gov/item/2017/1/HB1500/Chapter/1/306/

[3]http://townhall.virginia.gov/l/ViewStage.cfm?stageid=7845

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and concurs with this analysis.

Summary:

The proposed regulatory action establishes Commonwealth Coordinated Care Plus, the new statewide Medicaid managed long-term services and supports program servicing individuals with complex care needs through an integrated delivery system model across the full continuum of care. The proposed provisions address (i) eligibility and process for enrollment in the program; (ii) covered services; (iii) responsibilities of a managed care organization (MCO) providing covered services; (iv) requirements for continuity of care; (v) payment rates for MCOs; (vi) enrollee appeal and state fair hearing processes; and (vii) provider appeals.

12VAC30-120-600. Definitions.

The following words and terms when used in this section and 12VAC30-120-610 through 12VAC30-120-690 shall have the following meanings unless the context clearly indicates otherwise:

"Adverse action" means the denial, suspension, or reduction in services or the denial or retraction, in whole or in part, of payment for a service that has already been rendered.

"Adverse benefit determination" means, consistent with 42 CFR 438.400, a determination by the participating plan, subcontractor, service provider, or Virginia Department of Medical Assistance Services that constitutes a (i) denial or limited authorization of a service authorization request, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit; (ii) reduction, suspension, or termination of a previously authorized service; (iii) failure to act on a service request; (iv) denial in whole or in part of a payment for a service; (v) failure by the participating plan to render a decision within the required timeframes; (vi) failure to provide services in a timely manner; (vii) denial of an enrollee's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities; or (viii) denial of an enrollee's request to exercise the enrollee's right under 42 CFR 438.52(b)(2)(ii) to obtain services outside of the network.

"Appellant" means an applicant for or recipient of Medicaid benefits who seeks to challenge an adverse benefit determination taken by the participating plan, subcontractor, service provider, or DMAS regarding eligibility for services and payment determinations.

"Authorized representative" means the same as set forth in 12VAC30-110-1380 and 12VAC30-110-1390.

"Centers for Medicare and Medicaid Services" or "CMS" means the federal agency of the U.S. Department of Health and Human Services that is responsible for the administration of Titles XVIII, XIX, and XXI of the Social Security Act.

"Commonwealth Coordinated Care" or "CCC" means the program for the Virginia Medicare-Medicaid Financial Alignment Demonstration Model.

"Commonwealth Coordinated Care Plus program" or "CCC Plus" means the department's mandatory integrated care initiative for certain qualifying individuals, including dual eligible individuals and individuals receiving long-term services and supports (LTSS). The CCC Plus program includes individuals who receive services through nursing facility (NF) care or from four of the department's five home and community-based services (HCBS) § 1915(c) waivers (the Alzheimer's Assisted Living (AAL) Waiver individuals are not eligible for the CCC Plus program).

"Continuity of care period" means a set period of time during which the MCO shall ensure a seamless transition from Medicaid FFS, or from another MCO, for all members upon enrollment into a plan.

"Contractor" means a managed care health plan selected by DMAS and contracted to participate in the CCC Plus program.

"Covered services" means the set of required services offered by the participating plan.

"Department of Medical Assistance Services," "department," or "DMAS" means the Virginia Department of Medical Assistance Services, the single state agency for the Medicaid program in Virginia that is responsible for implementation and oversight of CCC Plus.

"Disenrollment" means the process of changing enrollment from one participating plan to another participating plan or the process of being excluded from CCC Plus by the department as described in 12VAC30-120-610.

"Division" or "Appeals Division" means the Appeals Division of the Department of Medical Assistance Services.

"Dual eligible" means a Medicare enrollee who receives Medicare Parts A, B, and D benefits and also receives full Medicaid benefits.

"Effective date" means the date on which a participating plan's coverage begins for an enrollee.

"Enrollee" means an individual who has enrolled in a participating plan to receive services under CCC Plus.

"Enrollee appeal" means an enrollee's request for review of an adverse benefit determination.

"Enrollment" means assignment of an individual to a health plan by the department in accordance with the terms of the contract with the participating plan. This does not include attaining eligibility for the Medicaid program.

"Enrollment broker" means an independent contractor that enrolls individuals in the contractor's plan and is responsible for the operation and documentation of a toll-free individual service helpline. The responsibilities of the enrollment broker include individual education and MCO enrollment and assistance with and tracking of individuals' complaints and their resolutions and may include individual marketing and outreach.

"Enrollment period" means the time that an enrollee is actually enrolled in a participating plan.

"Expedited appeal" means the process by which the participating plan must respond to an appeal by an enrollee if a denial of care decision and the subsequent internal appeal by a participating plan may jeopardize life, health, or ability to attain, maintain, or regain maximum function.

"External appeal" means an appeal, subsequent to the participating plan internal appeal or reconsideration decision, to the state fair hearing process (for a member appeal) or informal appeals process (for a provider appeal).

"Fee-for-service" or "FFS" means the traditional health care payment system in which physicians and other providers receive a payment for each service they provide.

"Final decision" means a written determination by a department hearing officer from an appeal of an informal evidentiary proceeding that is binding on the department, unless modified during or after the judicial process.

"Handbook" means a document prepared by the MCO and provided to the enrollee that is consistent with the requirements of 42 CFR 438.10 and the CCC Plus contract and includes information about all the services covered by that plan.

"Hearing" means an informal evidentiary proceeding conducted by a department hearing officer during which an enrollee has the opportunity to present the enrollee's concerns with or objections to the participating plan's internal appeal decision.

"Hearing officer" means an impartial decision maker who conducts evidentiary hearings for enrollee appeals on behalf of the department.

"Internal appeal" means a request to the MCO by a member, a member's authorized representative, or a provider acting on behalf of the member and with the member's written consent for review of a contractor's adverse benefit determination. The internal appeal is the only level of appeal with the MCO and must be exhausted by a member or deemed exhausted according to 42 CFR 438.408(c)(3) before the member may initiate a state fair hearing.

"Long-term services and supports" or "LTSS" means a variety of services and supports that (i) help elderly enrollees and enrollees with disabilities who need assistance to perform activities of daily living and instrumental activities of daily living to improve the quality of their lives and (ii) are provided over an extended period, predominantly in homes and communities, but also in facility-based settings such as nursing facilities.

"MCO" means a health plan selected to participate in Virginia's CCC Plus program. "MCO" means the same as "participating plan."

"Medicaid" means the program of medical assistance benefits under Title XIX of the Social Security Act.

"Medically necessary" or "medical necessity" means an item or service provided for the diagnosis or treatment of an enrollee's condition consistent with standards of medical practice and in accordance with Virginia Medicaid policy (12VAC30-130-600 et seq.) EPSDT criteria (for those

younger than 21 years of age) in accordance with 42 CFR 441 Subpart B (§§ 50 through 62), 42 CFR 438.210, and 42 CFR 440.230.

"Medicare" means Title XVIII of the Social Security Act, the federal health insurance program for people age 65 years or older, people younger than 65 years of age who have certain disabilities, and people with end stage renal disease or amyotrophic lateral sclerosis.

"Member" means the same as "enrollee."

"Network provider" means a doctor, hospital, or other health care provider that participates or contracts with a participating plan and, as a result, agrees to accept a mutually-agreed upon payment amount or fee schedule as payment in full for covered services that are rendered to eligible enrollees.

"Nursing facility" means any skilled nursing facility, skilled care facility, intermediate care facility, nursing care facility, or nursing facility, whether freestanding or a portion of a freestanding medical care facility, that is certified for participation as a Medicare or Medicaid provider, or both, pursuant to Title XVIII and Title XIX of the Social Security Act, as amended, and § 32.1-137 of the Code of Virginia.

"Participating plan" means the same as "MCO."

"Previously authorized" means, in relation to continuation of benefits, as described in 42 CFR 438.420, a prior approved course of treatment.

