VIRGINIA REGISTER OF REGULATIONS

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TABLE OF CONTENTS

Register Information Page 1529

Publication Schedule and Deadlines 1530

Petitions for Rulemaking 1531

Periodic Reviews and Small Business Impact Reviews 1532

Notices of Intended Regulatory Action 1533

Regulations 1534

4VAC20-720. Pertaining to Restrictions on Oyster Harvest (Emergency) 1534
4VAC20-950. Pertaining to Black Sea Bass (Emergency) 1535
9VAC5-20. General Provisions (Final) 1536
9VAC5-50. New and Modified Stationary Sources (Final) 1536
9VAC5-60. Hazardous Air Pollutant Sources (Final) 1536
9VAC20-120. Regulated Medical Waste Management Regulations (Final) 1551
9VAC20-121. Regulated Medical Waste Management Regulations (Final) 1551
9VAC25-194. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities (Forms) 1592
9VAC25-890. General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (Proposed) 1592
10VAC5-60. Consumer Finance Companies (Final) 1628
24VAC30-325. Urban Maintenance and Construction Policy (Final) 1633
24VAC35-80. Alcohol Safety Action Program Regulation (Proposed) 1634

Guidance Documents 1645

General Notices 1647

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THE 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

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing 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 proposed regulation 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 of Regulations 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 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 the final regulation contains changes made after publication of the proposed regulation that 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*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, 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 alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virgina.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. 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. Leftwich, Jr., Vice-Chair; Ward L. Armstrong; Nicole Cheuk; Richard E. Gardiner; Jennifer L. McClellan; Christopher R. Nolen; Steven Popps; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade; Wren M. Williams.**

Staff of the *Virginia Register:* **Holly Trice,** 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).

February 2023 through March 2024

Volume: Issue	Material Submitted By Noon*	Will Be Published On
39:14	February 8, 2023	February 27, 2023
39:15	February 22, 2023	March 13, 2023
39:16	March 8, 2023	March 27, 2023
39:17	March 22, 2023	April 10, 2023
39:18	April 5, 2023	April 24, 2023
39:19	April 19, 2023	May 8, 2023
39:20	May 3, 2023	May 22, 2023
39:21	May 17, 2023	June 5, 2023
39:22	May 31, 2023	June 19, 2023
39:23	June 14, 2023	July 3, 2023
39:24	June 28, 2023	July 17, 2023
39:25	July 12, 2023	July 31, 2023
39:26	July 26, 2023	August 14, 2023
40:1	August 9, 2023	August 28, 2023
40:2	August 23, 2023	September 11, 2023
40:3	September 6, 2023	September 25, 2023
40:4	September 20, 2023	October 9, 2023
40:5	October 4, 2023	October 23, 2023
40:6	October 18, 2023	November 6, 2023
40:7	November 1, 2023	November 20, 2023
40:8	November 14, 2023 **(Tuesday)**	December 4, 2023
40:9	November 29, 2023	December 18, 2023
40:10	December 13, 2023	January 1, 2024
40:11	December 27, 2023	January 15, 2024
40:12	January 10, 2024	January 29, 2024
40:13	January 24, 2024	February 12, 2024
40:14	February 7, 2024	February 26, 2024
40:15	February 21, 2024	March 11, 2024

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF VETERINARY MEDICINE

Initial Agency Notice

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine.**

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

Name of Petitioner: Virginia Veterinary Medical Association.

Nature of Petitioner's Request: The petitioner requests that the Board of Veterinary Medicine amend 18VAC150-20-70 B, which provides requirements for continuing education to renew a license, to (i) allow up to four hours required for renewal of a veterinary license and one hour required for renewal of a veterinary technician license to be satisfied through delivery of veterinary services, volunteer or compensated, at high-volume spay/neuter clinics provided by non-for-profit animal welfare organizations; and (ii) allow up to three hours required for renewal of a veterinary license and one hour required for renewal of a veterinary technician license to be satisfied through delivery of veterinary services in the form of vaccinations, volunteer or compensated, at a rabies clinic organized by a local health department. It is further requested that, for services at spay/neuter clinics, one hour may be credited for two hours of providing services, and for rabies clinics, one hour may be credited for three hours of service.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on February 13, 2023. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which will open on February 13, 2023, and will close on March 15, 2023. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment, currently scheduled for March 30, 2023. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: March 15, 2023.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4130, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. PFR23-20; Filed January 18, 2023, 4:51 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF FORESTRY

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **4VAC10-11, Public Participation Guidelines**; **4VAC10-20, Standards for Classification of Real Estate As Devoted to Forest Use under the Virginia Land Use Assessment Law; 4VAC10-30, Virginia State Forests Regulations;** and **4VAC10-40, Reforestation of Timberlands Regulations**.

The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic 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 these regulations, including whether each 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.

Public comment period begins February 13, 2023, and ends March 6, 2023.

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 published in the Virginia Register of Regulations.

Contact Information: Amanda Davis, Policy Planning Manager III, Department of Forestry, 900 Natural Resources Drive, #800, Charlottesville, VA 22903, telephone (804) 664-7301.

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TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Forensic Science Board conducted a periodic review and a small business impact review of **6VAC40-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated January 18, 2023, to support this decision.

This regulation is necessary because it is mandated by § 2.2-4007.02 of the Code of Virginia. It is clearly written and easily understandable. The Forensic Science Board utilized the Department of Planning and Budget's model public participation guidelines as a guide for 6VAC40-11.

At its meeting on January 4, 2023, the Forensic Science Board determined that this regulation should be retained as is.

There is a continued need for this regulation. It is not complex, and it does not overlap, duplicate, or conflict with any other federal or state law or regulation. There have been no complaints or comments received on the regulation. No technological, economic, or other factors have changed that would affect this regulation. This regulation has no economic impact on small businesses.

Contact Information: Amy Jenkins, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Withdrawal of Notice of Intended Regulatory Action

Title of Regulation: **12VAC5-460. Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools.**

Statutory Authority: §§ 35.1-11 and 35.1-13 of the Code of Virginia.

Notice is hereby given that the State Board of Health has WITHDRAWN the Notice of Intended Regulatory Action for **12VAC5-460, Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools**, that was published in 39:3 VA.R. 58 September 26, 2022. The purpose of the proposed action was to update the regulation following periodic review. When the State Board of Health is ready, it will reissue a Notice of Intended Regulatory Action to fully reflect the nature of the anticipated amendments, as identified by subject matter experts and stakeholders.

Agency Contact: Briana Bill, Program Manager, Tourist Establishments and General Environmental Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23235, telephone (805) 584-6340, or email briana.bill@vdh.virginia.gov.

VA.R. Doc. No. R22-7147; Filed January 23, 2023, 8:51 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

AUCTIONEERS BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Auctioneers Board intends to consider amending **18VAC25-21, Rules and Regulations of the Virginia Auctioneers Board**. The purpose of the proposed action is to remove overly burdensome or no longer applicable requirements and clarify and consolidate regulations in accordance with Governor Youngkin's Executive Directive One (2022).

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 54.1-201 and 54.1-602 of the Code of Virginia.

Public Comment Deadline: March 15, 2023.

Agency Contact: Bonnie Davis, Administrator, Auctioneers Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-4857, FAX (866) 465-6206, or email auctioneers@dpor.virginia.gov.

VA.R. Doc. No. R23-7468; Filed January 23, 2023, 10:15 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-40).**

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: January 31, 2023, through February 28, 2023.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email jennifer.farmer@mrc.virginia.gov.

Preamble:

The amendments extend through February 24, 2023, the hand scrape oyster harvest season in the James River Areas 1, 2, and 3 and in the Rappahannock River Rotation Area 2.

4VAC20-720-40. Open oyster harvest season and areas.

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds outside of the seasons and areas set forth in this section.

B. It shall be unlawful to harvest clean cull oysters from the public oyster grounds and unassigned grounds except during the lawful seasons and from the lawful areas as described in this subsection.

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2022, through April 30, 2023 (hand tong only).

2. Milford Haven: November 1, 2022, through March 31, 2023 (hand tong only).

3. Rappahannock River Area 9: October 1, 2022, through March 31, 2023 (hand tong only).

4. Corrotoman Hand Tong Area: October 1, 2022, through March 31, 2023.

5. Little Wicomico River: October 1, 2022, through December 31, 2022 (hand tong only).

6. Nomini Creek Area: October 1, 2022, through January 31, 2023 (hand tong only).

7. Yeocomico River Area: October 1, 2022, through December 31, 2022 (hand tong only).

8. Coan River Area: October 1, 2022, through December 31, 2022 (hand tong only).

9. Indian Creek Area: March 1, 2023, through March 31, 2023 (hand tong only).

10. York River Hand Tong Area: October 1, 2022, through March 31, 2023 (hand tong only).

11. York River Rotation Area 1: November 1, 2022, through March 31, 2023 (hand tong only).

12. Pocomoke Sound Area Public Ground 10: November 1, 2022, through November 15, 2022 (hand tong only).

13. Pocomoke Sound Area Public Ground 9: November 1, 2022, through January 31, 2023 (hand tong only).

14. Rappahannock River Rotation Area 2: December 1, 2022, through ~~January 31~~ February 24, 2023 (hand scrape only).

15. Rappahannock River Rotation Area 4: October 17, 2022, through November 30, 2022, and February 1, 2023, through February 28, 2023 (hand scrape only).

16. Rappahannock River Area 7: December 1, 2022, through December 31, 2022 (hand scrape only).

17. Rappahannock River Area 8: January 1, 2023, through January 31, 2023 (hand scrape only).

18. Great Wicomico River Rotation Area 2: December 1, 2022, through January 31, 2023 (hand scrape only).

19. James River Areas 1, 2, and 3: October 17, 2022, through February ~~14~~ 24, 2023 (hand scrape only).

20. Upper Chesapeake Bay - Blackberry Hangs Area: February 1, 2023, through February 28, 2023 (hand scrape only).

21. York River Area 2: January 1, 2023, through February 28, 2023 (hand scrape only).

22. Pocomoke Sound Area Public Ground 9: February 1, 2023, through February 28, 2023 (hand scrape only).

23. Pocomoke Sound Area Public Ground 10: November 15, 2022 through November 30,~~,~~ 2022 and February 1, 2023 through February 28, 2023 (hand scrape only).

24. Pocomoke and Tangier Sounds Rotation Area 2: December 1, 2022, through February 28, 2023 (dredge only).

25. Deep Rock Area: November 1, 2022, through March 15, 2023 (patent tong only).

26. Rappahannock River Rotation Area 1: October 17, 2022, through February 28, 2023 (patent tong only).

27. Seaside of the Eastern Shore (for clean cull oysters only): November 1, 2022, through March 31, 2023 (by hand and hand tong only).

C. It shall be unlawful to harvest seed oysters from the public oyster grounds or unassigned grounds, except during the lawful seasons. The harvest of seed oysters from the lawful areas is described in this subsection.

1. James River Seed Area: October 1, 2022, through May 31, 2023 (hand tong only).

2. Deep Water Shoal State Replenishment Seed Area: October 1, 2022, through May 31, 2023 (hand tong only).

VA.R. Doc. No. R23-7471; Filed January 31, 2023, 2:22 p.m.

Emergency Regulation

Title of Regulation: **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-20, 4VAC20-950-45).**

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: February 1, 2023, through March 2, 2023.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email jennifer.farmer@mrc.virginia.gov.

Background: Since 2018, the National Marine Fisheries Service has opened federal waters for a recreational black sea bass fishery in February under the condition that any state participating must pay back their February landings during the regular May through December recreational season. In 2020, the Atlantic States Marine Fisheries Commission (ASMFC) and Mid-Atlantic Fishery Management Council (MAFMC) said they support continuing the February recreational season option for states. In October 2022, the Finfish Management Advisory Committee (FMAC) passed a motion to pursue the February black sea bass season in 2023 in recognition of its popularity and importance to the for-hire industry. On December 13, 2022, ASMFC approved Virginia's proposal for a February 2023 recreational season.

Preamble:

The amendments open a recreational black sea bass season in February 2023.

4VAC20-950-20. Definitions.

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

"Annual quota" means Virginia's 15.88% share of the annual coastwide commercial black sea bass quota managed by the Atlantic States Marine Fisheries Commission.

"Black sea bass" means any fish of the species Centropristis striata.

"Land" or "landing" means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

"Recreational vessel" means any vessel, kayak, charter vessel, or headboat fishing recreationally.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, excluding the caudal fin filament, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

"Virginia Saltwater Fisherman's Journal" means the online web-based resource provided by the Marine Resources Commission to report recreational harvest of seafood at https://www.vasaltwaterjournal.com.

4VAC20-950-45. Recreational possession limits and seasons.

A. It shall be unlawful for any person fishing with hook-and-line, rod and reel, spear, gig, or other recreational gear to possess more than 15 black sea bass. When fishing from a recreational vessel where the entire catch is held in a common hold or container, the possession limit shall be for that vessel and shall be equal to the number of persons on board legally licensed to fish, multiplied by 15. The captain or operator of the vessel shall be responsible for that vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. ~~The open recreational fishing season shall be from May 15 through December 11.~~ It shall be unlawful for any person fishing recreationally to harvest or possess black sea bass before May 15 or after December 11 of the current calendar year, except as described in subsection D of this section.

D. It shall be unlawful for any person fishing recreationally to ~~take, catch, or possess any black sea bass, except during an open recreational season.~~ harvest or possess any black sea bass from February 1 through February 28, 2023, unless the captain or operator of the recreational vessel has obtained a Recreational Black Sea Bass Permit from the Marine Resources Commission (commission).

1. The captain or operator shall be responsible for reporting for all anglers on the recreational vessel and shall provide that captain's or that operator's Marine Resources Commission identification (MRC ID) number, the date of fishing, the number of persons on board, the mode of fishing, and the number of black sea bass kept or released. That report shall be submitted on forms provided by the commission or through the Virginia Saltwater Fisherman's Journal.

a. It shall be unlawful for any permittee to fail to report each trip where black sea bass were targeted, whether black sea bass were harvested, released, or not caught, by March 15 of the current calendar year.

b. It shall be unlawful for any permittee who did not take any fishing trips to target black sea bass in the February recreational black sea bass season to fail to report lack of participation by March 15 of the current calendar year.

2. It shall be unlawful for any permittee to fail to contact the Law Enforcement Operations at 1-800-541-4646 before or immediately after the start of each fishing trip. The permittee shall provide the Law Enforcement Operations with the permittee's name, MRC ID number, the point of landing, a description of the vessel, estimated return to shore time, and a contact phone number.

3. Any permittee shall allow the commission to sample the vessel's catch to obtain biological information for scientific and management purposes.

VA.R. Doc. No. R23-7444; Filed January 26, 2023, 11:41 a.m.

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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: **9VAC5-20. General Provisions (amending 9VAC5-20-21).**

9VAC5-50. New and Modified Stationary Sources (amending 9VAC5-50-400).

9VAC5-60. Hazardous Air Pollutant Sources (amending 9VAC5-60-60, 9VAC5-60-90, 9VAC5-60-100).

Statutory Authority:

§ 10.1-1308 of the Code of Virginia; §§ 108, 109, 110, and 182 of the Clean Air Act; 40 CFR Parts 50, 53, and 58 (9VAC5-20-21).

§ 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 (9VAC5-50-400, 9VAC5-60-60, 9VAC5-60-90, 9VAC5-60-100).

Effective Date: March 15, 2023.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

The amendments (i) update references to certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2022; (ii) update two other federal standards; and (iii) include 1-bromopropane (1-BP) on Virginia's list of hazardous air pollutants to align it with the U.S. Environmental Protection Agency rule effective January 5, 2022.

9VAC5-20-21. Documents incorporated by reference.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.

2. Code of Virginia.

3. Code of Federal Regulations.

4. Federal Register.

5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2020)~~ (2022) in effect July 1, ~~2020~~ 2022. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations;

40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.

a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.

(1) 40 CFR Part 50 -- National Primary and Secondary Ambient Air Quality Standards.

(a) Appendix A-1 -- Reference Measurement Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method).

(b) Appendix A-2 -- Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(c) Appendix B -- Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(d) Appendix C -- Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(e) Appendix D -- Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(f) Appendix E -- Reserved.

(g) Appendix F -- Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(h) Appendix G -- Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(i) Appendix H -- Interpretation of the National Ambient Air Quality Standards for Ozone.

(j) Appendix I -- Interpretation of the 8-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.

(k) Appendix J -- Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere.

(l) Appendix K -- Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(m) Appendix L -- Reference Method for the Determination of Fine Particulate Matter as $PM_{2.5}$ in the Atmosphere.

(n) Appendix M -- Reserved.

(o) Appendix N -- Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$.

(p) Appendix O -- Reference Method for the Determination of Coarse Particulate Matter as PM in the Atmosphere.

(q) Appendix P -- Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

(r) Appendix Q -- Reference Method for the Determination of Lead in Suspended Particulate Matter as PM_{10} Collected from Ambient Air.

(s) Appendix R -- Interpretation of the National Ambient Air Quality Standards for Lead.

(t) Appendix S -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide).

(u) Appendix T -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Sulfur (Sulfur Dioxide).

(v) Appendix U -- Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

(2) 40 CFR Part 51 -- Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

(a) Appendix M -- Recommended Test Methods for State Implementation Plans.

(b) Appendix S -- Emission Offset Interpretive Ruling.

(c) Appendix W -- Guideline on Air Quality Models (Revised).

(d) Appendix Y -- Guidelines for BART Determinations Under the Regional Haze Rule.

(3) 40 CFR Part 55 -- Outer Continental Shelf Air Regulations, except for §§ 55.5, 55.11, and 55.12.

(4) 40 CFR Part 58 -- Ambient Air Quality Surveillance.

Appendix A -- Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring.

(5) 40 CFR Part 59 -- National Volatile Organic Compound Emission Standards for Consumer and Commercial Products.

(a) Subpart C -- National Volatile Organic Compound Emission Standards for Consumer Products.

(b) Subpart D -- National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A -- Determination of Volatile Matter Content of

Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings.

(6) 40 CFR Part 60 -- Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources).

(7) 40 CFR Part 61 -- National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(8) 40 CFR Part 63 -- National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(9) 40 CFR Part 64 -- Compliance Assurance Monitoring.

(10) 40 CFR Part 72 -- Permits Regulation.

(11) 40 CFR Part 73 -- Sulfur Dioxide Allowance System.

(12) 40 CFR Part 74 -- Sulfur Dioxide Opt-Ins.

(13) 40 CFR Part 75 -- Continuous Emission Monitoring.

(14) 40 CFR Part 76 -- Acid Rain Nitrogen Oxides Emission Reduction Program.

(15) 40 CFR Part 77 -- Excess Emissions.

(16) 40 CFR Part 78 -- Appeal Procedures for Acid Rain Program.

(17) 40 CFR Part 81 -- Designation of Areas for Air Quality Planning Purposes.

(18) 40 CFR Part 82 -- Protection of Stratospheric Ozone.

(19) 40 CFR Part 152 Subpart I -- Classification of Pesticides.

~~(18)~~ (20) 49 CFR Part 172 -- Hazardous Materials Table. Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements, Subpart E, Labeling.

~~(19)~~ (21) 29 CFR Part 1926 Subpart F -- Fire Protection and Prevention.

b. Copies may be obtained from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; telephone (202) 783-3238.

2. U.S. Environmental Protection Agency.

a. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997; Supplement D, 1998; Supplement E, 1999.

(3) "Guidelines for Determining Capture Efficiency" (GD-35), Emissions Monitoring and Analysis Division, Office of Air Quality Planning and Standards, January 9, 1995.

b. Copies of the document identified in subdivision E 2 a (1) of this section, and Volume I and Supplements A through C of the document identified in subdivision E 2 a (2) of this section, may be obtained from U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; telephone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision E 2 a (2) of this section may be obtained online from EPA's Technology Transfer Network at http://www.epa.gov/ttn/index.html. Copies of the document identified in subdivision E 2 a (3) of this section are only available online from EPA's Technology Transfer Network at http://www.epa.gov/ttn/emc/guidlnd.html.

3. United States government.

a. The following document from the United States government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

b. Copies may be obtained from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; telephone (202) 512-1800.

4. American Society for Testing and Materials (ASTM).

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

(2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."

(3) D129-00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."

(4) D388-99, "Standard Classification of Coals by Rank."

(5) D396-98, "Standard Specification for Fuel Oils."

(6) D975-98b, "Standard Specification for Diesel Fuel Oils."

(7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases."

(8) D1265-97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."

(9) D2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry."

(10) D4057-95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(11) D4294-98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy."

(12) D523-89, "Standard Test Method for Specular Gloss" (1999).

(13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).

(14) D1640-95, "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).

(15) E119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials" (2000).

(16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).

(17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films" (1998).

(18) D86-04b, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2004).

(19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).

(20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).

(21) D3912-95, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants" (reapproved 2001).

(22) D4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants."

(23) F852-99, "Standard Specification for Portable Gasoline Containers for Consumer Use" (reapproved 2006).

(24) F976-02, "Standard Specification for Portable Kerosine and Diesel Containers for Consumer Use."

(25) D4457-02, "Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph" (reapproved 2008).

(26) D3792-05, "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph."

(27) D2879-97, "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope" (reapproved 2007).

b. Copies may be obtained from American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; telephone (610) 832-9585.

5. American Petroleum Institute (API).

a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.

b. Copies may be obtained from American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005; telephone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH).

a. The following document from the ACGIH is incorporated herein by reference: 1991-1992 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

b. Copies may be obtained from ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, OH 45240; telephone (513) 742-2020.

7. National Fire Prevention Association (NFPA).

a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

(1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.

(2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.

(3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.

b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101; telephone (617) 770-3000.

8. American Society of Mechanical Engineers (ASME).

a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.

(1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991).

(2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).

(3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.

b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016; telephone (800) 843-2763.

9. American Hospital Association (AHA).

a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.

b. Copies may be obtained from American Hospital Association, One North Franklin, Chicago, IL 60606; telephone (800) 242-2626.

10. Bay Area Air Quality Management District (BAAQMD).

a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:

(1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).

(2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).

b. Copies may be obtained from Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, telephone (415) 771-6000.

11. South Coast Air Quality Management District (SCAQMD).

a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:

(1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).

(4) Method 304-91, "Determination of Volatile Organic Compounds (VOC) in Various Materials," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(5) Method 316A-92, "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(6) "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems," October 3, 1989.

b. Copies may be obtained from South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, telephone (909) 396-2000.

12. California Air Resources Board (CARB).

a. The following documents from the California Air Resources Board are incorporated herein by reference:

(1) Test Method 510, "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(2) Test Method 511, "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(3) Method 100, "Procedures for Continuous Gaseous Emission Stack Sampling" (July 28, 1997).

(4) Test Method 513, "Determination of Permeation Rate for Spill-Proof Systems" (July 6, 2000).

(5) Method 310, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (Including Appendices A and B)" (May 5, 2005).

(6) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, § 94503.5 (2003).

(7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511 (2003).

(8) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555 (2003).

(9) "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501" (July 26, 2006).

(10) "Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems, TP-501" (July 26, 2006).

(11) "Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers, TP-502" (July 26, 2006).

b. Copies may be obtained from California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, telephone (906) 322-3260 or (906) 322-2990.

13. American Architectural Manufacturers Association.

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).

(2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior

Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).

b. Copies may be obtained from American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, telephone (847) 303-5664.

14. American Furniture Manufacturers Association.

a. The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (January 2001).

b. Copies may be obtained from American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; telephone (336) 884-5000.

15. Petroleum Equipment Institute.

a. The following document from the Petroleum Equipment Institute is incorporated herein by reference: Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites, PEI/RP300-09 (2009).

b. Copies may be obtained from Petroleum Equipment Institute, 6931 S. 66th E. Avenue, Suite 310, Tulsa, OK 74133; telephone (918) 494-9696; www.pei.org.

16. American Architectural Manufacturers Association (AAMA).

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels, publication number AAMA 2604-05.

(2) Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels, publication number AAMA 2605-05.

b. Copies may be obtained from American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173-4268; telephone (847) 303-5774.

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 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 ~~(2020)~~ (2022) in effect July 1, ~~2020~~ 2022. 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.

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 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 ~~(2020)~~ (2022) in effect July 1, ~~2020~~ 2022. 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.

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 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 ~~(2020)~~ (2022) in effect July 1, ~~2020~~ 2022. 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.

9VAC5-60-100. Designated emission standards.

Subpart A - General Provisions.

40 CFR 63.1 through 40 CFR 63.11; 40 CFR 63.16

(applicability, definitions, units and abbreviations, prohibited activities and circumvention, construction and reconstruction, compliance with standards and maintenance requirements, performance testing requirements, monitoring

requirements, notification requirements, recordkeeping and reporting requirements, control device requirements, performance track provisions)

Subpart B - Not applicable.

Subpart C - List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List.

40 CFR 63.60, 40 CFR 63.61, 40 CFR 63.62 ~~and~~, 40 CFR 63.63, and 40 CFR 63.64

(deletion of caprolactam from the list of hazardous air pollutants, deletion of methyl ethyl ketone from the list of hazardous air pollutants, redefinition of glycol ethers listed as hazardous air pollutants, deletion of ethylene glycol monobutyl ether from the list of hazardous air pollutants, addition of 1-bromopropane (1-BP) to the list of hazardous air pollutants)

Subpart D - Not applicable.

Subpart E - Not applicable.

Subpart F - Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

40 CFR 63.100 through 40 CFR 63.106

(chemical manufacturing process units that manufacture as a primary product one or more of a listed chemical; use as a reactant or manufacture as a product, by-product, or co-product, one or more of a listed organic hazardous air pollutant; and are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart G - Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

40 CFR 63.110 through 40 CFR 63.152

(all process vents, storage vessels, transfer operations, and wastewater streams within a source subject to Subpart F, 40 CFR 63.100 through 40 CFR 63.106)

Subpart H - Organic Hazardous Air Pollutants for Equipment Leaks.

40 CFR 63.160 through 40 CFR 63.182

(pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or systems that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63)

Subpart I - Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

40 CFR 63.190 through 40 CFR 63.192

(emissions of designated organic hazardous air pollutants from processes specified in this subpart that are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart J - Polyvinyl Chloride and Copolymers Production.

40 CFR 63.210 through 40 CFR 63.217

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart K - Reserved.

Subpart L - Coke Oven Batteries.

40 CFR 63.300 through 40 CFR 63.313

(existing by-product coke oven batteries at a coke plant, and existing nonrecovery coke oven batteries located at a coke plant)

Subpart M - Perchlorethylene Dry Cleaning Facilities.

40 CFR 63.320 through 40 CFR 63.325

(each dry cleaning facility that uses perchlorethylene)

Subpart N - Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

40 CFR 63.340 through 40 CFR 63.347

(each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing)

Subpart O - Ethylene Oxide Commercial Sterilization and Fumigation Operations.

40 CFR 63.360 through 40 CFR 63.367

(sterilization sources using ethylene oxide in sterilization or fumigation operations)

Subpart P - Reserved.

Subpart Q - Industrial Process Cooling Towers.

40 CFR 63.400 through 40 CFR 63.406

(industrial process cooling towers that are operated with chromium-based water treatment chemicals)

Subpart R - Gasoline Distribution Facilities.

40 CFR 63.420 through 40 CFR 63.429

(bulk gasoline terminals and pipeline breakout stations)

Subpart S - Pulp and Paper Industry.

40 CFR 63.440 through 40 CFR 63.458

(processes that produce pulp, paper, or paperboard, and use the following processes and materials: kraft, soda, sulfite, or semi-chemical pulping processes using wood; or mechanical

pulping processes using wood; or any process using secondary or nonwood fibers)

Subpart T - Halogenated Solvent Cleaning.

40 CFR 63.460 through 40 CFR 63.469

(each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride, perchlorethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform)

Subpart U - Group I Polymers and Resins.

40 CFR 63.480 through 40 CFR 63.506

(elastomer product process units that produce butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polysulfide rubber, polybutadiene rubber/styrene butadiene rubber by solution, styrene butadiene latex, and styrene butadiene rubber by emulsion)

Subpart V - Reserved.

Subpart W - Epoxy Resins Production and Non-Nylon Polyamides Production.

40 CFR 63.520 through 40 CFR 63.527

(manufacturers of basic liquid epoxy resins and wet strength resins)

Subpart X - Secondary Lead Smelting.

40 CFR 63.541 through 40 CFR 60.552

(at all secondary lead smelters: blast, reverberatory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources)

Subpart Y - Marine Tank Vessel Tank Loading Operations.

40 CFR 63.560 through 40 CFR 63.567

(marine tank vessel unloading operations at petroleum refineries)

Subpart Z - Reserved.

Subpart AA - Phosphoric Acid Manufacturing Plants.

40 CFR 63.600 through 40 CFR 63.611

(wet-process phosphoric acid process lines, evaporative cooling towers, rock dryers, rock calciners, superphosphoric acid process lines, purified acid process lines)

Subpart BB - Phosphate Fertilizers Production Plants.

40 CFR 63.620 through 40 CFR 63.632

(diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings)

Subpart CC - Petroleum Refineries.

40 CFR 63.640 through 40 CFR 63.671

(storage tanks, equipment leaks, process vents, and wastewater collection and treatment systems at petroleum refineries)

Subpart DD - Off-Site Waste and Recovery Operations.

40 CFR 63.680 through 40 CFR 63.697

(operations that treat, store, recycle, and dispose of waste received from other operations that produce waste or recoverable materials as part of their manufacturing processes)

Subpart EE - Magnetic Tape Manufacturing Operations.

40 CFR 63.701 through 40 CFR 63.708

(manufacturers of magnetic tape)

Subpart FF - Reserved.

Subpart GG - Aerospace Manufacturing and Rework Facilities.

40 CFR 63.741 through 40 CFR 63.759

(facilities engaged in the manufacture or rework of commercial, civil, or military aerospace vehicles or components)

Subpart HH - Oil and Natural Gas Production Facilities.

40 CFR 63.760 through 40 CFR 63.779

(facilities that process, upgrade, or store hydrocarbon liquids or natural gas; ancillary equipment and compressors intended to operate in volatile hazardous air pollutant service)

Subpart II - Shipbuilding and Ship Repair (Surface Coating).

40 CFR 63.780 through 40 CFR 63.788

(shipbuilding and ship repair operations)

Subpart JJ - Wood Furniture Manufacturing Operations.

40 CFR 63.800 through 40 CFR 63.819

(finishing materials, adhesives, and strippable spray booth coatings; storage, transfer, and application of coatings and solvents)

Subpart KK - Printing and Publishing Industry.

40 CFR 63.820 through 40 CFR 63.831

(publication rotogravure, product and packaging rotogravure, and wide-web printing processes)

Subpart LL - Primary Aluminum Reduction Plants.

40 CFR 63.840 through 40 CFR 63.859

(each pitch storage tank, potline, paste production plant, or anode bulk furnace associated with primary aluminum production)

Subpart MM - Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semichemical Pulp Mills.

40 CFR 63.860 through 40 CFR 63.868

(chemical recovery systems, direct and nondirect contact evaporator recovery furnace systems, lime kilns, sulfite combustion units, semichemical combustion units)

Subpart NN - Wool Fiberglass Manufacturing at Area Sources.

40 CFR 63.880 through 40 CFR 63.899

(manufacture of wool fiberglass insulation materials composed of glass fibers made from glass produced or melted at the same facility where the manufacturing line is located)

Subpart OO - Tanks--Level 1.

40 CFR 63.900 through 40 CFR 63.907

(for off-site waste and recovery operations, fixed-roof tanks)

Subpart PP - Containers.

40 CFR 63.920 through 40 CFR 63.928

(for off-site waste and recovery operations, containers)

Subpart QQ - Surface Impoundments.

40 CFR 63.940 through 40 CFR 63.948

(for off-site waste and recovery operations, surface impoundment covers and vents)

Subpart RR - Individual Drain Systems.

40 CFR 63.960 through 40 CFR 63.966

(for off-site waste and recovery operations, inspection and maintenance of individual drain systems)

Subpart SS - Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

40 CFR 63.980 through 40 CFR 63.999

(closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process, when associated with facilities subject to a referencing subpart)

Subpart TT - Equipment Leaks - Control Level 1.

40 CFR 63.1000 through 40 CFR 63.1018

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart)

Subpart UU - Equipment Leaks - Control Level 2.

40 CFR 63.1019 through 40 CFR 63.1039

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, closed vent systems and control devices)

Subpart VV - Oil-Water Separators and Organic-Water Separators.

40 CFR 63.1040 through 40 CFR 63.1049

(for off-site waste and recovery operations, oil-water separators and organic-water separator roofs and vents)

Subpart WW - Storage Vessels (Tanks) - Control Level 2.

40 CFR 63.1060 through 40 CFR 63.1066

(storage vessels associated with facilities subject to a referencing subpart)

Subpart XX - Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste.

40 CFR 63.1080 through 40 CFR 63.1098

(any cooling tower system or once-through cooling water system)

Subpart YY - Generic Maximum Achievable Control Technology Standards.

40 CFR 63.1100 through 40 CFR 63.1113

(acetal resins production, acrylic and modacrylic fibers production, hydrogen fluoride production, polycarbonate production)

Subpart ZZ - Reserved.

Subpart AAA - Reserved.

Subpart BBB - Reserved.

Subpart CCC - Steel Pickling - Hydrogen Chloride Process Facilities and Hydrochloric Acid Regeneration Plants.

40 CFR 63.1155 through 40 CFR 63.1174

(steel pickling facilities that pickle carbon steel using hydrochloric acid solution, hydrochloric acid regeneration plants)

Subpart DDD - Mineral Wool Production.

40 CFR 63.1175 through 40 CFR 63.1199

(cupolas and curing ovens at mineral wool manufacturing facilities)

Subpart EEE - Hazardous Waste Combustors.

40 CFR 63.1200 through 40 CFR 63.1221

(hazardous waste combustors)

Subpart FFF - Reserved.

Subpart GGG - Pharmaceutical Production.

40 CFR 63.1250 through 40 CFR 63.1261

(pharmaceutical manufacturing operations)

Subpart HHH - Natural Gas Transmission and Storage Facilities.

40 CFR 63.1270 through 40 CFR 63.1289

(natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user)

Subpart III - Flexible Polyurethane Foam Production.

40 CFR 63.1290 through 40 CFR 63.1309

(flexible polyurethane foam or rebond processes)

Subpart JJJ - Group IV Polymers and Resins.

40 CFR 63.1310 through 40 CFR 63.1335

(facilities which manufacture acrylonitrile butadiene styrene resin, styrene acrylonitrile resin, methyl methacrylate butadiene styrene resin, polystyrene resin, poly(ethylene terephthalate) resin, or nitrile resin)

Subpart KKK - Reserved.

Subpart LLL - Portland Cement Manufacturing.

40 CFR 63.1340 through 40 CFR 63.1359

(kilns; in-line kilns/raw mills; clinker coolers; raw mills; finish mills; raw material dryers; raw material, clinker, or finished product storage bins; conveying system transfer points; bagging systems; bulk loading or unloading systems)

Subpart MMM - Pesticide Active Ingredient Production.

40 CFR 63.1360 through 40 CFR 63.1369

(pesticide active ingredient manufacturing process units, waste management units, heat exchange systems, and cooling towers)

Subpart NNN - Wool Fiberglass Manufacturing.

40 CFR 63.1380 through 40 CFR 63.1399

(glass melting furnaces, rotary spin wool fiberglass manufacturing lines producing bonded wool fiberglass building insulation or bonded heavy-density product)

Subpart OOO - Amino/Phenolic Resins Production.

40 CFR 63.1400 through 40 CFR 63.1419

(unit operations, process vents, storage vessels, equipment subject to leak provisions)

Subpart PPP - Polyether Polyols Production.

40 CFR 63.1420 through 40 CFR 63.1439

(polyether polyol manufacturing process units)

Subpart QQQ - Primary Copper Smelting.

40 CFR 63.1440 through 40 CFR 63.1-1459

(batch copper converters, including copper concentrate dryers, smelting furnaces, slag cleaning vessels, copper converter departments, and the entire group of fugitive emission sources)

Subpart RRR - Secondary Aluminum Production.

40 CFR 63.1500 through 40 CFR 63.1520

(scrap shredders; thermal chip dryers; scrap dryers/delacquering kilns/decoating kilns; group 2, sweat, dross-only furnaces; rotary dross coolers; processing units)

Subpart SSS - Reserved.

Subpart TTT - Primary Lead Smelting.

40 CFR 63.1541 through 40 CFR 63.1550

(sinter machines, blast furnaces, dross furnaces, process fugitive sources, fugitive dust sources)

Subpart UUU - Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

40 CFR 63.1560 through 40 CFR 63.1579

(petroleum refineries that produce transportation and heating fuels or lubricants, separate petroleum, or separate, crack, react, or reform an intermediate petroleum stream, or recover byproducts from an intermediate petroleum stream)

Subpart VVV - Publicly Owned Treatment Works.

40 CFR 63.1580 through 40 CFR 63.1595

(intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment)

Subpart WWW - Reserved.

Subpart XXX - Ferroalloys Production: Ferromanganese and Silicomanganese.

40 CFR 63.1620 through 40 CFR 63.1679

(submerged arc furnaces, metal oxygen refining processes, crushing and screening operations, fugitive dust sources)

Subpart YYY - Reserved.

Subpart ZZZ - Reserved.

Subpart AAAA - Municipal Solid Waste Landfills.

40 CFR 63.1930 through 40 CFR 63.1990

(municipal solid waste landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition)

Subpart BBBB - Reserved.

Subpart CCCC - Manufacturing of Nutritional Yeast.

40 CFR 63.2130 through 40 CFR 63.2192

(fermentation vessels)

Subpart DDDD - Plywood and Composite Wood Products.

40 CFR 63.2230 through 40 CFR 63.2292

(manufacture of plywood and composite wood products by bonding wood material or agricultural fiber with resin under heat and pressure to form a structural panel or engineered wood product)

Subpart EEEE - Organic Liquids Distribution (Nongasoline).

40 CFR 63.2330 through 40 CFR 63.2406

(transfer of noncrude oil liquids or liquid mixtures that contain organic hazardous air pollutants, or crude oils downstream of the first point of custody, via storage tanks, transfer racks, equipment leak components associated with pipelines, and transport vehicles)

Subpart FFFF - Miscellaneous Organic Chemical Manufacturing.