"Primary care provider" means a practitioner who provides preventive and primary medical care and certifies service authorizations and referrals for medically necessary specialty services. Primary care providers may include pediatricians, family and general practitioners, internists, obstetricians or gynecologists, geriatricians, specialists who perform primary care functions (such as surgeons), and clinics, including local health departments, federally qualified health centers, and rural health clinics.

"Program of All-Inclusive Care for the Elderly" or "PACE" means the program in which the PACE provider provides the entire spectrum of health services (preventive, primary, and acute) and long-term services and supports to its enrollees without limit as to duration or cost of services pursuant to 12VAC30-50-320 et seq.

"Provider appeal" means an appeal to the department filed by a Medicaid-enrolled or network service provider that has already provided a service to an enrollee and has received an adverse reconsideration decision regarding service authorization, payment, or audit result.

"Reconsideration" means a provider's request to the MCO for review of an adverse action related to service authorization or payment. The MCO's reconsideration decision is a prerequisite to a provider's filing of an appeal to the Appeals Division.

"Remand" means the return of a case by the department's hearing officer to the MCO for further review, evaluation, and action.

"Reverse" means to overturn the MCO's internal appeal decision and to direct that the MCO fully approve the amount, duration, and scope of requested services.

"Social Security Act" means the federal act, codified through Chapter 7 of Title 42 of the United States Code, that established social insurance programs including Medicare and Medicaid.

"State fair hearing" means the DMAS evidentiary hearing process as administered by the Appeals Division.

"Subcontractor" means an entity that has contracted with the contractor to perform part of the responsibilities within the CCC Plus program. All subcontractors shall be approved by DMAS.

"Sustain" means to uphold the MCO's appeal decision.

"Withdraw" means a written request from the enrollee or the enrollee's authorized representative for the department to terminate the enrollee appeal.

12VAC30-120-610. CCC Plus mandatory managed care enrollees; enrollment process.

A. The following individuals shall be enrolled in CCC Plus per the CCC Plus § 1915(b) waiver:

1. Dual eligible individuals with Medicare A or B coverage and full Medicaid coverage.

2. Individuals enrolled in the Commonwealth Coordinated Care (CCC) program will transition to CCC Plus in January 2018, which is after the CCC program ends.

3. Non-dual eligible individuals who receive long-term services and supports through an institution, the CCC Plus waiver (formerly known as the EDCD and Technology Assisted waivers), Building Independence waiver, Community Living waiver, and Family and Individual Supports waiver.

Those enrolled in the Building Independence, Community Living, and Family and Individual Supports waivers will continue to receive their LTSS including LTSS related transportation services through Medicaid fee-for-service.

4. Individuals enrolled in the department's Medallion Health and Acute Care Program (HAP), except individuals in the Alzheimer's Assisted Living (AAL) waiver; AAL is excluded from CCC Plus.

5. All individuals classified as aged, blind, or disabled (ABD) without Medicare and not receiving LTSS. The majority of these individuals are currently enrolled in Medallion and will transition to CCC Plus effective January 1, 2018.

6. Individuals who have any insurance purchased through the Health Insurance Premium Payment (HIPP) program, as defined in 12VAC30-20-205 and 12VAC30-20-210.

B. The following individuals shall be excluded from enrollment in CCC Plus:

1. Individuals enrolled in the Alzheimer's Assisted Living (AAL) waiver. However, individuals with Alzheimer's disease and persons with dementia will be included if they meet other eligibility requirements and are not enrolled in the AAL waiver. The AAL waiver will discontinue on June 30, 2018. At that time, individuals who were enrolled in the AAL waiver may become enrolled in the CCC Plus program if they meet the other eligibility requirements of the program.

2. Individuals enrolled in another DMAS managed care program (e.g., Medallion, FAMIS, and FAMIS MOMS).

3. Individuals enrolled in a PACE program.

4. Newborns whose mothers are CCC Plus enrollees on their date of birth.

5. Individuals who are in limited coverage groups, such as:

a. Dual eligible individuals without full Medicaid benefits, such as:

(1) Qualified Medicare beneficiaries;

(2) Special low-income Medicare beneficiaries;

(3) Qualified disabled working individuals; or

(4) Qualifying individuals for whom Medicaid pays the Part B premium.

b. Individuals enrolled in Plan First.

c. Individuals enrolled in the Governor's Access Plan.

6. Individuals enrolled in a Medicaid-approved hospice program at the time of enrollment. However, if an individual enters a hospice program while enrolled in CCC Plus, the member will remain enrolled in CCC Plus.

7. Individuals who live on Tangier Island.

8. Individuals younger than 21 years of age who are approved for DMAS psychiatric residential treatment center (RTC) Level C programs as defined in 12VAC30-130-860. Any individual admitted to an RTC Level C program for behavioral health services will be temporarily excluded from CCC Plus until after they are discharged. RTC Level C services may be transitioned to the CCC Plus program in the future.

9. Individuals with end stage renal disease (ESRD) and in fee-for-service at the time of enrollment will be automatically enrolled into CCC Plus but may request to be disenrolled and remain in fee-for-service. The department will exclude these individuals if requested by the member within the first 90 days of CCC Plus enrollment. However, a member who does not request an extension within the first 90 days of CCC Plus enrollment or who develops ESRD while enrolled in CCC Plus will remain in CCC Plus.

10. Individuals who are institutionalized in certain state and private intermediate care facility for individuals with intellectual disabilities (ICF/IID) and mental health facilities as specified in the CCC Plus contract. "Intermediate care facility for individuals with intellectual disabilities" or "ICF/IID" means a facility licensed by the Department of Behavioral Health and Developmental Services in which care is provided to intellectually disabled individuals who are not in need of skilled nursing care, but who need more intensive training and supervision than would be available in a rooming home, boarding home, or group home. Such facilities must comply with Title XIX standards, provide health or rehabilitative services, and provide active treatment to enrollees toward the achievement of a more independent level of functioning.

11. Individuals who are patients at nursing facilities operated by the Veterans Administration.

12. Individuals participating in the CMS Independence at Home (IAH) demonstration. However, IAH individuals may enroll in CCC Plus if they choose to disenroll from IAH.

13. Certain individuals in out-of-state placements as specified in the CCC Plus contract.

14. Individuals placed on spenddown. However, spenddown individuals are included if they are residing in a nursing home.

15. Individuals enrolled in the department's Money Follows the Person Demonstration project. "Money Follows the Person" means a demonstration project administered by DMAS that is designed to create a system of long-term services and supports that better enable enrollees to transition from certain long-term care institutions into the community.

16. Incarcerated individuals. Individuals on house arrest are not considered incarcerated.

17. All children enrolled in the Virginia Birth-Related Neurological Injury Compensation Program, established pursuant to Chapter 50 of Title 38.2 (§ 38.2-5000 et seq.) of the Code of Virginia, who shall maintain enrollment in Medicaid fee-for-service.

C. Enrollment in CCC Plus will be mandatory for eligible individuals. The department shall have sole authority and responsibility for the enrollment of individuals into the CCC Plus program and for excluding enrollees from CCC Plus.

D. There shall be no retroactive enrollment for CCC Plus.

E. The MCO shall notify the enrollee of enrollment in the MCO's plan through a letter submitted simultaneously with the handbook. Upon disenrollment from the plan, the MCO shall notify the enrollee through a disenrollment notice that coverage in the MCO's plan will no longer be effective.

F. The department reserves the right to revise the CCC Plus intelligent default assignment methodology (as described in subsection I of this section) as needed based upon DMAS sole discretion.

G. Eligible individuals as defined in subsection A of this section shall be enrolled in a CCC Plus contracted health plan through a CCC Plus intelligent assignment methodology as defined by DMAS in the CCC Plus contract.

1. The enrollee will be, at a minimum, notified of the enrollee's assigned MCO, right to select another CCC Plus MCO operating in the enrollee's locality, CCC Plus service begin date, and instructions for the individual or the individual's designee to contact DMAS or its enrollment broker to either:

a. Accept the assigned MCO; or

b. Select a different CCC Plus MCO that is operating in the individual's locality.

2. If an individual does not contact DMAS or its enrollment broker to accept the assigned MCO or select a different CCC Plus MCO operating in the individual's locality, the individual shall be enrolled into the assigned MCO.

3. For the initial 90 calendar days following the effective date of CCC Plus enrollment, the enrollee will be permitted to disenroll from one MCO and enroll in another without cause. This 90-day timeframe applies only to the enrollee's initial start date of enrollment in CCC Plus; it does not reset or apply to any subsequent enrollment periods. After the initial 90-day period following the initial enrollment date, the enrollee may not disenroll without cause until the next annual open enrollment period.

4. Open enrollment is a period of time when individuals are able to change from one MCO to another without cause.

a. Open enrollment will occur at least once every 12 months per 42 CFR 438.56(c)(2) and 42 CFR 438.56(f)(1). The open enrollment will occur during October through December with any changes to take effect the following January 1.

b. Within 60 days prior to the open enrollment effective date, the department will inform enrollees of the opportunity to remain with the current plan or change to another plan without cause. Those individuals who do not choose a new MCO during the open enrollment period shall remain in their current MCO until their next open enrollment effective date.

H. Individuals transferring from CCC and Medallion 3.0 (other than HAP as described in subdivision A 4 of this section) will transition with a CCC Plus service begin date of January 1, 2018. However, DMAS retains the authority to change this date if deemed necessary by DMAS or CMS. Individuals impacted by a delay will be notified of their new CCC Plus service begin date.

I. DMAS shall utilize an intelligent default assignment process to assign eligible individuals, other than the ABD populations described in subdivision A 5 of this section, to a CCC Plus MCO contracted to operate in their locality. If none of the criteria used in the intelligent default assignment process applies to an individual, the individual will be randomly assigned to a CCC Plus MCO operating in the individual's locality. The intelligent default assignment process will, at a minimum, take into account:

1. The individual's previous Medicare and Medicaid MCO enrollment within the past two months if known at the time of assignment; and

2. Which MCO the individual's current providers are contracted with. This may include the nursing facility an individual is residing in at the time of assignment, adult day health care for CCC Plus Waiver enrolled members, and an individual's private duty nursing provider.

J. Consistent with 42 CFR 438.56(d), DMAS must permit an enrollee to disenroll at any time for cause.

1. An enrollee may disenroll from the enrollee's current plan for the following reasons:

a. The enrollee moves out of the MCO's service area;

b. The MCO does not, because of moral or religious objections, cover the service the enrollee seeks;

c. The enrollee needs related services (e.g., a cesarean section and a tubal ligation) to be performed at the same time; not all related services are available within the provider network; and the enrollee's primary care provider or another provider determines that receiving the services separately would subject the individual to unnecessary risk;

d. The enrollee would have to change his residential, institutional, or employment supports provider based on that provider's change in status from an in-network to an out-of-network provider with the MCO and, as a result, the enrollee would experience a disruption in residence or employment; and

e. Other reasons as determined by DMAS, including poor quality of care, lack of access to services covered under this MCO, or lack of access to providers experienced in dealing with the enrollee's care needs.

2. The enrollee's request to change from one plan to another outside of open enrollment, or for cause request, may be submitted orally or in writing to the department as provided for in 42 CFR 438.56(d)(1) and cite the reasons why the enrollee wishes to disenroll from one plan and enroll in another. The department will review the request in accordance with cause for disenrollment criteria defined in 42 CFR 438.56(d)(2). The department will respond to "for cause" requests, in writing, within 15 business days of the department's receipt of the request. In accordance with 42 CFR 438.56(e)(2), if the department fails to make a determination by the first day of the second month following the month in which the enrollee files the request, the disenrollment request shall be considered approved and effective on the date of approval. Enrollees who are dissatisfied with the department's determination of the enrollee's request to disenroll from one plan and enroll in another for cause shall have the right to appeal through the state fair hearing process in 12VAC30-110.

K. CCC Plus eligible individuals who have been previously enrolled with a CCC Plus MCO and who regain eligibility for the CCC Plus program within 60 calendar days of the effective date of exclusion or disenrollment will be reassigned to the same MCO whenever possible and without going through the selection or assignment process.

12VAC30-120-620. MCO responsibilities; sanctions.

A. The MCO and any of its subcontractors shall abide by all CCC Plus contract requirements, including:

1. The MCO shall provide medically necessary covered services in accordance with the CCC Plus contract.

a. Each MCO and its subcontractors shall have in place and follow written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested be made by a health care professional who has appropriate clinical expertise in treating the member's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria for authorization decisions and shall consult with the requesting provider when appropriate.

b. In accordance with § 1932(f) of the Social Security Act (42 USC § 1396a-2), the contractor shall pay all in-network and out-of-network providers (including Native American health care providers) on a timely basis, consistent with the claims payment procedure described in 42 CFR 447.45 and 42 CFR 447.46 and § 1902(a)(37) of the Social Security Act, upon receipt of all clean claims, for covered services rendered to covered members who are enrolled with the contractor at the time the service was delivered. The MCO may deny claims in whole or in part for not meeting payment criteria established by the MCO.

c. Utilization review and audit. MCOs may perform utilization reviews and audits on their network providers. As a result of such a review or audit, an overpayment may be determined.

2. The MCO shall report data to DMAS per CCC Plus contract requirements, which includes data, claims reports, and quality studies performed by the MCO.

3. The MCO shall maintain records, including written policies and procedures, as required by the CCC Plus contract.

4. The MCO shall furnish such required information to DMAS, the Attorney General of Virginia or the Attorney General's authorized representative, or the State Medicaid Fraud Control Unit upon request and in the form requested.

5. The MCO shall meet standards specified in the CCC Plus contract for sufficiency of provider networks. In accordance with § 1915(b)(4) of the Social Security Act, 42 CFR 431.51, and 42 CFR 438.12b(1), the MCO does not have to contract with any willing provider.

6. The MCO shall conduct monthly checks to screen providers for exclusion.

7. The MCO shall require its providers and subcontractors to fully comply with federal requirements for disclosure of ownership and control, business transactions, and information for persons convicted of crimes against federal related health care programs, including Medicare, Medicaid, and CHIP programs, as described in 42 CFR 455 Subpart B.

8. In accordance with 42 CFR 447.50 through 42 CFR 447.60, the MCO shall not impose any cost sharing obligations on members except as set forth in 12VAC30-20-150 and 12VAC30-20-160 and as described in the CCC Plus contract.

B. Sanctions shall be the same as those set forth in the CCC Plus contract.

C. As provided in 42 CFR 438.210(a)(5)(i), the MCO's medical necessity criteria shall not be more restrictive than the department's criteria.

D. The MCO's coverage rules for contract covered services shall also ensure compliance with federal EPSDT coverage requirements for enrollees younger than 21 years of age.

E. The MCO shall provide services at least in equal amount, duration, and scope as available under the Medicaid fee-for-service program and as described in Attachment 5 of the CCC Plus contract.

12VAC30-120-625. Continuity of care.

The MCO shall ensure continuity of care for each member upon enrollment into the member's plan. During the time period set forth in this section, the MCO shall maintain the member's current providers at the Medicaid FFS rate and honor service authorizations (SAs) issued prior to enrollment for the specified time period. The continuity of care period is as follows:

1. Within the first 90 calendar days of a member's enrollment, the MCO shall allow a member to maintain the member's current providers, including out-of-network providers. For members enrolling effective on or after April 1, 2018, the continuity of care time period will change to a minimum of 30 calendar days. The MCO shall extend this timeframe as necessary to ensure continuity of care pending the provider contracting with the MCO or the member's safe and effective transition to a contracted provider. DMAS has sole discretion to extend the continuity of care period timeframe.