40 CFR 63.2430 through 40 CFR 63.2550

(reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment that is used to produce a product or isolated intermediate)

Subpart GGGG - Solvent Extraction for Vegetable Oil Production.

40 CFR 63.2830 through 40 CFR 63.2872

(vegetable oil production processes)

Subpart HHHH - Wet-formed Fiberglass Mat Production.

40 CFR 63.2980 through 63.3079

(wet-formed fiberglass mat drying and curing ovens)

Subpart IIII - Surface Coating of Automobiles and Light-Duty Trucks.

40 CFR 63.3080 through 40 CFR 63.3176.

(application of topcoat to new automobile or new light-duty truck bodies or body parts)

Subpart JJJJ - Paper and Other Web Coating.

40 CFR 63.3280 through 40 CFR 63.3420

(web coating lines engaged in the coating of metal webs used in flexible packaging and in the coating of fabric substrates for use in pressure-sensitive tape and abrasive materials)

Subpart KKKK - Surface Coating of Metal Cans.

40 CFR 63.3480 through 40 CFR 63.3561

(application of coatings to a substrate using spray guns or dip tanks, including one-piece and two-piece draw and iron can body coating; sheetcoating; three-piece can body assembly coating; and end coating)

Subpart LLLL - Reserved.

Subpart MMMM - Surface Coating of Miscellaneous Metal Parts and Products.

40 CFR 63.3880 through 40 CFR 63.3981

(application of coatings to industrial, household, and consumer products)

Subpart NNNN - Surface Coating of Large Appliances.

40 CFR 63.4080 through 40 CFR 63.4181

(surface coating of a large appliance part or product, including cooking equipment; refrigerators, freezers, and refrigerated cabinets and cases; laundry equipment; dishwashers, trash compactors, and water heaters; and HVAC units, air-conditioning, air-conditioning and heating combination units, comfort furnaces, and electric heat pumps)

Subpart OOOO - Printing, Coating, and Dyeing of Fabrics and Other Textiles.

40 CFR 63.4280 through 40 CFR 63.4371

(printing, coating, slashing, dyeing, or finishing of fabric and other textiles)

Subpart PPPP - Surface Coating of Plastic Parts and Products.

40 CFR 63.4480 through 40 CFR 63.4581

(application of coating to a substrate using spray guns or dip tanks, including motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products)

Subpart QQQQ - Surface Coating of Wood Building Products.

40 CFR 63.4680 through 40 CFR 63.4781

(finishing or laminating of wood building products used in the construction of a residential, commercial, or institutional building)

Subpart RRRR - Surface Coating of Metal Furniture.

40 CFR 63.4880 through 40 CFR 63.4981

(application of coatings to substrate using spray guns and dip tanks)

Subpart SSSS - Surface Coating of Metal Coil.

40 CFR 63.5080 through 40 CFR 63.5209

(organic coating to surface of metal coil, including web unwind or feed sections, work stations, curing ovens, wet sections, and quench stations)

Subpart TTTT - Leather Finishing Operations.

40 CFR 63.5280 through 40 CFR 63.5460

(multistage application of finishing materials to adjust and improve the physical and aesthetic characteristics of leather surfaces)

Subpart UUUU - Cellulose Products Manufacturing.

40 CFR 63.5480 through 40 CFR 63.5610

(cellulose food casing, rayon, cellulosic sponge, cellophane manufacturing, methyl cellulose, hydroxypropyl methyl cellulose, hydroxypropyl cellulose, hydroxyethyl cellulose, and carboxymethyl cellulose manufacturing industries)

Subpart VVVV - Boat Manufacturing.

40 CFR 63.5680 through 40 CFR 63.5779

(resin and gel coat operations, carpet and fabric adhesive operations, aluminum recreational boat surface coating operations)

Subpart WWWW - Reinforced Plastic Composites Production.

40 CFR 63.5780 through 40 CFR 63.5935

(reinforced or nonreinforced plastic composites or plastic molding compounds using thermostat resins and gel coats that contain styrene)

Subpart XXXX - Rubber Tire Manufacturing.

40 CFR 63.5980 through 40 CFR 63.6015

(production of rubber tires and components including rubber compounds, sidewalls, tread, tire beads, tire cord and liners)

Subpart YYYY - Stationary Combustion Turbines.

40 CFR 63.6080 through 40 CFR 63.6175

(simple cycle, regenerative/recuperative cycle, cogeneration cycle, and combined cycle stationary combustion turbines)

Subpart ZZZZ - Stationary Reciprocating Internal Combustion Engines.

40 CFR 63.6580 through 40 CFR 63.6675.

(any stationary internal combustion engine that uses reciprocating motion to convert heat energy into mechanical work)

(NOTE: Authority to enforce provisions related to affected facilities located at a major source as defined in 40 CFR 63.6675 is being retained by the Commonwealth. Authority to enforce the area source provisions of the above standard is being retained by EPA and are not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart AAAAA - Lime Manufacturing Plants.

40 CFR 63.7080 through 40 CFR 63.7143.

(manufacture of lime product, including calcium oxide, calcium oxide with magnesium oxide, or dead burned dolomite, by calcination of limestone, dolomite, shells or other calcareous substances)

Subpart BBBBB - Semiconductor Manufacturing.

40 CFR 63.7180 through 40 CFR 63.7195

(semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate)

Subpart CCCCC - Coke Ovens: Pushing, Quenching, and Battery Stacks.

40 CFR 63.7280 through 40 CFR 63.7352

(pushing, soaking, quenching, and battery stacks at coke oven batteries)

Subpart DDDDD - Industrial, Commercial, and Institutional Boilers and Process Heaters.

40 CFR 63.7480 through 40 CFR 63.7575

(industrial, commercial, and institutional boilers and process heaters)

Subpart EEEEE - Iron and Steel Foundries.

40 CFR 63.7680 through 40 CFR 63.7765

(metal melting furnaces, scrap preheaters, pouring areas, pouring stations, automated conveyor and pallet cooling lines, automated shakeout lines, and mold and core making lines)

Subpart FFFFF - Integrated Iron and Steel Manufacturing.

40 CFR 63.7780 through 40 CFR 63.7852

(each sinter plant, blast furnace, and basic oxygen process furnace at an integrated iron and steel manufacturing facility)

Subpart GGGGG - Site Remediation.

40 CFR 63.7880 through 40 CFR 63.7957

(activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material)

Subpart HHHHH - Miscellaneous Coating Manufacturing.

40 CFR 63.7980 through 40 CFR 63.8105

(process vessels; storage tanks for feedstocks and products; pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; wastewater tanks and transfer racks)

Subpart IIIII - Mercury Cell Chlor-Alkali Plants.

40 CFR 63.8180 through 40 CFR 63.8266

(byproduct hydrogen streams, end box ventilation system vents, and fugitive emission sources associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes)

Subpart JJJJJ - Brick and Structural Clay Products Manufacturing.

40 CFR 63.8380 through 40 CFR 63.8515

(facilities that manufacture brick, clay pipe, roof tile, extruded floor and wall tile, and other extruded, dimensional clay products, and typically process raw clay and shale, form the processed materials into bricks or shapes, and dry and fire the bricks or shapes)

Subpart KKKKK - Ceramics Manufacturing.

40 CFR 63.8530 through 40 CFR 63.8665

(facilities that manufacture pressed floor tile, pressed wall tile, other pressed tile, or sanitaryware, and typically process clay, shale, and various additives, form the processed materials into tile or sanitaryware shapes, and dry and fire the ceramic products)

Subpart LLLLL - Asphalt Processing and Asphalt Roof Manufacturing.

40 CFR 63.8680 through 40 CFR 63.8698

(preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities)

Subpart MMMMM - Flexible Polyurethane Foam Fabrication Operations.

40 CFR 63.8780 through 40 CFR 63.8830

(flexible polyurethane foam fabrication plants using flame lamination or loop slitter adhesives)

Subpart NNNNN - Hydrochloric Acid Production.

40 CFR 63.8980 through 40 CFR 63.9075

(HCl production facilities that produce a liquid HCl product)

Subpart OOOOO - Reserved.

Subpart PPPPP - Engine Test Cells and Stands.

40 CFR Subpart 63.9280 through 40 CFR 63.9375

(any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines)

Subpart QQQQQ - Friction Materials Manufacturing Facilities.

40 CFR 63.9480 through 40 CFR 63.9579

(friction materials manufacturing facilities that use a solvent-based process)

Subpart RRRRR - Taconite Iron Ore Processing.

40 CFR 63.9580 through 40 CFR 63.9652

(ore crushing and handling, ore dryer stacks, indurating furnace stacks, finished pellet handling, and fugitive dust)

Subpart SSSSS - Refractory Products Manufacturing.

40 CFR 63.9780 through 40 CFR 63.9824

(manufacture of refractory products, including refractory bricks and shapes, monolithics, kiln furniture, crucibles, and other materials for liming furnaces and other high temperature process units)

Subpart TTTTT - Primary Magnesium Refining.

40 CFR 63.9880 through 40 CFR 63.9942

(spray dryer, magnesium chloride storage bin scrubber, melt/reactor system, and launder off-gas system stacks)

Subpart UUUUU - Coal-fired and Oil-fired Electric Utility Steam Generating Units.

40 CFR 63.9980 through 40 CFR 63.10042

(any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam, including fossil fuel-fired steam generators associated with integrated gasification combined cycle gas turbines and excluding nuclear steam generators, for the purpose of powering a generator to produce electricity or electricity and other thermal energy)

Subpart VVVVV - Reserved.

Subpart WWWWW - Hospital Ethylene Oxide Sterilizer Area Sources.

40 CFR 63.10382 through 40 CFR 63.10448

(any enclosed vessel that is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilization)

Subpart XXXXX - Reserved.

Subpart YYYYY - Electric Arc Furnace Steelmaking Facility Area Sources.

40 CFR 63.10680 through 40 CFR 63.10692

(a steel plant that produces carbon, alloy, or specialty steels using an electric arc furnace)

Subpart ZZZZZ - Iron and Steel Foundries Area Sources.

40 CFR 63.10880 through 40 CFR 63.10906

(a facility that melts scrap, ingot, and/or other forms of iron and/or steel and pours the resulting molten metal into molds to produce final or near final shape products for introduction into commerce)

Subpart AAAAAA - Reserved.

Subpart BBBBBB - Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, Area Sources.

40 CFR 63.11080 through 40 CFR 63.11100

(gasoline storage tanks, gasoline loading racks, vapor collection-equipped gasoline cargo tanks, and equipment components in vapor or liquid gasoline service)

Subpart CCCCCC - Gasoline Dispensing Facilities, Area Sources.

40 CFR 63.11110 through 40 CFR 63.11132

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source

as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart DDDDDD - Polyvinyl Chloride and Copolymers Production Area Sources.

40 CFR 63.11140 through 40 CFR 63.11145

(plants that produce polyvinyl chloride or copolymers)

Subpart EEEEEE - Primary Copper Smelting Area Sources.

40 CFR 63.11146 through 40 CFR 63.11152

(any installation or any intermediate process engaged in the production of copper from copper sulfide ore concentrates through the use of pyrometallurgical techniques)

Subpart FFFFFF - Secondary Copper Smelting Area Sources.

40 CFR 63.11153 through 40 CFR 63.11159

(a facility that processes copper scrap in a blast furnace and converter or that uses another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade copper scrap)

Subpart GGGGGG - Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

40 CFR 63.11160 through 40 CFR 63.11168

(cadmium melting furnaces used to melt cadmium or produce cadmium oxide from the cadmium recovered in the zinc production; primary beryllium production facilities engaged in the chemical processing of beryllium ore to produce beryllium metal, alloy, or oxide, or performing any of the intermediate steps in these processes; and primary zinc production facilities engaged in the production, or any intermediate process in the production, of zinc or zinc oxide from zinc sulfide ore concentrates through the use of pyrometallurgical techniques)

Subpart HHHHHH - Paint Stripping and Miscellaneous Surface Coating Operations Area Sources.

40 CFR 63.11169 through 40 CFR 63.11180

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart IIIIII - Reserved.

Subpart JJJJJJ - Industrial, Commercial, and Institutional Boiler Area Sources.

40 CFR 63.11193 through 40 CFR 63.11226

(NOTE: Authority to enforce the above standard is being retained by EPA and is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart KKKKKK - Reserved.

Subpart LLLLLL - Acrylic and Modacrylic Fibers Production Area Sources.

40 CFR 63.11393 through 40 CFR 63.11399

(production of either of the following synthetic fibers composed of acrylonitrile units: acrylic fiber or modacrylic fiber)

Subpart MMMMMM - Carbon Black Production Area Sources.

40 CFR 63.11400 through 40 CFR 63.11406

(carbon black production process units including all waste management units, maintenance wastewater, and equipment components that contain or contact HAP that are associated with the carbon black production process unit)

Subpart NNNNNN - Chemical Manufacturing Area Sources: Chromium Compounds.

40 CFR 63.11407 through 40 CFR 63.11413

(any process that uses chromite ore as the basic feedstock to manufacture chromium compounds, primarily sodium dichromate, chromic acid, and chromic oxide)

Subpart OOOOOO - Flexible Polyurethane Foam Production and Fabrication Area Sources.

40 CFR 63.11414 through 40 CFR 63.11420

(a facility where pieces of flexible polyurethane foam are cut, bonded, and/or laminated together or to other substrates)

Subpart PPPPPP - Lead Acid Battery Manufacturing Area Sources.

40 CFR 63.11421 through 40 CFR 63.11427

(grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and any other lead-emitting operation that is associated with the lead acid battery manufacturing plant)

Subpart QQQQQQ - Wood Preserving Area Sources.

40 CFR 63.11428 through 40 CFR 63.11434

(pressure or thermal impregnation of chemicals into wood to provide effective long-term resistance to attack by fungi, bacteria, insects, and marine borers)

Subpart RRRRRR - Clay Ceramics Manufacturing Area Sources.

40 CFR 63.11435 through 40 CFR 63.11447

(manufacture of pressed tile, sanitaryware, dinnerware, or pottery with an atomized glaze spray booth or kiln that fires glazed ceramic ware)

Subpart SSSSSS - Glass Manufacturing Area Sources.

40 CFR 63.11448 through 40 CFR 63.11461

(manufacture of flat glass, glass containers, or pressed and blown glass by melting a mixture of raw materials to produce molten glass and form the molten glass into sheets, containers, or other shapes)

Subpart TTTTTT - Secondary Nonferrous Metals Processing Area Sources.

40 CFR 63.11462 through 40 CFR 63.11474

(all crushing and screening operations at a secondary zinc processing facility and all furnace melting operations located at any secondary nonferrous metals processing facility)

Subpart UUUUUU - Reserved.

Subpart VVVVVV - Chemical Manufacturing Area Sources.

40 CFR 63.11494 through 40 CFR 11503

(each chemical manufacturing process unit that uses as feedstocks, generates as byproducts, or produces as products any of the following: 1,3-butadiene; 1,3-dichloropropene; acetaldehyde; chloroform; ethylene dichloride; methylene chloride; hexachlorobenzene; hydrazine; quinoline; or compounds of arsenic, cadmium, chromium, lead, manganese, or nickel)

Subpart WWWWWW - Plating and Polishing Operations, Area Sources.

40 CFR 63.11504 through 40 CFR 63.11513

(new and existing tanks, thermal spraying equipment, and mechanical polishing equipment used in non-chromium electroplating, electroless or non-electrolytic plating, non-electrolytic metal coating, dry mechanical polishing, electroforming, and electropolishing)

Subpart XXXXXX - Nine Metal Fabrication and Finishing Source Categories, Area Sources.

40 CFR 63.11514 through 40 CFR 63.11523

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1 (9VAC5-80-50 et seq., Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources) of Part II of 9VAC5-80.)

Subpart YYYYYY - Ferroalloys Production Facilities, Area Sources.

40 CFR 63.11524 through 40 CFR 63.11543

(manufacture of silicon metal, ferrosilicon, ferrotitanium using the aluminum reduction process, ferrovanadium, ferromolybdenum, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, calcium carbide or other ferroalloy products using electrometallurgical operations including electric arc furnaces or other reaction vessels)

Subpart ZZZZZZ - Aluminum, Copper, and Other Nonferrous Foundries, Area Sources.

40 CFR 63.11544 through 40 CFR 63.11558

(melting operations at aluminum, copper, and other nonferrous foundries, including the collection of induction, reverberatory, crucible, tower, or dry hearth furnaces used to melt metal ingot, alloyed ingot and/or metal scrap to produce molten metal that is poured into molds to make castings)

Subpart AAAAAAA - Asphalt Processing and Asphalt Roofing Manufacturing Area Sources.

40 CFR 63.11559 through 40 CFR 63.11567

(asphalt processing operations that prepare asphalt flux at standalone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities that include one or more asphalt flux blowing stills; and asphalt roofing manufacturing operations that manufacture asphalt roofing products through a series of sequential process steps depending upon whether the type of substrate used is organic or inorganic)

Subpart BBBBBBB - Chemical Preparations Industry Area Sources.

40 CFR 63.11579 through 40 CFR 63.11588

(any facility-wide collection of chemical preparation operations, including the collection of mixing, blending, milling, and extruding equipment used to manufacture chemical preparations that contain metal compounds for chromium, lead, manganese, and nickel)

Subpart CCCCCCC - Paints and Allied Products Manufacturing Area Sources.

40 CFR 63.11599 through 40 CFR 63.11638

(paints and allied products manufacturing processes, including, weighing, blending, mixing, grinding, tinting, dilution or other formulation, as well as cleaning operations, material storage and transfer, and piping)

Subpart DDDDDDD - Prepared Feeds Manufacturing Area Sources.

40 CFR 63.11619 through 40 CFR 63.11638

(production of animal feed from the point in the process where a material containing chromium or manganese is added, to the point where the finished product leaves the facility, including areas where materials containing chromium and manganese are stored, areas where materials containing chromium and manganese are temporarily stored prior to addition to the feed at the mixer, mixing and grinding processes, pelleting and pellet cooling processes, packing and bagging processes, crumblers and screens, bulk loading operations, and all conveyors and other equipment that transfer feed materials)

Subpart EEEEEEE - Gold Mine Ore Processing and Production Area Sources

40 CFR 63.11640 through 40 CFR 63.11653

(any industrial facility engaged in the processing of gold mine ore that uses any of the following processes: roasting operations, autoclaves, carbon kilns, preg tanks, electrowinning, mercury retorts, or melt furnaces)

Subpart FFFFFFF - Reserved.

Subpart GGGGGGG - Reserved.

Subpart HHHHHHH - Polyvinyl Chloride and Copolymers Production.

40 CFR 63.11860 through 40 CFR 63.12000

(facility-wide collection of PVCPU, storage vessels, heat exchange systems, surge control vessels, wastewater and process wastewater treatment systems that are associated with producing polyvinyl chloride and copolymers)

Appendix A - Test Methods.

Appendix B - Sources Defined for Early Reduction Provisions.

Appendix C - Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit.

Appendix D - Alternative Validation Procedure for EPA Waste and Wastewater Methods.

VA.R. Doc. No. R23-7353; Filed January 24, 2023, 12:44 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

Titles of Regulations: **9VAC20-120. Regulated Medical Waste Management Regulations (repealing 9VAC20-120-10 through 9VAC20-120-1000).**

9VAC20-121. Regulated Medical Waste Management Regulations (adding 9VAC20-121-10 through 9VAC20-121-420).

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Part 257.

Effective Date: March 15, 2023.

Agency Contact: Priscilla F. Rohrer, Guidance and Regulation Coordinator, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 217-7074, FAX (804) 698-4178, or email priscilla.rohrer@deq.virginia.gov.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Summary:

This regulatory action repeals and replaces Regulated Medical Waste Management Regulations (9VAC20-120), which provides for the general handling, storage, transfer, treatment, disposal of, packaging, labeling, transporting, and exemptions from all of these provisions for regulated medical waste (RMW). Substantive revisions included in the new chapter (i) provide conditional exemptions to encourage safe collection and proper management of specific types of regulated medical waste, such as sharps; (ii) clarify RMW storage requirements for generators and permitted facilities; (iii) streamline the permit structure and clarify activities exempt from permitting; (iv) specify the siting, design, operation, recordkeeping, and reporting requirements of RMW transfer stations and treatment facilities; (v) require validation and periodic challenge testing for treatment technologies; (vi) clarify procedures for the management of Category A wastes; (vii) improve the alternate treatment technology petition process; and (viii) improve regulatory structure, procedures, and use.

Clarifying changes have been made to the proposed regulation. Additionally, changes to the proposed regulation (i) extend to 18 months the timeframe for existing facilities to submit updated permit applications to come into compliance with the new regulation; (ii) clarify that permit applications for existing facilities will not need to include public participation unless the facility type is changing; (iii) allow generators the flexibility to manage certain fixed tissue blocks as either solid waste or regulated medical waste; (iv) specify that a log may be used by transfer stations and treatment facilities to track the length of time regulated medical waste is stored on site; (v) provide the owner or operator additional time to make arrangements for the management of wastes when the department determines that national treatment capacity is constrained or where preexisting plans are not in place and approves an alternative timeframe; (vi) modify training requirements for permitted facilities to limit training on treatment equipment and challenge testing to treatment facility operators; (vii) require autoclave operation at conditions that are demonstrated

through site-specific validation testing to achieve reliable and effective treatment of the waste stream; (viii) require a minimum of two pre-vacuums, unless based on the results of validation testing, additional vacuum is needed to ensure adequate steam exposure for certain waste or packaging types; (ix) require a treated waste disposal plan and clarify use of a regulated medical waste management plan; (x) allow a facility to maintain written or digital records; and (xi) update the most current version of the federal policy for management of Category A waste, as found on the Pipeline and Hazardous Materials Safety Administrations website.

Chapter 121
Regulated Medical Waste Management Regulations

Part I
Definitions

9VAC20-121-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia defines words and terms that supplement those in this chapter. The Solid Waste Management Regulations (9VAC20-81) define additional words and terms that supplement those in the statutes and this chapter. When the statutes, as cited, and the solid waste management regulations, as cited, conflict, the definitions of the statutes are controlling.

"Approved sanitary sewer system" means a network of sewers serving a facility that has been approved in writing by the Virginia Department of Health, including affiliated local health departments. Such sewer systems may be approved septic tank or drainfield systems and onsite treatment systems, or they may be a part of a collection system served by a VPDES permitted treatment works.

"Ash" means the residual waste material produced from an incineration process or any combustion.

"ASTM" means the American Society for Testing and Materials.

"Autoclave" means a wet thermal [~~sterilization~~ treatment] process that uses saturated steam under a specified amount of pressure for a specified exposure time and at a specific temperature.

"Bioaerosol" means a suspension of airborne particles, generally comprised of microorganisms (e.g., bacteria, viruses) or materials of biological origin released from humans, animals, plants, soil, water, or other sources. Particles range in size from very small to very large, and could include liquid droplets and materials left behind after such droplets evaporate (known as "droplet nuclei").

"Bioburden" means the degree of microbial contamination, including the type and total population of organisms, the number of spore formers present, and their resistance on any material and in a given amount of waste material prior to undergoing treatment.

"Biohazard" means biological substances that pose a threat to the health of living organisms, primarily that of humans, but can include substances harmful to animals.

"Biological indicator" means a preparation of a specific microorganism of a known concentration and resistance to a specific treatment process or to a known physical or chemical condition and is used to evaluate the capability of a process to effectively treat regulated medical waste. "Biological indicators" include bacterial spores or other microorganisms inoculated onto carriers (such as spore strips), spore suspensions, and self-contained biological indicators.

"Biological toxin" or "toxin" means a poison, especially a protein or conjugated protein produced by certain animals, plants, and pathogenic bacteria that is highly poisonous for other living organisms.

"Biologicals" means any preparations (sera, nonviable vaccines, vaccines attenuated in a manner that prevents propagation, antigens, toxins, and antitoxins) derived from a living organism or its products for use in diagnosis, immunization, or treatment of human beings or animals.

"Blood" means human blood, human blood components (e.g., serum and plasma), and products made from human blood.

"Bloodborne pathogen" means pathogenic microorganisms that are present in human blood (including human blood components and products made from human blood) that can cause disease in humans.

"Board" means the Virginia Waste Management Board.

"Body fluids" means liquid emanating or derived from humans, including blood; cerebrospinal, synovial, pleural, peritoneal, and pericardial fluids; semen and vaginal secretions; amniotic fluid; and any other body fluids that are contaminated with blood, mixed or combined with body fluids, or suspected by the health care professional in charge of being capable of producing an infectious disease in humans. This term does not include [~~toenail~~ nail] and skin clippings, breast milk, sputum, semen, teeth, sweat, tears, urine, vomitus, or saliva that are not contaminated with visible blood unless transmission of an infectious disease is possible as determined by a health care professional.

"Calibration" means the demonstration that a measuring device produces accurate results within specified limits of its operating range.

"Captive regulated medical waste management facility" means a regulated medical waste management facility that is located on property owned or controlled by the generator of all waste managed or disposed of at that facility.

"Category A infectious substance" means an infectious substance in a form capable of causing permanent disability or life-threatening or fatal disease in otherwise healthy humans or animals when exposure to the substance occurs. Category A infectious substances are defined by 49 CFR 173.134 of the U.S. Department of Transportation Hazardous Materials Regulations.

"Category A waste" means wastes that are contaminated with a Category A infectious substance and must be packaged and transported in accordance with the U.S. Department of Transportation Hazardous Materials Regulations or an applicable [~~DOT~~ Department of Transportation] special permit.

"Challenge testing" means periodic monitoring or testing of a regulated medical waste treatment device or system that employs the use of biological indicators to demonstrate continued, effective operation of the device or system.

"Closure" means the act of securing a regulated medical waste management facility and terminating use of the facility for management of regulated medical waste pursuant to the requirements of this chapter.

"Container" means any portable enclosure in which a material is stored, transported, treated, or otherwise handled.

"Contaminated" means the presence or the reasonably anticipated presence of blood or other body fluids, infectious agent, biohazard, or biological toxin on an item or surface.

"Cremains" means the ash or bone shadows that remain after cremation.

"Culture" means an infectious substance containing a pathogen that is intentionally propagated. "Culture" does not include a human or animal patient specimen.

"Cultures and stock" means materials derived from the management (e.g., the systems used to grow and maintain infectious agents in vitro, including nutrient agars, gels, broths, and cell lines) of agents infectious to humans, and associated biologicals, from medical or pathological laboratories, from research and industrial laboratories, or from the production of biologicals and includes discarded live or attenuated vaccines capable of propagation, or culture dishes and devices used to transfer, inoculate, or mix cultures.

"Cycle" means the total operating time required for a device to treat regulated medical waste, and for an autoclave, includes warm-up, residence time, and cool down time.

"D-value" or "decimal reduction value" means the thermal resistance or time in minutes at a specific temperature that is required for a one-log or 90% reduction of a specific microbial population under specified treatment conditions.

"Decontamination" means the use of physical or chemical means to remove, inactivate, or destroy human pathogens on a surface or item to the point where they are no longer capable of transmitting disease and the surface or item is rendered safe for handling, use, or disposal.

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

"Director" means the Director of the Department of Environmental Quality or the director's designee.

"Discard" means to throw away or reject. When a material is soiled, contaminated, or no longer usable, and it is placed in a waste receptacle for disposal or treatment prior to disposal, it is considered discarded.

"Discharge" or "waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of regulated medical waste into or on any land or state waters.

"Disinfectant" means an antimicrobial product used on hard inanimate surfaces and objects to destroy or irreversibly inactivate infectious agents, such as bacteria, fungi, and viruses, but not necessarily bacterial spores. There are three types of disinfectants registered by EPA based on the type of efficacy data submitted: limited, general or broad-spectrum, and hospital grade.

"Disinfection" means any procedure that involves the application of an antimicrobial agent (disinfectant) registered with EPA that is consistent with its approved use in accordance with the manufacturer's instructions. Disinfection shall not be considered a form of treatment, and appropriate handling of disinfected materials, as well as health and safety precautions, shall still be required to achieve protection of public health and the environment.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Disposal facility" means a facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which the solid waste will remain after closure.

"Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

"Efficacy testing" means testing of a treatment method, system, or device, conducted by a laboratory, independent of the system manufacturer, in conformance with generally recognized scientific principles, microbiologic examinations, or other pertinent assessments of waste material to establish operating parameters for effective treatment of regulated medical waste.

"Effluent" means liquid waste such as spills, wash water, and wastewater emanating from regulated medical waste storage, transfer, and treatment areas.

"Empty" means wastes have been removed from a container using the practices commonly employed to remove materials of that type such as pouring, pumping, or aspirating.

"EPA" means the U.S. Environmental Protection Agency.

"Exposure time" or "residence time" means the length of time at which the treatment method is held at a specific temperature, pressure, irradiation level, or chemical concentration for effective treatment of regulated medical waste.

"Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency, or establishment of the federal government, including any government corporation and the Government Printing Office.

"Generate" means to cause waste to become subject to regulation. At the point a regulated medical waste is discarded, it has been generated. Timeframes associated with storage and refrigeration are linked to the date the waste is placed in storage, not the date the waste is generated.

"Generator" means any person, by site location, whose act or process produces regulated medical waste identified or defined in this chapter or whose act first causes a regulated medical waste to become subject to this chapter.

"Hazardous material" means a substance or material that has been so designated under 49 CFR Parts 171 and 173.

"Hazardous waste" means any solid waste defined as a "hazardous waste" by the Virginia Hazardous Waste Management Regulations.

"Health care professional" means a medical doctor or nurse practicing under a license issued by the Department of Health Professions.

"Household sharps" means any needles, syringes with attached needles, lancets, auto injectors, pen needles, and any other devices that are used to penetrate the skin for the delivery of medications that are derived from households through self-care, rather than under the care of a home health care professional or at a health care facility. "Household sharps" are sharps that, except for the fact that they are derived from a household, would otherwise be classified as a regulated medical waste in accordance with this chapter.

"Household waste" means any waste material, including garbage, trash, and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas. "Household waste" does not include sanitary waste in septic tanks (septage) that is regulated by other state agencies. Waste generated by a health care professional or nonstationary health care provider administering care in a household, mobile unit, or commercially operated residence, or outpatient recovery facility that meets the definition of regulated medical waste is not household waste and must be managed as regulated medical waste.

"Inactivated" or "inactivation" means having reached the point, through autoclaving, incineration, or other validated treatment process, where the waste material is no longer infectious, does not pose an infection risk, and is not considered to be a regulated medical waste.

"Infectious agent" means any organism or agent, including a synthetic agent, that causes disease or an adverse health impact in humans or can be transferred to humans, as well as animals that have an economic impact on human society.

"Infectious substance" means a material known or reasonably expected to contain a pathogen, including bacteria, viruses, rickettsiae, parasites, fungi, or prions, that can cause disease in humans or animals.

"Inner packaging" means a packaging that is the primary container, such as a red bag or sharps container, for which an outer packaging is required for transport.

"Nonstationary health care provider" means those persons who routinely provide health care at locations that change each day or frequently. This term includes traveling doctors, nurses, midwives, and others providing care in patients' homes, first aid providers operating from emergency vehicles, and mobile blood service collection stations.

"Offsite" means any site that does not meet the definition of onsite, as defined in this part, including areas of a facility that are not on geographically contiguous property or outside of the boundary of the site.

"Onsite" means the same or geographically contiguous property, which may be divided by public or private right-of-way, provided the entrance and exit to the facility are controlled by the owner or the operator of the facility. Noncontiguous properties owned by the same person but connected by a right-of-way that he controls and to which the public does not have access are also considered onsite property.

"Operating parameters" means the specific conditions of pressure, temperature, residence time, chemical concentration, and other physical or engineering condition established through efficacy testing of a treatment method and verified through validation testing to be effective for treatment of regulated medical waste.

"Outer packaging" means packaging that is the secondary container or the outermost enclosure, such as a disposable or reusable rigid pail, fiberboard carton, drum, or portable bin that is under normal conditions of use leak-resistant, strong enough to prevent tearing or bursting, puncture resistant, impervious to moisture, has leak proof sides and bottom, has a tight fitting cover or is otherwise closable, and is in good repair, of a composite or combination packaging together with any

absorbent materials, cushioning and any other components necessary to contain and protect inner packaging.

"Overpack" means an enclosure that is used to provide protection or convenience in handling of a package or to consolidate two or more packages. "Overpack" does not include a vehicle, freight container, or aircraft unit load device. Examples of overpacks are one or more packages (i) placed or stacked onto a load board such as a pallet and secured by strapping, shrink wrapping, stretch wrapping, or other suitable means; or (ii) placed in a protective outer packaging such as a box or crate.

"Packaging" means the assembly of one or more containers and any other components necessary to assure compliance with minimum packaging requirements under Regulations Governing the Transportation of Hazardous Materials (9VAC20-110) or this chapter.

"Parametric controls" or "parametric monitoring device" means real time monitoring instrumentation integral to the treatment unit that is designed to quantitatively measure operational parameters, such as temperature, pressure, or other parameter, and provide an electronic or paper record of measurements that can be correlated to treatment. Parametric controls may be used to regulate or maintain preset operating parameters.

"Pathogen" means a microorganism, including bacteria, viruses, rickettsiae, parasites or fungi, or other agent, such as a proteinaceous infectious particle (prion), that can cause disease in humans or animals.

"Patient specimen" means human or animal materials collected directly from humans or animals and transported for research, diagnosis, clinical or investigational activities, or disease treatment or prevention. "Patient specimen" includes excreta, secreta, blood and its components, tissue and tissue swabs, body parts, and specimens in transport media (e.g., transwabs, culture media, and blood culture bottles) until such time that the patient specimen is discarded.

"Prion" means a pathogenic agent that is able to cause abnormal folding of specific normal cellular proteins called "prion proteins," which are found most abundantly in the brain. This abnormal folding is associated with neurological disease. Prions are proteinaceous infectious particles that are highly resistant to all but the most destructive methods of inactivation. They require specific inactivation, disposal, and containment procedures.

"Process rate" means the maximum rate of waste acceptance that a regulated medical waste management facility can process for transfer, treatment, or storage. This rate is limited by the capabilities of equipment, personnel, and infrastructure.

"Processing" means preparation, treatment, or conversion of regulated medical waste by a series of actions, changes, or functions that bring about a decided result.

"Regulated medical waste" or "RMW" means solid wastes defined to be regulated medical wastes in Part II (9VAC20-121-90) this chapter.

"Regulated medical waste management facility" means a site used for planned transfer, treatment, or disposal of regulated medical waste. A regulated medical waste management facility may consist of more than one transfer, treatment, or disposal unit. A regulated medical waste management facility is a type of solid waste management facility.

"Regulated medical waste transfer station" means a regulated medical waste management facility where regulated medical waste is received for the purpose of its subsequent consolidation, over-packing, storage, trans-loading, or subsequent transfer to another regulated medical waste management facility for further processing, treatment, transfer, or disposal. Parking a vehicle containing regulated medical waste during transportation for 24 hours or more is considered a regulated medical waste transfer station.

"Regulated medical waste treatment facility" means a regulated medical waste management facility where regulated medical waste is treated so that it no longer constitutes a threat to public health and the environment, and the waste is subsequently managed as solid waste.

"Reusable medical device" means a device, including surgical forceps, endoscopes, and stethoscopes, that is designed and labeled for multiple uses and is reprocessed by thorough cleaning followed by high-level disinfection or sterilization between patients.

"Sanitizer" means a substance, or mixture of substances, that reduces the bacterial population in the inanimate environment by significant numbers, (e.g., 3 log10 reduction) or more but does not destroy or eliminate all bacteria.

"Select agent or toxin" means a subset of biological agents and toxins that the U.S. Department of Health and Human Services and U.S. Department of Agriculture have determined have the potential to pose a severe threat to public health and safety, to animal or plant health, or to animal or plant products. Select agents and toxins are specified under 42 CFR §§ 73.3 and 73.4, 9 CFR §§ 121.3 and 121.4, and 7 CFR § 331.3.

"Sharps" means [~~needles, scalpels, knives, lancets, syringes with attached needles, suture needles, pasteur pipettes, broken glass, broken rigid plastic, and similar items having a point or sharp edge or that are likely to cause percutaneous injury or break during transportation and result in a point or sharp edge that may puncture or compromise the integrity of the container.~~ any object contaminated with a pathogen or that may become contaminated with a pathogen through handling or during transportation and also capable of cutting or penetrating skin or a packaging material. Sharps include needles, syringes, scalpels, broken glass, culture slides, culture dishes, broken capillary tubes, broken rigid plastic, and exposed ends of dental

wires. Discarded unused sharps contained in the original liner and outer packaging are excluded from this definition.]

"Sharps drop box" means a secure, tamper-proof sharps container for the temporary storage of only household sharps provided for the convenience of individual home generators who choose to transport their own household sharps to the collection point and where collected sharps are packaged, labeled, and managed as regulated medical waste.

"Shipment" means the movement or quantity conveyed by a transporter of a regulated medical waste between a generator and a designated facility or a subsequent transporter.

"Shipping paper" means a shipping order, bill of lading, manifest, or other shipping document serving a similar purpose and containing the information required by the U.S. Department of Transportation Hazardous Materials Regulations.

"Site" means all land or water and structures, other appurtenances, and improvements on them used for treating, storing, and disposing of regulated medical waste. This term includes adjacent land within the facility boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of regulated medical waste.

"Solid waste" means any of those materials defined as "solid waste" in 9VAC20-81-95 of the Virginia Solid Waste Management Regulations. Regulated medical waste that has been treated in accordance with this chapter is considered solid waste.

"Spill" means any accidental or unpermitted discharge, leaking, pumping, pouring, emitting, or dumping of wastes or materials that, when spilled, become wastes.

"Spore" means a dormant form of a microorganism that is more resistant to adverse conditions.

"Sterilize" means to inactivate all microorganisms on materials or waste.

"Storage" means the holding, including during transportation, of regulated medical waste.

"Surrogate waste load" means a load of noninfectious material used in validation test runs of treatment units that represents materials and packaging that would be found in the regulated medical waste stream to be treated by the facility.

"Transportation" or "transport" means the movement of regulated medical waste by air, rail, highway, or water.

"Transporter" means a person authorized in accordance with federal and state regulations and engaged in transportation or movement of regulated waste.

"Treatment" means any method, technology, or process designed to change the character or composition of any regulated medical waste so that it is inactivated and no longer constitutes a threat to public health and the environment. Treatment does not include compaction or disinfection.