2. The MCO shall reimburse nursing facilities and specialized care services (described in 12VAC30-60-40, 12VAC30-60-320, and 12VAC30-60-340) no less than the Medicaid established per diem rate for Medicaid covered days, using the DMAS methodologies, unless the MCO and the provider mutually agree to an alternative payment methodology or value-based payment arrangement; however, the rate paid shall not be less than the current Medicaid fee-for-service rate.

12VAC30-120-630. Covered services.

A. The MCO shall, at a minimum, provide all medically necessary Medicaid covered services required under the state plan (12VAC30-50-10 through 12VAC30-50-310, 12VAC30-50-410 through 12VAC30-50-430, and 12VAC30-50-470 through 12VAC30-50-580) and Elderly and Disabled with Consumer Direction waiver regulations (12VAC30-120-924 and 12VAC30-120-927) and the Technology Assisted waiver regulations (12VAC30-120-1720) and, effective January 1, 2018, community mental health services (12VAC30-50-130 and 12VAC30-50-226).

B. The following services are not covered by the MCO and shall be provided through fee-for-service outside the CCC Plus MCO contract:

1. Dental services (12VAC30-50-190);

2. School health services (12VAC30-50-130);

3. Preadmission screening (12VAC30-60-303);

4. Individual and Developmental Disability Support waiver services (12VAC30-120-700 et seq.);

5. Intellectual Disability Waiver (12VAC30-120-1000 et seq.); or

6. Day Support Waiver (12VAC30-120-1500 et seq.).

C. The Program of All-Inclusive Care for the Elderly, or PACE, is not available to CCC Plus members.

12VAC30-120-635. Payment rates for MCOs.

A. The payment rate to MCOs shall be set by negotiated contracts and in accordance with 42 CFR 438.6 Subpart A through 42 CFR 438.8 and other pertinent federal regulations.

B. In accordance with § 1932(b)(2)(D) of the Social Security Act and State Medicaid Director Letter 06-010, the contractor shall pay noncontracted providers for emergency services no more than the amount that would have been paid if the service had been provided under the state's FFS Medicaid program. The contractor shall reimburse out-of-network providers and providers of emergent or urgent care, as defined by 42 CFR 424.101 and 42 CFR 405.400 respectively, at the Medicaid FFS payment level for that service.

12VAC30-120-640. State fair hearing process.

A. Notwithstanding the provisions of 12VAC30-110-10 through 12VAC30-110-370, this section through 12VAC30-120-690 govern state fair hearings for individuals enrolled in CCC Plus.

B. The Appeals Division maintains an appeals and fair hearings system for enrollees (referred to as "appellants" once the appeal process has begun) to challenge appeal decisions rendered by the MCO in response to enrollee appeals of adverse benefit determinations related to Medicaid services. Exhaustion of the MCO's appeals process is a prerequisite to requesting a state fair hearing with the department. Appellants who meet the criteria for a state fair hearing shall be entitled to a hearing before a department hearing officer.

C. The MCO shall conduct an internal appeal hearing, pursuant to 42 CFR Part 431 Subpart E and 42 CFR Part 438 Subpart F, and issue a written decision that includes its findings and information regarding the appellant's right to file an appeal with DMAS for a state fair hearing for Medicaid appeals.

D. Enrollees must be notified in writing of the MCO's internal appeals process in accordance with 42 CFR 438.400 et seq.:

1. With the handbook; and

2. Upon receipt of a notice of adverse benefit determination from the MCO.

E. Enrollees must be notified in writing of their right to an external appeal to DMAS upon receipt of the MCO's final internal appeal decision.

F. An appellant shall have the right to representation by an attorney or an authorized representative at the internal appeal and external appeal before DMAS.

1. An authorized representative may be designated to represent the appellant, pursuant to 12VAC30-110-60, 12VAC30-110-1380, and 12VAC30-110-1390, at the internal appeal and external appeal before DMAS. The appellant shall designate the authorized representative in a written statement that is signed by the appellant whose Medicaid benefits were adversely affected. If the appellant is physically unable to sign a written statement and proof is submitted to that effect, the department or MCO shall allow a family member or other person acting on the appellant's behalf to be the authorized representative. If the appellant is mentally unable to sign a written statement, the department or MCO shall require written documentation that a family member or other person has been appointed or designated as the appellant's authorized representative.

2. If the authorized representative is an attorney or a paralegal working under the supervision of an attorney, a signed statement by such attorney or paralegal that the attorney or paralegal is authorized to represent the appellant prepared on the attorney's letterhead shall be accepted as a designation of representation.

3. An individual of the same law firm as a designated authorized representative shall have the same rights as the designated authorized representative.

4. An appellant may revoke representation by another person at any time. The revocation is effective when the department receives written notice from the appellant.

G. Any communication from an enrollee or the enrollee's authorized representative that expresses the enrollee's desire to present his case to a reviewing authority shall constitute an appeal request.

1. This communication should explain the basis for the appeal of the MCO's internal appeal decision.

2. The appellant or the appellant's authorized representative may examine witnesses, documents, or both; provide testimony; submit evidence; and advance relevant arguments during the hearing.

H. After the MCO's internal appeal process has been exhausted, an appellant may request a state fair hearing by filing an appeal with the Appeals Division via regular mail, fax transmission, telephone, email, in person, or through other commonly available electronic means.

I. Expedited appeals referenced in subsection K of this section may be filed by telephone or any of the methods set forth in subsection H of this section.

J. The appellant enrollee has the right to have his benefits continued during the MCO's appeal or the state fair hearing.

1. All of the following requirements must be met in order for benefits to be continued during the MCO and state fair hearing appeals:

a. The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;

b. The services were ordered by an authorized provider;

c. The original period covered by the initial authorization has not expired; and

d. The enrollee requests that the benefits be continued.

2. For continuation of benefits for an internal appeal with the MCO, the enrollee or authorized representative must file the appeal before the effective date of the adverse benefit determination or within 10 calendar days of the mail date of the MCO's notice of the adverse benefit determination.

3. For continuation of benefits for a state fair hearing, the enrollee, or authorized representative must file the appeal within 10 calendar days of the mail date of the MCO's final appeal decision.

4. The MCO shall also continue benefits for enrollees who initiate a state fair hearing directly because of deemed exhaustion of appeals processes due to failure of the MCO to adhere to the notice and timing requirements in 42 CFR 438.408.

5. If the final resolution of the appeal or state fair hearing is adverse to the enrollee, that is, upholds the MCO's adverse benefit determination, the MCO may recover the costs of services furnished to the enrollee while the appeal and the state fair hearing was pending, to the extent they were furnished solely because of the pending appeal.

K. The MCO and the department shall maintain an expedited process for appeals when an appellant's treating provider indicates in making the request on the enrollee's behalf or supporting the enrollee's request that taking the time for a standard resolution could seriously jeopardize the enrollee's life, physical or mental health, or ability to attain, maintain, or regain maximum function.

1. Resolution of an expedited appeal shall be no longer than 72 hours after the MCO receives the appeal.

2. Enrollees must exhaust the MCO's internal appeals processes prior to filing an expedited appeal request with the department with the exception of those enrollees with direct access to state fair hearings because of deemed exhaustion of appeals processes with the MCO.

3. The MCO and the department may extend the timeframes for resolution of an expedited appeal by up to 14 calendar days if the enrollee or the enrollee's authorized representative requests the extension, or if the MCO or the department shows that there is a need for additional information and how the delay is in the enrollee's best interest.

4. Requirements following extension. If the MCO extends the timeframes not at the request of the enrollee, it shall complete the following:

a. Promptly notify the enrollee of the reason for an extension and provide the date the extension expires; and

b. Resolve the appeal as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.

12VAC30-120-650. Appeal timeframes.

A. Appeals to the Medicaid state fair hearing process must be filed with the Appeals Division within 120 days of the date of the MCO's final internal appeal decision.