"Treatment method" means a process including wet thermal sterilization (such as autoclaving) or dry thermal sterilization, chemical sterilization, combustion or incineration, and alternate technologies used to treat regulated medical waste.

"Thermochemical indicator" means a device (e.g., tape, paper strips, integrators, or small ampoules) that responds to the treatment process parameters in some measurable fashion, such as changing color or becoming striped when subjected to temperatures intended to provide sterilization of materials.

"Thermochemical recording device" means a device (e.g., thermocouple, wireless data loggers, or chemical monitoring probes) that reacts in response to one or more critical treatment parameters (such as temperature) and yields a quantifiable value that correlates to microbial lethality or predictable inactivation of microbial spore populations.

"Unauthorized waste" means waste that is not authorized by the department to be managed by [~~a~~ the] regulated medical waste management facility. Examples are [site-specific and] dependent upon the treatment technology and permit but may include chemotherapeutic, pathological, pharmaceutical, radioactive, chemical, hazardous, or other wastes.

"Used health care product" means a medical, diagnostic, or research device or piece of equipment, or personal care product used by consumers, medical professionals, or pharmaceutical providers that does not otherwise meet the definition of patient specimen, biological product, or regulated medical waste, but is contaminated with potentially infectious body fluids or materials and is not decontaminated or disinfected to remove or mitigate the infectious hazard prior to transportation.

"Validation testing" means procedures conducted at the site of a regulated medical waste treatment facility prior to initial operation of a treatment system or device, the purpose of which is to demonstrate, through established operating parameters, the effective treatment of regulated medical waste.

"Vector" means a living animal, insect, or other arthropod that is capable of transmitting a pathogen or infectious disease from one organism to another.

"VPDES" means Virginia Pollutant Discharge Elimination System, the Virginia system for the issuance of permits pursuant to the Permit Regulation (9VAC25-31), the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), and § 402 of the Clean Water Act (33 USC § 1251 et seq.).

"Waste management" means the entire process of managing waste from the point of generation to final disposition. For regulated medical waste, the process includes collection and segregation, characterization, classification, packaging, labeling, processing, staging, storing, decontamination, treatment, transportation, and disposal, as well as monitoring

of waste management operations and sites to ensure that the management of these wastes is protective of human health and the environment.

"Waste management facility" means all contiguous land and structures, other appurtenances, and improvements on them used for treating, storing, or disposing of waste.

"Z-value" means the temperature change required for the D-value to change by 1 log (i.e., by a factor of 10) for a specific microbial population under specified treatment conditions.

Part II
General Information

9VAC20-121-20. Purpose.

The purpose of this chapter is to establish standards and procedures pertaining to regulated medical waste management in the Commonwealth of Virginia in order to protect the public health and public safety, and to enhance the environment and natural resources.

9VAC20-121-30. Administration.

A. The Virginia Waste Management Board promulgates and enforces regulations that it deems necessary to protect the public health and safety, the environment, and natural resources.

B. The director is authorized and directed to administer this chapter in accordance with the Virginia Waste Management Act (§§ 10.1-1400 through 10.1-1457 of the Code of Virginia).

C. Nothing in this chapter shall limit or affect the power of the director, by the director's order, to prohibit storage, transfer, treatment, or disposal of any waste or require special handling requirements the director determines are necessary to protect the public health or the environment.

9VAC20-121-40. Applicability.

A. This chapter applies (i) to all persons who generate or transport, store, transfer, process, treat, dispose, or otherwise manage regulated medical waste; own or operate a regulated medical waste management facility; or allow a regulated medical waste management facility to be operated on their property in the Commonwealth of Virginia; and (ii) to those who seek approval to engage in these activities, except those specifically exempted or excluded elsewhere in this chapter. A "person" may include an individual, firm, company, corporation, partnership, association, state or federal government and any agency thereof, municipality, commission, political subdivision of a state, or any interstate body.

B. All existing regulated medical waste management facilities must comply with this chapter. Existing facilities, including those with an existing permit, must submit [~~a complete~~ updated] permit application [documents] by [~~(insert date months after the effective date of this regulation)~~ September 15, 2024,] to come into compliance with this chapter. [If the updated application includes changes that result in a different type of facility as outlined in 9VAC20-121-300 C 2, a complete permit-by-rule application shall be required. Existing facilities that only make changes to come into compliance with the regulations shall submit the following updated documents, as applicable, in accordance with 9VAC20-121-310:

1. DEQ Form RMW PBR;

2. Disclosure statements (DEQ Form DISC-01 and DISC-02), if changes in key personnel;

3. Design and construction certification by a professional engineer, in accordance with 9VAC20-121 310 A 2 c;

4. Design plans in accordance with 9VAC20-121-310 A 2 d;

5. Facility standards certification and a copy of the Regulated Medical Waste Management Plan in accordance with 9VAC20-121-310 A 2 f;

6. Treatment Plan in accordance with 9VAC20-121-310 A 2 h and i, respectively;

7. Closure Plan and closure cost estimate, in accordance with 9VAC20-121-310 A 2 j and m;

8. Certification from the State Corporation Commission, in accordance with 9VAC20-121-310 A 2 l, if not previously provided; and

9. Applicable permit fee in accordance with 9VAC20-121-310 A 2 n.]

9VAC20-121-50. Prohibitions.

A. No person shall operate any regulated medical waste management facility for the transfer, treatment, or disposal of regulated medical waste without a permit from the director.

B. No person shall allow regulated medical waste to be stored, disposed, or otherwise managed on the person's property except in accordance with this chapter.

C. It shall be the duty of all persons to manage their regulated medical waste in a legal manner. Untreated regulated medical waste, including its packaging, shall not be used, reused, or reclaimed.

D. No person shall:

1. Allow regulated medical waste to drain or discharge into surface waters except when treated onsite and discharged into surface water as authorized under a Virginia Pollutant Discharge Elimination System (VPDES) Permit (9VAC25-31).

2. Cause the discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act (33 USC § 1251 et seq.), including the VPDES requirements and Virginia Water Quality Standards (9VAC25-260).

3. Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area wide or statewide water quality management plan that has been approved under § 208 or 319 of the Clean Water Act (33 USC § 1251 et seq.) or violates any requirement of the Virginia Water Quality Standards (9VAC25-260).

4. Allow regulated medical waste to be deposited in or to enter any surface waters, groundwaters, or storm drains.

E. Any person who violates subsection A, B, C, or D of this section shall immediately cease the activity of improper management and shall initiate waste removal, cleanup, or closure.

9VAC20-121-60. Enforcement and appeal.

A. All administrative enforcement and appeals taken from actions of the director relative to the provisions of this chapter shall be governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The Virginia Waste Management Board or the director may enforce the provisions of this chapter utilizing all applicable procedures under the law. The powers of the board and the director include those established under Chapter 11.1 (§ 10.1-1182 et seq. of the Code of Virginia); in Article 8 (§ 10.1-1455 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia; and particularly in § 10.1-1186 of the Code of Virginia. These sections describe the right of entry for inspections; the issuance of orders, penalties, injunctions; and other provisions and procedures for enforcement of this chapter.

9VAC20-121-70. Public participation and information.

A. All permits for regulated medical waste management facilities are subject to public participation, as specified in Part V (9VAC20-121-300 et seq.) of this chapter.

B. Modifications to regulated medical waste management facility permits shall be subject to public participation in accordance with Part V (9VAC20-121-300 et seq.) of this chapter.

C. Dockets of all permitting actions, enforcement actions, and administrative actions relative to this chapter shall be available to the public for review, consistent with the Virginia Administrative Process Act, Virginia Freedom of Information Act (§ 2.2-3700 of the Code of Virginia), and the provisions of this chapter.

D. Public participation in the compliance evaluation and enforcement programs is encouraged. The department will:

1. Investigate all citizen complaints and provide written responses to all signed, written complaints from citizens, concerning matters within the board's purview;

2. Not oppose intervention by any citizen in a suit brought before a court by the department as a result of the enforcement action; and

3. Provide notice on the department's [~~internet~~] website and provide at least 30 days of public comment on proposed settlements of civil enforcement actions, except where the settlement requires some immediate action. Where a public comment period is not held prior to the settlement of an enforcement action, public notice will still be provided following the settlement.

9VAC20-121-80. Relationship to other bodies of regulation.

A. The Solid Waste Management Regulations (9VAC20-81) address other requirements for solid waste management. If there is a conflict between the provisions of this chapter and the solid waste management regulations, this chapter is controlling.

B. Regulated medical waste management facilities must also comply with any applicable sections of the Hazardous Waste Management Regulations (9VAC20-60). If there is a conflict between the provisions of this chapter and the hazardous waste management regulations, 9VAC20-60 is controlling.

C. Intrastate shipment of hazardous materials is subject to the Regulations Governing the Transportation of Hazardous Materials (9VAC20-110). If there is a conflict between the provisions of this chapter and the hazardous materials transportation regulations, 9VAC20-110 is controlling.

D. Generators of regulated medical waste and regulated medical waste management facilities may be subject to the general industry standard for occupational exposure to bloodborne pathogens in 16VAC25-90-1910.1030 (29 CFR 1910.1030).

E. Persons transporting regulated medical waste are subject to the federal requirements in the U.S. Department of Transportation Hazardous Material Regulations at 49 CFR Parts 171 through 180.

F. Facilities managing select agents or toxins are subject to the Regulations for Disease Reporting and Control (12VAC5-90) as administered by the Virginia Department of Health. Facilities that possess, use, or transfer select agents or toxins are also subject to registration, reporting, inactivation, destruction, and compliance with the U.S. Department of Health and Human Services and U.S. Department of Agriculture's Federal Select Agent Program and the federal select agent regulations at 7 CFR Part 331, 9 CFR Part 121, and 42 CFR Part 73.

G. If there is a conflict between provisions of this chapter and adopted regulations of another agency of the Commonwealth, the provisions of these regulations are set aside to the extent necessary to allow compliance with the regulations of the other agency. If neither regulation controls, the more stringent standard applies.

H. Nothing in this chapter either precludes or enables a local governing body to adopt ordinances. Compliance with one body of regulation does not ensure compliance with the other, and normally, both bodies of regulation must be fully complied with.

I. The Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70) shall be applicable in all parts to regulated medical waste management facilities. Nothing in this chapter governing regulated medical waste management shall be considered to delete or alter any requirements of the department as set out in Financial Assurance Regulations for Solid Waste Facilities.

J. The U.S. Nuclear Regulatory Commission, 10 CFR, regulates management of radioactive materials. The Virginia Department of Health has established other requirements in accordance with Title 32.1 of the Code of Virginia. No regulated medical waste containing radioactive materials, regardless of amount or origin, shall be treated unless its management and treatment are in full compliance with these two bodies of regulations and are deemed by both regulations to represent no threat to public health and the environment.

9VAC20-121-90. Identification of regulated medical waste.

A. A solid waste is a regulated medical waste subject to this chapter if it meets the criteria under subsection B of this section, unless specifically excluded or exempted by subsection C or D of this section. Claims that materials are not regulated medical wastes or are conditionally exempt from regulation shall demonstrate that the material meets the terms of an exemption. In doing so, appropriate documentation shall be provided to demonstrate that the material is not a regulated medical waste or is exempt from regulation.

B. A solid waste is a regulated medical waste if it meets either of the two criteria of this subsection:

1. The solid waste is suspected by the health care professional in charge of being capable of producing an infectious disease in humans. A solid waste shall be considered to be capable of producing an infectious disease if it has been or is likely to have been contaminated by an organism likely to be pathogenic to healthy humans, such organism is not routinely and freely available in the community, and if such organism has a significant probability of being present in sufficient quantities and with sufficient virulence to transmit disease. If the exact cause of a patient's illness is unknown, but the health care professional in charge suspects a contagious disease is the cause, the likelihood of pathogen transmission shall be assessed based on the pathogen suspected of being the cause of the illness.

2. The solid waste or solid waste stream is identified in the following list:

a. Discarded cultures, stocks, specimens, vaccines, and associated items likely to have been contaminated by them are regulated medical wastes if they are likely to contain organisms likely to be pathogenic to healthy humans. Wastes from the production of biologicals and antibiotics likely to have been contaminated by organisms likely to be pathogenic to healthy humans are regulated medical wastes;

b. Wastes consisting of human blood or body fluids, containers of human blood or body fluids, and items contaminated with human blood or body fluids are regulated medical waste. Human blood and body fluids solidified by absorbent gel, powder, or similar means are also regulated medical waste.

c. Human pathological and anatomical waste, including tissues, organs, body parts, and other pathological or anatomical wastes;

d. Sharps likely to be contaminated with [~~organisms that are pathogenic to healthy humans, and all needles, scalpels, lancets, syringes with attached needles, suture needles, regardless of whether they have been used in patient care, are regulated medical wastes~~ a pathogen or that may become contaminated with a pathogen through handling or during transportation and also capable of cutting or penetrating skin or a packaging material]. This also includes sharps generated through veterinary practice, acupuncture needles, and household sharps collected in a sharps drop box;

e. When animals are intentionally infected with organisms likely to be pathogenic to healthy humans for the purposes of research, in vivo testing, production of biological materials, or any other reason, the animal carcasses, body parts, bedding material, and all other wastes likely to have been contaminated are regulated medical wastes when discarded, disposed of, or placed in storage;

f. Wastes that are contaminated with a Category A infectious substance are regulated medical waste that shall be managed in accordance with 9VAC20-121-160;

g. Any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill of any regulated medical waste; and

h. Any solid waste contaminated by or mixed with regulated medical waste, including solid wastes that are packaged as regulated medical wastes.

C. The following materials are not solid wastes or regulated medical wastes:

1. Domestic sewage, including wastes that are not stored and are disposed of in a sanitary sewer system (with or without grinding).

2. Any mixture of domestic sewage and other wastes that pass through a sewer system to a wastewater treatment works permitted by the State Water Control Board or the Virginia Department of Health.

3. Sanitary waste from septic tanks (septage) and sewage holding tanks that is regulated by other state agencies.

4. Human remains when:

a. Under the control of a licensed physician or dentist, when the remains are being used or examined for medical purposes and are not solid wastes;

b. Provided to qualified educational programs as anatomical gifts;

c. Removed during a medical procedure and retained by the patient for religious or other purposes provided that the remains are not a source of disease transmission, as determined by a health care professional; [~~and~~ or]

d. Properly interred in a cemetery or in preparation by a licensed funeral director or embalmer for such interment or cremation.

5. Individual human and animal cremains.

6. Dead or diseased animals subject to regulation by the Virginia Department of Agriculture and Consumer Services.

7. Bed linen, instruments, medical care equipment, and other materials that are routinely cleaned and reused for their original purpose are not subject to this chapter until they are discarded and are a solid waste unless a health care professional has determined these items to be to be capable of producing an infectious disease in humans in accordance with [~~9VAC20-121-90~~ subdivision] B 1 [of this section]. These items do not include reusable carts or containers used in the management of regulated medical waste, which shall be managed in accordance with 9VAC20-121-130.

8. Used health care products and reusable medical devices, being returned to a manufacturer or third party for reprocessing (cleaning and disinfecting or sterilizing) and reuse if packaged and labeled in accordance with 49 CFR 173.134(b)(12)(ii)(A) through (D) and reprocessed in accordance with applicable U.S. Food and Drug Administration requirements. Used health care products and contaminated medical devices or equipment [that meet either of the two criteria in subsection B of this section] being sent offsite for recycling or disposal are regulated medical waste and shall be managed in accordance with this chapter. These items do not include reusable carts or containers used in the management of regulated medical waste, which shall be managed in accordance with 9VAC20-121-130.

9. The following items while in use: samples for laboratory tests, patient specimens, and criminal evidence items taken during enforcement procedures that meet the definition of regulated medical waste. Once these items are no longer needed for their intended purpose, they shall be managed as regulated medical waste unless exempt under [~~9VAC20-121-90~~ subsection] D [of this section].

10. Tissue blocks of organs or tissues (except those associated with prions) that have been fixed in paraffin or similar embedding materials for cytological or histological examinations. Once these items are no longer needed for their intended purpose, they [~~shall~~ may] be managed as solid waste.

D. The following solid wastes are not regulated medical wastes for purpose of this chapter:

1. Wastes that have been treated in accordance with this chapter are no longer regulated medical waste and may be used, reused, or reclaimed in accordance with the provisions of the Virginia Solid Waste Management Regulations (9VAC20-81), provided the following requirements are met:

a. Treated waste that was once regulated but is no longer regulated medical waste shall not be [~~packaged~~ repackaged] as regulated medical waste. Solid waste [~~packaged~~ repackaged] as regulated medical waste is regulated medical waste.

b. If the solid waste is no longer regulated medical waste because of treatment, the generator and the permitted treatment facility shall maintain a record of the treatment for three years after treatment. Generators treating regulated medical waste onsite shall maintain records in accordance with applicable provisions of Part V (9VAC20-121-300 et seq.) of this chapter. Generators shipping regulated medical waste offsite for treatment shall maintain records in accordance with 9VAC20-121-100 I.

c. The generator or proposed user of treated regulated medical waste may request that the department make a case-specific determination that the solid waste may be beneficially used in a manufacturing process to make a product or as an effective substitute for a commercial product. The requestor shall submit a beneficial use demonstration in accordance with the requirements of 9VAC20-81-97.

2. Household waste, including household sharps. Household sharps shall be placed in an opaque, leak proof, puncture resistant container that is closed, tightly sealed, and labeled for home use before being mixed with other solid wastes or disposed. Household sharps may be placed in U.S. Food and Drug Administration-cleared sharps containers if specifically designed and labeled for home use. Household sharps containers shall be labeled "HOUSEHOLD SHARPS – DO NOT RECYCLE" or "HOME GENERATED SHARPS – DO NOT RECYCLE" printed in large legible text and permanent ink. Household sharps centrally collected in a sharps drop box shall be managed as regulated medical waste in accordance with 9VAC20-121-300 E 1. Medical waste generated by a health care professional administering care in a household is regulated medical waste and must be managed in accordance with this chapter.

3. [~~Toenail~~ Nail] and skin clippings, breast milk, sputum, semen, teeth, sweat, tears, urine, vomitus, or saliva, unless contaminated with visible blood or a health care professional has determined these items to be capable of producing an infectious disease in humans in accordance with [~~9VAC20-121-90~~ subdivision] B 1 [of this section].

4. Dental amalgam managed in accordance with the Dental Rule (40 CFR Part 441).

5. Meat or other food items being discarded because of spoilage, contamination, or recall.

6. The following discarded items, when they are unused or expired: health care products, medical equipment, medical devices, [unused sharps in the original packaging,] or other materials, unless a health care professional has determined these items to be [~~to be~~] capable of producing an infectious disease in humans in accordance with [~~9VAC20-121-90~~ subdivision] B 1 [of this section]. [~~This does not apply to unused or expired sharps, which are a regulated medical waste in accordance with 9VAC20-121-90 B 2 d.~~]

7. Used products for personal hygiene, such as diapers, facial tissues, underpads, adult incontinence products, sanitary napkins, and feminine hygiene items, unless a health care professional has determined these items to be capable of producing an infectious disease in humans in accordance with [~~9VAC20-121-90~~ subdivision] B 1 [of this section].

8. The following discarded items when they are empty: urine collection bags and tubing, suction canisters and tubing, IV solution bags and tubing, colostomy bags, ileostomy bags, urostomy bags, plastic fluid containers, enteral feeding containers and tubing, hemovacs, urine bottles, and urine specimen cups, unless the items are subject to regulation under 16VAC25-90-1910.1030 (29 CFR 1910.1030) or a comparable state or federal standard.

9. The following discarded items: urinary catheters, suction catheters, plastic cannula, IV spikes, nasogastic tubes, oxygen tubing and cannula, ventilator tubing, enema bags and tubing, enema bottles, thermometer probe covers, irrigating feeding syringes, and bedpans or urinals, unless the items are subject to 16VAC25-90-1910.1030 (29 CFR 1910.1030) or a comparable state or federal standard.

10. Items such as bandages, gauze, or cotton swabs or other similar absorbent materials, unless at any time following use the items are saturated or would release human blood or human body fluids in a liquid or semiliquid state if compressed. Items that contain or that are caked with dried human blood or human body fluids and are capable of releasing these materials during handling are regulated medical waste. An item would be considered caked if it could release flakes or particles when handled.

11. Human blood and body fluids when solidified by absorbent gel, powder, or similar means as part of a spill cleanup at establishments engaged in operations other than health care or management of regulated medical waste. This category includes waste generated by stores, markets, office buildings, restaurants, businesses, schools, manufacturers, and commercial or industrial operations.

12. Waste generated from the care of an animal [~~at a household or a farm~~] when care is provided by the owner of the animal [, such as at a household or farm]. Waste generated [~~by a veterinarian~~ through veterinary practice that meets either of the two criteria of subsection B of this section], such as sharps, must be managed as regulated medical waste.

13. Waste from cosmetology, ear and body piercing, nail salons, and tattoo establishments, except for sharps and unabsorbed human blood or body fluids.

14. Plant or animal wastes, such as bat guano, removed from construction or demolition projects when actions are taken to avoid worker exposure, including use of appropriate personal protective equipment, and the waste is managed in accordance with any applicable best management practice, special handling, and other precautions for processing or disposal.

15. Waste from food, drug, and cosmetics testing laboratories (except research laboratories) using microbiological methods for the detection of human infectious agents, microbial toxins, or chemical residuals as part of routine quality assurance testing of food, drugs, or cosmetic products.

16. Wastes regulated by the Virginia Department of Health, the State Water Control Board, the Air Pollution Control Board, Department of Agriculture and Consumer Services, Federal Drug Administration, U.S. Department of Agriculture, or any other state or federal agency with such authority.

Part III

Standards for Management of All Regulated Medical Waste

9VAC20-121-100. General handling and generator requirements.

A. Any person or facility handling, generating, storing, transporting, transferring, treating, or disposing of regulated medical waste shall comply with the general management requirements of this section.

B. [~~Regulated~~ All generators must identify and segregate regulated] medical waste [~~shall be identified and segregated~~] from other waste, including radioactive waste, hazardous waste, and other solid waste, at the point of origin or as soon as practicable after generation. [~~If~~ When] practical, [the generator shall segregate] regulated medical waste [~~shall also be segregated~~] based on the anticipated treatment method.

C. All generators must comply with the packaging, labeling, storage, reusable container, spill cleanup, transportation, and

Category A waste management requirements for regulated medical waste outlined in Part III (9VAC20-121-100 et seq.) of this chapter, as applicable.

D. Anyone handling or packaging regulated medical waste and loading, unloading, or handling containers of regulated medical waste shall wear appropriate personal protective equipment in accordance with the standards for occupational exposure to bloodborne pathogens in the general industry standard in 16VAC25-90-1910.1030 (29 CFR 1910.1030).

E. All regulated medical waste shall be handled in a manner that maintains the integrity of the packaging at all times, prevents damage, leakage, and spills and provides protection from the elements, vectors, and trespassers.

F. Trash chutes shall not be used to manage regulated medical waste. If slides, cart tippers, conveyors, or similar equipment are used to move regulated medical waste from the point of generation to storage areas, between containers, or to vehicles or treatment devices, the movement and impact shall be controlled to maintain the integrity of the regulated medical waste packaging and prevent damage, leaks, and spills. Waste shall not be thrown, dumped, walked upon, or handled in any other manner that could result in spills or releases of regulated medical waste or damage to the packaging.

G. Except in accordance with 9VAC20-121-240 B, regulated medical waste shall not be manually or mechanically compacted, compressed, or subjected to violent mechanical stress prior to treatment; however, after regulated medical waste is fully treated and is no longer regulated medical waste, it may be compacted in a closed container in a safe and sanitary manner.

H. All regulated medical waste generated shall either be treated onsite in accordance with Part IV (9VAC20-121-200 et seq.) of this chapter or packaged, labeled, and transported offsite to a facility permitted to receive the waste for transfer, treatment, or disposal.

I. Generators of regulated medical waste are subject to the following recordkeeping requirements:

a. The generator shall maintain all records of onsite treatment or shipment offsite for a minimum of three years following treatment or shipment. All records shall be available for review by the department upon request.

b. Generators treating regulated medical waste onsite, regulated medical waste transfer stations, and all other regulated medical waste treatment or disposal facilities shall maintain records in accordance with applicable provisions of Part V (9VAC20-121-300 et seq.) of this chapter.

c. Generators shipping regulated medical waste offsite for transfer, treatment, or disposal shall maintain records, including copies of all shipping papers, specifying the date of shipment, amount of waste removed from the site, and the names, addresses, and telephone numbers of the transporter and the destination facility receiving the shipment for treatment or disposal.

d. If regulated medical waste is received from offsite, records shall be maintained for three years following receipt of the waste and shall include the date of receipt, name of each offsite generator (except for generators of household sharps using sharps drop boxes), amount of waste received, and dates of subsequent treatment or shipment offsite.

9VAC20-121-110. Packaging and labeling of regulated medical waste.

A. All regulated medical waste shall be appropriately packaged, labeled, and managed as required by this section.

B. The generator of regulated medical waste is responsible for the packaging and labeling of regulated medical waste. Contractors or other agents may provide services to the generator, including packaging and labeling of regulated medical waste; however, no contract or other relationship shall relieve the generator of the responsibility for packaging and labeling the regulated medical waste as required by this chapter.

C. No person shall receive for transportation, transfer, storage, or treatment any regulated medical waste that is not packaged and labeled in accordance with this chapter. Contractors or other agents may package or label regulated medical wastes to comply with this chapter, so long as the packaging and labeling is performed onsite where the regulated medical waste was generated and no transportation, storage, treatment, or disposal occurs prior to the packaging. Nothing in this section shall prevent the proper repackaging and further transportation of regulated medical waste that has spilled during transportation. [~~1~~]

D. All regulated medical waste shall be packaged and labeled onsite prior to storage, treatment, transport, or other management and at a minimum must conform with the following:

1. When regulated medical wastes are first discarded, they shall be placed directly in bags or containers meeting the requirements of the standards for occupational exposure to bloodborne pathogens in the general industry standard in 16VAC25-90-1910.1030 (29 CFR 1910.1030). The general industry standard requires the packaging to be closable, constructed to contain all contents and prevent leakage of fluids, labeled, and closed prior to removal. Red bags shall be used for the packaging of all regulated medical waste except as provided in subdivision 2 of this subsection.

2. Sharps shall be placed directly in puncture resistant containers as required by the general industry standards in 16VAC25-90-1910.1030(d)(4)(iii)(A). Sharps containers must not be filled beyond the fill line indicated on the container.

3. Waste packages must not be overfilled. As a bag or container becomes full at the point of generation, and prior to moving, it shall be closed, capped, or sealed so that no waste materials can leak, spill, or protrude during handling, storage, or transport.

4. Once closed, capped, and sealed, bags and containers of regulated medical waste shall not be opened, unsealed, unpackaged, or repackaged. If damage, spills, or outside contamination of the regulated medical waste packaging occurs, the bag or container shall be placed in a secondary packaging that meets all requirements of this subsection.

5. All regulated medical waste packaging shall be labeled. The label shall be securely attached to or printed on packaging. The label may be a tag or sticker securely affixed to the package. Permanent ink shall be used to complete the information on the label. The label and the information provided on the label must be clearly legible. The following information shall be included:

a. The name, address, and business telephone number of the generator. For hospitals, the label shall identify the specific department or lab where the waste originated;

b. The words "Regulated Medical Waste," "Biohazard," or "Infectious Waste" in large print; and

c. The universal biohazard symbol.



E. When regulated medical waste is conveyed in reusable carts or containers, the waste in the cart or container shall be packaged and labeled in accordance with this section.

F. When not being filled and prior to moving, wheeled carts and other items used to move regulated medical waste shall be secured, locked, or sealed so that no waste materials can leak and labeled with the universal biohazard symbol or color-coded red to indicate that the contents contain regulated medical waste.

G. Wheeled carts and roll-off containers shall not be used for the holding of liquids, sharps, animal carcasses or body parts, and human anatomical waste, including tissues, organs, or body parts, unless the regulated medical waste is:

1. Properly contained in rigid containers capable of retaining liquids with enough absorbent material to absorb all liquid present, and

2. Separated from other types of regulated medical waste by a leak-proof rigid barrier, divider, or separate compartment.

H. Prior to transporting regulated medical waste offsite for treatment, transfer, or disposal, waste shall be packaged and labeled for transportation in accordance with the standards of 49 CFR Part 173 of the U.S. Department of Transportation Hazardous Materials Regulations or packaged in accordance with an exemption approved by the U.S. Department of Transportation.

9VAC20-121-120. Storage of regulated medical waste.

A. The requirements of this section apply to storage of regulated medical waste, including storage (i) in soiled utility rooms and other accumulation areas; (ii) at a generating facility; (iii) during transportation; (iv) at a regulated medical waste transfer stations; and (v) at a regulated medical waste treatment or disposal facility. This section also applies to areas used to transfer a load of regulated medical waste from one vehicle to another or when a vehicle containing regulated medical waste is parked for 24 hours or more during transportation.

B. All regulated medical waste shall be stored in a manner that:

1. Maintains the integrity of the packaging at all times, prevents damage, leakage, and spills and provides protection from the elements, vectors, and trespassers;

2. Maintains the packaging in an upright and stable configuration to minimize the potential for spills. If packages or containers are stacked, except during transport, the top of the stacked containers must not be more than six feet above the level of the floor. The integrity of the containers must not be compromised by the stacking arrangement;

3. Is clean and orderly and located in areas free of standing liquid and debris;

4. Provides security from unauthorized access and protects workers and the general public. Regulated medical waste shall be stored in areas where access is limited to only those persons specifically designated to manage regulated medical waste;

5. Meets the packaging and labeling requirements of 9VAC20-121-110; and

6. Meets the requirements of 9VAC20-121-130 when regulated medical waste is stored in reusable carts or containers.

C. Regulated medical waste transfer stations, treatment facilities, and generators of 250 gallons or more of regulated medical waste per calendar month are subject to the following storage requirements:

1. All regulated medical waste shall be stored on surfaces that are cleanable and impermeable to liquids. Carpets and floor coverings with cracks or gaps shall not be used in storage areas. Where tile floors are used and seams are present in the tile, the floor must be sealed with wax or other floor coatings in order to meet this requirement.

2. In areas used to store regulated medical waste, all floor drains shall discharge directly to an approved sanitary sewer system, and all ventilation shall discharge so as to minimize human exposure to the waste.

3. Signage shall be displayed to indicate any areas used to store regulated medical waste.

D. All regulated medical waste shall be stored in accordance with the following timeframes:

1. Generators of less than 250 gallons of regulated medical waste per calendar month shall arrange for the removal of all regulated medical waste stored onsite at least once per calendar month and provide shipment to a facility permitted to receive it for transfer, treatment, or disposal. No regulated medical waste shall be stored onsite for more than 45 calendar days, and no more than 250 gallons of regulated medical waste shall be stored onsite at any given time. Records shall be maintained in accordance with 9VAC20-121-100 I.

2. Generators of 250 gallons or more of regulated medical waste per calendar month shall arrange for the removal of all regulated medical waste stored onsite at least once per calendar week and provide shipment to a facility permitted to receive it for transfer, treatment, or disposal. No regulated medical waste shall be stored onsite for more than 10 calendar days. Records shall be maintained in accordance with 9VAC20-121-100 I.

3. Regulated medical waste treatment facilities shall provide treatment or removal of all regulated medical waste stored onsite on at least a weekly basis. No regulated medical waste shall be stored onsite for more than 10 calendar days. Records shall be maintained in accordance with 9VAC20-121-340 [, as applicable].

4. Regulated medical waste transfer stations shall store unrefrigerated regulated medical waste onsite for no more than seven calendar days. All regulated medical waste stored for more than seven calendar days must be refrigerated and stored in an ambient temperature between 35°F and 45°F (2°C and 7°C). No regulated medical waste shall be stored onsite for more than a total of 15 calendar days. Records shall be maintained in accordance with 9VAC20-121-340 [, as applicable].

5. Regulated medical waste transfer stations and treatment facilities shall clearly demonstrate the length of time that regulated medical waste is accumulated onsite by marking the outer packaging in permanent ink or maintaining an inventory, barcode, [log,] or other recordkeeping system.

E. Except in accordance with a permit:

1. No more than 25% of the regulated medical waste stored onsite each month shall be generated or received from offsite, except for emergency cleanups conducted in accordance with 9VAC20-121-300 E 5 and household sharps collected at sharps drop boxes in accordance with 9VAC20-121-300 E 1;

2. Regulated medical waste shall not be treated onsite; and

3. Regulated medical waste that is stored on a loading dock or in areas designated for loading shall be packaged, marked, and labeled for transport and shall not be stored in loading areas for more than 24 hours.

9VAC20-121-130. Reusable container requirements.

A. The requirements of this section shall be implemented whenever regulated medical waste is conveyed in reusable carts or containers.

B. The waste in the cart or container shall be packaged and labeled in accordance with 9VAC20-121-110.

C. Reusable carts and containers must be constructed of smooth, easily cleanable materials that are impervious to liquids and made of materials designed to withstand exposure to hot water or chemical disinfectants. A plastic bag shall not be reused.

D. Use of reusable carts and containers and any automated or mechanical cleaning and disinfection systems shall maintain the integrity of the packaging at all times, prevent damage, leakage, and spills and provide protection from the elements, vectors, and trespassers.

E. Persons cleaning and disinfecting reusable carts and containers shall wear appropriate personal protective equipment.

F. Immediately following each time a container is emptied and prior to being reused, all reusable carts and containers, including reusable suction canisters and fluid carts that receive blood, shall be both thoroughly cleaned and disinfected. Cleaning shall be conducted with detergent and water using an agitation method or by pressure and movement to remove all waste and visible contamination from all inner and outer surfaces of the container. At least one of the following methods shall be used for disinfection:

1. Utilizing an EPA-registered general or broad-spectrum disinfectant following manufacturer's label instructions;

2. Exposure to heated rinse water at a minimum of 180°F (82°C) and a maximum 195°F (90°C) for a minimum of 15 seconds, or until the surface reaches a temperature of 160°F (71°C); or

3. Immersion in or rinsing with, one of the following chemical sanitizers for a minimum of three minutes:

a. Hypochlorite solution (500 ppm available chlorine);

b. Phenolic solution (500 ppm active agent);

c. Iodophor solution (100 ppm available iodine);

d. Quaternary ammonium solution (400 ppm active agent); or

e. Other organic, plant-based, or nonchemical disinfectant registered by EPA.

G. All wash water from cleaning and disinfection shall be contained and discharged directly to an approved sanitary sewer system.

H. Reusable carts and containers shall not be reused if there are cracks, holes, damage, or other defects, including to a lid or locking mechanism or if contamination or waste residuals are present.

I. Reusable carts or containers used for the holding or storage of regulated medical waste shall not be used for any other purpose.

J. When reusable carts or containers containing regulated medical waste are used for offsite transport, all aspects of the cart or container management shall comply with federal Department of Transportation Hazardous Material Regulations, 49 CFR Parts 171 through 180, as applicable.

K. Reusable carts or containers that are damaged, defective, or ready to be discarded shall not be disposed of as solid waste unless they are cleaned and disinfected in accordance with this section, and all regulated medical waste labeling is removed or covered, prior to disposal. Containers unable to be cleaned and disinfected must be treated as regulated medical waste.

9VAC20-121-140. Management of spills of regulated medical waste.

A. Any person or facility handling, generating, storing, transporting, transferring, treating, or disposing of regulated medical waste shall immediately address all spills of regulated medical waste, incidents or emergencies, maintenance events, and nonconformances that could have an impact on the management of regulated medical waste at the facility.

B. Anyone handling regulated medical waste shall maintain a spill containment and cleanup kit onsite within the vicinity of any area where regulated medical waste is managed, and the location of the kit shall provide for rapid and efficient cleanup of spills anywhere within the area. All vehicles transporting regulated medical wastes are required to carry a spill containment and clean up kit in the vehicle whenever regulated medical wastes are conveyed. A spill containment and cleanup kit shall consist of at least the following items:

1. Material designed to absorb spilled liquids, and the amount of absorbent material shall be that having a capacity, as rated by the manufacturer, of one gallon of liquid for every cubic foot of regulated medical waste that is normally managed in the area for which the kit is provided or 10 gallons, whichever is less;

2. In a sprayer capable of dispersing its charge in a mist and a stream at a distance, at least one gallon of an EPA-registered hospital grade disinfectant effective against mycobacteria, unless it can be demonstrated that an alternate EPA-registered disinfectant is protective of human health and the environment and is appropriate for the type of regulated medical waste managed and surfaces being disinfected;

3. Enough red plastic bags to double enclose at least 150% of the maximum load managed (up to a maximum of 500 bags) that meet the applicable requirements of 49 CFR Part 173, including the ASTM 125 pound drop test for filled bags (D959) or an exemption approved by the U.S. Department of Transportation and are accompanied by seals and labels. These bags shall be large enough to overpack any box or container normally used for regulated medical waste management by that generator, handler, or facility;

4. Appropriate personal protective equipment, such as puncture and leak resistant gloves, safety glasses or face shield, protective coveralls or bib, protective footwear, and mask or respiratory protection as needed; and

5. For vehicles only, a first aid kit, fire extinguisher, boundary marking tape, lights, and other appropriate safety equipment.

C. Following any spill or release of regulated medical waste or its discovery, the following procedures shall be implemented:

1. Take appropriate precautions to ensure personnel do not come into contact with any contaminants by wearing appropriate personal protective equipment.

2. Repackage spilled regulated medical waste in accordance with the packaging requirements in 9VAC20-121-110.

3. Transport any regulated medical waste by a transporter that meets the requirements of 9VAC20-121-150.

4. Clean and disinfect all areas and materials having been contacted by regulated medical waste using an EPA-registered hospital grade disinfectant effective against mycobacteria in accordance with manufacturer's label instructions, unless it can be demonstrated that an alternate EPA-registered disinfectant is protective of human health and the environment and is appropriate for the type of regulated medical waste managed and surfaces being disinfected.

5. Take necessary steps to replenish the spill containment and cleanup kit.

9VAC20-121-150. Transportation of regulated medical waste.

A. The requirements of this section apply to the transportation of regulated medical waste including by intermediate transporters and generators who transport their own waste offsite.