B. It is presumed that appellants will receive the MCO's final internal appeal decision five days after the MCO mails it unless the appellant shows that the appellant did not receive the notice within the five-day period.

C. A request for a state fair hearing on the grounds that the MCO has not acted with reasonable promptness in response to an internal appeal request may be filed at any time until the MCO has acted.

D. The date of filing shall be the date the internal appeal request is received by the MCO, the date the state fair hearing request is received by the Appeals Division, or the postmark date if the state fair hearing request is sent by regular mail.

E. In computing any time period under this chapter, the day of the act or event from which the designated period of time begins to run shall be excluded and the last day included. If a time limit would expire on a Saturday, Sunday, or state or federal holiday, it shall be extended until the next regular business day.

F. DMAS shall take final administrative action within 90 days from the date the enrollee filed an MCO appeal, not including the number of days the enrollee took to subsequently file for a state fair hearing.

G. Exceptions to standard appeal resolution timeframes. Decisions may be issued beyond the standard appeal resolution timeframes when the appellant or the appellant's authorized representative requests or causes a delay. Decisions may also be issued beyond the standard appeal resolution timeframe when any of the following circumstances exist:

1. The appellant or authorized representative requests to reschedule or continue the hearing;

2. The appellant or authorized representative provides good cause for failing to keep a scheduled hearing appointment, and the Appeals Division reschedules the hearing;

3. Inclement weather, unanticipated system outage, or the department's closure prevents the hearing officer's ability to work;

4. Following a hearing, the hearing officer orders an independent medical assessment as described in 12VAC30-120-670 H 1;

5. The hearing officer leaves the hearing record open after the hearing in order to receive additional evidence or argument from the appellant;

6. The hearing officer receives additional evidence from a person other than the appellant or the appellant's authorized representative, and the appellant requests to comment on such evidence in writing or to have the hearing reconvened to respond to such evidence; or

7. The Appeals Division determines that there is a need for additional information and documents how the delay is in the appellant's best interest.

H. For delays requested or caused by an appellant or the appellant's authorized representative, the delay date for the decision will be calculated as follows:

1. If an appellant or authorized representative requests or causes a delay within 30 days of the request for a hearing, the 90-day time limit will be extended by the number of days from the date when the first hearing was scheduled until the date to which the hearing is rescheduled.

2. If an appellant or authorized representative requests or causes a delay within 31 to 60 days of the request for a hearing, the 90-day time limit will be extended by 1.5 times the number of days from the date when the first hearing was scheduled until the date to which the hearing is rescheduled.

3. If an appellant or authorized representative requests or causes a delay within 61 to 90 days of the request for a hearing, the 90-day time limit will be extended by two times the number of days from the date when the first hearing was scheduled until the date to which the hearing is rescheduled.

I. Post hearing delays requested or caused by an appellant or authorized representative (e.g., requests for the record to be left open) will result in a day-for-day delay for the decision date. The department shall provide the appellant and authorized representative with written notice of the reason for the decision delay and the delayed decision date, if applicable.

12VAC30-120-660. Prehearing decisions.

A. If the Appeals Division determines that any of the conditions as described in this subsection exist, a hearing will not be held and the appeal process shall be terminated.

1. A request for appeal may be invalidated if:

a. It was not filed within the time limit imposed by 12VAC30-120-650; or

b. The individual who filed the appeal ("filer") is not the appellant or parent of a minor appellant, and the Appeals Division sends a letter to the filer requesting proof of the filer's authority to appeal on behalf of the appellant; and

(1) The filer did not reply to the request for authorization to represent the appellant within 10 calendar days; or

(2) The filer replied within 10 calendar days of the request, and the Appeals Division determined that the authorization submitted was insufficient to allow the filer to represent the appellant under the provisions of 12VAC30-120-640.

2. A request for appeal may be administratively dismissed if:

a. The MCO's internal appeals process was not exhausted prior to the enrollee's request for a state fair hearing;

b. The issue of the appeal is not related to the MCO's final internal appeal decision;

c. The adverse benefit determination being appealed was not taken by the MCO; or

d. The sole issue is a federal or state law requiring an automatic change adversely affecting some or all beneficiaries.

3. An appeal case may be closed if:

a. The Appeals Division schedules a hearing and sends a written schedule letter notifying the appellant or the appellant's authorized representative of the date, time, and location of the hearing; the appellant or the appellant's authorized representative fails to appear at the scheduled hearing; and the Appeals Division sends a letter to the appellant for an explanation as to why he failed to appear; and

(1) The appellant did not reply to the request for an explanation that met good cause criteria within 10 calendar days; or

(2) The appellant replied within 10 calendar days of the request, and the Appeals Division determined that the reply did not meet good cause criteria.

b. The Appeals Division sends a written schedule letter requesting that the appellant or the appellant's authorized representative provide a telephone number at which he can be reached for a telephonic hearing, and the appellant or the appellant's authorized representative failed to respond within 10 calendar days to the request for a telephone number at which he could be reached for a telephonic hearing.

c. The appellant or the appellant's authorized representative withdraws the appeal request. If the appeal request is withdrawn orally, the Appeals Division shall (i) record the individual's statement and telephonic signature and (ii) send the affected individual written confirmation via regular mail or electronic notification, in accordance with the individual's election.

d. The MCO approves the full amount, duration, and scope of services requested.

e. The evidence in the record shows that the MCO's decision was clearly in error and that the case should be fully resolved in the appellant's favor.

B. Remand to the MCO. If the hearing officer determines from the record, without conducting a hearing, that the case might be resolved in the appellant's favor if the MCO obtains and develops additional information, documentation, or verification, the hearing officer may remand the case to the MCO for action consistent with the hearing officer's written instructions pursuant to 12VAC30-110-210 D.

C. A letter shall be sent to the appellant or the appellant's authorized representative that explains the determination made on the appeal.

12VAC30-120-670. Hearing process and final decision.

A. All hearings must be scheduled at a reasonable time, date, and place, and the appellant and the appellant's authorized representative shall be notified in writing prior to the hearing.

1. The hearing location will be determined by the Appeals Division.

2. A hearing shall be rescheduled at the appellant's request no more than twice unless compelling reasons exist.

3. Rescheduling the hearing at the appellant's request will result in automatic waiver of the 90-day deadline for resolution of the appeal. The delay date for the decision will be calculated as set forth in 12VAC30-120-650 I.

B. The hearing shall be conducted by a department hearing officer. The hearing officer shall review the complete record for all MCO decisions that are properly appealed; conduct informal, fact-gathering hearings; evaluate evidence presented; research the issues; and render a written final decision.

C. Subject to the requirements of all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information, the appeal record shall be made accessible to the appellant and authorized representative at a convenient place and time before the date of the hearing, as well as during the hearing. The appellant and the appellant's authorized representative may examine the content of the appellant's case file and all documents and records the department will rely on at the hearing except those records excluded by law.

D. Appellants who require the attendance of witnesses or the production of records, memoranda, papers, and other

documents at the hearing may request in writing the issuance of a subpoena. The request must be received by the department at least 10 working days before the scheduled hearing. Such request shall (i) include the witness's or respondent's name, home and work addresses, and county or city of work and residence; and (ii) identify the sheriff's office that will serve the subpoena.

E. The hearing officer shall conduct the hearing; decide on questions of evidence, procedure, and law; question witnesses; and assure that the hearing remains relevant to the issue being appealed. The hearing officer shall control the conduct of the hearing and decide who may participate in or observe the hearing.

F. Hearings shall be conducted in an informal, nonadversarial manner. The appellant or the appellant's authorized representative shall have the right to bring witnesses, establish all pertinent facts and circumstances, present an argument without undue interference, and question or refute the testimony or evidence, including the opportunity to confront and cross-examine agency representatives.

G. The rules of evidence shall not strictly apply. All relevant, nonrepetitive evidence may be admitted, but the probative weight of the evidence will be evaluated by the hearing officer.

H. The hearing officer may leave the hearing record open for a specified period of time after the hearing in order to receive additional evidence or argument from the appellant or the appellant's authorized representative.

1. At the appellant's option, the hearing officer may order an independent medical assessment when the appeal involves medical issues, such as a diagnosis, an examining physician's report, or a medical review team's decision, and the hearing officer determines that it is necessary to have an assessment by someone other than the person or team who made the original decision (e.g., to obtain more detailed medical findings about the impairments, to obtain technical or specialized medical information, or to resolve conflicts or differences in medical findings or assessments in the existing evidence). A medical assessment ordered pursuant to this chapter shall be at the department's expense, shall not extend any of the timeframes specified in this chapter, shall not disrupt the continuation of benefits, and shall become part of the record.

2. The hearing officer may receive evidence that was not presented by either party if the record indicates that such evidence exists, and the appellant or the appellant's authorized representative requests to submit it or requests that the hearing officer secure it.

3. If the hearing officer receives additional evidence from an entity other than the appellant or the appellant's authorized representative, the hearing officer shall send a copy of such evidence to the appellant and the appellant's authorized representative and give the appellant or the appellant's authorized representative the opportunity to comment on such evidence in writing or to have the hearing reconvened to respond to such evidence.

4. Any additional evidence received will become a part of the hearing record, but the hearing officer must determine whether or not it will be used in making the decision.

I. After conducting the hearing, reviewing the record, and deciding questions of law, the hearing officer shall issue a written final decision that sustains or reverses, in whole or in part, the MCO's adverse benefit determination or remands the case to the MCO for further evaluation consistent with the hearing officer's written instructions. Some decisions may be a combination of these dispositions. The hearing officer's final decision shall be considered as the department's final administrative action pursuant to 42 CFR 431.244(f). The final decision shall include:

1. Identification of the issue;

2. Relevant facts, to include a description of the procedural development of the case;

3. Conclusions of law, regulations, and policy that relate to the issue;

4. Discussions, analysis of the accuracy of the MCO's appeal decision, conclusions, and hearing officer's decision;

5. Further action, if any, to be taken by the MCOs to implement the hearing officer's decision;

6. The deadline date by which further action must be taken; and

7. A cover letter informing the appellant and the appellant's authorized representative of the hearing officer's decision. The letter must indicate that the hearing officer's decision is final, and that the final decision may be appealed directly to circuit court.

J. A copy of the hearing record shall be forwarded to the appellant and the appellant's authorized representative with the final decision.

K. An appellant who disagrees with the hearing officer's final decision described in this section may seek judicial review pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and Rules of the Supreme Court of Virginia, Part Two A. Written instructions for requesting judicial review must be provided to the appellant or the appellant's authorized representative with the hearing officer's decision, and upon request by the appellant or authorized representative.

12VAC30-120-680. Appeals Division records.

A. No person shall take from the department's custody any original record, paper, document, or exhibit that has been

certified to the Appeals Division except as the Appeals Division Director or the director's designee authorizes, or as may be necessary to furnish or transmit copies for other official purposes.

B. Information in the appellant's record can be released only to the appellant, the appellant's authorized representative, the MCO, other entities for official purposes, and other persons named in a release of information authorization signed by an appellant or the appellant's authorized representative.

C. The fees to be charged and collected for any copy of Appeals Division records will be in accordance with Virginia's Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia) or other controlling law.

D. When copies are requested from records in the Appeals Division's custody, the required fee shall be waived if the copies are requested in connection with an enrollee's own appeal.

12VAC30-120-690. Provider appeals.

A. The Appeals Division maintains an appeal process for network and Medicaid-enrolled providers of Medicaid services that have rendered services to enrollees and are requesting to challenge an MCO's reconsideration decision regarding an adverse action affecting service authorization or payment. The MCO's internal reconsideration process is a prerequisite to filing for an external appeal to the department's provider appeal process. The appeal process is available to network and Medicaid-enrolled providers that (i) have rendered services and have been denied payment in whole or part for Medicaid covered services; (ii) have rendered services and have been denied authorization for the services; and (iii) have received a notice of program reimbursement or overpayment demand from the department or its contractors. Providers that have had their enrollment in the MCO's network denied or terminated by the MCO do not have the right to an external appeal with the Appeals Division.

B. Department provider appeals shall be conducted in accordance with the department's provider appeal regulations (12VAC30-20-500 et seq.), § 32.1-325 et seq. of the Code of Virginia, and the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. The department's external appeal decision shall be binding upon the MCO and not subject to further appeal by the MCO.

D. If the provider is successful in its appeal of a reimbursement issue, then the MCO shall reimburse the provider for the appealed issue.

VA.R. Doc. No. R17-4974; Filed December 18, 2018, 3:24 p.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.106).**

Statutory Authority: § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: February 22, 2019.

Agency Contact: Jay Withrow, Director, Legal Support, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-9873, FAX (804) 786-8418, or email jay.withrow@doli.virginia.gov.

Summary:

Federal Occupational Safety and Health Administration (OSHA) issued a correction to the Code of Federal Regulations, Part 1910, revised as of July 1, 2017, regarding 29 CFR 1910.106. The correction revises the introductory text to § 1910.106, which addresses the design, construction, capacity, and size of storage containers and portable tanks for flammable liquids. The revision removes the words "and combustible" between "Flammable" and "liquid."

In this regulatory action, the Safety and Health Codes Board is adopting this correction.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Statement of Final Agency Action: On November 8, 2018, the Safety and Health Codes Board adopted federal OSHA's

CFR Correction, published in 83 FR 30539 on June 29, 2018, with an effective date of February 22, 2019.

Federal Terms and State Equivalents: When the regulations as set forth in the corrected final rule for Occupational Safety and Health Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
June 27, 2018	February 22, 2019

VA.R. Doc. No. R19-5762; Filed December 18, 2018, 9:25 a.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.1024).**

Statutory Authority: § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: February 22, 2019.

Agency Contact: Jay Withrow, Director, Legal Support, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-9873, FAX (804) 786-8418, or email jay.withrow@doli.virginia.gov.

Summary:

In a final rule, federal Occupational Safety and Health Administration (OSHA) adopted clarifying amendments to address the application of the comprehensive general industry standard for beryllium and beryllium compounds exposure to materials containing trace amounts of beryllium. The direct final rule (i) amends the definition of "beryllium work area" and "emergency"; (ii) adds definitions for "contaminated with beryllium and beryllium-contaminated," and "dermal contact with beryllium"; (iii) clarifies the provision for disposal and recycling; and (iv) clarifies the provisions that apply only where skin can be exposed to materials containing at least 0.1% beryllium by weight.

In this regulatory action, the Safety and Health Codes Board is adopting this final rule.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Statement of Final Agency Action: On November 8, 2018, the Safety and Health Codes Board adopted federal OSHA's Revising the Beryllium Standard for General Industry direct final rule, as published in 83 FR 19936 through 83 FR 19949 on May 7, 2018. OSHA confirmed the effective date of the final rule in 83 FR 31045 through 83 FR 31046 on July 3, 2018. The board established an effective date of February 22, 2019.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
July 6, 2018	February 22, 2019

VA.R. Doc. No. R19-5760; Filed December 18, 2018, 9:26 a.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.1043).**

Statutory Authority: § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: February 22, 2019.

Agency Contact: Jay Withrow, Director, Legal Support, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-9873, FAX (804) 786-8418, or email jay.withrow@doli.virginia.gov.

Summary:

Federal Occupational Safety and Health Administration (OSHA) issued a correction to the Code of Federal Regulations, Part 1910, revised as of July 1, 2017, by removing 29 CFR 1910.1043(i)(1)(i)(A) through (F). The provisions related to an employer's requirement to train each employee exposed to cotton dust and to institute a training program and ensure employee participation in the program. The correction removes the provisions detailing the components for the employer's education and training program.