B. All transporters of regulated medical waste must comply with the general handling requirements in 9VAC20-121-100.

C. Regulated medical waste shall be transported in accordance with the applicable requirements for shipping papers, packaging, labeling, marking and vehicle placarding in accordance with the U.S. Department of Transportation Hazardous Materials Regulations, 49 CFR Parts 171 through 180. No person shall transport or receive for transport any regulated medical waste that is not packaged and labeled fully in accordance with the U.S. Department of Transportation Hazardous Materials Regulations. Reusable carts or containers used to transport regulated medical waste shall meet the requirements of the U.S. Department of Transportation Hazardous Materials Regulations and must be sealed, puncture resistant, and leak proof.

D. Transportation of regulated medical waste shall maintain the packaging in an upright and stable configuration to minimize the potential for spills. The integrity of the containers must not be compromised by the stacking arrangement.

E. All vehicles and equipment used in the transportation of regulated medical waste must have access control that limits access to those persons specifically designated to manage regulated medical waste, and the cargo carrying body must be secured except when loading and unloading.

F. Surfaces of vehicles and equipment used to transport regulated medical waste must be clean and impermeable to liquids if those areas are involved with the management of the waste. Carpets and floor coverings with cracks or gaps shall not be used. Vehicles used to transport regulated medical waste shall be clean and maintained in an orderly condition, free of standing liquid and debris, in those areas involved with the management of the waste.

G. Storage, transport, and transfer to, from, and between vehicles and equipment shall be under a cover or packaged in a container that protects the waste from the elements and over a floor or bermed pavement that will contain leaks and spills of liquid from the waste. All effluent, wash water, and other runoff shall discharge directly to or through a holding tank to an approved sanitary sewer system. A cover, floor, or pavement is not required if the activity is transient in nature, such as in the case of spill cleanup or collection of waste packages from professional offices for transport.

H. All vehicles transporting regulated medical waste must carry a spill containment and cleanup kit in the vehicle as specified in 9VAC20-121-140 B, whenever regulated medical wastes are conveyed. Following a spill of regulated medical waste or its discovery, the procedures specified in 9VAC20-121-140 C shall be implemented.

I. Any vehicle parked 24 hours or more during transport will be considered a regulated medical waste transfer station subject to the requirements of Part IV (9VAC20-121-200 et seq.) of this chapter. Unless exempt under 9VAC20-121-300 E, no storage during transport will be allowed without a permit issued in accordance with the procedures in Part V (9VAC20-121-300 et seq.) of this chapter.

J. All vehicles and equipment used to transport regulated medical waste must be thoroughly cleaned and disinfected before being used for any other purpose and prior to any transfer of ownership. Disinfection shall include using an EPA-registered hospital grade disinfectant effective against mycobacteria in accordance with manufacturer's label instructions, unless it can be demonstrated that an alternate EPA-registered disinfectant is protective of human health and the environment and is appropriate for the type of regulated medical waste managed and surfaces being disinfected. Any areas of vehicles or equipment that are visibly contaminated, or that become contaminated as a result of a spill, must be immediately decontaminated in accordance with 9VAC20-121-140.

K. Transport of regulated medical waste by the United States Postal Services that fully complies with 39 CFR 111 shall be considered to be transportation in compliance with this chapter if:

1. The generator maintains a complete and legible copy of the manifest or mail disposal service shipping record for a period of three years. Disposer's certification and other tracking items must be completed and shown on the copy;

2. The addressee is a facility permitted by all the appropriate agencies of the Commonwealth or the host state; and

3. No package shall be more than 35 pounds by weight.

L. Category A waste shall be managed in accordance with the requirements of 9VAC20-121-160.

9VAC20-121-160. Management of Category A waste.

A. Category A waste shall be managed in accordance with the requirements of this section.

B. Overarching Planning Considerations and Waste Generator Information and Responsibilities for Category A waste are specified in Sections 3 and 5 of Managing Solid Waste Contaminated with a Category A Infectious Substance. In addition to the general management requirements for regulated medical waste in Part III (9VAC20-121-100 et seq.), all Category A waste shall be handled in accordance with the following additional requirements:

1. Every effort shall be made to minimize the amount of Category A waste generated. Category A waste shall be physically separated, if practical, from other types of waste at the point of origin. When other types of regulated medical waste are mixed with Category A waste, the mixture shall be managed as Category A waste. Category A wastes not suitable for conventional treatment methods, such as batteries, electronics, and oxygen cylinders, shall be segregated from other waste at the point of generation for special handling.

2. All handling, storage, transfer, and treatment of Category A waste must be conducted in areas with cleanable and impermeable surfaces. Carpets and floor coverings with cracks or gaps shall not be used. Where tile floors are used and seams are present in the tile, the floor must be sealed with wax or other floor coatings in order to meet this requirement.

3. Equipment and handling techniques that could potentially cause bioaerosols, such as cart tipping, slides, conveyors, and mechanical cleaning or disinfection systems, shall not be used for Category A waste unless the movement and impact is controlled to maintain the integrity of the packaging, prevent exposure to the waste, and any aerosol, bioaerosol, or mist caused by the process is collected and treated or filtered.

4. Category A waste shall not be conveyed in reusable carts or containers unless the containers are subsequently cleaned and disinfected in accordance with 9VAC20-121-130 using an EPA-registered disinfectant appropriate for the type of Category A waste managed and materials being disinfected.

5. All spills of Category A waste shall be cleaned and disinfected in accordance with 9VAC20-121-140 using an EPA-registered disinfectant appropriate for the type of Category A waste managed and materials being disinfected.

6. Category A waste shall be stored in accordance with the requirements of 9VAC20-121-120 B and C. Packages or containers of Category A waste shall not be stacked.

7. A generator storing 250 gallons or more of Category A waste shall notify the department within 24 hours of exceeding 250 gallons. At least once per calendar week, accumulated Category A waste shall be treated onsite in accordance with this section or shipped offsite to a facility permitted to receive it for treatment or disposal. No Category A waste shall be stored onsite for more than 10 calendar days unless an extended storage timeframe is approved by the department. Records shall be maintained in accordance with 9VAC20-121-100 I.

8. The regulated medical waste transfer station or treatment facility shall notify DEQ of receipt of any Category A waste in accordance with 9VAC20-121-340.

C. Waste Transporter Information and Responsibilities for Category A waste are specified in Section 6 of Managing Solid Waste Contaminated with a Category A Infectious Substance. Packaging and labeling of Category A waste for transport must comply with the more stringent packaging standards of 49 CFR Parts 171 through 180 of the HMR, or may require a [~~DOT~~ Department of Transportation] special permit for an exception to the HMR requirements to allow for alternative packaging to accommodate the waste.

D. Waste Treatment Information and Responsibilities for Category A waste are specified in Section 7 of Managing Solid Waste Contaminated with a Category A Infectious Substance. In addition to the general treatment requirements for regulated medical waste in Part IV (9VAC20-121-200 et seq.), all Category A waste shall be treated in accordance with the following additional requirements:

1. A facility shall only receive Category A waste for processing or treatment upon specific approval from the director or by specific provisions within the facility's permit.

2. Prior to treatment of any Category A waste, the facility shall notify DEQ and conduct additional validation testing in accordance with 9VAC20-121-260 and an approved treatment plan that is specific to the Category A waste stream and packaging types that will be received.

3. The treatment method and operating parameters shall be appropriate and effective for the type of Category A waste being managed. Treatment units that employ a mechanical process, such as grinding or shredding, prior to treatment or integral to the treatment unit, may not be appropriate for Category A waste streams. The facility shall demonstrate that the process prevents employee exposure to the waste; contains any aerosol, bioaerosol, or mist caused by the process; and treats or filters any air evacuated from the chamber during processing.

4. The facility shall not receive or treat Category A waste until the department has reviewed and approved the validation results, operating parameters, and protocols to be used for the treatment unit.

5. Treatment of Category A waste shall only be in accordance with the operating parameters and protocols approved by the department.

6. Challenge testing shall be performed and documented for every load containing Category A waste. The facility may request an alternate challenge test frequency once a high level of confidence is established that the Category A waste is being effectively treated.

7. The owner or operator shall provide a certification that the regulated medical waste management plan demonstrates protocols specific to the Category A waste stream to be treated and meets all additional standards of Part III (9VAC20-121-100 et seq.) and Part IV (9VAC20-121-200 et seq.), as applicable, in accordance with 9VAC20-121-330. The plan shall specify if and how management protocols for Category A waste differ from existing protocols for routinely received regulated medical waste, including how treated wastes will be disposed. The certification shall also include a statement that the emergency contingency plan has been provided to the local police and fire departments, local emergency manager, and local emergency health coordinator.

E. Final Disposal Information and Responsibilities for Category A waste are specified in Section 8 of Managing Solid

Waste Contaminated with a Category A Infectious Substance. Category A waste shall be disposed of in accordance with the following requirements:

1. Category A waste that has been treated in accordance with the special requirements of this section is no longer Category A waste or regulated medical waste. Category A waste treated in accordance with this section is solid waste and shall be disposed of at a permitted solid waste disposal facility, provided the disposal is in accordance with the Solid Waste Management Regulations (9VAC20-81) and the facility's permit.

2. Category A waste not treated in accordance with this chapter shall not be transported to, received for transport, or disposal by, or disposed of in, any solid waste management facility.

Part IV
Standards for Regulated Medical Waste Transfer Stations and Treatment Facilities

9VAC20-121-200. General and applicability.

A. Any person who designs, constructs, or operates any regulated medical waste transfer station or treatment facility not otherwise exempt under 9VAC20-121-300 E shall obtain a permit-by-rule pursuant to this chapter prior to operation and comply with the requirements of this part. Further, all applications pursuant to this chapter shall demonstrate specific means proposed for compliance with requirements set forth in this part.

B. All facilities, except exempted facilities, shall be maintained and operated in accordance with the permit-by-rule status pursuant to this chapter. All facilities shall be maintained and operated in accordance with the approved design and intended use of the facility.

C. Hazardous wastes shall not be managed or disposed in facilities subject to this regulation unless specifically authorized by the facility permit or the director and managed in accordance with 9VAC20-60. Any material from a state other than Virginia that is classified as a hazardous waste in that state shall be managed as hazardous waste in accordance with 9VAC20-60.

9VAC20-121-210. Siting requirements.

A. The siting of all regulated medical waste transfer stations or treatment facilities shall be governed by the standards as set forth in this section. These facilities shall:

1. Be adjacent to or have direct access to roads that are paved or surfaced and capable of withstanding anticipated load limits;

2. Not be sited or constructed in areas subject to base floods;

3. Shall not be closer than:

a. 50 feet to any property boundary;

b. 50 feet to any perennial stream or river;

c. 200 feet to any residence or recreational park area; or

d. 200 feet to any health care facility, school, or similar type public institution, unless the facility is located at the health care facility, school, or similar type public institution.

B. The site of a regulated medical waste transfer station or treatment facility shall provide room to minimize traffic congestion and allow for safe management of regulated medical waste and safe operation of the facility.

9VAC20-121-220. Design and construction requirements.

A. The design and construction of all regulated medical waste transfer stations or treatment facilities shall be governed by the standards as set forth in this section. These facilities shall have:

1. An access road suitable for loaded collection vehicles in all weather conditions from the entrance to the unloading or receiving area of the facility.

2. Onsite queuing capacity for the expected traffic so that the waiting collection vehicles do not back up onto the public road.

3. Unloading and loading areas of an adequate size and design to facilitate efficient transfer of regulated medical waste to and from collection vehicles and the unobstructed movement of vehicles.

4. Access controls such as perimeter security fencing, gates, locks, badge systems, or other controls to limit access to areas used to store, transfer, or treat regulated medical waste to only those persons specifically designated to manage regulated medical waste.

5. Adequate lighting so that operating personnel can exercise site control. Lighting may be provided by portable equipment as necessary.

6. Covered areas with cleanable and impermeable surfaces for handling, storage, transfer, and treatment of regulated medical waste and the cleaning and disinfection of reusable containers. These areas shall not be carpeted or have floor coverings with cracks or gaps. Where tile floors are used and seams are present in the tile, the floor must be sealed with wax or other floor coatings in order to meet this requirement.

7. Bermed pavement, a liquid retaining lip, or equivalent controls at loading docks and near rolling or bay doors to contain potential leaks and spills of regulated medical waste or other liquids.

8. Floors sloped or graded to drain such that all effluent, wash water, and other runoff from storage and processing areas, treatment equipment, waste compactors, and reusable container cleaning and disinfection areas is contained and discharged directly to an approved sanitary sewer system.

9. Ventilation that discharges to minimize human exposure to the waste.

10. A water supply shall be provided for cleaning purposes.

11. Fire alarm and protection systems capable of detecting, controlling, and extinguishing any and all fires.

12. Fixed radiation detectors in a location as close as practicable to the incoming waste loads and in an appropriate geometry to monitor all waste prior to storage, transfer, or treatment. A fixed radiation detector is not required at captive regulated medical waste management facility if the facility demonstrates that there is no potential for generation or management of radioactive materials or wastes. Demonstration shall include a certification that there is no radiation producing equipment or material onsite.

B. Effluent, wash water, and other runoff from the facility shall not be permitted to drain or discharge into surface waters except when authorized under a VPDES permit issued pursuant to 9VAC25-31.

C. Slides, cart tippers, conveyors, and similar equipment used to move regulated medical waste must be designed and constructed such that the movement and impact is controlled to maintain the integrity of the packaging at all times and prevent damage, leakage, and spills. Trash chutes shall not be used to manage regulated medical waste.

D. Any areas used for the storage of regulated medical waste shall be designed in accordance with 9VAC20-121-120 and have sufficient storage capacity for the maximum anticipated storage amount based on the amount of daily incoming waste and maximum length of time in storage.

E. All facilities that manage reusable containers or carts for regulated medical waste shall have designated areas for manual or mechanical cleaning and disinfection that comply with the requirements of 9VAC20-121-130.

9VAC20-121-230. Operation requirements.

A. The operation of regulated medical waste transfer stations or treatment facilities shall be governed by the standards as set forth in this section.

B. The regulated medical waste transfer station or treatment facility shall maintain and operate in accordance with a regulated medical waste management plan that meets all requirements of 9VAC20-121-330. This plan shall be reviewed and recertified annually, within one year from the date of the last certification, to ensure consistency with current operations and regulatory requirements, and shall be made available for review by the department upon request. If the applicable standards of this chapter and the facility's operations plan conflict, this chapter shall take precedence.

C. The facility must operate to comply with the general handling requirements of 9VAC20-121-100.

D. All regulated medical waste shall be packaged, labeled in accordance with 9VAC20-121-110 and managed in accordance with the storage conditions and timeframes required by 9VAC20-121-120. The facility shall employ methods to track and document specific incoming waste throughout the duration of storage, treatment or transfer, and shipment offsite.

E. All facilities that manage reusable carts or containers for regulated medical waste shall comply with the requirements of 9VAC20-121-130 and maintain onsite an adequate water supply and sufficient quantity of detergent and EPA-registered disinfectant or other approved materials, as applicable.

F. Except for reusable containers authorized by the department to be opened, regulated medical waste containers must not be opened or unpackaged unless approved as part of the consolidation or treatment process.

G. The facility shall immediately address all spills of regulated medical waste, incidents or emergencies, maintenance events, and nonconformances that could have an impact on the management of regulated medical waste. Spill containment and cleanup kits shall be maintained as required by 9VAC20-121-140 B, and immediately following a spill of regulated medical waste or its discovery, the procedures specified in 9VAC20-121-140 C shall be implemented.

H. Damaged or leaking packages of regulated medical waste shall either be properly repackaged prior to storage and subsequent shipment offsite or contained and treated onsite within 24 hours if the facility is permitted for treatment operations.

I. Transportation of regulated medical waste is subject to the requirements of 9VAC20-121-150.

J. Waste must not be accepted unless it is allowed in accordance with the permit-by-rule issued and the regulated medical waste management plan and there is sufficient storage, transfer, or treatment capacity. The amount of regulated medical waste received and stored at the facility shall not exceed the permit process rate and designed storage capacity.

K. Regulated medical waste transfer stations and treatment facilities regulated under this part shall implement an unauthorized waste control program in accordance with their written plan as required by 9VAC20-121-330 and the following provisions:

1. Prior to managing regulated medical waste or using process equipment, and at least annually, within one year from the date of the last training, the facility shall provide training to staff to recognize, segregate, properly manage, document, and report receipt of waste not authorized to be managed by the facility's permit.

2. If unauthorized waste is observed in the waste delivered to the facility prior to unloading, the owner or operator must refuse to accept the waste.

3. If the unauthorized waste is observed in the waste at the facility or delivered to the facility, the owner or operator shall segregate it, notify the generator (if applicable), document the incident in the operating record, make necessary arrangements to have the material managed in accordance with applicable federal and state laws, and notify the department of the incident to include the means of proper handling, in accordance with the reporting procedures of 9VAC20-121-340.

4. Any unauthorized waste accepted by the owner or operator shall be managed in accordance with applicable federal or state laws and regulations. The facility must carefully store the waste in a designated storage area within the facility separate from untreated regulated medical waste and treated regulated medical waste. Unauthorized waste that has been segregated and stored shall be adequately secured and contained to prevent leakage or contamination to the environment. The facility shall have the unauthorized waste removed or properly managed [~~as soon as practicable, but~~] no later than 10 calendar days after discovery [~~or~~ unless] an alternate timeframe [~~as~~ up to 30 days is] approved by the department [~~for certain waste types~~]. Handling and management of the unauthorized waste, including segregation, removal, and transportation, shall be by a person authorized to manage such waste and shall be transferred, treated, or disposed of at a permitted waste management facility approved to receive it.

5. The facility must maintain a record of all unauthorized waste accepted at the facility, the date accepted, the type of waste, date of transfer, treatment, or disposal, management method, and the name, address, and telephone number of the final treatment or disposal facility.

L. Radiation detection equipment shall be operated and maintained in a manner that ensures all incoming waste is screened and the measurements are meaningful and fulfill the objectives for detecting radiologically contaminated waste. If fixed radiation detectors become inoperable, repairs shall be made as soon as practicable, and appropriate portable equipment shall be used to screen incoming waste loads until the equipment is repaired.

M. Untreated waste, radioactive waste, hazardous waste, and any unauthorized waste must be segregated and stored in clearly identified containers. Category A waste shall be managed in accordance with the requirements of 9VAC20-121-160.

N. The facility shall be operated to maintain the design and construction standards as required by 9VAC20-121-220.

O. All areas used to transfer or treat regulated medical waste shall have prominent signage or markings displayed on the door or access point to indicate that the space is used to manage regulated medical waste, and those areas shall be secured to prevent unauthorized access.

P. Floors and areas used for the handling, tipping, storage, transfer, or treatment of regulated medical waste and reusable container cleaning must be kept clean, in an orderly condition, and free of standing liquid and debris.

Q. Effluent, wash water, and other runoff from facility floors, storage and processing areas, treatment equipment, waste compactors, and reusable container cleaning and disinfection areas shall be contained and discharged directly to an approved sanitary sewer system. Effluent, wash water, and other runoff from the facility shall not be permitted to drain or discharge into surface waters except when authorized under a VPDES permit issued pursuant to 9VAC25-31.

R. All infrastructure and equipment shall be properly maintained and operated as designed and approved in the facility's permit. Facility maintenance must include annual calibrations of parametric controls, including recording devices and temperature and pressure gauges; overall cleaning (the facility, vehicles, and processing systems); servicing of exhaust lines and drains; ensuring the proper functioning of pressure and safety valves, and water, steam, disinfectant and electrical lines; replacing gaskets as needed to ensure a complete seal at all times; ensuring floor drains are maintained such that liquid is free-draining at all times; and maintaining proper functioning of mechanical waste handling systems, conveyors and shredders, HEPA, and other ventilation and filtration devices, and radiation monitoring devices, as applicable.

S. Adequate numbers and types of properly maintained equipment shall be available for operation. Provision shall be made for substitute equipment to be available, except for treatment units which must be approved by the department, or the emergency contingency plan implemented to achieve compliance with this chapter, as applicable, within 24 hours should the former become inoperable or unavailable. Operators with training appropriate to the tasks they are expected to perform and in sufficient numbers for the complexity of the site shall be on the site whenever it is in operation.

T. Safety hazards to operating personnel shall be controlled through an active safety program consistent with the requirements of 29 CFR Part 1910, as amended.

U. Each facility shall conduct monthly inspections of all major aspects of facility operations necessary to ensure compliance with the requirements of this chapter. Records of these inspections must be maintained in the operating record and available for review in accordance with 9VAC20-121-340. If a deficiency or release is identified during an inspection, the owner or operator must document it on the self-inspection checklist, provide a remedy for the issue as soon as feasible, and document repairs and remedial actions, including the date implemented. The following aspects of the facility shall be inspected on a monthly basis whenever the facility is in operation:

1. Each component of the processing equipment, treatment system, and infrastructure;

2. Spill containment and cleanup kit and any other decontamination materials;

3. Safety and emergency equipment, including radiation detection equipment, fire alarm and protection systems, fire extinguishers, eyewash stations, or other equipment;

4. Waste storage areas and loading and unloading areas;

5. All floors and floor drains and any areas and inventory for managing, cleaning, and disinfecting reusable carts or containers;

6. Proper use of personal protective equipment by all employees;

7. Monitoring for pests and vermin, litter, blowing debris, odor, dust, breached containers, and spills; and

8. Any areas in which significant adverse environmental or health consequences may result if breakdown occurs.

V. Prior to managing regulated medical waste or using process equipment, and at least annually, within one year from the date of the last training, the facility shall provide all operators with training on the procedures for managing regulated medical waste specific to the transfer or treatment process used, including:

1. General handling of regulated medical waste and use of personal protective equipment;

2. Packaging, labeling, and storage of regulated medical waste;

3. Cleaning and disinfection of reusable containers;

4. Facility housekeeping and management of spills;

5. Overall process and mechanical operation of any equipment used [~~, including operation of any treatment units and procedures for conducting periodic challenge testing; and~~;]

6. Emergency contingency plan procedures, in case of system failure or other emergency [; and

7. In addition to the requirements of subdivisions 1 through 6 of this subsection, treatment facility operators shall be trained on the operation of any treatment units and procedures for conducting periodic challenge testing].

W. The facility shall retain records in accordance with 9VAC20-121-340. Records shall be retained for three years and available for review as requested by the department.

9VAC20-121-240. Treatment standards.

A. Prior to disposal or recycling, all regulated medical waste, including its packaging, must be treated by a department approved regulated medical waste treatment process. Any method used for the treatment of regulated medical waste must be verifiable to render the waste noninfectious in a manner that is protective of human health and the environment. Untreated regulated medical waste shall not be recycled or disposed of in a solid waste landfill or other solid waste management facility.

B. The requirements in this subsection are applicable to all treatment methods. Additional requirements are provided in subsections C through I of this section and are dependent on the type of treatment used.

1. The treatment method and operating parameters shall be appropriate and effective for the type of waste being managed.

a. Human pathological and anatomical waste, including tissues, organs, body parts, and other related waste and animal carcasses shall [~~not~~] be treated by [~~a noncombustion process~~ incineration] unless [an alternative treatment process is] approved by the department. Alkaline hydrolysis is an alternative treatment process that may be considered for treatment. Pathological waste in a liquid fixative may require special management, such as decanting the liquid for separate disposal, incineration, or management as hazardous waste if applicable.

b. Thermally resistant waste, including solidified liquids and bulk animal bedding, requires approval of treatment operating parameters on a case-by-case basis.

c. Category A waste shall be managed in accordance with the requirements of 9VAC20-121-160.

d. Waste contaminated with toxins and toxin waste solutions (depending on the toxin) can be inactivated by incineration or extensive autoclaving, or by soaking in suitable decontamination solutions. Toxin inactivation procedures shall not be assumed to be 100% effective without validation using specific toxin bioassays.

2. Treatment equipment shall include built-in automatic controls and fail safe mechanisms to ensure the waste cannot bypass the treatment process.

3. Size reduction, grinding, shredding, or puncturing of containers is permissible if integral to the treatment unit and shall be done with safe and sanitary methods. Nothing in this section shall prevent the use of devices that grind, shred, or compact to reduce volume at the point of generation and prior to enclosing the regulated medical waste in plastic bags and other required packaging; however, the waste remains regulated medical waste. The facility shall demonstrate that devices are constructed and operated in a manner that prevents employee exposure to the waste; contains any aerosol, bioaerosol, or mist caused by the process; and treats or filters any air evacuated from the chamber during processing. Appropriate means must be employed to appropriately protect workers and contain the waste when unloading regulated medical wastes from such a device.

4. If grinding, shredding, or size reduction or puncturing of packaging takes place prior to treatment, it shall occur in a closed unit immediately preceding the treatment unit. If grinding, shredding, or size reduction takes place following treatment, it must occur within 24 hours of leaving the treatment unit. Transfer from a grinder or shredder to or from a treatment unit shall be under forced draft ventilation that removes fumes from the operations area to a safe discharge.

5. All process units for the preparation or treatment of regulated medical waste shall be in closed vessels designed to operate under a negative pressure atmospheric control that filters all vents, discharges, and fugitive emissions of air from the process units through a high efficiency particulate air (HEPA) filter with efficiency of 99.97% for 0.3 microns. Proper installation of filters shall be documented. Air and gases which have themselves been sterilized by the process are not required to pass through a filter.

6. All effluent must be discharged to an approved sanitary sewer system. Effluent from the facility shall not be permitted to drain or discharge into surface waters except when authorized under a VPDES permit issued pursuant to 9VAC25-31.

7. Only the types of regulated medical waste specified in the facility's permit shall be treated using the approved treatment unit. Treatment methods include:

a. Autoclaves (steam sterilization);

b. Microwaves;

c. Dry heat treatment;

d. Chemical treatment;

e. Alkaline hydrolysis;

f. Incineration; and

g. Alternate treatment technologies as reviewed and approved by the department in accordance with this chapter.

8. Prior to operation of any treatment unit, the facility must conduct validation testing in accordance with 9VAC20-121-260 and an approved treatment plan to establish the appropriate operating parameters for effective treatment of regulated medical waste. The results of the testing must be submitted to the department for review and approval in accordance with 9VAC20-121-320. The facility shall not receive or treat regulated medical waste until the department has approved the validation results, operating parameters, and protocols to be used for the treatment unit. Revalidation shall be conducted as required by 9VAC20-121-260.

9. Treatment units shall operate in accordance with the specified operating parameters and protocols set forth in subsections C through I of this section or alternate standards established through validation testing and approved by the department. Records of treatment shall be maintained in accordance with 9VAC20-121-340.

10. Periodic challenge testing shall be performed under full loading in accordance with 9VAC20-121-270 to evaluate the effectiveness of each treatment unit and treatment method.

11. Effective treatment of regulated medical waste must achieve a 6 [~~log10~~ Log_{10}] or greater reduction of the viable spore concentrations of the most appropriate bacterial species for the treatment method. Effective treatment is demonstrated by no growth in all treated biological indicators and growth in all untreated biological indicators during validation and periodic challenge testing.

12. The selection of the most appropriate biological indicator to utilize during validation and challenge testing of a treatment process shall be supported by referenced standards, guidelines, or information from peer reviewed journals related to the process.

a. Biological indicators shall utilize spores from one of the following bacterial species:

(1) Geobacillus stearothermophilus (G.s.);

(2) Bacillus atrophaeus (B.a.);

(3) Bacillus subtilis (B.s.);

(4) Other Bacillus species or spore forming bacteria from domestic or international culture collections; or

(5) Organisms that demonstrate the necessary resistance for the treatment method, as approved by the department.

b. The facility shall use commercially prepared biological indicators, such as spore strips, spore suspensions, and self-contained biological indicators.

c. Biological indicators shall be placed in the most challenging location during validation and periodic challenge testing. Indicator ports, chambers, or other mechanisms shall be used for placement of the biological indicator when placement directly into the waste may be compromised by the treatment method, such as when shredding, grinding, or other mechanism is used. Ports and chambers shall be accessible by the operator.

d. When using the appropriate biological indicator, the number to be used shall be based upon the amount of waste to be processed in accordance with 9VAC20-121-260 D 7 (for validation) and 9VAC20-121-270 B (for periodic challenge testing).

13. Parametric controls shall be used to monitor critical operational treatment parameters and provide a record of measurements that can be correlated to effective treatment.

14. Door alignment, gaskets, locking mechanisms, and other components of any treatment unit that utilizes a pressure vessel (such as an autoclave) shall achieve a complete seal during operation to prevent leaking of steam, liquid, or waste and avoid decreases in pressure or temperature that could cause isolated cold spots inside the unit.

15. In the event of power failure, interrupted, or incomplete treatment cycle, the facility shall investigate the cause of the

failure and make any necessary repairs to resolve the issue prior to the next treatment cycle. Any waste in the treatment unit shall either be removed and managed as regulated medical waste or subjected to another full treatment cycle once repairs are made.

16. [~~Reusable~~ After each cycle, treated waste shall be removed from reusable treatment carts and containers. All reusable] treatment carts and containers [~~(such as autoclave carts)~~] shall be [~~clean and free of treated waste residuals before reuse~~ cleaned on a periodic basis to remove the buildup of more than de minimus amounts of treated waste residual on cart and container surfaces].

C. The requirements in this subsection are applicable to autoclave treatment methods.

1. All autoclaves shall be operated at 100% saturated steam conditions at [~~a minimum operating temperature of 250ºF (121ºC) at no less than 15 pounds per square inch of gauge pressure. Autoclaves shall maintain the minimum operating temperature and pressure for an uninterrupted cycle of 90 minutes. Alternate combinations of operating temperatures, pressures, and cycle times may be~~ appropriate combinations of operating temperatures, pressures, and residence times, that have been] demonstrated through validation testing to achieve [~~a~~] reliable and [~~complete kill of all~~ effective treatment of] microorganisms in regulated medical waste at design capacity. Longer [~~steam sterilization times are required when a load contains a large quantity of liquid.~~ treatment cycles may be needed for loads with liquids. Autoclave operating temperatures shall be greater than or equal to 250ºF (121ºC) at no less than 15 pounds per square inch of gauge pressure, and the minimum operating temperature and pressure shall be maintained during the residence time of the treatment cycle.]

2. All autoclaves shall be equipped with continuous time, temperature, and pressure monitoring and recording.

3. For vacuum autoclaves, pre-vacuum [~~cycles~~] shall be conducted such that all system air is fully evacuated a minimum of [~~three~~ two] times [~~at the beginning of each~~ prior to the residence phase of the] treatment cycle [~~and held with~~, during which] all air [is] evacuated to ensure adequate steam exposure throughout the waste. Additional pre-vacuum pulls may be required based on certain waste or packaging types, and as determined through validation testing.]

4. For gravity autoclaves, pressure pulsing must be performed to evacuate all air in the unit.

5. Validation and periodic challenge testing shall be performed using biological indicators utilizing spores from the bacterial species Geobacillus stearothermophilus.

D. The requirements in this subsection are applicable to microwave treatment methods.

1. Microwaving treatment shall incorporate pretreatment by shredding and steam injection or induction.

2. All microwaves shall be operated between 203ºF and 212ºF (95ºC and 100ºC) for a minimum of 45 minutes. Alternate operating temperatures and cycle times may be demonstrated through validation testing.

3. Microwave radiation power of the treatment process shall be at least six units each having a power of 1,200 watts or the equivalent power output.

4. Each microwave treatment unit shall be equipped to sense, display, and continuously record the temperature at the start, middle, and end of the treatment chamber.

5. Process temperatures at the exposure chamber entry and exit and the waste flow rate shall be continuously monitored, displayed, and recorded.

6. Validation and periodic challenge testing shall be performed using biological indicators utilizing spores from the bacterial species Bacillus atrophaeus.

E. The requirements in this subsection are applicable to dry heat treatment methods.

1. Dry heat systems shall be operated per the following operational standards:

a. Temperature of not less than 320ºF (160°C) for 120 minutes;

b. Temperature of not less than 340ºF (170°C) for 60 minutes; or

c. Temperature of not less than 360ºF (180°C) for 30 minutes.

Alternate operating temperatures and cycle times may be demonstrated through validation testing.

2. Each treatment unit shall be equipped to sense, display, and continuously record the temperature of the treatment chamber.

3. Unless otherwise approved by the department, no treatment unit employing dry heat as the main treatment process shall have a treatment chamber capacity greater than 1.0 cubic foot in volume.

4. Validation and periodic challenge testing shall be performed using biological indicators utilizing spores from the bacterial species Bacillus atrophaeus.

F. The requirements in this subsection are applicable to chemical treatment methods.

1. Operating standards for chemical treatment systems are dependent on the chemical concentration and exposure time. Facilities wishing to employ a chemical treatment system shall submit an alternate treatment technology petition per 9VAC20-121-250 to justify the proposed operating parameters. Once the petition is approved, chemical

concentration and treatment time operating parameters shall be demonstrated through validation testing in the presence of the maximum anticipated organic waste content.

2. The facility shall maintain registration for the chemical used in the treatment system in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act, if required.

3. Containers holding chemicals shall be labeled in accordance with 40 CFR 156 (Labeling Requirements for Pesticides and Devices), and the facility shall maintain Safety Data Sheets for all chemicals related to the chemical treatment system.

4. Validation and periodic challenge testing shall be performed using biological indicators utilizing spores from the bacterial species Bacillus subtilis or Bacillus atropheus.

G. The requirements in this subsection are applicable to alkaline hydrolysis treatment methods. Alkaline hydrolysis is a process by which heat and pressure dissolve and sterilize regulated medical waste in a strong solution of sodium or potassium hydroxide (NaOH or KOH, respectively).

1. Alkaline hydrolysis shall only be used for treatment of human pathological and anatomical waste, including tissues, organs, body parts, other related waste, and animal carcasses.

2. Systems that operate above atmospheric pressure must employ a dissolution chamber that is a certified pressure vessel by the American Society of Mechanical [~~Engineers'~~ Engineers] (ASME).

3. Operating parameters for alkaline hydrolysis systems vary depending on the amount of regulated medical waste to be treated and the type of contamination:

a. To inactivate microbial pathogens, the waste must be heated to 212ºF (100ºC), and pressurized at 15 pounds per square inch for three hours;

b. To destroy transmissible spongiform encephalopathy (TSE), including bovine spongiform encephalopathy, the waste must be heated to 300ºF (150ºC) and pressurized at 70 pounds per square inch for six to eight hours.

c. Chemical concentration and treatment time shall be demonstrated through validation testing in the presence of the worst case organic material waste content.

4. Treatment shall ensure the complete dissolution of all tissue remains, if applicable, and any solids left shall be disposed of at a solid waste management facility permitted to receive it.

5. Validation and periodic challenge testing shall be performed using biological indicators utilizing spores from the bacterial species Geobacillus stearothermophilus.

H. The requirements in this subsection are applicable to incineration treatment methods.

1. All incinerators shall be permitted under regulations of the State Air Pollution Control Board and be in compliance with the regulations of that body.

2. All combustible regulated medical waste shall be converted by the incineration process into ash that is not recognizable as to its former character.

3. Analysis of ash and air pollution control residues:

a. Incinerator bottom ash and residues collected from air pollution control equipment shall be collected separately in leak resistant containers with runoff controls to prevent releases from the ash storage. Incinerator bottom ash and air pollution control residues shall be stored separately until sample testing per subdivision 3 b of this subsection is performed and the waste streams are determined to be a solid waste.

b. Testing requirements:

(1) Representative samples consisting of 250 milliliters of each waste stream shall be collected once every eight hours of operation of a continuously fed incinerator and once every batch or 24 hours of operation of a batch fed incinerator. Samples shall be collected during each 1,000 hours of operation or quarterly, whichever is more often, and samples shall be thoroughly mixed and seven random portions of equal volume shall be composited into one sample for laboratory analysis. This sample shall be tested in accordance with the methods established by the Virginia Hazardous Waste Management Regulations (9VAC20-60) for determining if a solid waste is a hazardous waste.

(2) In addition to subdivision 3 b (1) of this subsection, composite samples of incinerator bottom ash shall be tested for total organic content.

c. If ash or air pollution control residues are found to be hazardous waste (based on a sample and a confirmation sample) the waste ash shall be managed of as a hazardous waste in accord with the Virginia Hazardous Waste Management Regulations (9VAC20-60). The operator shall notify the department within 24 hours. No later than 15 calendar days following, the permittee shall submit a plan for treating and disposing of the waste on hand at the facility and all unsatisfactorily treated waste that has left the facility. The permittee shall include with the plan a description of the corrective actions to be taken to prevent further unsatisfactory performance. No ash or air pollution control residues subsequently generated from the incinerator waste stream found to be hazardous waste shall be sent to a nonhazardous solid waste management facility in the Commonwealth unless written approval of the director is obtained in accordance with Solid Waste Management Regulations (9VAC20-81).

d. If ash or air pollution control residues are found not to be hazardous waste by analysis, they may be disposed of in a solid waste landfill that is permitted to receive

municipal solid waste or incinerator ash, provided the disposal is in accordance with the Solid Waste Management Regulations (9VAC20-81).

e. A log shall document the ash sampling, to include the date and time of each sample collected; the date, time, and identification number of each composite sample; and the results of the analyses, including laboratory identification. Results of analyses must be returned from the laboratory and recorded within four weeks following collection of the composite sample. The results and records described in this part shall be maintained for a period of three years, and shall be available for review.

I. Alternate treatment technologies as reviewed and approved by the department. All alternate treatment technologies approved by the director shall conform to the general treatment standards in subsection B of this section and any additional requirements the department imposes at the time of approval.

1. Any person who desires to use a chemical treatment technology per subsection F of this section or treatment technology, other than those described in subsections C, D, and E or subsections G and H of this section, shall petition the director for a review under 9VAC20-121-250.

2. If the director finds that the technology and application is in accordance with this part, the department may consider the facility for permitting.

9VAC20-121-250. Alternate treatment technologies.

A. In accordance with 9VAC20-121-240 I, chemical treatment and other alternate treatment technologies may be approved for permitting if the department reviews the process and determines that the technology provides treatment in accordance with this chapter and protects public health and the environment, and if the department establishes appropriate conditions for their siting, design, and operation. This section establishes the criteria, protocols, procedures, and processes to be used to petition the director for review and to demonstrate the suitability of the proposed technology for the treatment of regulated medical waste.

B. Alternate treatment technologies are subject to the general treatment standards of 9VAC20-121-240 and the additional requirements of this section. To ensure effectiveness of the proposed chemical or alternate treatment technology, the applicant must demonstrate effective microbial and bacterial inactivation at a 6 [~~log10~~ $\log_{10}$] or greater reduction for the microorganisms and spores listed in subsections C and D of this section through validation testing that meets the requirements of 9VAC20-121-260.

C. Microbial inactivation shall be demonstrated using one or more representative microorganisms from each microbial group:

1. For vegetative bacteria: either Staphylococcus aureus (ATCC 6538) or Pseudomonas aeruginosa (ATCC 15442).

2. For fungi: either Candida albicans (ATCC 18804), Penicillium chrysogenum (ATCC 24791), or Aspergillus niger.

3. For viruses: either Polio 2 or Polio 3, or MS-2 Bacteriophage (ATCC 15597-B1).

4. For parasites: either Cryptosporidium spp. oocysts or Giardia spp. Cysts.

5. For Mycobacteria: either Mycobacterium terrae, Mycobacterium phlei, Mycobacterium bovis (BCG) (ATCC 35743).

D. Bacterial inactivation shall be demonstrated for chemical, thermal, and irradiation treatment systems using spores from either B. stearothermophilus (ATCC 7953) or B. subtilis (ATCC 19659).

E. For those treatment processes that can maintain the integrity of the biological indicator carrier (i.e., ampules, plastic strips) of the desired microbiological test strain, biological indicators of the required strain and concentration shall be used to demonstrate effective treatment. Effective treatment is demonstrated by no growth in all treated biological indicators and growth in all untreated biological indicators during validation and periodic challenge testing.

F. For those treatment mechanisms that cannot ensure or provide integrity of the biological indicator (i.e., chemical inactivation or grinding), quantitative measurement of effective treatment requires a two-step approach: Step 1, "Control"; Step 2, "Test." The purpose of Step 1 is to account for the reduction of test microorganisms due to loss by dilution or physical entrapment.

1. Step 1 is:

a. Use microbial cultures of a predetermined concentration necessary to ensure a sufficient microbial recovery at the end of this step.

b. Add suspension to a standardized medical waste load that is to be processed under normal operating conditions without the addition of the microbial inactivation agent (i.e., heat, chemicals).

c. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.

d. Plate recovered microorganism suspensions to quantify microbial recovery. (The number of viable microorganisms recovered serves as a baseline quantity for comparison to the number of recovered microorganisms from wastes processed with the microbial inactivation agent).

e. The required number of recovered viable indicator microorganisms from Step 1 must be equal to or greater than the number of microorganisms required to demonstrate a 6 [~~log10~~ $\log_{10}$] or greater reduction.

2. Step 2 is:

a. Use microbial cultures of the same concentration as in Step 1.

b. Add suspension to the standardized medical waste load that is to be processed under normal operating conditions with the addition of the microbial inactivation agent.

c. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.

d. Plate recovered microorganism suspensions to quantify microbial recovery.

3. From data collected from Step 1 and Step 2, the level of microbial and bacterial inactivation shall be calculated based on the:

a. Number of viable "Test" microorganisms (in colony forming units per gram of waste solids) introduced into the treatment unit,

b. Number of "Control" microorganisms (in colony forming units per gram of waste solids) that were not recovered after processing, and

c. Number of viable "Test" microorganisms (in colony forming units per gram of waste solids) recovered in treated processed waste residue.

G. To initiate the technology review process the applicant shall complete and submit DEQ Form RMWTP-01, Application for Evaluation and Approval of Regulated Medical Waste Treatment Technology to the department. The application shall be accompanied by:

1. A detailed description of the chemical or alternate treatment technology. The description must include:

a. A discussion of operating procedures and conditions, including, as applicable, treatment times, pressure, temperatures, chemical concentrations, irradiation doses, feed rates, and [~~wasteload~~ waste load] composition;

b. A discussion of parametric controls, verifying effective treatment, and ensuring operator noninterference; and

c. A discussion of waste residues and by-products generated and methods of disposal or recycling.

d. The description shall be accompanied by the manufacturer's operations manual or equipment usage instructions, equipment specifications, and maintenance manual.

2. Documentation demonstrating the chemical or alternate treatment technology meets microbial and bacterial inactivation criteria specified under subsections B through F of this section. The documentation must include a description of the test procedures and calculations used in fulfilling required performance standards verifying effective treatment, of user verification methodology, and of microbial culturing protocols that ensure traceability, purity and concentration, and copy of all test results.

3. A chemical management plan describing all chemicals to be stored on site and include copies of Safety Data Sheets for all chemicals used for regulated medical waste treatment and EPA pesticide registration, if applicable.

4. Documentation providing occupational safety and health assurance.

H. The applicant shall demonstrate that all required surrogate pathogens and resistant bacterial endospores are inactivated to criteria specified in subsections B through F of this section under the representative surrogate waste load compositions.

I. The applicant shall demonstrate where the relationship between effective treatment, biological indicator data, and data procured from real-time parametric monitoring devices for the treatment unit.

J. The review of the application will occur in accordance with this subsection.

1. After receiving an application that includes the information and demonstrations required in subsections A through I of this section, the department will perform an administrative review and determine whether the information received is sufficient to approve the proposed chemical or alternate treatment technology. If the information is deemed to be insufficient, the department will request that additional information be furnished.

2. The applicant may submit the additional information requested or may demonstrate that the additional information should not be required. If the department agrees that the additional information is not required, the department will determine if the application is complete.

3. After the application is deemed complete, the director may then issue a treatment technology approval. The approval shall be issued under the conditions specified in the manufacturer's instructions and equipment specifications, operating procedures, and conditions as outlined in the application, including, as applicable, treatment times, temperatures, pressure, chemical concentrations, irradiation doses, feed rates, and waste load composition. Any significant revision to these conditions will require reapplication for approval in accordance with this section.

4. Following technology approval, any facility wishing to use the approved technology to treat regulated medical waste shall apply for and obtain the necessary permits in accordance with Part V (9VAC20-121-300 et seq.).

9VAC20-121-260. Validation testing.

A. Prior to using any treatment system, the facility must conduct validation testing that employs the use of process controls, biological indicators, and process monitoring to establish operating parameters to demonstrate effective treatment of regulated medical waste.

B. Prior to validation testing, the owner or operator shall submit to the department a treatment plan containing the information required by 9VAC20-121-330 E. The plan shall demonstrate that the validation protocols for each treatment unit meet the standards of this section and shall indicate any additional protocols specific to the regulated medical waste to be treated, such as the use of packaging types that may affect treatment of the waste. Validation testing must be conducted in accordance with an approved treatment plan and the requirements of this section. The validation test results and operating parameters must be submitted to the department for review prior to acceptance of regulated medical waste for treatment.

C. To demonstrate reproducibility, a minimum of three separate treatment runs must be performed on three separate days, using three distinct loads, during which the department is present to witness at least one complete validation test run. All test runs shall meet the following requirements:

1. Operating parameters used during the tests must be consistent with the parameters that will be used during routine operation of the treatment process (e.g., cycle duration, temperature, pressure, chemical concentration, irradiation exposure time, or other treatment parameters as applicable).

2. Surrogate waste load composition (e.g., porosity, liquids, solids, moisture content, organic matter, thermal resistance, and type of packaging or containers) and [~~wasteload~~ waste load] configuration (e.g., packing density and orientation) used during the tests must be consistent with the waste properties and loading process that will be used during routine operation. The surrogate waste load shall represent the most difficult waste anticipated to be treated during routine operation.

3. The weight and volume of the surrogate waste loads used during the tests must be consistent with the amount of waste that will be treated during routine operation. Validation testing must be performed at the treatment unit's full capacity unless an alternate load size is approved.

D. To assess treatment performance, the system must employ commercially-prepared biological indicators from the same lot or batch, each containing spores that demonstrate the necessary resistance for the treatment method, as determined by the department. The indicators must:

1. Have a minimum concentration of 6 [~~log10~~ $\log_{10}$] spores per biological indicator. The concentration must be higher and more thermally resistant than the bioburden routinely associated with the waste;

2. Include a supplier's certificate of performance (or certificate of analysis) that identifies the organism (genus, species, strain, and population) and, for thermal treatment systems (including autoclaves), the D-value and Z-value. The D-value must be 1.5 to 3.0 minutes, unless otherwise approved by the department, and the Z-value must be no less than 50°F (10°C);

3. Be appropriate for the type of waste and device (i.e., self-contained, suspension, or spore strip), including the shelf life, the carrier material and primary packaging, the culture medium (for self-contained biological indicators) and the media, growth, and culture conditions (for non-self-contained biological indicators);

4. Be compatible with the treatment process and have a resistance relative to the temperature, pressures, conditions, chemicals, or irradiation used in the process; the infectious agents on a substrate; the type and density of the waste to be treated; and its packaging;

5. Be placed in a carrier system (e.g., net bags, wrapped in a paper towel and encased in cotton batting or inside tennis balls, socks, or alloy containers with holes in them) designed to mimic the thermal resistance of the waste before placement into the package to be treated. Materials used to hold biological indicators must be similar to the waste to be treated, provide effective protection from damage or breakage or from otherwise being compromised, be loose in the bulk of the waste, and be easily retrievable at the end of each validation test run. Indicators shall not be placed in carrier systems that would enhance treatment or produce erroneous results (such as metal containers that would conduct heat);

6. Be placed throughout the waste load during each validation test at the coldest or most challenging locations within the treatment unit, where the sum of all influences on the microorganisms results in minimal inactivation for a defined waste load;

7. Be used in accordance with the quantity specified as follows, for each test run:

a. Three biological indicators per cycle for 0 to 110 pounds of waste per load;

b. Five biological indicators per cycle for 111 to 550 pounds of waste per load;

c. Seven biological indicators per cycle for 551 to 1,100 pounds of waste per load;

d. Nine biological indicators per cycle for 1,101 to 1,650 pounds of waste per load;

e. Eleven or more biological indicators per cycle, as determined by the department, for greater than 1,650 pounds of waste per load; and

f. One or more biological indicators from the same lot or batch to be left untreated and used as a control;

8. Be stored in accordance with the manufacturer's specifications when not in use. Expired biological indicators shall not be utilized.

9. Biological indicators in the form of paper strips must not be used in devices or areas where fluids can pool or puddle around the indicator. Self-contained biological indicators with vent caps must not be used where liquids may accumulate and contaminate the indicators.

10. Qualitative or quantitative biological indicators shall be used provided the operator or vendor of the technology provides evidence from such sources as peered reviewed journals that support the use of that particular indicator. Biological indicators requiring microbial bioassay to confirm effective treatment must be quantitatively analyzed after the treatment cycle. All self-contained biological indicators used for test runs must be evaluated for growth (e.g. qualitatively analyzed for color change) following incubation in accordance with the manufacturer's instructions.

E. Concurrent with biological indicators, the process must employ devices or instrumentation that demonstrates the treatment unit is achieving critical operating parameters for effective treatment. Process monitoring shall include:

1. Thermochemical indicators (e.g., tape, paper strips, or integrators) that demonstrate that the waste has been exposed to a certain temperature or chemical concentration;

2. Thermochemical recording devices (e.g., wireless data loggers, thermocouples, or chemical monitoring probes) that are placed in or on waste packages and that provide a measurable record of actual treatment conditions of the waste [~~; and~~. The minimum number of thermochemical recording devices to be used during each validation test shall be at least one device per treatment bin plus one additional device in the treatment chamber; and]

3. Parametric controls or monitoring devices integral to the treatment system that record critical operational treatment parameters and provide a record of measurements that can be correlated to effective treatment.

F. Effective treatment of regulated medical waste must achieve a 6 [~~log10~~ $\log_{10}$] or greater reduction of the viable spore concentrations of the most appropriate bacterial species for the treatment method. Effective treatment is demonstrated by no growth in all treated biological indicators and growth in all untreated biological indicators during each test run. In certain situations where the waste poses a greater risk (e.g., a higher bioburden waste), the department may require a greater reduction.

G. The facility shall submit to the department for approval a summary of the validation test results demonstrating the treatment effectiveness and specifying the operating parameters based on the results of all validation test runs. The report shall describe the results of all validation test runs, including:

1. Date and time of all test runs, including the operator's name and cycle start and end times;

2. Surrogate waste load composition, configuration, and size;

3. Number, type, batch or lot number, expiration date, and placement of biological indicators, thermochemical indicators, and thermochemical recording devices; and

4. Results of all methods used to monitor operating parameters achieved throughout the treatment cycle and the accuracy of parametric monitoring devices, including copies of charts, graphs, or other read-outs from the treatment equipment and growth results of all treated indicators and untreated controls.

H. Validation testing must be repeated when any of the following occurs:

1. Failure of any treatment process to achieve operational parameters, such as time, temperature, or pressure during validation testing;

2. Failure to achieve microbial inactivation in any biological indicator during any treatment cycle during validation testing;

3. Failure of the untreated control indicator to show growth of the viable spore concentration;

4. Any modifications to any of the treatment process operational parameters, bioburden, waste mass, chemical type, concentration, irradiation or exposure time, type of waste to be treated, or mechanical or engineering changes to the treatment system from those assessed during the validation testing;

5. A failure identified in subdivision 1, 2, or 3 of this subsection during periodic challenge testing as identified by biological or process monitoring that occurs three or more times in a calendar year or during the first 30 days of actual operation;

6. A treatment device has been operational without a repeat validation for at least five years; or

7. A treatment device has not been used for at least one year.

9VAC20-121-270. Periodic challenge testing.

A. After initial validation testing and during routine operation, a regulated medical waste treatment facility shall perform periodic challenge testing under full loading to evaluate the effectiveness of each treatment device in accordance with procedures outlined in the facility's approved treatment plan.

B. Periodic challenge testing shall be performed in accordance with the following requirements:

1. Biological indicators shall be used to periodically challenge test a load of regulated medical waste and must

comply with all requirements of 9VAC20-121-260 D, with the exception of the quantity of biological indicators required under 9VAC20-121-260 D 7.

2. Periodic challenge testing must include at least one-third of the number of appropriate biological indicators that are required for the validation test, or two indicators, whichever is greater, unless otherwise determined by the department. One or more additional biological indicators from the same lot or batch shall be left untreated and used as a control.

3. The results of all periodic challenge testing shall be maintained for three years in accordance with 9VAC20-121-340 and shall include:

a. Date and time of all challenge tests, including the operator's name and cycle start and end times;

b. Number, type, batch or lot number, expiration date, and placement of biological and thermochemical indicators; and

c. Results of all methods used to monitor operating parameters achieved throughout the treatment cycle, including copies of charts, graphs, or other read-outs from the treatment equipment and growth results of all treated indicators and untreated controls.

4. Effective treatment of regulated medical waste must be demonstrated by a 6 [~~log10~~ Log_{10}] or greater reduction of spore concentrations in all biological indicators in each periodic challenge test. A challenge test is considered a failure if any of the following occurs:

a. Failure of any treatment process to achieve operational parameters such as time, temperature, or pressure;

b. Failure to achieve microbial inactivation in any biological indicator during any treatment cycle. All biological indicators must show passing results (no growth in the viable spore concentration) after treatment or the challenge test is considered a failure; or

c. Failure of the untreated control indicator to show growth of the viable spore concentration.

C. Any regulated medical waste treated during or after a challenge test shall be stored temporarily until challenge test results are obtained. Regulated medical waste shall not be shipped offsite until the challenge test is complete and shows passing results for all biological indicators.

D. Unless otherwise approved by the department, for the first 30 days of actual operation, each treatment unit shall undergo challenge testing twice per day. The first load of each day shall be used for one of the required challenge tests.

E. Following the first 30 days of actual operation, periodic challenge testing must be conducted at a minimum of once per week or every 40 hours of operation, whichever is greater.

F. After six months of successful operation with no challenge test failures in weekly or 40- hour testing, challenge testing shall be conducted at least once per month.

G. Any challenge test failures during the first six months of actual operation shall require a return to daily challenge testing for at least 30 operating days. After the first six months of actual operation, any challenge test failure shall require a return to challenge testing once per week or every 40 hours of operation, whichever is greater.

H. Following any challenge test failure:

1. The waste shall continue to be managed as regulated medical waste and shall be retreated, stored temporarily until retreatment, or diverted to another approved facility for treatment or disposal. Regulated medical waste shall not be considered treated until a subsequent challenge test is conducted with passing results;

2. The facility shall evaluate and correct any issues with the treatment cycle and unit prior to treating any additional waste;

3. The facility shall notify the department of the failure in accordance with 9VAC20-121-340; and

4. The facility shall increase the frequency of challenge testing in accordance with subsection G of this section.

9VAC20-121-280. Disposal of treated regulated medical waste.

A. Regulated medical waste that has been treated in accordance with this part is no longer a regulated medical waste. Treated regulated medical waste is a solid waste. Treated waste may be compacted in a closed container in a safe and sanitary manner.

B. Treated waste shall be disposed of at a permitted solid waste disposal facility in accordance with the Solid Waste Management Regulations (9VAC20-81) and the solid waste disposal facility's permit. Regulated medical waste not treated in accordance with this chapter remains a regulated medical waste and shall not be transported to, received for transport or disposal by, or disposed in any solid waste management facility.

C. Where non-bulk treatment is used, treated waste shall be placed in sealed bags or containers that allow for visible assessment of treatment, such as clear bags or bags marked with sterilization indicators. The bags shall not be red in color. Opaque bags and bags with special labels are permissible if agreed upon in writing by the solid waste management facility receiving the treated waste. Treatment cart liners that are resistant to treatment conditions (such as temperature) may be used to package treated waste. Where bulk treatment is used and the solid waste is immediately placed or compacted in closed bulk solid waste management containers that are more than 64 gallons in volume, the repackaging of the solid waste

in bags is not required. Treated waste shall not be repackaged as regulated medical waste.

D. The regulated medical waste treatment facility shall have a written [~~agreement with~~ treated waste disposal plan that shall be provided to] each permitted solid waste management facility that will transfer, store, or dispose of the treated waste. The [~~agreement~~ plan] shall specify and include the following:

1. A description of how the treated waste will be packaged and transported to each solid waste management facility, including the types and colors of bags or containers used, and any special labeling if applicable;

2. The type of regulated medical waste treated, treatment method, and name, address, and telephone number of the treatment facility; [~~and~~]

3. The name, address, and telephone number of any transfer stations or other intermediate facilities or locations where the treated waste will be transferred or temporarily stored prior to transport to a permitted solid waste disposal facility [;]

4. The plan shall be updated and redistributed to receiving facilities when there are changes to the treatment process or facility operation that impact the plan.

5. The facility shall maintain records of distribution of the plan to all transfer, storage, or disposal facilities that manage the treated waste].

E. If treated residuals are determined to be hazardous, then the waste must be managed in accordance with the Virginia Hazardous Waste Management Regulations (9VAC20-60).

9VAC20-121-290. Closure requirements.

A. The owner or operator of a regulated medical waste management facility shall close the facility in a manner that minimizes the need for further maintenance, and controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of regulated medical waste, uncontrolled effluent, surface runoff, or waste decomposition products to the groundwater, surface water, or atmosphere.

1. When a unit that has been used for regulated medical waste management is to cease operations involving regulated medical waste, the unit and all related equipment, structures, and surfaces shall be thoroughly cleaned and disinfected. Cleaning shall be conducted with detergent and water. At a minimum, disinfection shall include using an EPA-registered hospital grade disinfectant effective against mycobacteria in accordance with manufacturer's label instructions, unless it can be demonstrated to the satisfaction of the department that an alternate EPA-registered disinfectant will be protective of human health and the environment and is appropriate for the type of regulated medical waste managed and surfaces being disinfected.

2. All regulated medical waste, materials contaminated with waste constituents, and treatment residue shall be removed and disposed of in accordance with this chapter.

B. Closure plan and modification of plan.

1. The owner or operator of a regulated medical waste management facility shall have a written closure plan that meets the requirements of 9VAC20-121-330 G.

2. The owner or operator may amend the closure plan at any time during the active life of the facility. The owner or operator shall so amend the plan any time changes in operating plans or facility design affects the closure plan. The amended closure plan shall be placed in the operating record.

3. The owner or operator shall submit to the department the amended closure plan that was placed in the operating record.

4. At least 180 days prior to beginning closure of each unit, the owner or operator shall notify the director of the intent to close.

5. The owner or operator shall provide to the department a certification that the facility has been closed in accordance with the closure plan.

C. The owner or operator shall complete closure activities in accordance with the closure plan and within six months after receiving the final volume of wastes. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will take longer than six months to complete, and that the owner or operator has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive facility.

D. The owner or operator shall post one sign notifying all persons of the closing and providing a notice prohibiting further receipt of waste materials. The sign shall remain in place until closure activities are complete. Further, suitable barriers shall be installed at former accesses to prevent new waste from being delivered.

E. The department shall inspect the facility to confirm that the closure is complete and adequate in accordance with this chapter. The department shall notify the owner of a closed facility in writing if the closure is satisfactory, or if unsatisfactory, shall require any necessary construction or such other steps as may be necessary to bring unsatisfactory sites into compliance with this chapter. Notification by the department that the closure is satisfactory does not relieve the operator of responsibility for corrective action to prevent or abate problems caused by the facility.

Part V
Permitting of Regulated Medical Waste Management Facilities

9VAC20-121-300. Applicability.

A. Any facility operated for the transfer or treatment of regulated medical waste that is not exempt in accordance with this chapter, must hold a permit-by-rule from the department prior to commencement of operations.

B. Each regulated medical waste management facility permit-by-rule shall be limited to one site and shall be nontransferable between sites.

C. A new permit-by-rule is required when there is:

1. Any new regulated medical waste management facility; or

2. Any change in design or process of a regulated medical waste management facility that will [~~, in the opinion of the department,~~] result in a [~~substantially~~] different type of facility. [These changes may include a change from transfer to treatment facility, change of physical location, or change from captive to non-captive facility.]

D. The director may grant a variance from any provision contained in this part to a permittee provided the requirements of Part VI (9VAC20-121-400 et seq.) of this chapter are met.

E. The following regulated medical waste management activities are conditionally exempt from the requirements of this part provided no open dump, hazard, or public nuisance is created and wastes are managed in accordance with the requirements promulgated by other applicable state or federal regulations or the conditions provided in this section.

1. Household sharps may be collected in a sharps drop box located in a public restroom, airport, train station, health clinic, pharmacy, health department, police or fire station, community organization building, permitted solid waste management facility, or other location as a convenience to the public, as long as the following requirements are met:

a. Sharps drop boxes shall only receive household sharps from individual home generators who choose to transport household sharps to the drop box. Sharps drop boxes shall not receive waste from collection vehicles or other entities that have collected waste from more than one real property owner;

b. All owners and operators of sharps drop boxes must comply with the general handling, packaging and labeling, storage, reusable container, spill cleanup, transportation, and Category A waste management requirements for regulated medical waste outlined in Part III (9VAC20-121-100 et seq.) of this chapter; and

c. Collected sharps shall be treated or disposed of as regulated medical waste in accordance with this chapter. Untreated sharps shall not be recycled or disposed of in a solid waste landfill or other solid waste management facility. Collected sharps that are shipped offsite as part of a mail-back program shall be transported in accordance with the requirements of 39 CFR 111 and 9VAC20-121-150 K.

2. Facilities that employ a treatment method to treat regulated medical waste onsite but subsequently package, label, and transport the waste offsite to be further managed as regulated medical waste are exempt from permitting in accordance with this chapter, but are subject to all other standards outlined in Part III (9VAC20-121-100 et seq.) for the management of regulated medical waste.

3. Treatment systems (such as an effluent decontamination system) used to treat industrial or domestic sewage discharges in compliance with federal, state, or local pretreatment requirements as applicable. If the treatment unit separates solids from liquids prior to discharge, the solids shall be managed as regulated medical waste unless it meets an exemption in accordance with this chapter.

4. Combustion of up to 10% by weight of regulated medical waste in a Virginia Solid Waste Management Regulations (9VAC20-81) permitted solid waste incinerator, thermal treatment, or waste to energy facility. Regulated medical waste must be an approved supplemental waste or included in an approved material review process in accordance with the State Air Pollution Control Board regulations and management of the regulated medical waste prior to addition to the incinerator, thermal treatment, or waste to energy unit must be in accordance with this chapter.

5. Temporary offsite storage of regulated medical waste generated from an emergency cleanup for up to 72 hours, including in a locked vehicle, prior to transporting directly to a regulated medical waste management facility permitted to receive the waste for treatment, transfer, or disposal, provided that all regulated medical waste is:

a. Generated from an emergency or unplanned sudden or nonsudden spill or release of regulated medical waste requiring immediate response in order to protect human health or the environment, and the regulated medical waste was not generated by a health care professional or nonstationary health care provider;

b. Collected from not more than one individual regulated medical waste generator and is not received from collection vehicles or other entities that have collected waste from more than one real property owner;

c. Managed, stored, and transported in accordance with all requirements of Part III (9VAC20-121-100 et seq.) of this chapter, except for the storage timeframe which shall be no more than 72 hours; and

d. Not a Category A waste, hazardous waste, or radioactive waste.

9VAC20-121-310. Permits by rule and emergency permits.

A. This subsection contains the requirements for permits-by-rule. The owner or operator of a facility described in subdivision A 1 of this section shall be deemed to have a regulated medical waste management facility permit if (i) the owner or operator submits the completed DEQ Form RMW PBR, Regulated Medical Waste Management Facility Permit-by-Rule Form, and all required information and attachments as detailed in subdivision A 2 of this section, and (ii) the department acknowledges completeness of the submittal per subdivision A 4 of this section.

1. Except for exempt facilities described in 9VAC20-121-300 E, the owner or operator of the following regulated medical waste management facilities shall apply for a permit-by-rule:

a. Regulated medical waste transfer stations as defined by this chapter, including when a vehicle transporting regulated medical waste will be parked for 24 hours or more during transport;

b. Facilities treating regulated medical waste employing a treatment method described in 9VAC20-121-240; and

c. Facilities treating regulated medical waste employing an alternate treatment method as described in 9VAC20-121-250.

2. The owner or operator of a regulated medical waste management facility shall submit the following information and documentation to the department:

a. To initiate the permit-by-rule application process, any person who proposes to establish a new regulated medical waste management facility, or modify an existing regulated medical waste management facility shall file a notice of intent with the director stating the type of facility for which the permit-by-rule application is made, the precise location of the proposed facility, and the intended use of the facility. The notice shall be in letter form and be accompanied by the following documents:

(1) A disclosure statement (DEQ Forms DISC-01 and DISC-02) identifying all key personnel as required by § 10.1-1408.1 of the Code of Virginia.

(2) A copy of the certification for at least one operator licensed by the Board for Waste Management Facility Operators as required by § 10.1-1408.2 of the Code of Virginia.

(3) A certification (DEQ Form CERT-01) from the governing body of the county, city, or town in which the facility is to be located stating, without qualifications, conditions, or reservations, that the location and operation of the facility are consistent with all applicable ordinances. No certification shall be required for the application for a modification to an existing permit-by-rule.

(4) The results of the public participation effort conducted in accordance with the requirements contained in subdivision A 3 of this section;

b. A certification that the facility meets the siting standards, as applicable, of 9VAC20-121-210;

c. A certificate signed by a professional engineer that the facility has been designed and constructed in accordance with the design and construction standards, as applicable, of 9VAC20-121-220;

d. Design plans certified by a professional engineer consisting of at least the following:

(1) A title sheet indicating the facility name, who prepared the plans, the person for whom the plans were prepared, a table of contents, and a location map showing the location of the site and area to be served.

(2) An exterior site plan identifying building dimensions of the transfer or treatment facility and the location of property boundaries and building setbacks, fencing, loading or unloading areas, vehicle staging and queuing locations, and parking areas.

(3) An interior site plan identifying location and size of all receiving, storage, temporary storage, including storage areas to be used to segregate unauthorized waste, radioactive waste, hazardous waste, and other untreated waste from treated waste, and processing areas, and location of treatment units, reusable container washing stations, and floor drains.

(4) A process flow diagram for all treatment units showing, piping and instrumentation, vents, and liquid discharge locations;

e. Documentation of the authorization to discharge into an approved sanitary sewer system or publicly or privately owned treatment works;

f. A certification that the facility meets the standards of Part III (9VAC20-121-100 et seq.) and Part IV (9VAC20-121-200 et seq.), as applicable, [~~in a~~ and a copy of the] regulated medical waste management plan to be maintained in the operating record in accordance with 9VAC20-121-330. The certification shall also include a statement that the emergency contingency plan has been provided to the local police and fire departments, local emergency manager, and local emergency health coordinator;

g. Alternate treatment technologies shall provide a copy of the treatment technology approval;

h. A treatment plan for each treatment unit in accordance with 9VAC20-121-330 E;

i. For treatment facilities, a [~~written agreement~~ treated waste disposal plan] in accordance with 9VAC20-121-280 D [~~with each permitted solid waste management facility that will transfer, store, or dispose of treated waste~~];

j. A closure plan in accordance with 9VAC20-121-330 G;

k. Demonstration of legal control over the site for the permit life;

l. A certification from the State Corporation Commission that the business entity pursing the permit-by-rule status is a valid entity, authorized to transact its business in Virginia. This requirement does not apply to those facilities owned solely by governmental units;

m. Closure cost estimates and proof of financial responsibility as required by the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70). Proof of financial responsibility must be for the entity identified in subdivision A 2 l of this section. For treatment facilities, proof of financial responsibility is required prior to department approval to begin operation in accordance with 9VAC20-121-320; and

n. The applicable permit fees under the provisions of 9VAC20-90.

3. Public participation.

a. The applicant for a new regulated medical waste transfer station or treatment facility shall publish a notice once a week for two consecutive weeks in a major local newspaper of general circulation of the intent to construct and operate a facility eligible for a permit-by-rule. The notice shall include:

(1) A statement of the applicant's intent to apply for a permit-by-rule to operate a regulated medical waste transfer station or treatment facility;

(2) A brief description of the proposed facility and its location;

(3) A statement that the purpose of the public participation is to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the facility;

(4) Announcement of a 30-day comment period, in accordance with subdivision A 3 d of this section;

(5) Announcement of the date, time, and location for a public meeting to be held in accordance with subdivision A 3 c of this section;

(6) The name, address, and telephone number of the owner's or operator's representative who can be contacted by interested persons to answer questions or receive comments on the siting and operation of the proposed regulated medical waste facility; and

(7) Location where copies of the documentation to be submitted to the department in support of the permit-by-rule notification can be viewed and copied in accordance with subdivision A 3 b of this section.

b. The owner or operator shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.

c. The owner or operator shall hold a public meeting not earlier than 14 days after the publication of the notice required in subdivision A 3 a of this section and no later than seven days before the close of the 30-day comment period. The meeting shall be held to the extent practicable in the vicinity of the proposed facility at a time convenient for the public.

d. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period will begin on the date the owner or operator publishes the first notice in the local newspaper.

e. The requirements of this section do not apply to the owners or operators of a regulated medical waste treatment unit that has received a permit from the department based on the regulations promulgated by the State Air Pollution Control Board or State Water Control Board that required facility-specific public participation procedures.

4. Upon receiving the certifications and other required documents, including the results of the public meeting and the applicant's response to the comments received, the department shall conduct a completeness review and respond within 30 days.

a. If the applicant's submission for a regulated medical waste transfer station is administratively complete, the applicant shall be deemed to operate under permit-by-rule status.

b. If the applicant's submission for a treatment unit is administratively complete, the applicant shall be deemed to operate under permit-by-rule status and granted authorization to initiate validation testing in accordance with an approved validation protocol and 9VAC20-121-320. The facility shall not accept regulated medical waste for treatment until the results of validation testing and operating parameters are submitted and approved by the department.

c. If the applicant's submission is administratively incomplete, the department will respond with a letter stating that the facility will not be considered to have a permit-by-rule or initiate the validation protocol until the missing certifications or other required documentation is submitted. At the time of the initial receipt or at a later date, the director may require changes in the documents designed to assure compliance with this chapter. Should such changes not be accomplished by the facility owner or operator, the facility will not be deemed to have a regulated medical waste management facility permit.

5. A permit-by-rule shall not be transferred by the permittee to a new owner or operator. However, when the property transfer takes place without proper closure, the new owner shall notify the department of the sale and fulfill all the

requirements contained in subdivision A 2 of this section. Upon presentation of the financial assurance proof required by Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70) by the new owner, the department will release the former owner from the closure and financial responsibilities and acknowledge existence of the new permit-by-rule in the name of the new owner.

6. The owner or operator of a facility operating under a permit-by-rule may modify its design and operation by furnishing the department a new certificate and applicable permit fees under the provisions of 9VAC20-90. For modifications of design, the new certificate shall be prepared by a professional engineer and shall include new documentation required under subdivision A 2 of this section, as applicable, and subdivision A 3 of this section. For modifications to the operations, the owner or operator shall submit to the department a new certificate and documentation required under subdivision A 2 of this section, as applicable. For treatment units, a new treatment plan and revalidation with department approval to begin operation will be required for design and operation changes that include changing the treatment unit type, changing the treatment unit operating parameters, changes in waste stream, and adding a new treatment unit. Whenever modifications in the design or operation of the facility affect the provisions of the closure plan, the owner or operator shall revise the closure plan and submit to the department a new certificate and documentation required under subdivision A 2 of this section, as applicable. Should there be an increase in the closure costs, the owner or operator shall submit a new proof of financial responsibility as required by 9VAC20-70.

7. The director may terminate a regulated medical waste management facility's coverage under a permit-by-rule and require closure of the facility when the director finds that:

a. As a result of changes in key personnel, the requirements necessary for a permit-by-rule are no longer satisfied;

b. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in the disclosure statement or any other report or certification required under this chapter or has knowingly or willfully failed to notify the director of any material change to the information in the disclosure statement;

c. Any key personnel have been convicted of any of the crimes listed in § 10.1-1409 of the Code of Virginia, punishable as felonies under the laws of the Commonwealth or the equivalent under the laws of any other jurisdiction or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth, or any other state, and the director determines that such conviction or adjudication is sufficiently probative of the permittee's inability or unwillingness to operate the facility in a lawful manner; or

d. The operation of the facility is inconsistent with the facility's regulated medical waste management plan or the requirements of Part IV (9VAC20-121-200 et seq.) of this chapter.

B. Notwithstanding any other provision of this chapter, in the event the director finds an imminent and substantial endangerment to human health or the environment, the director may issue a temporary emergency permit to a facility to allow transfer, treatment, or storage of regulated medical waste. Such permits:

1. May be issued to allow:

a. Transfer, treatment, or storage of regulated medical waste at a nonpermitted facility;

b. Transfer, treatment, or storage of types of regulated medical waste not covered by the permit for a facility with an effective permit;

c. Treatment of regulated medical waste by a new or temporary treatment unit or treatment unit or method not covered by the permit for a facility with an effective permit; or

d. Temporary transfer, treatment, or storage activities not covered by the permit for a facility with an effective permit.

2. If oral, the emergency permit shall be followed within five calendar days by a written emergency permit.

3. Shall not exceed 90 days in duration.

4. Shall clearly specify:

a. The regulated medical wastes to be received;

b. The manner and location of their transfer, treatment, storage, or disposal; and

c. For emergency treatment units, the treatment plan in accordance with 9VAC20-121-330 E.

5. Shall be accompanied by a public notice including:

a. Name and address of the office granting the emergency authorization;

b. Name and location of the facility so permitted;

c. A brief description of the wastes involved;

d. A brief description of the action authorized and reasons for authorizing it; and

e. Duration of the emergency permit.

6. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter, and shall include the applicable permit fees under the provisions of 9VAC20-90.

7. For emergency treatment units, the facility shall not accept regulated medical waste for treatment until the results of

validation testing and operating parameters are submitted and approved by the department.

8. Any permit issued under this subsection may be renewed not more than three times if necessary and with appropriate justification. Each such renewal shall be for a period of not more than 90 days.

9VAC20-121-320. Effect of the permit.

A. A regulated medical waste treatment facility will be approved to perform its validation protocol following determination of a complete permit-by-rule application in accordance with the procedures outlined in 9VAC20-121-310. Before receipt of waste by the facility, the permittee must:

1. Arrange for a department representative to inspect the site to observe at least one validation test run and perform validation testing in accordance with approved protocols.

2. Submit to the department for approval a summary of the validation test results demonstrating the treatment effectiveness and specifying the operating parameters based on the results of all validation test runs. The report shall include the results of all validation test runs.

B. Following approval by the department of the validation results, a regulated medical waste treatment facility may begin receiving and treating regulated medical waste as defined in the permit-by-rule. The facility shall comply with the operating parameters necessary to achieve treatment. A regulated medical waste treatment facility shall not receive or treat regulated medical waste until the department has approved the validation results and operating parameters to be used for the treatment unit.

C. Each facility permitted to accept regulated medical waste requires periodic inspection and review of records and reports. By accepting coverage under a permit-by-rule in accordance with 9VAC20-121-310, the owner or operator agree to the specified periodic inspections.

D. Compliance with a valid permit-by-rule and this chapter during its term constitutes compliance for purposes of enforcement with the Virginia Waste Management Act. However, a permit-by-rule may be modified or terminated for cause as set forth in 9VAC20-121-310 A 6 and A 7.

E. A permit-by-rule does not convey any property rights or any sort or any exclusive privilege.

F. A permit-by-rule does not authorize any injury to persons or property or invasion of other private rights or any infringement of federal, state, or local law or regulations.

G. A permit-by-rule may be transferred by the permittee to a new owner or operator only if the permit-by-rule has been terminated and reissued or modified to identify the new owner or operator and incorporate such other requirements as may be necessary. Upon presentation of the financial assurance proof required by 9VAC20-70 by the new owner, the department will release the old owner from the old owner's closure and financial responsibilities and acknowledge existence of the new or modified permit-by-rule in the name of the new owner.

9VAC20-121-330. Regulated medical waste management plan.

A. All permitted regulated medical waste management facilities, such as regulated medical waste transfer stations or treatment facilities, shall prepare and maintain a written regulated medical waste management plan. The plan shall include a certification page signed by a responsible official. This signature shall certify the plan meets the requirements of this chapter. The plan shall be maintained in the operating record and shall be made available for review by the department upon request. The plan shall include, at a minimum, the items in subsections B through G of this section.

B. A written waste acceptance plan, which includes, at a minimum:

1. Types and quantities of regulated medical waste to be managed, including sources of the waste and proposed service areas (if waste is accepted from offsite). The plan shall identify:

a. Acceptable waste types for treatment onsite (if applicable); and

b. Acceptable wastes types to be transferred to another approved facility for treatment or management offsite. The plan shall include a description of the offsite facility that will receive the waste, including [the] name, address, and telephone number for the receiving facility and how specific waste types will be managed.