In this regulatory action, the Safety and Health Codes Board is adopting this correction.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Statement of Final Agency Action: On November 8, 2018, the Safety and Health Codes Board adopted federal OSHA's CFR Correction, published in 83 FR 30035 on June 27, 2018, with an effective date of February 22, 2019.

Federal Terms and State Equivalents: When the regulations as set forth in the corrected final rule for Occupational Safety and Health Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
June 27, 2018	February 22, 2019

VA.R. Doc. No. R19-5761; Filed December 18, 2018, 9:24 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Withdrawal of Proposed Regulatory Action

Title of Regulation: **18VAC80-20. Board for Hearing Aid Specialists Regulations (amending 18VAC80-20-70).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: January 21, 2019.

Notice is hereby given that the Board for Hearing Aid Specialists and Opticians has WITHDRAWN the proposed regulatory action for **18VAC80-20, Hearing Aid Specialists Regulations**, which was published in 32:4 VA.R. 530-535 October 19, 2015. The board determined to revise projections based on more current financial data and initiate a new action at a later date.

Agency Contact: Steve Kirschner, Regulatory Operations Administrator, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email hasopt@dpor.virginia.gov.

VA.R. Doc. No. R14-4011; Filed January 2, 2019, 10:49 a.m.

EXECUTIVE ORDER NUMBER TWENTY-SEVEN (2018)

Establishing the Virginia Complete Count Commission

Importance of the Issue

The U.S. Constitution mandates a decennial count of all people living in the United States and its territories. This monumental task is one that affects the distribution of approximately $675 billion dollars from the federal government to state, local, and tribal governments. It also affects the redistricting of legislative districts and reapportionment of seats that each state has in the U.S. House of Representatives. The 2020 Census is quickly approaching and all stakeholders should collectively support the efforts of the U.S. Census Bureau. The Virginia Complete Count Commission will maximize such efforts.

Historically, the U.S. Census Bureau has experienced low survey response rates from many communities across the Commonwealth. The Virginia Complete Count Commission is created to improve the participation and representation of all Virginians. It will consist of key community members and will represent the many geographic regions and diverse communities in the Commonwealth. The Commission will operate as a central conduit of information and facilitate the sharing of ideas and community resources regarding the 2020 Census. These efforts will improve collaboration between the Commonwealth and the U.S. Census Bureau and encourage all stakeholders to actively prepare for the 2020 Census.

Establishing the Commission

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including, but not limited to §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Virginia Complete Count Commission (Commission).

The Commission is comprised of up to 40 members appointed by the Governor, including representatives from stakeholder organizations, leaders from various underrepresented and traditionally hard-to-count communities, and such other members as may be appointed by the Governor. All Commission members shall serve without compensation.

The Commission, using the local knowledge, expertise, and influence of its commission members, will develop and coordinate a census outreach program to increase awareness about the census and motivate residents to respond.

The census outreach strategy shall include, but not be limited to, state agency initiatives to encourage participation in the 2020 Census, the establishment of partnerships with non-profit community-based organizations, and a multi-faceted campaign designed to ensure an accurate and complete count of Virginia's population.

In carrying out its duties, the Commission may appoint working groups as it deems appropriate, and shall solicit participation from relevant experts and practitioners involved in census issues.

Staff support for the Commission shall be furnished by the Office of the Secretary of the Commonwealth, and other agencies and offices as needed.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect until December 18, 2019, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 18th day of December, 2018.

/s/ Ralph S. Northam
Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY

Greensville County Solar Project LLC Revised Notice of Intent Small Renewable Energy Project (Solar) Permit by Rule - Greensville County

Greensville County Solar Project LLC has provided the Department of Environmental Quality a revised notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) near Emporia. The notice of intent is for an 80-megawatt alternating current solar project. The ground-mounted array will utilize photovoltaic solar modules and single-axis tracking technology constructed on approximately 1,225 acres (originally the project was intended to use 1,185 acres). The project site is located outside of the city limits of Emporia along Rock Bridge Road. A solar project is permitted under this use category through a special use permit from Greensville County Board of Supervisors and will not require rezoning. The original notice of intent was posted to the Virginia Regulatory Town Hall on October 18, 2018, and published in the Virginia Register of Regulations on November 12, 2018.

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.

STATE BOARD OF HEALTH

January 2019 - Public Participation in Drinking Water State Revolving Fund Process

The Virginia Department of Health (VDH) is pleased to announce several opportunities for funding drinking water infrastructure. Applications may be submitted year round, however, VDH will conduct one round of evaluations submitted by the deadline. Applications postmarked or received after the due date will be considered for funding in the following round. Funding is made possible by the Drinking Water State Revolving Fund (DWSRF) Program and the Water Supply Assistance Grant Fund (WSAG) Program (if funds are available). The fiscal year 2020 DWSRF Intended Use Plan will be developed using public input on these issues.

(1) Public Comments and Set-Aside Suggestions Invited (submission deadline April 1): To identify ways to improve this program, VDH seeks meaningful input from the public, the waterworks industry, or other interested parties. Anyone may make comments or recommendations to support or revise the program. Everyone has the opportunity to suggest new or continuing set-aside (nonconstruction) activities. Set-aside funds help VDH assist waterworks owners to prepare for future drinking water challenges and ensure the sustainability of safe drinking water.

(2) Construction, Consolidation, and Refinance Fund Requests (application deadline April 1): Owners of community waterworks and nonprofit noncommunity waterworks are eligible to apply for construction funds. VDH makes selections based on criteria described in the DWSRF Program Design Manual, such as existing public health problems, noncompliance, affordability, regionalization, and the availability of matching funds. VDH anticipates a funding level of $25 million.

(3) 1452(k) Source Water Protection Initiatives (application deadline April 1): Loan funds are available to (i) community and nonprofit noncommunity waterworks to acquire land or conservation easements and (ii) community waterworks only to establish local voluntary incentive-based protection measures.

(4) Lead Service Line (LSL) Replacement Program (application deadline April 1): In an effort to accelerate the removal of lead from drinking water, the DWSRF Program has made funding available for the complete removal of the public or private portion of the LSLs. In conjunction with other available funds, this program intends to provide up to $5,000 dollars as grant funds (of which up to $500 may be eligible as an administrative fee) for each service line replaced on the homeowner's side of the meter. The LSL includes pipe entry into the structure (up to the shut-off valve) but excludes the premise plumbing.

The VDH DWSRF Program Design Manual describes the features of the opportunities listed in this notice for funding. After receiving public input, VDH will develop an intended use plan (IUP) for public review and comment. When developed, the IUP will describe specific details for use of the funds. A public meeting is planned, and written comments will be accepted before submittal of a final version to the U.S. Environmental Protection Agency for approval.

Applications, set-aside suggestion forms, program design manuals, and information materials are available on the VDH website at http://www.vdh.virginia.gov/drinking-water/financial-construction-assistance-programs/drinking-water-funding-program-details/. This information can also be obtained from Steven Pellei, PE, FCAP Director, telephone (804) 864-7500, FAX (804) 864-7521, or Virginia Department of Health, Office of Drinking Water, 109 Governor Street, 6th Floor, Richmond, VA 23219. Comments should also be directed to Mr. Pellei.

Drinking Water Construction Funding Workshops

VDH will offer funding informational meetings via webcast. The workshop will be recorded for future play back. The tentative time and date for the webcast is 1 p.m. on February 20, 2019. The link will be provided at a later date on the Office of Drinking Water website.

Material will focus on drinking water construction funding available through VDH. The Drinking Water State Revolving Loan Fund Program will be discussed. Participants will be advised on program updates and guided through program criteria, program applications, and the project scheduling steps needed for smooth project implementation.

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 Health is conducting a periodic review and small business impact review of **12VAC5-421, Food 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 January 21, 2019, and ends February 11, 2019.