2. Protocols for identification and segregation of regulated medical waste from other types of waste, including radioactive wastes, hazardous wastes, and other solid waste. The plan shall include a description of how incoming waste will be monitored to detect the presence of radioactive materials and actions that will be taken to verify the source of any alarm.

3. Procedures for handling Category A waste in accordance with 9VAC20-121-160.

4. Facilities that accept regulated medical waste from offsite shall include the following:

a. A description of onsite traffic control, schedules, and routing for waste delivery vehicle flow and methods of enforcement of traffic flow plans for the waste delivery vehicles;

b. Procedures for arrival confirmatory inspections of each delivery vehicle and their loads to ensure that the waste has been packaged and transported in accordance with the U.S. Department of Transportation Hazardous Materials Regulations and this chapter;

c. A description of how the waste will be off-loaded, weighed, and compared to the shipping paper that

accompanies the waste and how any discrepancies will be resolved; and

d. For each generator or customer, the facility shall maintain a signed certificate, contract, or equivalent document for each load or inclusive of all loads received from the generator in which the generator affirms that the loads do not contain unauthorized waste.

5. Procedures for handling regulated medical waste received from onsite or offsite that is not packaged, labeled, or marked correctly; leaking, dented, ripped, torn, bulging, or otherwise damaged; or not accompanied by a shipping paper.

C. A written description of the procedures for the detection and management of unauthorized waste in accordance with 9VAC20-121-230 K. The plan shall contain, at a minimum:

1. A list of unauthorized waste types that are not acceptable for management at the facility.

2. Methods used by the operator to prevent management of unauthorized wastes, such as routine monitoring and observation of incoming waste, generator agreements, and informational materials.

3. Procedures to detect and address any unauthorized waste discovered at the facility, including the protocol for identifying and contacting the generator and to prevent recurrence.

4. Procedures for containing and storing each type of unauthorized waste, such as radioactive or hazardous waste, until it is removed for proper management, including designated storage locations, storage timeframes, packaging, and labeling.

5. Instructions for documenting and notifying the department of receipt and ultimate disposition of unauthorized waste.

D. A written operations plan that includes, at a minimum:

1. A general description of the overall process and equipment used. The plan shall include the following: hours of operation; process rate; procedures for daily startup; methods, containers, and other devices for the collection, off-loading, tipping, and conveyance of regulated medical waste from the point of generation or receipt to areas for processing; normal loading, unloading, and waste handling procedures; and timeframes for transfer or treatment.

2. Protocols for packaging and labeling regulated medical waste for treatment onsite or transport offsite, including protocols for labeling or marking wheeled carts, containers, conveyance systems, or other items used for moving regulated medical waste.

3. Procedures for temporary onsite storage of regulated medical waste until it is collected for treatment onsite or transport offsite. The plan shall identify each storage location and capacity, the maximum length of time the waste will be stored, and procedures used to document compliance with required storage timeframes.

4. Methods and equipment used to empty, clean, and disinfect reusable containers in accordance with 9VAC20-121-130, including types and quantities of reusable containers and disinfectant to be used, disinfection procedures utilized between uses, and final disposal in case of damage or wear and tear. The plan shall also include a description of appropriate personal protective equipment, such as puncture and leak resistant gloves, safety glasses or face shield, protective coveralls or bib, protective footwear, and mask or respiratory protection as needed, used to protect personnel when cleaning and disinfecting reusable containers.

5. Procedures for spill prevention and response and how spilled waste will be collected, packaged, and the spill area decontaminated in accordance with 9VAC20-121-140. This includes locations and contents of all spill containment and cleanup kits.

6. Names, addresses, and telephone number of final treatment or ultimate disposal facilities to be used for untreated waste and treated residues, facility-generated wastes, unauthorized waste, hazardous waste, radioactive waste, and other waste bypassed or disposed.

7. A description of equipment and procedures used to control access to areas used for the storage, transfer, and treatment of regulated medical waste. The plan shall identify all entry and exit points where access is controlled.

8. Methods and equipment used for routine cleaning and disinfection of facility equipment, floors, vehicles, and other surfaces that come into contact with regulated medical waste.

9. Measures used to control and monitor for fire, dust, noise, litter, odors, vectors, and blowing debris at the facility.

10. Collection and management of effluent, wash water, and other runoff from facility floors, storage and processing areas, waste compactors, and reusable container cleaning and disinfection areas, including location and discharge of drains.

11. Identification of all appropriate personal protective equipment, such as puncture and leak resistant gloves, safety glasses or face shield, protective coveralls or bib, protective footwear, and mask or respiratory protection as needed, and when the items are used to protect personnel managing regulated medical waste at the facility. The plan shall also include a description of donning and offing procedures for personal protective equipment.

12. A self-inspection plan that at a minimum includes copies of the inspection checklists that comply with 9VAC20-121-230 U [~~of this chapter~~] along with a description of the types

of potential problems and corrective actions that may result from the inspections.

13. A schedule and description of initial and annual refresher training to be provided to employees in-person, in a language they can understand, including interactive training, and the types and numbers of adequately trained personnel. Initial training shall be provided within seven working days of employment, and annual refresher training shall be provided within one year from the date of the last training. Training shall include:

a. Operational procedures in accordance with 9VAC20-121-230 V;

b. Protocols to recognize, manage, document, and report unauthorized waste in accordance with 9VAC20-121-230 K;

c. Procedures for retraining staff when noncompliance or other incidents occur; and

d. Any other specialized waste training specific to the job function.

14. Procedures for recordkeeping in accordance with 9VAC20-121-340. The procedures shall address how inventory will be managed and methods used to track, link, and document specific incoming waste loads to specific outgoing waste loads.

15. A description of the type and estimated daily quantity of any facility-generated waste residues and procedures for handling and disposal of the residues.

E. A written treatment plan for each unit used to treat regulated medical waste that meets the standards of 9VAC20-121-240 and 9VAC20-121-250 and includes at a minimum:

1. A detailed description of the treatment technology to be used, including:

a. An overview of the treatment process and description of the treatment unit, including manufacturer, model name or number, and treatment capacity;

b. Procedures for equipment startup and shut down including warm-up, loading and unloading wastes, and anticipated load size during routine operation;

c. A description of built-in automatic controls and fail safe mechanisms to ensure the waste cannot bypass the treatment process;

d. If applicable, methods used to grind, shred, or puncture containers or packaging before, during, or after treatment, along with the methods to prevent exposure to the waste; contain any aerosol, bioaerosol, or mists caused by the process; and treat or filter any air evacuated from the chamber during processing;

e. If applicable, methods to transfer from a grinder or shredder to or from a treatment unit under forced draft ventilation that removes fumes from the operations area to a safe discharge;

f. Methods for maintaining negative pressure atmospheric control in the vessel and filtering all vents, discharges, and fugitive emissions of air from the process units through a high efficiency particulate air (HEPA) filter with efficiency of 99.97% for 0.3 microns. Installation and maintenance of filters shall be specified;

g. Methods to manage effluent including location and discharge of drains; and

h. A description of preventative maintenance that is performed on the treatment unit, including on engineering and electronic controls.

2. Identification of acceptable waste types to be treated and a listing of types of wastes that shall not be treated.

3. Treatment unit operating parameters (e.g., cycle duration, temperature, pressure, chemical concentration, irradiation exposure time, or other treatment parameters as applicable) and a description of how the operating parameters will be monitored and recorded, including number, type, and location of parametric monitoring devices, thermochemical indicators, and thermochemical recording devices, as applicable for routine operation.

4. Identification of the biological indicators to be used and documentation that lack of growth in the treated indicator corresponds to a 6 [~~log10~~ Log_{10}] reduction of viable spores. An explanation of why each indicator is suitable for the treatment process and wastes to be treated, including referencing any standards, guidelines, or information from peer reviewed journals, shall be included. The facility shall also specify the:

a. Type of biological indicators (spore strip, suspension, or self-contained), including a copy of the supplier's certificate of performance (or certificate of analysis) that identifies the organism (genus, species, strain, and population), purity, and for thermal treatment systems (including autoclaves) the D-value, and Z-value;

b. Estimated shelf life and storage conditions to be maintained;

c. Culture medium, incubation procedures, and incubation time (for self-contained biological indicators) and the media, growth, and culture conditions (for non-self-contained biological indicators), including how the results are to be interpreted and recorded;

d. Carrier system or material and primary packaging;

e. Relative resistance to temperature, pressure, chemicals, irradiation, infectious agents, or any other conditions used in the treatment process; and

f. Number, location, and placement of untreated (control) and treated indicators relative to the coldest spot in the treatment unit as identified by the manufacturer.

5. Number, type, and placement of thermochemical indicators, including a description of how results will be interpreted and recorded.

6. A validation plan that includes a detailed description of the validation testing protocol used to demonstrate effective treatment by each treatment unit that meets the standards of 9VAC20-121-260 and includes:

a. Surrogate waste load composition, including packaging type, porosity, relative percentages of inorganic and organic components, moisture content, thermal resistance, and a relative breakdown of solid components, such as blood culture bottles, plastics (including suction canisters), microbiological waste, and sharps;

b. Load configuration including packing density, orientation, and load size;

c. Number, type, and location or placement of biological indicators; thermochemical indicators; thermochemical recording devices; and any other methods used to monitor operating parameters and accuracy of parametric monitoring devices during validation runs to ensure that the gauge or electronic read-out is a true reflection of conditions inside the treatment unit;

d. A description of how the results will be interpreted and documented; and

e. Identification of who will conduct the validation testing.

7. A detailed description of the periodic challenge testing procedures used to evaluate the effectiveness of each treatment device under full loading, which meets the standards of 9VAC20-121-270 and includes:

a. Frequency of challenge testing to be performed;

b. Number, type, and location or placement of biological and thermochemical indicators, and other methods used to monitor operating parameters;

c. A description of how the results will be interpreted and documented;

d. Procedures used to address challenge test failures, including evaluating and correcting any issues with the treatment cycle and unit, and management of untreated regulated medical waste to include temporary storage or diversion to another approved facility for treatment or disposal; and

e. Procedures for reporting failing results of challenge testing to the department in accordance with 9VAC20-121-340.

8. Identification of all appropriate personal protective equipment, such as puncture and leak resistant gloves, safety glasses or face shield, protective coveralls or bib, protective footwear, and mask or respiratory protection as needed, and when the items are used to protect personnel.

9. Safety procedures used to minimize occupational exposure and prevent physical injury to operators during loading, unloading, and treatment cycle.

10. Procedures for handling and disposing of treated wastes, including packaging, labeling, and transport.

11. A copy of the [~~written agreement with each permitted solid waste management facility that will transfer, store, or dispose of the~~] treated waste [disposal plan] in accordance with 9VAC20-121-280 D.

F. A written emergency contingency plan that describes the organized, planned, coordinated courses of action to be followed in the event of emergencies and nonoperation. In addition to submission to the department, the plan shall be provided to the local police and fire departments, local emergency manager, and local emergency health coordinator. The plan shall include:

1. Procedures to minimize hazards to human health and the environment from utility failure, fires or explosions, spills, leaks and releases, and exposure to regulated medical waste.

2. A description of the actions facility personnel shall take in the event of various emergency situations (fire, explosion, catastrophic loss, temporary shutdown, release of regulated medical waste or regulated medical waste constituents, or other incident that could threaten human health or the environment), including evacuation procedures.

3. A list of available fire protection and emergency equipment, and appropriate uses, such as fire extinguishers, emergency safety showers, eye wash stations, spill control materials, and alarm systems.

4. Procedures to be employed in the event of equipment breakdown or maintenance events, including standby equipment, extension of operating hours, or diversion of waste to another facility.

5. A list of onsite and offsite backup equipment with names and telephone numbers where offsite equipment may be obtained.

6. Provisions for loading, unloading, storage, transfer, treatment, or other disposal capabilities to be used during emergency situations, including when the facility downtime exceeds 24 hours.

7. The designation of alternate treatment areas or plans for transfer of stored waste in the event facility or system downtime exceeds 72 hours.

8. Procedures for spill cleanup and decontamination following a release of regulated medical waste.

9. A description of arrangements made with the local police and fire department that allow for immediate entry into the facility by their authorized representatives should the need

arise, such as in the case of response personnel responding to an emergency situation.

10. The telephone numbers for local fire and police departments.

11. An identification of personnel designated as emergency coordinators. A list of names, addresses, and phone numbers (office and home) of all persons qualified to act as an emergency coordinator for the facility. Where more than one person is listed, one shall be named as primary emergency coordinator and the other shall be listed in the order in which they will assume responsibility as alternates. The emergency coordinator must be onsite or on-call and is responsible for responding to emergencies and coordinating emergency response measures.

12. A description of where and how emergency response information will be posted.

G. A written closure plan that identifies the steps necessary to completely close the facility or unit at its full operation under the permit conditions, which includes:

1. Procedures for removal of regulated medical waste, treated residue, and other materials for proper treatment or disposal;

2. Methods for cleaning and disinfecting the unit or facility and all related equipment, structures, and surfaces;

3. A description of any sampling to be conducted to ensure the facility has been decontaminated;

4. A schedule for final closure including, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates that will allow tracking of the progress of closure; and

5. Actions necessary for facility abandonment or uses other than for regulated medical waste management.

9VAC20-121-340. Recordkeeping and reporting required of a permittee.

A. Regulated medical waste management facilities having coverage under a permit-by-rule shall maintain and retain records and reports as required by this chapter.

B. A facility shall retain records whenever monitoring is required.

1. The facility shall retain records of all monitoring information, including all calibration and maintenance records and all original recordings for continuous monitoring instrumentation, for at least three years from the sample or measurement date. The director may request that this period be extended.

2. Records of monitoring information shall include:

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

b. The name of the individuals who performed the sampling or measurements;

c. The date analysis were performed;

d. The name of the individuals who performed the analysis;

e. The analytical techniques or methods used; and

f. The results of such analyses.

C. The facility must maintain accurate written [or digital] records as required by this chapter. Records shall include all records required by the facility permit, this chapter, or other applicable regulations. Records must be maintained at the facility or another location approved by the department for at least three years from the date of the record, sample or measurement date, treatment date, shipping date, or receipt date. The department may request that this period be extended. Records shall be available for review by the department as requested.

D. The facility shall maintain a regulated medical waste management plan in the operating record in accordance with 9VAC20-121-330.

E. The owner or operator of a regulated medical waste management facility under a permit-by-rule that transfers or treats regulated medical waste, except for a captive regulated medical waste management facility, shall submit a Solid Waste Information and Assessment report to the department by March 31 of each year in accordance with 9VAC20-81-80.

F. A disclosure statement identifying all key personnel as required by § 10.1-1408.1 of the Code of Virginia shall be on file with the department and updated on a quarterly basis as necessary. At least one operator listed as key personnel on the facility's disclosure statement shall be licensed by the Board for Waste Management Facility Operators as required by § 10.1-1408.2 of the Code of Virginia.

G. If regulated medical waste is received from offsite, records shall be maintained for three years following receipt of the waste and shall include the date of receipt, name of each offsite generator, transporter, type and quantity (weight or volume) of waste received, and dates of subsequent treatment onsite or shipment offsite. The facility shall maintain a signed certificate, contract, or equivalent document for each load or inclusive of all loads received from offsite in which the generator affirms that the load does not contain hazardous waste or radioactive materials, unless the facility is permitted to receive those types of wastes.

H. If regulated medical waste is shipped or transferred offsite, the facility shall maintain records, including copies of all shipping papers, specifying the date of shipment, type, and quantity (weight or volume) of waste removed from the site and the names, addresses, and telephone numbers of both the

transporters and the destination facility receiving the shipments for treatment or disposal.

I. A regulated medical waste treatment facility shall maintain an onsite treatment log at each treatment unit that is complete for the preceding three-year period. The log shall record the date, start time, end time, and operator of each treatment cycle; the type and quantity (weight or volume) of regulated medical waste treated onsite; monitoring records for the operating parameters (e.g. time, temperature, pressure, and chemical concentration) achieved throughout each treatment cycle; and the results of all validation and periodic challenge testing. Monitoring records shall include original recordings for continuous monitoring instrumentation and parametric controls as well as the results of all biological and thermochemical indicators. Where multiple treatment units are used, a working log can be maintained at each unit and such logs periodically consolidated at a central location as long as the records distinguish which treatment unit is applicable to each record. The consolidated logs shall be retained for three years and be available for review.

J. The facility shall retain records of all unauthorized waste in accordance with 9VAC20-121-230 K.

K. The facility must maintain a record of self-inspections in an inspection log. The log must include the date and time of the inspection, the name of the inspector, a description of the inspection, including the identity of the specific equipment and structures inspected, observations recorded, and the date and nature of any remedial actions implemented or repairs made.

L. Written documentation of all training received by each employee, including the date and topics of the training, shall be maintained in the facility's operating record.

M. A regulated medical waste management facility shall be subject to the following reporting requirements. The facility shall report to the department any noncompliance, emergency, or unusual condition that may endanger health, the environment, or the facility's operation. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five working days of the time the facility becomes aware of the circumstances. The written report shall contain a description of the circumstances and its cause; the period of occurrence, including exact dates and times; and if the circumstance has not been corrected, the anticipated time it is expected to continue. It shall also contain steps taken or planned to reduce, eliminate, and prevent reoccurrence of the circumstances resulting in an unusual condition or noncompliance, to include retraining of staff as necessary. Reportable conditions include:

1. Any interruption to operations that requires implementation of the facility's emergency contingency plan or diversion of regulated medical waste to another management facility;

2. Releases or discharges of regulated medical waste from a fire, explosion, storm, or other emergency that could endanger human health or the environment outside the facility;

3. Unauthorized discharge of effluent, wash water, waste, or other pollutant to surface water (i.e., offsite, natural water body or tributary, including wetlands);

4. Spills of regulated medical waste in any areas not protected from the elements, such as outside of a building;

5. Storage of regulated medical waste beyond capacity or storage timeframes;

6. Failing results of periodic challenge testing;

7. Receipt or discovery of unauthorized waste;

8. Receipt of Category A waste; and

9. Shipment of regulated medical waste offsite in inappropriate packaging.

N. Copies of all reports required and records of all data used to complete the permit-by-rule application must be retained for at least three years from the date of the report or application. The director may request that this period be extended.

O. When the permittee becomes aware that the permittee failed to submit any relevant facts or submitted incorrect information in a permit-by-rule application or in any report to the department, the permittee shall promptly submit such omitted facts or the correct information with an explanation.

Part VI
Variance Application Procedures

9VAC20-121-400. General.

A. Any person affected by this chapter may apply to the department for a variance from any requirement of this chapter. Variance determinations shall be subject to the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The department shall not accept any variance application relating to:

1. Equivalent testing or analytical methods contained in EPA Publication SW-846;

2. A change in the regulatory requirements that the applicant is currently violating until such time as the violation has been resolved through the enforcement process.

9VAC20-121-410. Variance to requirements.

A. The director may grant a variance from any regulation contained in Part III (9VAC20-121-20 et seq.) through Part V (9VAC20-121-300 et seq.) of this chapter to an applicant if the applicant demonstrates to the satisfaction of the director that:

1. a. Strict application of the regulation to the facility will result in undue hardship that is caused by the applicant's particular situation;

b. The alternate is equally protective of human health and the environment as that provided for in the regulations; or

c. Technical conditions exist that make a strict application of the regulation difficult to achieve; and

2. Granting the variance will not result in an unreasonable risk to the public health or the environment.

B. Effects of the decisions.

1. When the director renders a decision under this section in accordance with the procedures contained in 9VAC20-121-420, the director may:

a. Deny the application;

b. Grant the variance as requested; or

c. Grant a modified or partial variance.

2. When a variance is granted, the director may:

a. Specify the termination date of the variance; or

b. Include a schedule for:

(1) Compliance, including increments of progress, by the facility with each requirement of the variance; and

(2) Implementation by the facility of such control measures as the director finds necessary in order that the variance may be granted.

9VAC20-121-420. Administrative procedures.

A. Persons requesting variance from a provision of this chapter shall submit an application for such variance in accordance with this section.

1. All applications submitted to the director shall include:

a. The applicant's name and address;

b. A statement of applicant's interest in the proposed action;

c. A description of the desired action and a citation to the regulation from which a variance is requested;

d. A description of the need and justification for the proposed action;

e. The duration of the variance, if applicable;

f. The potential impact of the variance on public health or the environment;

g. Other information believed by the applicant to be pertinent; and

h. The following statements signed by the applicant or his authorized representative:

"I certify that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

2. In addition to the general information required of all applicants under this part:

a. To be successful the applicant shall address the applicable standards and criteria;

b. An explanation of the applicant's particular situation that prevents the facility from achieving compliance with the cited regulation; and

c. Other information as may be required by the department.

B. The variance application shall be processed in accordance with this subsection.

1. After receiving an application that includes the information required in subsection A of this section, the director will determine whether the information received is sufficient to render the decision. If the information is deemed to be insufficient, the director will request that additional information be furnished.

2. The applicant may submit the additional information requested or may demonstrate that the additional information should not be required. If the director agrees that the additional information should not be required, the director will act in accordance with subdivision 3 of this subsection.

3. After the application is deemed complete:

a. The director will make a tentative decision to grant or deny the variance request.

b. If the variance request is tentatively denied, the director will offer the applicant the opportunity to withdraw the request, submit additional information, or proceed with the evaluation.

c. The director will issue a notice tentatively granting the variance request. Notification of this tentative decision will be provided by newspaper advertisement in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days.

d. After evaluating all public comments, the director will, within 15 days after the expiration of the comment period:

(1) Notify the applicant of the final decision; and

(2) Notify all persons who commented on the tentative decision.

C. Decision resolution.

1. In the case of a denial, the applicant has a right to request a formal hearing to challenge the rejection.

2. If the director grants a variance request, the notice to the applicant shall provide that the variance may be terminated upon a finding by the director that the applicant has failed to comply with any variance requirements.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (9VAC20-121)

Solid Waste Management Facility Permit Applicant's Disclosure Statement (Cover Sheet), DEQ Form DISC 01 (rev. 9/2020)

Solid Waste Management Facility Permit Applicant's Disclosure Statement - Key Personnel Statement, DEQ Form DISC 02 (rev. 9/2020)

Local Government Certification Request, DEQ Form CERT 01 (rev. 8/2018)

Regulated Medical Waste Management Facility Permit-by-Rule Form, DEQ Form RMW PBR (eff. 1/2022)

Application for Evaluation and Approval of Regulated Medical Waste Treatment Technology, DEQ Form RMWTP 01 (rev. 9/2018)

DOCUMENTS INCORPORATED BY REFERENCE (9VAC20-121)

[~~Managing Solid Waste Contaminated with a Category A Infectious Substance (August 2019), approved for publication by the National Security Council (NSC) led Domestic Resilience Group (DRG) on August 19, 2019.~~

Managing Solid Waste Contaminated with a Category A Infectious Substance (June 2022), approved for publication by the National Security Council (NSC)-led Homeland and Critical Infrastructure Resilience (HCIR) and Countering Biological Threats (CBT) Interagency Policy Committees on June 3, 2022]

VA.R. Doc. No. R19-5395; Filed January 20, 2023, 10:31 a.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: **9VAC25-194. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities.**

Agency Contact: Elleanore Daub, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2655, or email elleanore.daub@deq.virginia.gov.

FORMS

~~Registration Statement for the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Vehicle Wash Facilities and Laundry Facilities 2012 Reissuance (rev. 8/14)~~

Registration Statement for the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Vehicle Wash Facilities and Laundry Facilities 2022 Reissuance (rev. 6/2022)

VA.R. Doc. No. R23-7467; Filed January 20, 2023, 12:00 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from 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.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (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 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-890. General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (amending 9VAC25-890-1, 9VAC25-890-10 through 9VAC25-890-40).**

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

Public Hearing Information:

March 20, 2023 - 2 p.m. - Department of Environmental Quality, Piedmont Regional Office Training Room, 4949-A Cox Road, Glen Allen, VA 23060

Public Comment Deadline: April 14, 2023.

Agency Contact: Jeffrey Selengut, MS4 Permit Writer, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1314, FAX (804) 698-4178, or email jeffrey.selengut@deq.virginia.gov.

Summary:

The proposed amendments are necessary to reissue the existing general permit, which expires on October 31, 2023. The general permit governs local governments and state and federal agencies that discharge stormwater from municipally owned separate storm sewer systems (MS4s) located within the Census Urbanized Area as determined by the U.S. Census Bureau. Proposed amendments include (i) adding definitions for common MS4 terminology and modifying the high-priority facility definition; (ii) requiring electronic submission of annual reports after a three-month notice is provided by the Department of Environmental Quality in accordance with 9VAC25-31-1020; (iii) adding permit conditions specific to traditional and nontraditional MS4 permittees to address existing permit conditions that are inherently not applicable to nontraditional permittees or not practicable for nontraditional permittee implementation; (iii) requiring third phase Chesapeake Bay total maximum daily load (TMDL) action plan submittal and completion of 100% of required nitrogen, phosphorus, and sediment reductions no later than October 31, 2028; (v) requiring Chesapeake Bay TMDL implementation annual status reports be maintained as separate documents from annual reports and posted to a permittee's publicly accessible stormwater webpage; (vi) requiring permittees to provide MS4 maps in a geographic information system (GIS) shapefile format and establishing data standards for GIS shapefile submission; (vii) adding provisions allowing permittees to adopt a risk-based approach to dry weather screening identifying observation points based upon illicit discharge risks upstream of an outfall. Each observation point screened may be counted as one outfall screening activity equivalent; however, at least 50% of the minimum annual screening events must include outfalls. These provisions are voluntary and permittees may choose to adopt this approach at their discretion; (viii) removing electronic best management practices (BMP) database requirements as these requirements are duplicative of BMP Warehouse reporting requirements; (ix) moving BMP Warehouse reporting conditions to a new permit section Part III and adding reporting requirements for ecosystem restoration projects; (x) reformatting and integrating good housekeeping requirements for written procedures, differentiating between the objectives each procedure shall meet and activities that require procedures, incorporating existing good housekeeping permit conditions into written procedure requirements, and improving linkage to contract language and training requirements; (xi) removing subjectivity from stormwater pollution prevention plan (SWPPP) applicability, clarifying SWPPP requirements, and integrating use of applicable written good housekeeping procedures; (xii) requiring good housekeeping written procedures for applying anti-icing and deicing agents to update road, street, sidewalk, and parking lot procedures, including implementation of best management practices for anti-icing and deicing agent application, transport, and storage; (xiii) requiring permittees to develop written procedures for renovation and significant exterior maintenance activities; (xiv) clarifying written good housekeeping procedures for temporary storage of landscaping materials, recognizing that long-term bulk storage meets the definition of a high-priority facility; (xv) requiring Department of Conservation and Recreation approval and renewal of nutrient management plans; (xvi) requiring chloride TMDL action plans where applicable; (xvii) requiring inspection and maintenance procedures for ecosystem restoration projects; and (xvii) removing sediment reduction requirements from the Chesapeake Bay TMDL special condition.

Chapter 890

~~General~~ Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s)

9VAC25-890-1. Definitions.

The words and terms used in this chapter shall have the meanings defined in the ~~Virginia~~ Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia) and the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Annual practice" means a nonstructural best management practice such as street or storm drain cleaning that reduces pollution for one compliance year upon implementation.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Date brought online" means the date when the permittee determines that a new stormwater management facility is properly functioning.

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

"Ecosystem restoration projects" means practices implemented to reestablish and maintain natural systems that prevent, reduce, or remediate pollutant loadings. Examples of ecosystem restoration projects include stream restoration, shoreline restoration, land-use conversion, and reforestation.

"High-priority facilities" means facilities owned or operated by the permittee with drainage to any permitted MS4 that actively engage in one or more of the following activities: (i) composting~~,~~; (ii) equipment storage, cleaning, and maintenance~~,~~; (iii) long-term bulk materials storage~~,~~; (iv) pesticide, herbicide, and fertilizer storage~~, (v) storage for public works, (vi)~~; (v) recycling~~, (vii) salt storage, (viii)~~; (vi) anti-icing and deicing agent storage, handling, and transfer;

(vii) solid waste handling and transfer, and ~~(ix) vehicle storage and maintenance~~ (viii) permittee owned or operated vehicle washing, maintenance, and salvage.

"MS4 regulated service area" or "service area" means for Phase II permittees, the drainage area served by the permittee's MS4 that is located within an urbanized area as determined by the 2010 decennial census performed by the Bureau of the Census. MS4 regulated service area may also be referred to as "served by the MS4" as it pertains to the tables in Part II A of this permit.

"Nontraditional MS4 permittee" or "nontraditional permittee" means a government entity that operates a regulated MS4 that is not under the authority of a county board of supervisors, a city council, or a town council.

"Physically interconnected" means that one MS4 is connected to a second MS4 in such a manner that it allows for direct discharges to the second system.

"Pollutants of concern" or "POC" means pollutants specifically identified in a U.S. Environmental Protection Agency approved total maximum daily load (TMDL) report as causing a water quality impairment.

"Traditional MS4 permittee" or "traditional permittee" means a local government that operates a regulated MS4 under the authority of a county board of supervisors, a city council, or a town council.

9VAC25-890-10. Purpose; effective date of the state permit.

A. This general permit regulation governs point source stormwater discharges from regulated small municipal separate storm sewer systems (~~small~~ MS4s) to surface waters of the Commonwealth of Virginia. Nonmunicipal stormwater or wastewater discharges are not authorized by this permit except in accordance with 9VAC25-890-20 D.

B. This general permit will become effective on November 1, ~~2018~~ 2023, and will expire October 31, ~~2023~~ 2028.

9VAC25-890-15. 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 in this chapter, that regulation shall be as it exists and has been published in the July 1, ~~2017~~ 2022, update. ~~The final rule published in the Federal Register on August 28, 2017 (82 FR 40836), which amends 40 CFR Part 136, is also incorporated by reference in this chapter.~~

9VAC25-890-20. Authorization to discharge.

A. Any operator covered by this general permit is authorized to discharge stormwater from the ~~small municipal separate storm sewer system (~~MS4~~)~~ to surface waters of the Commonwealth of Virginia provided that:

1. The operator submits a complete and accurate registration statement in accordance with 9VAC25-890-30 and that registration statement is accepted by the ~~board~~ department;

2. The operator submits any permit fees required by Part XIII (9VAC25-870-700 et seq.~~ (Part XIII)~~);

3. The operator complies with the requirements of 9VAC25-890-40; and

4. The ~~board~~ department has not notified the operator that the discharge is ineligible for coverage in accordance with subsection C of this section.

B. The operator is not authorized by this general permit to discharge to surface waters specifically named in other board regulations that prohibit such discharges.

C. The ~~board~~ department will notify an operator that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The operator is required to obtain an individual permit in accordance with 9VAC25-870-410 B;

2. The operator is proposing discharges to surface waters specifically named in other board regulations that prohibit such discharges; or

3. The operator fails to implement BMPs to reduce pollutants to the maximum extent practicable (MEP) standard in order to demonstrate progress toward meeting the water quality requirements as listed in 9VAC25-31-220 D 1 a in accordance with 9VAC25-31-220 K 2.

D. Nonstormwater discharges or flows into the ~~small~~ MS4 are authorized by this state permit and do not need to be addressed in the MS4 program required under 9VAC25-890-40 Part I E 3 if:

1. The nonstormwater discharges or flows are covered by a separate individual or general VPDES or state permit for nonstormwater discharges;

2. The individual nonstormwater discharges or flows have been identified by the department as de minimis discharges that are not significant sources of pollutants to surface waters and do not require a separate VPDES permit;

3. The nonstormwater discharges or flows are identified in this subdivision ~~D 3~~ and have not been identified by the operator or by the ~~board~~ department as significant contributors of pollutants to the ~~small~~ MS4:

a. Water line flushing, managed in a manner to avoid an instream impact;

b. Landscape irrigation;

c. Diverted stream flows;

d. Rising groundwaters;

e. Uncontaminated groundwater infiltration, as defined at 40 CFR 35.2005(20);

f. Uncontaminated pumped groundwater;

g. Discharges from potable water sources managed in a manner to avoid instream impact;

h. Foundation drains;

i. Air conditioning condensation;

j. Irrigation water;

k. Springs;

l. Water from crawl space pumps;

m. Footing drains;

n. Lawn watering;

o. Individual residential car washing;

p. Flows from riparian habitats and wetlands;

q. Dechlorinated freshwater swimming pool discharges managed in a manner to avoid instream impact;

r. Street and pavement wash ~~water~~ waters that do not contain cleaning additives or are otherwise managed in a manner to avoid instream impact;

s. Discharges or flows from emergency firefighting activities;

t. Discharges or flows of water for fire prevention or firefighting training activities managed in a manner to avoid instream impact in accordance with § 9.1-207.1 of the Code of Virginia;

u. Discharges from noncommercial fundraising car washes if the washing uses only biodegradable, phosphate-free, water-based cleaners in accordance with § 15.2-2114.1 of the Code of Virginia; or

~~u.~~ v. Other activities generating discharges identified by the department as not requiring VPDES authorization~~.~~; or

4. The immediate discharge of materials is necessary to protect life or property as determined by fire department personnel or emergency management officials or any discharge in accordance with 9VAC25-31-40. The operator shall take~~,~~ or ensure that the responsible party takes~~,~~ all reasonable steps to minimize or prevent any adverse effect on human health or the environment. This state permit does not transfer liability for a spill itself from the party responsible for the spill to the operator nor relieve the party responsible for a spill from the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302.

E. In the event the operator is unable to meet certain conditions of this permit due to circumstances beyond the operator's control, the operator shall submit a written explanation of the circumstances that prevented state permit compliance to the department in the annual report. Circumstances beyond the control of the operator include abnormal climatic conditions; weather conditions that make certain requirements unsafe or impracticable; or unavoidable equipment failures caused by weather conditions or other conditions beyond the reasonable control of the operator (operator error is not a condition beyond the control of the operator). The failure to provide adequate program funding, staffing, or equipment maintenance shall not be an acceptable explanation for failure to meet state permit conditions. The ~~board~~ department will determine, at its sole discretion, whether the reported information will result in an enforcement action.

F. Discharges that are excluded from permitting requirements pursuant to 9VAC25-870-300 are exempted from the regulatory requirements of this state permit.

G. For those portions of the ~~small~~ MS4 engaging in activities that are covered under a separate VPDES permit for discharges associated with industrial activities, the permittee shall follow the conditions established by the separate VPDES permit.

H. Upon termination of permit coverage for those activities addressed in subsection G of this section, the discharges from the outfalls previously authorized under the VPDES permit for stormwater discharges associated with industrial activities shall meet the conditions of this state permit provided it has been determined by the ~~board~~ department that an individual MS4 permit is not required.

I. Stormwater discharges from specific MS4 permittee activities that have been granted conditional exclusion for "no exposure" of industrial activities and materials to stormwater under the separate VPDES permitting program shall comply with this state permit unless a separate VPDES permit is obtained. The department is responsible for determining compliance with the conditional exclusion under the State Water Control Law (Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia) and attendant regulations.

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

K. Continuation of permit coverage.

1. Any permittee that was authorized to discharge under the state permit effective ~~July 1, 2013~~ November 1, 2018, and that submits a complete registration statement on or before ~~June 1, 2018~~ October 1, 2023, is authorized to continue to discharge under the terms of the ~~July 1, 2013~~ November 1, 2018, state permit until such time as the ~~board~~ department either:

a. Issues coverage to the permittee under this state permit; or

b. Notifies the permittee that the discharge is not eligible for coverage under this state permit.

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

a. Initiate enforcement action based upon the ~~2013~~ 2018 general permit;

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

c. Issue a new state permit with appropriate conditions; or

d. Take other actions authorized by the State Water Control Law, VPDES (9VAC25-31), and VSMP (9VAC25-870) regulations.

9VAC25-890-30. Registration statement.

A. Deadline for submitting a registration statement.

1. Operators of ~~small~~ MS4s described under 9VAC25-870-400 B that are applying for initial coverage under this general permit must submit a complete registration statement to the department within 180 days of notice of designation, unless the ~~board~~ department grants a later date.

2. In order to continue uninterrupted coverage under the general permit, operators of ~~small~~ MS4s shall submit a new registration statement no later than ~~June 1, 2018~~ October 1, 2023, unless permission for a later date has been granted by the ~~board~~ department. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing state permit.

B. The registration statement shall include the following information:

1. The name and location of the ~~small~~ MS4;

2. The name of the owner or operator of the ~~small~~ MS4;

3. The mailing address of the owner or operator of the ~~small~~ MS4;

4. The type of ~~small~~ MS4 (e.g., city, county, incorporated town, unincorporated town, college or university, local school board, military installation, transportation system, federal or state facility, or other);

5. If the MS4 is operated under the authority of a city council or a county board of supervisors, indicate if public school facilities are included in the application.

6. The name, title, mailing address, telephone number, and email address for the following individuals:

a. The responsible official who meets the criteria established in ~~9VAC 25-870-370~~ 9VAC25-870-370 A 3;

b. The MS4 permit contact; and

c. The annual permit maintenance fee contact;

~~6.~~ 7. The following receiving waters information:

a. The names of the receiving surface waters to which the MS4 system discharges; and

b. Whether or not the receiving waters are listed as impaired in the Virginia 2016 305(b)/303(d) Water Quality Assessment Integrated Report;

~~7.~~ 8. The names of any physically interconnected MS4s to which the ~~small~~ MS4 discharges;

~~8.~~ 9. A list of all existing signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures;

~~9.~~ 10. For ~~those~~ permittees previously covered under the General VPDES Permit for Discharges of Stormwater from MS4 effective November 1, 2018, whose regulated MS4 is located partially or entirely in the Chesapeake Bay watershed, a draft ~~second~~ third phase Chesapeake Bay TMDL action plan; and

~~10.~~ 11. The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 9VAC25-890-40 Part ~~III~~ IV K 4.

D. An operator may file its own registration statement, or the operator and other operators of ~~small~~ MS4s may jointly submit a registration statement. If responsibilities for meeting the stormwater minimum control measures will be shared with other municipalities or governmental entities, the registration statement must describe which stormwater minimum control measures the operator will implement and identify the entities that will implement the other stormwater minimum control measures within the area served by the ~~small~~ MS4.

E. The registration statement may be delivered to the DEQ Central Office, Office of VPDES Permits or by electronic mail to an electronic mailbox specified by the department.

9VAC25-890-40. General permit.

Any MS4 operator whose registration statement is accepted by the ~~board~~ department will receive coverage under the following general permit and shall comply with the requirements in this general permit and be subject to all applicable requirements of the Virginia Stormwater Management Program (VSMP) Regulations (9VAC25-870)

and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations (9VAC25-31).

General Permit No.: VAR04

Effective Date: November 1, ~~2018~~ 2023

Expiration Date: October 31, ~~2023~~ 2028

GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER MANAGEMENT PROGRAM REGULATIONS, VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM REGULATIONS, AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, permittees of small municipal separate storm sewer systems are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in State Water Control Board regulations ~~which~~ that prohibit such discharges.

The authorized discharge shall be in accordance with the registration statement filed with the department, this cover page, Part I - Discharge Authorization and Special Conditions, Part II - TMDL Special Conditions, ~~and~~ Part III - DEQ BMP Warehouse Reporting, and Part IV - Conditions Applicable to All State and VPDES Permits, as set forth in this general permit.

Part I

Discharge Authorization and Special Conditions

A. Coverage under this state permit. During the period beginning with the date of coverage under this general permit and lasting until the expiration and reissuance of this state permit, the permittee is authorized to discharge stormwater and those authorized nonstormwater discharges described in 9VAC25-890-20 D in accordance with this state permit from the small municipal separate storm sewer system identified in the registration statement into surface waters within the boundaries of the Commonwealth of Virginia and consistent with 9VAC25-890-30.

B. The permittee shall develop, implement, and enforce ~~a~~ an MS4 program designed to reduce the discharge of pollutants from the ~~small~~ MS4 to the ~~maximum extent practicable (~~MEP~~)~~ in accordance with this permit, to protect water quality, and to satisfy the appropriate water quality requirements of the State Water Control Law and its attendant regulations. The permittee shall utilize the legal authority provided by the laws and regulations of the Commonwealth of Virginia to control discharges to and from the MS4. This legal authority may be a combination of statute, ordinance, permit, policy, specific contract language, order, or interjurisdictional agreements. The MS4 program shall include the minimum control measures (MCM) described in Part I E. For the purposes of this permit term, implementation of MCMs in Part I E and the Chesapeake Bay and local TMDL requirements in Part II (as applicable) consistent with the provisions of an iterative MS4 program required pursuant to this general permit constitutes compliance with the standard of reducing pollutants to the ~~"maximum extent practicable,"~~ MEP, provides adequate progress in meeting water quality standards, and satisfies the appropriate water quality requirements of the State Water Control Law and its attendant regulations.

C. The MS4 program plan.

1. The MS4 program plan shall include, at a minimum, the following written items:

a. The roles and responsibilities of each of the permittee's divisions and departments in the implementation of the requirements of the permit tasked with ensuring that the permit requirements are met;

b. If the permittee utilizes another entity to implement portions of the MS4 program, a copy of the written agreement. The description of each party's roles and responsibilities, including any written agreements with third parties, shall be updated as necessary;

c. For each MCM in Part I E, the following information shall be included:

(1) Each specific requirement as listed in Part I E for each MCM;

(2) A description of the BMPs or strategies that the permittee anticipates will be implemented to demonstrate compliance with the permit conditions in Part I E;

(3) All standard operating procedures or policies necessary to implement the BMPs;

(4) The measurable goal by which each BMP or strategy will be evaluated; and

(5) The persons, positions, or departments responsible for implementing each BMP or strategy; and

d. A list of documents incorporated by reference, including the version and date of the document being incorporated.

2. If the permittee is receiving initial coverage under this general VPDES permit for the discharge of stormwater, the permittee shall:

a. No later than six months following the date of permit coverage, submit to the department a schedule for the development of each component of the MS4 program plan in accordance with Part I C 1 that does not exceed ~~the expiration date of this permit~~ October 31, 2028, unless the department grants a later date; and

b. Provide to the department a copy of the MS4 program plan upon completion of development.

3. If the permittee was previously covered under the General VPDES Permit for ~~the Discharge~~ Discharges of Stormwater

from MS4 effective ~~July 1, 2013~~ November 1, 2018, the permittee shall update the MS4 program plan to meet the requirements of this permit no later than six months after the effective date of this permit unless otherwise specified in another permit condition and shall post the most up-to-date version of MS4 program plan on the permittee's website or location where the MS4 program plan can be obtained as required by Part I E 2 within 30 days of updating the MS4 program plan. Until such time that the MS4 program plan is updated in accordance with Part I E, the permittee shall continue to implement the MS4 program plan in effect at the time that coverage is issued under this general permit.

4. Revisions to the MS4 program plan are expected throughout the life of this permit as part of the iterative process to reduce pollutant loading and protect water quality to the MEP. As such, revisions made in accordance with this permit as a result of the iterative process do not require modification of this permit. The permittee shall summarize revisions to the MS4 program plan as part of the annual report as described in Part I D ~~2~~ 3.

5. The permittee may demonstrate compliance with one or more MCM in Part I E through implementation of separate statutory or regulatory programs provided that the permittee's MS4 program plan identifies and fully describes any program that will be used to satisfy one or more of the minimum control measures of Part I E. If the program that the permittee is using requires the approval of a third party, the program shall be fully approved by the third party, or the permittee shall be working toward getting full approval. Documentation of the program's approval status~~,~~ or the progress toward achieving full approval~~,~~ shall be included in the annual report required by Part I D. The permittee shall remain responsible for compliance with the permit requirements if the other entity fails to implement one or more components of the control measures.

6. The permittee may rely on another entity to satisfy the permit requirements to implement a minimum control measure if:

a. The other entity, in fact, implements the control measure;

b. The particular control measure, or component thereof, is at least as stringent as the corresponding permit requirement;

c. The other entity agrees to implement the control measure on behalf of the permittee; and

d. The agreement between the parties is documented in writing and retained by the permittee with the MS4 program plan for as long as the agreement is active.

The permittee shall remain responsible for compliance with requirements of the permit and shall document in the annual reports required in accordance with Part I D that another entity is being relied on to satisfy all or part of the state permit requirements. The permittee shall provide the information required in Part I D.

7. If the permittee relies on another governmental entity regulated under 9VAC25-870-380 to satisfy all of the state permit obligations, including the obligation to file periodic reports required by Part I D, the permittee must note that fact in the registration statement, but is not required to file the periodic reports. The permittee remains responsible for compliance with the state permit requirements if the other entity fails to implement the control measures or components thereof.

D. Annual reporting requirements.

1. The permittee shall submit an annual report to the department no later than October 1 of each year in a method, (i.e., how the permittee must submit) and format (i.e., how the report shall be laid out) as specified by the department; the required content of the annual report is specified in Part I E and Part II B. The report shall cover the previous year from July 1 to June 30.

2. Following notification from the department of the start date for the required electronic submission of annual reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least a three-month notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

3. The annual report shall include the following general information:

a. The permittee, system name, and permit number;

b. The reporting period for which the annual report is being submitted;

c. A signed certification as per Part ~~III~~ IV K;

d. Each annual reporting item as specified in an MCM in Part I E; and

e. An evaluation of the MS4 program implementation, including a review of each MCM, to determine the MS4 program's effectiveness and whether or not changes to the MS4 program plan are necessary.

~~3.~~ 4. For permittees receiving initial coverage under this general VPDES permit for the discharge of stormwater, the annual report shall include a status update on each component of the MS4 program plan being developed. Once the MS4 program plan has been updated to include implementation of a specific MCM in Part I E, the permittee shall follow the reporting requirements established in Part I D ~~2~~ 3.

~~4. For those permittees with requirements established under Part II A, the annual report shall include a status report on the implementation of the Chesapeake Bay TMDL action~~

~~plan in accordance with Part II A of this permit including any revisions to the plan.~~

5. For those permittees with requirements established under Part II B, the annual report shall include a status report on the implementation of the local TMDL action plans in accordance with Part II B including any revisions to the plan.

6. For the purposes of this permit, the MS4 program plan ~~and~~, annual ~~report~~ reports, the Chesapeake Bay TMDL action plan, and Chesapeake Bay TMDL implementation annual status reports shall be maintained ~~separately~~ as separate documents and submitted to the department as required by this permit as ~~two~~ separate documents.

E. Minimum control measures.

1. Public education and outreach.

a. The permittee shall implement a public education and outreach program designed to:

(1) Increase the public's knowledge of how to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;

(2) Increase the public's knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications; and

(3) Implement a diverse program with strategies that are targeted toward individuals or groups most likely to have significant stormwater impacts.

b. The permittee shall identify no ~~less~~ fewer than three high-priority stormwater issues to meet the goal of educating the public in accordance with Part I E 1 a. High-priority issues may include the following examples: Chesapeake Bay nutrients, pet wastes, local receiving water impairments, TMDLs, high-quality receiving waters, litter control, BMP maintenance, anti-icing and deicing agent application, planned green infrastructure redevelopment, planned ecosystem restoration projects, and illicit discharges from commercial sites.

c. The high-priority public education and outreach program, as a whole, shall:

(1) Clearly identify the high-priority stormwater issues;

(2) Explain the importance of the high-priority stormwater issues;

(3) Include measures or actions the public can take to minimize the impact of the high-priority stormwater issues; and

(4) Provide a contact and telephone number, website, or location where the public can find out more information.

d. The permittee shall use two or more of the strategies listed in Table 1 ~~below~~ per year to communicate to the ~~public~~ target audience the high-priority stormwater issues identified in accordance with Part I E 1 b, including how to reduce stormwater pollution.

Table 1

Strategies for Public Education and Outreach

Strategies	Examples (provided as examples and are not meant to be all inclusive or limiting)
Traditional written materials	Informational brochures, newsletters, fact sheets, utility bill inserts, or recreational guides for targeted groups of citizens
Alternative materials	Bumper stickers, refrigerator magnets, t-shirts, or drink koozies
Signage	Temporary or permanent signage in public places or facilities, vehicle signage, bill boards, or storm drain stenciling
Media materials	Information disseminated through electronic media, radio, televisions, movie theater, ~~or~~ newspaper, or GIS story maps
Speaking engagements	Presentations to school, church, industry, trade, special interest, or community groups
Curriculum materials	Materials developed for school-aged children, students at local colleges or universities, or extension classes offered to local citizens
Training materials	Materials developed to disseminate during workshops offered to local citizens, trade organization, or industrial officials
Public education activities	Booth at community fair, demonstration of stormwater control projects, presentation of stormwater materials to schools to meet applicable education Standards of Learning or curriculum requirements, or watershed walks
Public meetings	Public meetings on proposed community stormwater management retrofits, green infrastructure redevelopment, ecosystem restoration projects, TMDL development, voluntary residential low impact development, or other stormwater issues

e. The permittee may coordinate its public education and outreach efforts with other MS4 permittees; however, each permittee shall be individually responsible for meeting all of its state permit requirements.

f. The MS4 program plan shall include:

(1) A list of the high-priority stormwater issues the permittee will communicate to the public as part of the public education and outreach program;

(2) The rationale for selection of each high-priority stormwater issue and an explanation of how each education or outreach strategy is intended to have a positive impact on stormwater discharges;

(3) Identification of the ~~public~~ target audience to receive each high-priority stormwater message;

(4) Nontraditional permittees may identify staff, students, and other users of facilities operated by the permittee as the target audience for education and outreach strategies;

(5) Traditional permittees may identify staff and students as part of the target audience for education and outreach strategies; however, staff shall not be the majority of the target audience;

(6) Staff training required in accordance with Part I E 6 d does not qualify as a strategy for public education and outreach;

(7) The strategies from Table 1 of Part I E 1 d to be used to communicate each high-priority stormwater message; and

~~(5)~~ (8) The anticipated time periods the messages will be communicated or made available to the public.

g. The annual report shall include the following information:

(1) A list of the high-priority stormwater issues the permittee addressed in the public education and outreach program; ~~and~~

(2) A ~~list of the~~ summary of the public education and outreach activities conducted for the report year, including the strategies used to communicate the identified high-priority issues; and

(3) A description of any changes in high-priority stormwater issues, including, strategies used to communicate ~~each~~ high-priority stormwater ~~issue~~ issues or target audiences for the public education and outreach plan. The permittee shall provide a rationale for any of these changes.

2. Public involvement and participation.

a. The permittee shall develop and implement procedures for the following:

(1) The public to report potential illicit discharges, improper disposal, or spills to the MS4, complaints regarding land disturbing activities, or other potential stormwater pollution concerns;

(2) The public to provide ~~input~~ comments on the permittee's MS4 program plan;

~~(3) Receiving public input or complaints;~~

~~(4)~~ (3) Responding to public ~~input~~ comments received on the MS4 program plan ~~or complaints~~; and

~~(5)~~ (4) Maintaining documentation of public ~~input~~ comments received on the MS4 program and associated MS4 program plan and the permittee's response.

b. No later than three months after this permit's effective date, the permittee shall ~~develop and maintain a~~ update and maintain the webpage dedicated to the MS4 program and stormwater pollution prevention. The following information shall be posted on this webpage:

(1) The effective MS4 permit and coverage letter;

(2) The most current MS4 program plan or location where the MS4 program plan can be obtained;

(3) The annual report for each year of the term covered by this permit no later than 30 days after submittal to the department;

(4) For permittees whose regulated MS4 is located partially or entirely in the Chesapeake Bay watershed, the most current Chesapeake Bay TMDL action plan or location where the Chesapeake Bay TMDL action plan can be obtained;

(5) For permittees whose regulated MS4 is located partially or entirely in the Chesapeake Bay watershed, the Chesapeake Bay TMDL implementation annual status reports for each year of the term covered by this permit no later than 30 days after submittal to the department;

(6) A mechanism for the public to report potential illicit discharges, improper disposal, or spills to the MS4, complaints regarding land disturbing activities, or other potential stormwater pollution concerns in accordance with Part I E 2 a (1); ~~and~~

~~(5)~~ (7) Methods for how the public can provide ~~input~~ comments on the permittee's MS4 program plan in accordance with Part I E 2 a (2) and if applicable, the Chesapeake Bay TMDL action plan in accordance with Part II A 13; and

(8) Federal and state nontraditional permittees with security policies preventing a MS4 program and stormwater pollution prevention webpage from being publicly accessible may utilize an internal staff accessible webpage such as an intranet webpage to meet the requirements of Part 1 E 2 b.

c. ~~The permittee~~ Traditional permittees shall implement no ~~less~~ fewer than four activities per year from two or more of the categories listed in Table 2 ~~below~~ to provide an opportunity for public involvement to improve water quality and support local restoration and clean-up projects.

d. Nontraditional permittees shall implement, promote, participate in, or coordinate on no fewer than four activities per year from two or more of the categories listed in Table 2 to provide an opportunity for public involvement to improve water quality and support local restoration and clean-up projects.

Table 2 Public Involvement Opportunities	
Public involvement opportunities	Examples (provided as example and are not meant to be all inclusive or limiting)
Monitoring	Establish or support citizen monitoring group
Restoration	Stream ~~or,~~ watershed, shoreline, beach, or park clean-up day, ~~adopt-a-water way~~ adopt-a-waterway program, tree plantings, and riparian buffer plantings
~~Educational events~~ Public education activities	Booth at community fair, demonstration of stormwater control projects, presentation of stormwater materials to schools to meet applicable education Standards of Learning or curriculum requirements, or watershed walks~~, participation on environmental advisory committees~~
Public meetings	Public meetings on proposed community stormwater management retrofits, green infrastructure redevelopment, ecosystem restoration projects, TMDL development, voluntary residential low impact development, or other stormwater issues
Disposal or collection events	Household hazardous chemicals collection, vehicle fluids collection
Pollution prevention	Adopt-a-storm drain program, implement a storm drain marking program, promote use of residential stormwater BMPs, implement pet waste stations in public areas, adopt-a-street program.

~~d.~~ e. The permittee may coordinate the public involvement opportunities listed in Table 2 with other MS4 permittees; however, each permittee shall be individually responsible for meeting all of the permit requirements.

~~e.~~ f. The permittee may include staff and students in public participation events; however, the activity cannot solely include or be limited to staff participants with stormwater, groundskeeping, and maintenance duties in order for an event to qualify as a public participation event.

g. Staff training required in accordance with Part I E 6 d does not qualify as a public participation event unless the training activity solicits participation from target audiences beyond staff or contractors with stormwater, groundskeeping, and maintenance duties.

h. The MS4 program plan shall include:

(1) The webpage address where mechanisms for the public to report (i) potential illicit discharges, improper disposal, or spills to the MS4, (ii) complaints regarding land disturbing activities, or (iii) other potential stormwater pollution concerns;

(2) The webpage address that contains the methods for how the public can provide input on the permittee's MS4 program; and

(3) A description of the public involvement activities to be implemented by the permittee, the anticipated time period the activities will occur, and a metric for each activity to determine if the activity is beneficial to water quality. An example of metrics may include the weight of trash collected from a stream cleanup~~,~~ or the number of participants in a hazardous waste collection event~~, etc~~.

~~f.~~ i. The annual report shall include the following information:

(1) A summary of any public ~~input~~ comments on the MS4 program received ~~(including stormwater complaints)~~ and how the permittee responded;

(2) A summary of stormwater pollution complaints received under the procedures established in Part I E 2 a (1), excluding flooding complaints, and how the permittee responded;

(3) A webpage address to the permittee's MS4 program and stormwater website;

~~(3)~~ (4) Federal and state nontraditional permittees with security policies preventing the MS4 program and stormwater pollution prevention webpage from being publicly accessible utilizing an internal staff accessible website, such as intranet, shall provide evidence of the current internal MS4 program and stormwater pollution prevention webpage;

(5) A description of the public involvement activities implemented by the permittee;

~~(4)~~ (6) A report of the metric as defined for each activity and an evaluation as to whether or not the activity is beneficial to improving water quality; and

~~(5)~~ (7) The name of other MS4 permittees with whom the permittee collaborated in the public involvement opportunities.

3. Illicit discharge detection and elimination.

a. The permittee shall develop and maintain an accurate MS4 map and information table as follows:

(1) ~~A~~ An updated map of the ~~storm sewer system~~ MS4 owned or operated by the permittee within the census urbanized area identified by the 2010 decennial census no later than 12 months after the permit effective date that includes, at a minimum:

(a) MS4 outfalls discharging to surface waters, except as follows:

(i) In cases where the outfall is located outside of the MS4 permittee's legal responsibility, the permittee may elect to map the known point of discharge location closest to the actual outfall; and

(ii) In cases where the MS4 outfall discharges to receiving water channelized underground, the permittee may elect to map the point downstream at which the receiving water emerges above ground as an outfall discharge location. If there are multiple outfalls discharging to an underground channelized receiving water, the map shall identify that an outfall discharge location represents more than one outfall. This is an option a permittee may choose to use and recognizes the difficulties in accessing outfalls to underground channelized stream conveyances for purposes of mapping, screening, or monitoring~~.~~:

(b) A unique identifier for each mapped item required in Part I E 3;

(c) The name and location of receiving waters to which the MS4 outfall or point of discharge discharges;

(d) MS4 regulated service area; and

(e) ~~stormwater~~ Stormwater management facilities owned or operated by the permittee.

(2) The permittee shall maintain an outfall information table associated with the ~~storm sewer system~~ MS4 map that includes the following information for each outfall or point of discharge for those cases in which the permittee elects to map the known point of discharge in accordance with Part I E 3 a (1) (a). The outfall information table may be maintained as a shapefile attribute table. The outfall information table shall contain the following:

(a) A unique identifier as specified on the ~~storm sewer system~~ MS4 map;

(b) The latitude and longitude of the outfall or point of discharge;

(c) The estimated regulated acreage draining to the outfall or point of discharge;

(d) The name of the receiving water;

(e) The 6th Order Hydrologic Unit Code of the receiving water;

(f) An indication as to whether the receiving water is listed as impaired in the Virginia ~~2016~~ 2020 305(b)/303(d) Water Quality Assessment Integrated Report; and

(g) ~~The predominant land use for each outfall discharging to an impaired water; and (h)~~ The name of any EPA approved TMDLs for which the permittee is assigned a wasteload allocation.

(3) No later than ~~July 1, 2019~~ 12 months after permit issuance, the permittee shall submit to DEQ, a ~~GIS-compatible shapefile of the permittee's MS4 map as described in Part I E 3 a. If the permittee does not have an MS4 map in a GIS format, the permittee shall provide the map as a PDF document.~~ format file geodatabase or two shapefiles that contain at a minimum:

(a) A point feature class or shapefile for outfalls with an attribute table containing outfall data elements required in accordance with Part I E 3 a (2); and

(b) A polygon feature class or shapefile for the MS4 service area as required in accordance with Part I E 3 a (1) (d) with an attribute table containing the following information:

(i) MS4 operator name;

(ii) MS4 permit number (VAR04); and

(iii) MS4 service area pervious, impervious, and total acreage rounded to the nearest hundredth.

(4) All file geodatabase feature classes or shapefiles shall be submitted in the following data format standards:

(a) Point data in NAD83 or WGS84 decimal degrees global positional system coordinates;

(b) Data projected in Virginia Lambert Conformal Conic format;

(c) Outfall location accuracy shall be represented in decimal degrees rounded to at least the fifth decimal place for latitude and longitude to ensure point location accuracy (e.g., 37.61741, -78.15279); and

(d) Metadata that shall provide a description of each feature class or shapefile dataset, units of measure as applicable, coordinate system, and projection.

(5) No later than October 1 of each year, the permittee shall update the ~~storm sewer system~~ MS4 map and outfall information table to include any new outfalls constructed or TMDLs approved or both during the immediate preceding reporting period.

~~(5)~~ (6) The permittee shall provide written notification to any downstream adjacent MS4 of any known physical interconnection established or discovered after the effective date of this permit.

b. The permittee shall prohibit, through ordinance, policy, standard operating procedures, or other legal mechanism, to the extent allowable under federal, state, or local law, regulations, or ordinances, unauthorized nonstormwater discharges into the ~~storm sewer system~~ MS4. Nonstormwater discharges or flows identified in 9VAC25-890-20 D 3 shall only be addressed if they are identified by the permittee as a significant contributor of pollutants discharging to the MS4. Flows that have been identified by the department as de minimis discharges are not significant sources of pollutants to surface water.

c. The permittee shall maintain, implement, and enforce illicit discharge detection and elimination (IDDE) written procedures designed to detect, identify, and address unauthorized nonstormwater discharges, including illegal

dumping, to the ~~small~~ MS4 to effectively eliminate the unauthorized discharge. Written procedures shall include:

(1) A description of the legal authorities, policies, standard operating procedures, or other legal mechanisms available to the permittee to eliminate identified sources of ongoing illicit discharges, including procedures for using legal enforcement authorities.

(2) Dry weather field screening protocols to detect, identify, and eliminate illicit discharges to the MS4. The protocol shall include:

(a) A prioritized schedule of field screening activities and rationale for prioritization determined by the permittee based on such criteria as age of the infrastructure, land use, historical illegal discharges, dumping, or cross connections;

(b) If the total number of MS4 outfalls is equal to or less than 50, a schedule to screen all outfalls annually;

(c) If the total number of MS4 outfalls is greater than 50, a schedule to screen a minimum of 50 outfalls annually such that no more than 50% are screened in the previous 12-month period. The 50% criteria is not applicable if all outfalls have been screened in the previous three years; ~~and~~

(d) The permittee may adopt a risk-based approach to dry weather screening identifying observation points based upon illicit discharge risks upstream of an outfall. Observation points may include points of interconnection, manholes, points of discharge, conveyances, or inlets suspected to have a high likelihood of receiving illicit discharges;

(e) Each observation point screened may be counted as one outfall screening activity equivalent and counted towards the requirements of Part I E 3 c (2) (b) or (2) (c); however, at least 50% of the minimum annual screening events must include outfall screening;

(f) Illicit discharges reported by the public and subsequent investigations may not be counted as screening events; however once the resolution of the investigation and the date the investigation was closed has been documented, an observation point may be established for future screening events; and

(g) A checklist or mechanism to track the following information for dry weather screening events:

(i) The unique ~~outfall~~ identifier for the outfall or observation point;

(ii) Time since the last precipitation event;

(iii) The estimated quantity of the last precipitation event;

(iv) Site descriptions (e.g., conveyance type and dominant watershed land uses);

(v) Observed indicators of possible illicit discharge events, such as floatables, deposits, stains, and vegetative conditions (e.g., dying or dead vegetation, excessive vegetative growth);

(vi) Whether or not a discharge was observed; ~~and~~

~~(vi)~~ (vii) If a discharge was observed, the estimated discharge rate ~~(e.g., width and depth of discharge flow rate)~~ and visual characteristics of the discharge (e.g., odor, color, clarity~~, floatables, deposits or stains, vegetation condition, structural condition, and biology~~) and the physical condition of the outfall; and

(viii) For observation points, the location, downstream outfall unique identifier, and risk factors or rationale for establishing the observation point.

(3) A timeframe upon which to conduct an investigation to identify and locate the source of any observed unauthorized nonstormwater discharge. Priority of investigations shall be given to discharges of sanitary sewage and those believed to be a risk to human health and public safety. Discharges authorized under a separate VPDES or state permit require no further action under this permit.

(4) Methodologies to determine the source of all illicit discharges. If the permittee is unable to identify the source of an illicit discharge within six months of beginning the investigation then the permittee shall document that the source remains unidentified. If the observed discharge is intermittent, the permittee shall document that attempts to observe the discharge flowing were unsuccessful.

(5) Methodologies for conducting a follow-up investigation for illicit discharges that are continuous or that permittees expect to occur more frequently than a one-time discharge to verify that the discharge has been eliminated except as provided for in Part I E 3 c (4);

(6) A mechanism to track all illicit discharge investigations to document the following:

(a) The dates that the illicit discharge was initially observed, reported, or both;

(b) The results of the investigation, including the source, if identified;

(c) Any follow-up to the investigation;

(d) Resolution of the investigation; and

(e) The date that the investigation was closed.

d. The MS4 program plan shall include:

(1) The MS4 map and outfall information table required by Part I E 3 a. The map and outfall information table may be incorporated into the MS4 program plan by reference. The map shall be made available to the department within 14 days upon request;

(2) Copies of written notifications of ~~new~~ physical interconnections given by the permittee to other MS4s; and

(3) The IDDE procedures described in Part I E 3 c.

e. The annual report shall include:

(1) A confirmation statement that the MS4 map and outfall information table have been updated to reflect any changes to the MS4 occurring on or before June 30 of the reporting year;

(2) The total number of outfalls and observation points screened during the reporting period as part of the dry weather screening program; and

(3) A list of illicit discharges to the MS4, including spills reaching the MS4 with information as follows:

(a) The location and source of illicit discharge;

(b) The dates that the discharge was observed, reported, or both;

(c) Whether the discharge was discovered by the permittee during dry weather screening, reported by the public, or other method (describe);

(d) How the investigation was resolved;

(e) A description of any follow-up activities; and

(f) The date the investigation was closed.

4. Construction site stormwater runoff and erosion and sediment control.

a. The permittee shall utilize its legal authority, such as ordinances, permits, orders, specific contract language, and interjurisdictional agreements, to address discharges entering the MS4 from regulated construction site stormwater runoff. The permittee shall control construction site stormwater runoff as follows:

(1) If the traditional permittee is a city, county, or town that has adopted a Virginia Erosion and Sediment Control Program (VESCP), the permittee shall implement the VESCP consistent with the Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia) and Virginia Erosion and Sediment Control Regulations (9VAC25-840);

(2) If the traditional permittee is a town that has not adopted a VESCP, implementation of a VESCP consistent with the Virginia Erosion and Sediment Control Law (§ 62.1-44:15:51 et seq. of the Code of Virginia) and Virginia Erosion and Sediment Control Regulations (9VAC25-840) by the surrounding county shall constitute compliance with Part I E 4 a; such town shall notify the surrounding county of erosion, sedimentation, or other construction stormwater runoff problems;

(3) If the nontraditional permittee is a state agency; public institution of higher education, including community colleges, colleges, and universities; or federal entity and has developed standards and specifications in accordance with the Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia) and Virginia Erosion and Sediment Control Regulations (9VAC25-840), the permittee shall implement the most recent department approved standards and specifications; or

(4) If the nontraditional permittee is a state agency; public institution of higher education, including community colleges, colleges, and universities; or federal entity and has not developed standards and specifications in accordance with the Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia) and Virginia Erosion and Sediment Control Regulations (9VAC25-840), the permittee shall inspect all land disturbing activities as defined in § 62.1-44.15:51 of the Code of Virginia that result in the disturbance activities of 10,000 square feet or greater, or 2,500 square feet or greater in accordance with areas designated under the Chesapeake Bay Preservation Act, as follows:

(a) During or immediately following initial installation of erosion and sediment controls;

(b) At least once per every two-week period;

(c) Within 48 hours following any runoff producing storm event; and

(d) At the completion of the project prior to the release of any performance bond.

(5) If the nontraditional permittee is a ~~subdivision of a local government such as a~~ school board or other local government body, the permittee shall inspect those projects resulting in a land disturbance as defined in § 62.1-44.15.51 of the Code of Virginia occurring on lands owned or operated by the permittee that result in the disturbance of 10,000 square feet or greater, 2,500 square feet or greater in accordance with areas designated under the Chesapeake Bay Preservation Act, or in accordance with more stringent thresholds established by the local government, as follows:

(a) During or immediately following initial installation of erosion and sediment controls;

(b) At least once per every two-week period;

(c) Within 48 hours following any runoff producing storm event; and

(d) At the completion of the project prior to the release of any performance bond.

b. The permittee shall require implementation of appropriate controls to prevent nonstormwater discharges to the MS4, such as wastewater, concrete washout, fuels and oils, and other illicit discharges identified during land disturbing activity inspections ~~of the MS4~~. The discharge of nonstormwater discharges other than those identified in 9VAC25-890-20 D through the MS4 is not authorized by this state permit.

c. Employees and contractors serving as plan reviewers, inspectors, program administrators, and construction site operators shall obtain the appropriate certifications as

required under the Virginia Erosion and Sediment Control Law and its attendant regulations;

d. The permittee's MS4 program plan shall include:

(1) If the permittee implements ~~a~~ an erosion and sediment control program for construction site stormwater runoff ~~control program~~ in accordance with Part I E 4 a (1), the local ordinance citations for the VESCP program;

(2) If the permittee ~~implements a~~ is a town that does not implement an erosion and sediment control program for construction site stormwater runoff ~~control program~~ in accordance with Part I E 4 a ~~(3):~~ (2), the county ordinance citations for the VESCP program the town is subject to;

(3) If the permittee implements annual standards and specifications for erosion and sediment control and construction site stormwater runoff in accordance with Part I E 4 a (3):

(a) The most recently approved standards and specifications or if incorporated by reference, the location where the standards and specifications can be viewed; and

(b) A copy of the most recent standards and specifications approval letter from the department;

~~(3)~~ (4) A description of the legal authorities utilized to ensure compliance with Part I E 4 a ~~to~~ for erosion and sediment control and construction site stormwater runoff control, such as ordinances, permits, orders, specific contract language, policies, and interjurisdictional agreements;

~~(4) Written~~ (5) For traditional permittees, written inspection procedures to ensure ~~the~~ VESCP requirements are maintained in accordance with 9VAC25-840-90 A and onsite erosion and sediment controls are properly implemented ~~and all associated documents utilized during inspection including the inspection schedule~~ in accordance with 9VAC25-840-60 B;

~~(5) Written procedures for requiring compliance through corrective action or enforcement action to the extent allowable under federal, state, or local law, regulation, ordinance, or other legal mechanisms; and~~

(6) For nontraditional permittees, erosion and sediment control plans or annual standards and specifications shall be approved by the department in accordance with § 62.1-44.15:55 of the Code of Virginia. Compliance with approved erosion and sediment control plans or annual standards and specifications shall be ensured by the permittee with written inspection procedures that at minimum include the following:

(a) An inspection checklist for documenting onsite erosion and sediment control structures and systems are properly maintained and repaired as needed to ensure continued performance of their intended function; and

(b) A list of all associated documents utilized for inspections, including checklists, department approved erosion and sediment control plans, or the most recently department approved annual standards and specifications, and any other documents utilized;

(7) Traditional permittees shall maintain written procedures for requiring VESCP compliance through corrective action or enforcement action in accordance with § 62.1-44.15:58 of the Code of Virginia;

(8) Nontraditional permittees shall maintain written procedures for requiring compliance with department approved erosion and sediment control plans and annual standards and specifications through corrective action or enforcement action to the extent allowable under federal, state, or local law, regulation, ordinance, or other legal mechanisms; and

(9) The roles and responsibilities of each of the permittee's departments, divisions, or subdivisions in implementing ~~the~~ erosion and sediment control and construction site stormwater runoff control requirements in Part I E 4.

~~d.~~ e. The annual report shall include the following:

(1) ~~If the permittee implements a construction site stormwater runoff program in accordance with Part I E 4 a (3)~~ For nontraditional permittees:

(a) A confirmation statement that land disturbing projects that occurred during the reporting period have been conducted in accordance with the current department approved annual standards and specifications for erosion and sediment control; and

(b) If ~~one or more of the~~ any land disturbing projects were ~~not~~ conducted ~~with the~~ without department approved annual standards and specifications, ~~an explanation as to why the projects did not conform to the approved standards and specifications~~ a list of all land disturbing projects that occurred during the reporting period with erosion and sediment control plan approval dates for each project.

(2) Total number of erosion and sediment control inspections conducted; and

(3) ~~The total~~ Total number ~~and~~ of each type of compliance action and enforcement ~~actions~~ action implemented ~~and the type of enforcement actions~~.

5. Post-construction stormwater management for new development and development on prior developed lands.

a. The permittee shall address post-construction stormwater runoff that enters the MS4 from the following land disturbing activities by implementing a post-construction stormwater runoff management program as follows:

(1) If the traditional permittee is a city, county, or town, with an approved Virginia Stormwater Management Program (VSMP), the permittee shall implement the VSMP consistent with the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of

Virginia) and VSMP Regulations (9VAC25-870) as well as develop an inspection and maintenance program in accordance with ~~Parts~~ Part I E 5 b and c;

(2) If the traditional permittee is a town that has not adopted a VSMP, implementation of a VSMP consistent with the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and VSMP Regulations (9VAC25-870) by the surrounding county shall constitute compliance with Part I E 5 a; such town shall notify the surrounding county of erosion, sedimentation, or other post-construction stormwater runoff problems and develop an inspection and maintenance program in accordance with Part I E 5 ~~b and~~ c and d;

(3) If the traditional permittee is a ~~state agency; public institution of higher education including community colleges, colleges, and universities; or federal entity and has developed standards and specifications in accordance~~ city, county, or town receiving initial permit coverage during the permit term and must obtain VSMP approval from the department, the permittee shall implement the VSMP consistent with the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and VSMP Regulations (9VAC25-870)~~, the permittee shall implement the most recent department approved standards and specifications and~~ as well as develop an inspection and maintenance program in accordance with Part I E 5 b and c no later than 60 months after receiving permit coverage;

(4) If the nontraditional permittee is a state agency; public institution of higher education, including community colleges, colleges, and universities; or federal entity and has not developed standards and specifications in accordance with the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and ~~Virginia Stormwater Management~~ VSMP Regulations (9VAC25-870), the permittee shall implement ~~a post-construction stormwater runoff control program through compliance with 9VAC25-870 and with the implementation of a maintenance and~~ the most recent department approved standards and specifications and develop an inspection and maintenance program ~~consistent~~ in accordance with Part I E 5 b; ~~or~~

(5) If the nontraditional permittee is a ~~subdivision of a local government such as a school board or other local government body, the permittee shall implement a post-construction stormwater runoff control program through compliance with 9VAC25-870 or in accordance with more stringent local requirements, if applicable,~~ state agency; public institution of higher education, including community colleges, colleges, and universities; or federal entity, and has not developed standards and specifications in accordance with the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and VSMP Regulations (9VAC25-870), the permittee shall implement a post-construction stormwater runoff control program through compliance with 9VAC25-870 and with the implementation of a maintenance and inspection program consistent with Part I E 5 b; or

(6) If the nontraditional permittee is a school board or other local government body, the permittee shall implement a post-construction stormwater runoff control program through compliance with 9VAC25-870 or in accordance with more stringent local requirements, if applicable, and with the implementation of a maintenance and inspection program consistent with Part I E 5 b.

b. The permittee shall implement an inspection and maintenance program for those stormwater management facilities owned or operated by the permittee ~~that discharges to the~~ MS4 as follows:

(1) The permittee shall develop and maintain written inspection and maintenance procedures in order to ensure adequate long-term operation and maintenance of its stormwater management facilities. The permittee may use inspection and maintenance specifications available from the Virginia Stormwater BMP Clearinghouse or inspection and maintenance plans developed in accordance with the department's Stormwater Local Assistance Fund (SLAF) guidelines;

(2) Employees and contractors implementing the stormwater program shall obtain the appropriate certifications as required under the Virginia Stormwater Management Act and its attendant regulations;

(3) The permittee shall inspect stormwater management facilities owned or operated by the permittee no less frequently than once per year. The permittee may choose to implement an alternative schedule to inspect these stormwater management facilities based on facility type and expected maintenance needs provided that the alternative schedule and rationale is included in the MS4 program plan. The alternative inspection frequency shall be no less often than once per five years; and

~~(3)~~ (4) If during the inspection of the stormwater management facility conducted in accordance with Part I E 5 b (2), it is determined that maintenance is required, the permittee shall conduct the maintenance in accordance with the written procedures developed under Part I E 5 b (1).

c. For ~~those~~ traditional permittees described in Part I E 5 a (1) ~~or~~, (2), or (3), the permittee shall:

(1) Implement an inspection and enforcement program for stormwater management facilities not owned by the permittee (i.e., privately owned) that includes:

(a) An inspection frequency of no less often than once per five years for all privately owned stormwater management facilities that discharge into the MS4; and

(b) ~~Adequate~~ Require adequate long-term operation and maintenance by the owner of the stormwater management facility by requiring the owner to develop and record a maintenance agreement, including an inspection schedule to the extent allowable under state or local law or other legal mechanism;

(2) Utilize its legal authority for enforcement of the maintenance responsibilities in accordance with 9VAC25-870-112 if maintenance is neglected by the owner; ~~and~~

(3) The permittee may develop and implement a progressive compliance and enforcement strategy provided that the strategy is included in the MS4 program plan;

(4) The permittee may utilize the inspection reports provided by the owner of a stormwater management facility as part of an inspection and enforcement program in accordance with 9VAC25-870-114 C.