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 Julie Henderson, Director of Food and General Services, Virginia Department of Health, 109 Governor Street, 5th Floor, Richmond, VA 23219, telephone (804) 864-7473, or email julie.henderson@vdh.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 Virginia Regulatory Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Health conducted a small business impact review of **12VAC5-475, Regulations Implementing the Virginia Donor Registry**, and determined that this regulation should be retained in its current form. The State Board of Health is publishing its report of findings dated November 28, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

There is a continued need for these regulations as they are mandated by law. No public comments were received during the public comment period. The regulations are clearly written and easily understandable. The regulations do not overlap, duplicate, or conflict with any known federal or state laws or regulations. Regulations are evaluated on an ongoing basis, and these regulations were last amended in July 2015. Retaining the regulations in their current form does not appear to cause an adverse economic impact on small businesses in the Commonwealth of Virginia.

Contact Information: Robin Buskey, Policy Analyst, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7253, FAX (804) 864-7771, or email robin.buskey@vdh.virginia.gov.

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Human Resource Management is conducting a periodic review and small business impact review of each listed regulation. The review of each regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

1VAC55-11, Public Participation Guidelines

1VAC55-20, Commonwealth of Virginia Health Benefits Program

The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 January 21, 2019, and ends February 11, 2019.

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 Susan Jones, Associate Director Policy and Instruction, Department of Human Resource Management, 101 North 14th Street, 13th Floor, Richmond, VA 23219, telephone (804) 225-2852, FAX (804) 371-0231, or email susan.jones@dhrm.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 Virginia Regulatory Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

BOARD OF OPTOMETRY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Optometry conducted a small business impact review of **18VAC105-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Optometry is publishing its report of findings dated December 17, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The board has received no complaints or recommendations for change to public participation guidelines, and there is no impact on small businesses.

Contact Information: 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.

BOARD OF PHARMACY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Pharmacy conducted a small business impact review of **18VAC110-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Pharmacy is publishing its report of findings dated December 17, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The board has received no complaints or recommendations for change to public participation guidelines, and there is no impact on small businesses.

Contact Information: 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.

BOARD OF PHYSICAL THERAPY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Physical Therapy conducted a small business impact review of **18VAC112-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Physical Therapy is publishing its report of findings dated December 17, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The board has received no complaints or recommendations for change to public participation guidelines, and there is no impact on small businesses.

Contact Information: 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.

BOARD OF PSYCHOLOGY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Psychology conducted a small business impact review of **18VAC125-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Psychology is publishing its report of findings dated December 17, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The board has received no complaints or recommendations for change to public participation guidelines, and there is no impact on small businesses.

Contact Information: 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.

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 **22VAC40-880, Child Support Enforcement 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 economic 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 January 21, 2018, and ends February 11, 2019.

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 Alice Burlinson, Senior Assistant Attorney General, Department of Social Services, 4504 Starkey Road, Suite 103, Roanoke, VA 24018, telephone (540) 776-2779, FAX (540) 766-2797, or email alice.burlinson@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 Virginia Regulatory Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

BOARD OF SOCIAL WORK

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Social Work conducted a small business impact review of **18VAC140-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Social Work is publishing its report of findings dated December 17, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The board has received no complaints or recommendations for change to public participation guidelines, and there is no impact on small businesses.

Contact Information: 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.

TREASURY BOARD

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 Treasury Board is conducting a periodic review and small business impact review of **1VAC75-20, Virginia Security for Public Deposits Act 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 January 21, 2019, and ends on February 11, 2019.

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 Kristin Reiter, Director of Operations, Treasury Board, P.O. Box 1879, Richmond, VA 23218-1879, telephone (804) 225-3240, FAX (804) 786-7271, or email kristin.reiter@trs.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 Virginia Regulatory Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations. The Virginia Department of the Treasury is aware of the need to update the Security for Public Deposits Act Regulations for the recodification of Title 2.1 of the Code of Virginia to Title 2.2 in 2001 and for amendments to the Security for Public Deposits Act since 1993.

BOARD OF VETERINARY MEDICINE

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Veterinary Medicine conducted a small business impact review of **18VAC150-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Veterinary Medicine is publishing its report of findings dated December 17, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The board has received no complaints or recommendations for change to public participation guidelines, and there is no impact on small businesses.

Contact Information: 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.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Anisa Enterprise Inc.

An enforcement action has been proposed for Anisa Enterprise Inc. for violations of the State Water Control Law in Hanover, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at http://www.deq.virginia.gov. 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 23218, from January 21, 2019, to February 22, 2019.

Proposed Consent Order for Mark A. Stephens LTD

An enforcement action has been proposed for Mark A. Stephens LTD for violations of the State Water Control Law and regulations at Ann's Mobile Home Park located in Stafford, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with a privately owned pump station servicing the onsite sanitary sewer collection system for Ann's Mobile Home Park. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from January 22, 2019, through February 21, 2019.

Notice of Availability of and Public Comment on the 2018 Water Quality Assessment Integrated Report

The Virginia Department of Environmental Quality (DEQ) will release the Draft 2018 Water Quality Assessment Integrated Report (Integrated Report) on January 22, 2019, for public comment, and the comment period will end February 21, 2019.

The Integrated Report combines both the § 305(b) Water Quality Assessment and the § 303(d) Report on Impaired Waters. Both are required by the Federal Clean Water Act and the Virginia Water Quality Monitoring Information and Restoration Act. The report will be available for download on the DEQ website at https://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityAssessments.aspx (please copy and paste the link into your browser if it does not work) throughout the public comment period.

A public webinar summarizing the Integrated Report is scheduled for February 13, 2019. The public is invited to submit questions pertaining to the report during this event. All submitted questions will be addressed in a FAQ document that will be subsequently posted on the DEQ webpage. Registration information for the webinar can be found at https://attendee.gotowebinar.com/register/3542169463391934466 (please copy and paste the link into your browser if it does not work).

Written comments on the draft Integrated Report can be sent to the contact listed below. Please include name, postal mailing address, telephone number, and email address.

Contact Information: Sandra Mueller, Office of Water Monitoring and Assessment, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4324, or email sandra.mueller@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

BOARD OF PHARMACY

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

Publication: 35:5 VA.R. 891-892 October 29, 2018

Correction to Final Regulation:

Page 892, 18VAC110-20-322, first column, insert after "B.":

"Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Research chemicals:

a. 2-(ethylamino)-2-phenyl-cyclohexanone (other name: deschloro-N-ethyl-ketamine), its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 3,4-methylenedioxy-N-tert-butylcathinone, its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 4-fluoro-N-ethylamphetamine, its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

d. Beta-keto-4-bromo-2,5-dimethoxyphenethylamine (other name: bk-2C-B), its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Synthetic opioids:

a. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-2butenamide (other name: Crotonyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. 2-(3,4-dichlorophenyl)-N-[2-(dimethylamino) cyclohexyl]-N-methylacetamide (other name: U-51754), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. N-phenyl-N-[4-phenyl-1-(2-phenylethyl)-4piperidinyl]-propanamide (other name: 4phenylfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until December 12, 2019, unless enacted into law in the Drug Control Act.

C."

Page 892, 18VAC110-20-322, second column, line 6, replace "C." with "D."

VA.R. Doc. No. R19-5660; Filed January 3, 2019, 4:16 p.m.

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22VAC40-677. State Oversight of a Local Social Services Department that Fails to Provide Services.**

Publication: 35:10 VA.R. 1226 January 7, 2019

Correction to Notice of Intended Regulatory Action:

Page 1226, first column, State Board of Social Services Notice of Intended Regulatory Action, lines 3 through 5:

Replace "**State Response When a Local Department of Social Services Fails to Provide Services**" with "**State Oversight of a Local Social Services Department that Fails to Provide Services**"

VA.R. Doc. No. R19-5464; Filed January 10, 2019, 1:47 p.m.