~~d. The permittee shall maintain an electronic database or spreadsheet of all known permittee-owned or permittee-operated and privately owned stormwater management facilities that discharge into the MS4. The database shall also include all BMPs implemented by the permittee to meet the Chesapeake Bay TMDL load reduction as required in Part II A. A database shall include the following information as applicable:~~

~~(1) The stormwater management facility or BMP type;~~

~~(2) The stormwater management facility or BMPs location as latitude and longitude;~~

~~(3) The acres treated by the stormwater management facility or BMP, including total acres, pervious acres, and impervious acres;~~

~~(4) The date the facility was brought online (MM/YYYY). If the date brought online is not known, the permittee shall use June 30, 2005;~~

~~(5) The 6th Order Hydrologic Unit Code in which the stormwater management facility is located;~~

~~(6) Whether the stormwater management facility or BMP is owned or operated by the permittee or privately owned;~~

~~(7) Whether or not the stormwater management facility or BMP is part of the permittee's Chesapeake Bay TMDL action plan required in Part II A or local TMDL action plan required in Part II B, or both;~~

~~(8) If the stormwater management facility or BMP is privately owned, whether a maintenance agreement exists; and~~

~~(9) The date of the permittee's most recent inspection of the stormwater management facility or BMP.~~

~~e. The electronic database or spreadsheet shall be updated no later than 30 days after a new stormwater management facility is brought online, a new BMP is implemented to meet a TMDL load reduction as required in Part II, or discovered if it is an existing stormwater management facility.~~

~~f. The permittee shall use the DEQ Construction Stormwater Database or other application as specified by the department to report each stormwater management facility installed after July 1, 2014, to address the control of post-construction runoff from land disturbing activities for which the permittee is required to obtain a General VPDES Permit for Discharges of Stormwater from Construction Activities.~~

~~g. No later than October 1 of each year, the permittee shall electronically report the stormwater management facilities and BMPs implemented between July 1 and June 30 of each year using the DEQ BMP Warehouse and associated reporting template for any practices not reported in accordance with Part I E 5 f including stormwater management facilities installed to control post-development stormwater runoff from land disturbing activities less than one acre in accordance with the Chesapeake Bay Preservation Act regulations (9VAC25-830) and for which a General VPDES Permit for Discharges of Stormwater from Construction Activities was not required.~~

~~h.~~ d. The MS4 program plan shall include:

(1) If the permittee implements a VSMP in accordance with Part I E 5 a (1) ~~and~~, (2), or (3):

(a) A copy of the VSMP approval letter issued by the department;

(b) Written inspection procedures and all associated documents utilized in the inspection of privately owned stormwater management facilities; and

(c) Written procedures for compliance and enforcement of inspection and maintenance requirements for privately owned ~~BMPs.~~ stormwater management facilities;

(2) If the permittee implements a post-development stormwater runoff control program in accordance with Part I E 5 a ~~(3)~~ (4):

(a) The most recently approved standards and specifications or if incorporated by reference, the location where the standards and specifications can be viewed; and

(b) A copy of the most recent standards and specifications approval letter from the department.;

(3) A description of the legal authorities utilized to ensure compliance with Part I E 5 a for post-construction stormwater runoff control such as ordinances (provide citation as appropriate), permits, orders, specific contract language, and interjurisdictional agreements;

(4) Written inspection and maintenance procedures and ~~all~~ other associated template documents utilized during inspection and maintenance of stormwater management facilities owned or operated by the permittee; and

(5) The roles and responsibilities of each of the permittee's departments, divisions, or subdivisions in implementing the post-construction stormwater runoff control program~~; and (6) The stormwater management facility spreadsheet or database incorporated by reference and the location or webpage address where the spreadsheet or database can be reviewed~~.

~~i.~~ e. The annual report shall include the following information:

(1) If the traditional permittee implements a ~~Virginia Stormwater Management Program~~ VSMP in accordance with Part I E 5 a (1) ~~and~~, (2), or (3):

(a) The number of privately owned stormwater management facility inspections conducted; and

(b) The number of enforcement actions initiated by the permittee to ensure long-term maintenance of privately owned stormwater management facilities including the type of enforcement action;

(2) Total number of inspections conducted on stormwater management facilities owned or operated by the permittee;

(3) A description of the significant maintenance, repair, or retrofit activities performed on the stormwater management facilities owned or operated by the permittee to ensure it continues to perform as designed. This does not include routine activities such as grass mowing or trash collection;

(4) ~~A~~ For traditional permittees as specified in Part I E 5 a (1), a confirmation statement that the permittee submitted stormwater management facility information through the Virginia Construction Stormwater General Permit database for those land disturbing activities for which the permittee was required to obtain coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities in accordance with Part ~~I E 5 f~~ III B 1 or a statement that the permittee did not complete any projects requiring coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880); ~~and~~

(5) A confirmation statement that the permittee electronically reported ~~BMPs~~ stormwater management facilities using the DEQ BMP Warehouse in accordance with Part ~~I E 5 g and the date on which the information was submitted~~ III B 1 and 2; and

(6) A confirmation statement that the permittee electronically reported stormwater management facilities inspected using the DEQ BMP Warehouse in accordance with Part III B 5.

6. Pollution prevention and good housekeeping for facilities owned or operated by the permittee within the MS4 service area.

a. The permittee shall maintain and implement written good housekeeping procedures for those activities listed in Part I E 6 b at facilities owned or operated by the permittee~~, such as road, street, and parking lot maintenance; equipment maintenance; and the application, storage, transport, and disposal of pesticides, herbicides, and fertilizers~~ designed to meet the following objectives:

(1) Prevent illicit discharges;

(2) Ensure ~~the proper disposal~~ permittee staff or contractors properly dispose of waste materials, including landscape wastes and prevent waste materials from entering the MS4;

(3) Prevent the discharge of wastewater or ~~permittee vehicle~~ wash water ~~or both~~ not authorized in accordance with 9VAC25-890-20 D 3 u, into the MS4 without authorization under a separate VPDES permit; and

(4) ~~Require implementation of best management practices when discharging water pumped from utility construction and maintenance activities;~~ Minimize the pollutants in stormwater runoff.

b. The permittee shall develop and implement written good housekeeping procedures that meet the objectives established in Part I E 6 a for the following activities:

(1) Road, street, sidewalk, and parking lot maintenance and cleaning:

(a) Within 24 months of permit issuance, permittees that apply anti-icing and deicing agents shall update and implement procedures in accordance with Part I E to include implementation of best management practices for anti-icing and deicing agent application, transport, and storage;

(b) Procedures developed in accordance with Part I E shall prohibit the application of any anti-icing or deicing agent containing urea or other forms of nitrogen or phosphorus;

(2) Renovation and significant exterior maintenance activities (e.g., painting, building power-washing, roof resealing, and HVAC coil cleaning) not covered under a separate VSMP construction general permit. The permittee shall develop and implement procedures no later than 36 months after permit issuance;

(3) Discharging water pumped from construction and maintenance activities;

(4) Temporary storage of landscaping materials;

(5) ~~Minimize the pollutants in stormwater runoff from bulk storage areas (e.g., salt storage, topsoil stockpiles) through the use of best management practices~~ Maintenance of permittee owned or operated vehicles and equipment (i.e., prevent pollutant discharges from leaking permittee vehicles and equipment);

(6) ~~Prevent pollutant discharge into the MS4 from leaking municipal automobiles and equipment~~ Application of materials, including pesticides and herbicides shall not exceed manufacturer's recommendations; and

(7) ~~Ensure that the application of materials, including fertilizers and pesticides, is conducted in accordance with the~~ Application of fertilizer shall not exceed maximum application rates established by applicable nutrient management plans. For areas not covered under nutrient management plans where fertilizer is applied, application rates shall not exceed manufacturer's recommendations.

~~b.~~ c. The permittee shall require through the use of contract language, training, written procedures, or other measures within the permittee's legal authority that contractors employed by the permittee and engaging in activities described in Part I E 6 b follow established good housekeeping procedures and use appropriate control measures to minimize the discharge of pollutants to the MS4.

d. The written procedures established in accordance with Part I E 6 a and b shall be utilized as part of the employee training program ~~at Part I E 6 m~~, and the permittee shall develop a written training plan for applicable field personnel that ensures the following:

(1) Applicable field personnel shall receive training in the prevention, recognition, and elimination of illicit discharges no less often than once per 24 months;

(2) Employees performing road, street, sidewalk, and parking lot maintenance shall receive training in good housekeeping procedures required under Part I E 6 b (1) no less often than once per 24 months;

(3) Employees working in and around facility maintenance, public works, or recreational facilities shall receive training in applicable Part I E 6 a and b good housekeeping procedures required no less often than once per 24 months;

(4) Employees working in and around high-priority facilities with a stormwater pollution prevention plan (SWPPP) shall receive training in applicable site specific SWPPP procedures no less often than once per 24 months;

(5) Employees whose duties include emergency spill control and response shall be trained in spill control and response. Emergency responders, such as firefighters and law-enforcement officers, trained on the handling of spill control and response as part of a larger emergency response training shall satisfy this training requirement and be documented in the training plan; and

(6) Employees and contractors hired by the permittee who apply pesticides and herbicides shall be trained and certified in accordance with the Virginia Pesticide Control Act (§ 3.2-3900 et seq. of the Code of Virginia). Certification by the Virginia Department of Agriculture and Consumer Services (VDACS) Pesticide and Herbicide Applicator program shall constitute compliance with this requirement. Contracts for the application of pesticide and herbicides executed after the effective date of this permit shall require contractor certification.

e. The permittee shall maintain documentation of each training activity conducted by the permittee to fulfill the requirements of Part I E 6 d for a minimum of three years after training activity completion. The documentation shall include the following information:

(1) The date when applicable employees have completed the training activity;

(2) The number of employees who have completed the training activity; and

(3) The training objectives and good housekeeping procedures required under Part I E 6 a covered by training activity.

f. The permittee may fulfill the training requirements in Part I E 6 d, in total or in part, through regional training programs involving two or more MS4 permittees; however, the permittee shall remain responsible for ensuring compliance with the training requirements.

~~c. Within 12 months of state permit coverage, the permittee shall identify which of the high priority facilities have a high potential of discharging pollutants.~~

g. The permittee shall maintain and implement a site specific ~~stormwater pollution prevention plan (~~SWPPP~~)~~ for each high-priority facility ~~identified. High priority facilities that have a high potential for discharging pollutants are those facilities that are not covered under a~~ as defined in 9VAC25-890-1 that does not have or require separate VPDES permit coverage, and which any of the following materials or activities occur and are expected to have exposure to stormwater resulting from rain, snow, snowmelt or runoff:

(1) Areas where residuals from using, storing, or cleaning machinery or equipment remain and are exposed to stormwater;

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

(3) Material handling equipment;

(4) Materials or products that would be expected to be mobilized in stormwater runoff during loading or unloading or transporting activities (e.g., rock, salt, fill dirt);

(5) Materials or products stored outdoors (except final products intended for outside use where exposure to stormwater does not result in the discharge of pollutants);

(6) Materials or products that would be expected to be mobilized in stormwater runoff contained in open, deteriorated, or leaking storage drums, barrels, tanks, and similar containers;

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

(8) Application or disposal of process wastewater (unless otherwise permitted); or

(9) Particulate matter or visible deposits of residuals from roof stacks, vents, or both not otherwise regulated (i.e., under an air quality control permit) and evident in the stormwater runoff.

~~d.~~ h. Each SWPPP as required in Part I E 6 ~~e~~ g shall include the following:

(1) A site description that includes a site map identifying all outfalls, direction of stormwater flows, existing source controls, and receiving water bodies;

(2) A description and checklist of the potential pollutants and pollutant sources;

(3) A description of all potential nonstormwater discharges;

(4) ~~Written procedures designed to reduce and prevent pollutant discharge~~ A description of all structural control measures, such as stormwater management facilities and other pollutant source controls, applicable to SWPPP implementation (e.g., permeable pavement or oil-water separators that discharge to sanitary sewer are not applicable to the SWPPP), such as oil-water separators, and inlet protection designed to address potential pollutants and pollutant sources at risk of being discharged to the MS4;

(5) ~~A description of the applicable training as required in Part I E 6 m~~ A maintenance schedule for all stormwater management facilities and other pollutant source controls applicable to SWPPP implementation described in Part I E 6 h (4);

(6) ~~Procedures to conduct an annual comprehensive site compliance evaluation~~ Site specific written procedures designed to reduce and prevent pollutant discharge that incorporate by reference applicable good housekeeping procedures required under Part I E 6 a and b;

(7) A description of the applicable training as required in Part I E 6 d (4);

(8) An inspection frequency of no less often than once per year and maintenance requirements for site specific source controls. The date of each inspection and associated findings and follow-up shall be logged in each SWPPP; ~~and~~

~~(8)~~ (9) A log of each unauthorized discharge, release, or spill incident reported in accordance with Part ~~III~~ IV G including the following information:

(a) Date of incident;

(b) Material discharged, released, or spilled; and

(c) Estimated quantity discharged, released, or spilled;

(10) A log of modifications to the SWPPP made as the result of any unauthorized discharge, release, or spill in accordance Part I E 6 j or changes in facility activities and operation requiring SWPPP modification; and

(11) The point of contact for SWPPP implementation.

~~e.~~ i. No later than June 30 of each year, the permittee shall annually review any high-priority facility owned or operated by the permittee for which ~~a~~ an SWPPP has not been developed to determine if the facility ~~has a high potential to discharge pollutants as~~ meets any of the conditions described in Part I E 6 ~~e~~ g. If the facility is determined to ~~be a high priority facility with a high potential to discharge pollutants~~ need an SWPPP, the permittee shall develop ~~a~~ an SWPPP meeting the requirements of Part I E 6 ~~d~~ h no later than December 31 of that same year. The permittee shall maintain a list of all high-priority facilities owned or operated by the permittee not required to maintain an SWPPP in accordance with Part I E 6 g and this list shall be available upon request.

~~f.~~ j. The permittee shall review the contents of any site specific SWPPP no later than 30 days after any unauthorized discharge, release, or spill reported in accordance with Part ~~III~~ IV G to determine if additional measures are necessary to prevent future unauthorized discharges, releases, or spills. If necessary, the SWPPP shall be updated no later than 90 days after the unauthorized discharge.

~~g.~~ k. The SWPPP shall be kept at the high-priority facility ~~with a high potential to discharge~~ and utilized as part of ~~staff~~ employee SWPPP training required in Part I E 6 ~~m~~ d (4). The SWPPP and associated documents may be maintained as a hard copy or electronically as long as the documents are available to employees at the applicable site.

~~h.~~ l. If activities change at a facility such that the facility no longer meets the ~~criteria~~ definition of a high-priority facility ~~with a high potential to discharge pollutants as described in Part I E 6 c~~, the permittee may remove the facility from the list of high-priority facilities with a high potential to discharge pollutants.

~~i.~~ m. If activities change at a facility such that the facility no longer meets the criteria requiring SWPPP coverage as described in Part I E 6 g, the permittee may remove the facility from the list of high-priority facilities that require SWPPP coverage.

n. The permittee shall maintain and implement turf and landscape nutrient management plans that have been developed by a certified turf and landscape nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia on all lands owned or operated by the permittee where nutrients are applied to a contiguous area greater than one acre. If nutrients are being applied to achieve final stabilization of a land disturbance project, application shall follow the manufacturer's recommendations.

~~j. Permittees~~ o. If nutrients are being applied to achieve final stabilization of a land disturbance project, application shall follow the manufacturer's recommendations. For newly established turf where nutrients are applied to a

contiguous area greater than one acre, the permittee shall implement a nutrient management plan no later than six months after the site achieves final stabilization.

p. Nutrient management plans developed in accordance with Part I E 6 n shall be submitted to the Department of Conservation and Recreation (DCR) for approval.

q. Nutrient management plans that are expired as of the effective date of this permit shall be submitted to DCR for renewal within six months after the effective date of this permit. Thereafter, all nutrient management plans shall be submitted to DCR at least 30 days prior to nutrient management plan expiration. Within 36 months of permit coverage, no nutrient management plans maintained by the permittee in accordance with Part I E 6 n shall be expired due to DCR documented noncompliance with 4VAC50-85-130 provided to the permittee.

r. Nutrient management plans may be maintained as a hard copy or electronically as long as the documents are available to employees at the applicable site.

s. Nontraditional permittees with lands regulated under § 10.1-104.4 of the Code of Virginia, including state agencies, state colleges and universities, and other state government entities, shall continue to implement turf and landscape nutrient management plans in accordance with this statutory requirement.

~~k. The permittee shall not apply any deicing agent containing urea or other forms of nitrogen or phosphorus to parking lots, roadways, and sidewalks, or other paved surfaces.~~

~~l. The permittee shall require through the use of contract language, training, standard operating procedures, or other measures within the permittee's legal authority that contractors employed by the permittee and engaging in activities with the potential to discharge pollutants use appropriate control measures to minimize the discharge of pollutants to the MS4.~~

~~m. The permittee shall develop a training plan in writing for applicable staff that ensures the following:~~

~~(1) Field personnel receive training in the recognition and reporting of illicit discharges no less than once per 24 months;~~

~~(2) Employees performing road, street, and parking lot maintenance receive training in pollution prevention and good housekeeping associated with those activities no less than once per 24 months;~~

~~(3) Employees working in and around maintenance, public works, or recreational facilities receive training in good housekeeping and pollution prevention practices associated with those facilities no less than once per 24 months;~~

~~(4) Employees and contractors hired by the permittee who apply pesticides and herbicides are trained or certified in accordance with the Virginia Pesticide Control Act (§ 3.2-3900 et seq. of the Code of Virginia). Certification by the Virginia Department of Agriculture and Consumer Services (VDACS) Pesticide and Herbicide Applicator program shall constitute compliance with this requirement;~~

~~(5) Employees and contractors serving as plan reviewers, inspectors, program administrators, and construction site operators obtain the appropriate certifications as required under the Virginia Erosion and Sediment Control Law and its attendant regulations;~~

~~(6) Employees and contractors implementing the stormwater program obtain the appropriate certifications as required under the Virginia Stormwater Management Act and its attendant regulations; and~~

~~(7) Employees whose duties include emergency response have been trained in spill response. Training of emergency responders such as firefighters and law enforcement officers on the handling of spill releases as part of a larger emergency response training shall satisfy this training requirement and be documented in the training plan.~~

~~n. The permittee shall maintain documentation of each training event conducted by the permittee to fulfill the requirements of Part I E 6 m for a minimum of three years after the training event. The documentation shall include the following information:~~

~~(1) The date of the training event;~~

~~(2) The number of employees attending the training event; and~~

~~(3) The objective of the training event.~~

~~o. The permittee may fulfill the training requirements in Part I E 6 m, in total or in part, through regional training programs involving two or more MS4 permittees; however, the permittee shall remain responsible for ensuring compliance with the training requirements.~~

~~p.~~ t. The MS4 program plan shall include:

(1) ~~The~~ A list of written good housekeeping procedures for the operations and maintenance activities as required by Part I E 6 a and b;

(2) A list of all high-priority facilities owned or operated by the permittee required to maintain an SWPPP in accordance with Part I E 6 ~~c, and whether or not the facility has a high potential to discharge~~ g that includes the facility name, facility location, and the location of the SWPPP hardcopy or electronic document being maintained. The SWPPP for each high-priority facility shall be incorporated by reference;

(3) A list of ~~lands~~ locations for which turf and landscape nutrient management plans are required in accordance with Part I E 6 ~~i and j~~ n and s, including the following information:

(a) The total acreage ~~on which nutrients are applied~~ covered by each nutrient management plan;

(b) ~~The date of the most recently approved nutrient management plan for the property; and~~ The DCR approval date and expiration date for each nutrient management plan;

(c) The location ~~in which the individual turf and landscape nutrient management plan is located~~ of the nutrient management plan hardcopy or electronic document being maintained;

(4) A summary of mechanisms the permittee uses to ensure contractors working on behalf of the permittees implement the necessary good housekeeping and pollution prevention procedures, and stormwater pollution plans as appropriate; and

(5) The written training plan as required in Part I E 6 ~~m~~ d.

~~q.~~ u. The annual report shall include the following:

(1) A summary of any ~~operational~~ written procedures developed or modified in accordance with Part I E 6 a and b during the reporting period;

(2) ~~A summary of any new SWPPPs developed in accordance Part I E 6 c during the reporting period~~ A confirmation statement that all high-priority facilities were reviewed to determine if SWPPP coverage is needed during the reporting period;

(3) ~~A summary of any SWPPPs modified in accordance with Part I E 6 f or the rationale of any high priority facilities delisted in accordance with Part I E 6 h during the reporting period~~ A list of any new SWPPPs developed in accordance Part I E 6 i during the reporting period;

(4) A summary of any ~~new turf and landscape nutrient management plans developed that includes: (a) Location and the total acreage of each land area; and (b) The date of the approved nutrient management plan; and~~ SWPPPs modified in accordance with Part I E 6 j, 6 l, or 6 m;

(5) The rationale of any high-priority facilities delisted in accordance with Part I E 6 l or m during the reporting period;

(6) The status of each nutrient management plan as of June 30 of the reporting year (e.g., approved, submitted and pending approval, and expired);

(7) A list of the training ~~events~~ activities conducted in accordance with Part I E 6 ~~m~~ d, including the following information:

(a) The completion date ~~of~~ for the training ~~event~~ activity;

(b) The number of employees who ~~attended~~ completed the training ~~event~~ activity; and

(c) The ~~objective of~~ objectives and good housekeeping procedures covered by the training ~~event~~ activity.

Part II
TMDL Special Conditions

A. Chesapeake Bay TMDL special condition.

1. The Commonwealth in its Phase I ~~and,~~ Phase II, and Phase III Chesapeake Bay TMDL Watershed Implementation Plans (WIPs) committed to a phased approach for MS4s, affording MS4 permittees up to three full five-year permit cycles to implement necessary reductions. This permit is consistent with the Chesapeake Bay TMDL and the Virginia Phase I ~~and,~~ Phase II ~~WIPs~~, and Phase III WIPs to meet the Level 2 (L2) scoping run for existing developed lands as it represents an implementation of an additional ~~35%~~ 60% of L2 as specified in the ~~2010~~ Phase I ~~and,~~ Phase II, and Phase III WIPs. In combination with the ~~5.0%~~ 40% reduction of L2 that has already been achieved, a total reduction ~~at the end of this permit term~~ no later than October 31, 2028, of ~~40%~~ 100% of L2 will be achieved. Conditions of future permits will be consistent with the TMDL or WIP conditions in place at the time of permit issuance.

2. The following definitions apply to Part II of this state permit for the purpose of the Chesapeake Bay TMDL special condition for discharges in the Chesapeake Bay Watershed:

"Existing sources" means pervious and impervious urban land uses served by the MS4 as of June 30, 2009.

"New sources" means pervious and impervious urban land uses served by the MS4 developed or redeveloped on or after July 1, 2009.

"Pollutants of concern" or "POC" means total nitrogen~~,~~ and total phosphorus~~, and total suspended solids~~.

"Transitional sources" means regulated land disturbing activities that are temporary in nature and discharge through the MS4.

3. Reduction requirements for permittees previously covered under the General VPDES Permit for Discharges of Stormwater from MS4 effective November 1, 2018. No later than ~~the expiration date of this permit~~ October 31, 2028, the permittee shall reduce the load of total nitrogen~~,~~ and total phosphorus~~, and total suspended solids~~ from existing developed lands served by the MS4 as of June 30, 2009, within the 2010 Census urbanized areas by at least ~~40%~~ 100% of the Level 2 (L2) Scoping Run Reductions. The ~~40%~~ 100% reduction is the sum of (i) the first phase reduction of 5.0% of the L2 Scoping Run Reductions based on the lands located within the 2000 Census urbanized areas required by June 30, 2018; (ii) the second phase reduction of at least 35% of the L2 Scoping Run based on lands within the 2000 Census urbanized areas required by June 30, 2023; ~~and~~ (iii) the second phase reduction of at least 40% of the L2 Scoping Run, which shall only apply to the additional lands that were added by the 2010 expanded Census urbanized areas required by June 30, 2023; and (iv) the third phase reduction of least 60% of the L2 Scoping Run based on lands within the 2000 and 2010 expanded Census urbanized areas required by October 31, 2028. The required reduction shall be calculated using Tables 3a, 3b, 3c, and 3d ~~below~~ as applicable:

Table 3a

Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the James River, Lynnhaven, and Little Creek Basins

		A	B	C	D	~~E~~	~~F~~ E	~~G~~ F
Pollutant	Subsource	Loading rate (lbs/ac/yr)[1]	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres)[2]	Load(lbs/yr)[3]	Percentage of MS4 required Chesapeake Bay total L2 loading reduction	~~Percentage of L2 required reduction by 6/30/2023~~	~~40%~~ 100% cumulative reduction Required by ~~6/30/2023~~ 10/31/2028 (lbs/yr)[4]	Sum of ~~40%~~ 100% cumulative reduction (lb/yr)[5]
Nitrogen	Regulated urban impervious	9.39			9%	~~40%~~		
	Regulated urban pervious	6.99			6%	~~40%~~		
Phosphorus	Regulated urban impervious	1.76			16%	~~40%~~		
	Regulated urban pervious	0.5			7.25%	~~40%~~		
~~Total suspended solids~~	~~Regulated urban impervious~~	~~676.94~~			~~20%~~	~~40%~~		
	~~Regulated urban pervious~~	~~101.08~~			~~8.75%~~	~~40%~~		

[1]Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.

[2]To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

[3]Column C = Column A x Column B.

[4]Column ~~F~~ E = Column C x Column D ~~x Column E~~.

[5]Column ~~G~~ F = The sum of the subsource cumulative reduction required by ~~6/30/23~~ 10/31/2028 (lbs/yr) as calculated in Column ~~F~~ E.

Table 3b

Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the Potomac River Basin

		A	B	C	D	~~E~~	~~F~~ E	~~G~~ F
Pollutant	Subsource	Loading rate (lbs/ac/yr)[1]	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres)[2]	Load (lbs/yr)[3]	Percentage of MS4 required Chesapeake Bay total L2 loading reduction	~~Percentage of L2 required reduction by 6/30/2023~~	~~40%~~ 100% cumulative reduction required by ~~6/30/2023~~ 10/31/2028 (lbs/yr)[4]	Sum of ~~40%~~ 100% cumulative reduction (lb/yr)[5]
Nitrogen	Regulated urban impervious	16.86			9%	~~40%~~		
	Regulated urban pervious	10.07			6%	~~40%~~		
Phosphorus	Regulated Urban Impervious	1.62			16%	~~40%~~		
	Regulated urban pervious	0.41			7.25%	~~40%~~		
~~Total suspended solids~~	~~Regulated urban impervious~~	~~1171.32~~			~~20%~~	~~40%~~		
	~~Regulated urban pervious~~	~~175.8~~			~~8.75%~~	~~40%~~		

[1]Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2

[2]To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

[3]Column C = Column A x Column B.

[4]Column ~~F~~ E = Column C x Column D ~~x Column E~~.

[5]Column ~~G~~ F = The sum of the subsource cumulative reduction required by ~~6/30/23~~ 10/31/2028 (lbs/yr) as calculated in Column ~~F~~ E.

Table 3c

Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the Rappahannock River Basin

		A	B	C	D	~~E~~	~~F~~ E	~~G~~ F
Pollutant	Subsource	Loading rate (lbs/ac/yr)[1]	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres)[2]	Load (lbs/yr)[3]	Percentage of MS4 required Chesapeake Bay total L2 loading reduction	~~Percentage of L2 required reduction by 6/30/2023~~	~~40%~~ 100% cumulative reduction Required by ~~6/30/2023~~ 10/31/2028 (lbs/yr)[4]	Sum of ~~40%~~ 100% cumulative reduction (lb/yr)[5]
Nitrogen	Regulated urban impervious	9.38			9%	~~40%~~		
	Regulated urban pervious	5.34			6%	~~40%~~		
Phosphorus	Regulated urban impervious	1.41			16%	~~40%~~		
	Regulated urban pervious	0.38			7.25%	~~40%~~		
~~Total suspended solids~~	~~Regulated urban impervious~~	~~423.97~~			~~20%~~	~~40%~~		
	~~Regulated urban pervious~~	~~56.01~~			~~8.75%~~	~~40%~~		

[1]Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.

[2]To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

[3]Column C = Column A x Column B.

[4]Column ~~F~~ E = Column C x Column D ~~x Column E~~.

[5]Column ~~G~~ F = The sum of the subsource cumulative reduction required by ~~6/30/23~~ 10/31/2028 (lbs/yr) as calculated in Column ~~F~~ E.

Table 3d

Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the York River and Poquoson Coastal Basin

		A	B	C	D	~~E~~	~~F~~ E	~~G~~ F
Pollutant	Subsource	Loading rate (lbs/ac/yr)[1]	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres)[2]	Load (lbs/yr)[3]	Percentage of MS4 required Chesapeake Bay total L2 loading reduction	~~Percentage of L2 required reduction by 6/30/2023~~	~~40%~~ 100% cumulative reduction required by ~~6/30/2023~~ 10/31/2028 (lbs/yr)[4]	Sum of ~~40%~~ 100% cumulative reduction (lb/yr)[5]
Nitrogen	Regulated urban impervious	7.31			9%	~~40%~~		
	Regulated urban pervious	7.65			6%	~~40%~~		
Phosphorus	Regulated urban impervious	1.51			16%	~~40%~~		
	Regulated urban pervious	0.51			7.25%	~~40%~~		
~~Total suspended solids~~	~~Regulated urban impervious~~	~~456.68~~			~~20%~~	~~40%~~		
	~~Regulated urban pervious~~	~~72.78~~			~~8.75%~~	~~40%~~		

[1]Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.

[2]To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

[3]Column C = Column A x Column B.

[4]Column ~~F~~ E = Column C x Column D ~~x Column E~~.

[5]Column ~~G~~ F = The sum of the subsource cumulative reduction required by ~~6/30/23~~ 10/31/2028 (lbs/yr) as calculated in Column ~~F~~ E.

4. No later than ~~the expiration date of this permit~~ October 31, 2028, the permittee shall offset ~~40%~~ 100% of the increased loads from new sources initiating construction between July 1, 2009, and ~~June 30, 2019~~ October 31, 2023, and designed in accordance with 9VAC25-870 Part II C (9VAC25-870-93 et seq.) if the following conditions apply:

a. The activity disturbed one acre or greater; and

b. The resulting total phosphorous load was greater than 0.45 lb/acre/year, which is equivalent to an average land cover condition of 16% impervious cover.

The permittee shall utilize Table 4 of Part II A 5 to develop the equivalent pollutant load for new sources of nitrogen ~~and total suspended solids for new sources~~ meeting the requirements of this condition.

5. No later than ~~the expiration date of this permit~~ October 31, 2028, the permittee shall offset the increased loads from projects grandfathered in accordance with 9VAC25-870-48 that begin construction after July 1, 2014, if the following conditions apply:

a. The activity disturbs one acre or greater; and

b. The resulting total phosphorous load was greater than 0.45 lb/acre/year, which is equivalent to an average land cover condition of 16% impervious cover.

The permittee shall utilize Table 4 ~~below~~ to develop the equivalent pollutant load for grandfathered sources of nitrogen ~~and total suspended solids for grandfathered sources~~ meeting the requirements of this condition.

Table 4

Ratio of Phosphorus Loading Rate to Nitrogen ~~and Total Suspended Solids~~ Loading Rates for Chesapeake Bay Basins

Ratio of Phosphorus to Other POCs (Based on All Land Uses 2009 Progress Run)	Phosphorus Loading Rate (lbs/acre)	Nitrogen Loading Rate (lbs/acre)	~~Total Suspended Solids Loading Rate (lbs/acre)~~
James River Basin, Lynnhaven, and Little Creek Basins	1.0	5.2	~~420.9~~
Potomac River Basin	1.0	6.9	~~469.2~~
Rappahannock River Basin	1.0	6.7	~~320.9~~
York River Basin (including Poquoson Coastal Basin)	1.0	9.5	~~531.6~~

6. Reductions achieved in accordance with the General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems effective July 1, 2013, and November 1, 2018, shall be applied toward the total reduction requirements to demonstrate compliance with Part II A 3, A 4, and A 5.

7. 40% of L2 reductions for total nitrogen and total phosphorus shall at a minimum, be maintained by the permittee during the permit term.

8. Reductions shall be achieved in each river basin as calculated in Part II A 3 or for reductions in accordance with Part II A 4 and A 5 in the basin in which the new source or grandfathered project occurred.

~~8.~~ 9. Loading and reduction values greater than or equal to 10 pounds calculated in accordance with Part II A 3, A 4, and A 5 shall be calculated and reported to the nearest pound without regard to mathematical rules of precision. Loading and reduction values of less than 10 pounds reported in accordance with Part II A 3, A 4, and A 5 shall be calculated and reported to two significant digits.

~~9.~~ 10. Reductions required in Part II A 3, A 4, and A 5 shall be achieved through one or more of the following:

a. BMPs approved by the Chesapeake Bay Program;

b. BMPs approved by the department; or

c. A trading program described in Part II A 10.

~~10.~~ 11. The permittee may acquire and use total nitrogen and total phosphorus credits in accordance with § 62.1-44.19:21 of the Code of Virginia ~~and total suspended solids in accordance with § 62.1-44.19:21.1 of the Code of Virginia~~ for purposes of compliance with the required reductions in Table 3a, Table 3b, Table 3c, and Table 3d of Part II A 3; Part II A 4; and Part II A 5, provided the use of credits has been approved by the department. The exchange of credits is subject to the following requirements:

a. The credits are generated and applied to a compliance obligation in the same calendar year;

b. The credits are generated and applied to a compliance obligation in the same tributary;

c. The credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied;

d. No later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on an MS4 Nutrient Credit Acquisition Form that the permittee has acquired the credits; and

e. Total nitrogen and total phosphorus credits shall be either point source credits generated by point sources covered by the Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed general permit issued pursuant to § 62.1-44.19:14 of the Code of Virginia~~,~~ or nonpoint source credits certified pursuant to § 62.1-44.19:20 of the Code of Virginia~~;~~.

~~f. Sediment credits shall be derived from one of the following:~~

~~(1) Implementation of BMP in a defined area outside of an MS4 service area, in which case the necessary baseline~~

~~sediment reduction for such defined area shall be achieved prior to the permittee's use of additional reductions as credit; or~~

~~(2) A point source wasteload allocation established by the Chesapeake Bay total maximum daily load, in which case the credit is the difference between the wasteload allocation specified as an annual mass load and any lower monitored annual mass load that is discharged as certified on an MS4 Sediment Credit Acquisition Form.~~

~~g. Sediment credits shall not be associated with phosphorus credits used for compliance with the stormwater nonpoint nutrient runoff water quality criteria established pursuant to § 62.1 44.15:28 of the Code of Virginia.~~

~~11. No later than 12 months after the permit effective date, the permittee shall submit an updated Chesapeake Bay TMDL action plan for the reductions required in Part II A 3, A 4, and A 5 that includes the following information:~~

~~a. Any new or modified legal authorities, such as ordinances, permits, policy, specific contract language, orders, and interjurisdictional agreements, implemented or needing to be implemented to meet the requirements of Part II A 3, A 4, and A 5.~~

12. Chesapeake Bay TMDL action plan requirements.

a. Permittees applying for initial coverage under this general permit shall submit a draft first phase Chesapeake Bay TMDL action plan to the department no later than October 31, 2028, unless the department grants a later date. The required reduction shall be calculated using Tables 3a, 3b, 3c, and 3d as applicable. The first phase action plan shall achieve a minimum reduction of least 40% of the L2 Scoping Run based on lands within the 2000 and 2010 expanded Census urbanized areas no later than October 31, 2033. The action plan shall include the following information:

~~b.~~ (1) The load and cumulative reduction calculations for each river basin calculated in accordance with Part II A 3, A 4, and A 5.

~~c. The total reductions achieved as of July 1, 2018, for each pollutant of concern in each river basin.~~

~~d. A list of BMPs implemented prior to July 1, 2018, to achieve reductions associated with the Chesapeake Bay TMDL including:~~

~~(1) The date of implementation; and~~

~~(2) The reductions achieved.~~

~~e.~~ (2) The BMPs to be implemented by the permittee ~~prior~~ to ~~the expiration of this permit to meet the cumulative~~ achieve 40% of the reductions calculated in Part II A ~~3, A 4, and A 5, including as applicable~~ 13 a:

~~(1)~~ (a) Type of BMP;

~~(2)~~ (b) Project name;

~~(3)~~ (c) Location;

~~(4)~~ (d) Percent removal efficiency for each pollutant of concern; and

~~(5)~~ (e) Calculation of the reduction expected to be achieved by the BMP calculated and reported in accordance with the methodologies established in Part II A ~~8~~ 9 for each pollutant of concern; and

~~f. A summary of any comments received as a result of public participation required in Part II A 12, the permittee's response, identification of any public meetings to address public concerns, and any revisions made to Chesapeake Bay TMDL action plan as a result of public participation.~~

~~12.~~ b. For permittees previously covered under the General VPDES Permit for the Discharge of Stormwater from MS4 effective November 1, 2018, no later than 12 months after the permit effective date, the permittee shall submit a third phase Chesapeake Bay TMDL action plan for the reductions required in Part II A 3, A 4, and A 5 that includes the following information:

(1) Any new or modified legal authorities, such as ordinances, permits, policy, specific contract language, orders, and interjurisdictional agreements, implemented or needing to be implemented to meet the requirements of Part II A 3, A 4, and A 5.

(2) The load and cumulative reduction calculations for each river basin calculated in accordance with Part II A 3, A 4, and A 5.

(3) The total reductions achieved as of November 1, 2023, for each pollutant of concern in each river basin.

(4) A list of BMPs implemented prior to November 1, 2023, to achieve reductions associated with the Chesapeake Bay TMDL, including:

(a) The date of implementation; and

(b) The reductions achieved.

(5) The BMPs to be implemented by the permittee within 60 months of the effective date of this permit to meet the cumulative reductions calculated in Part II A 3, A 4, and A 5, including as applicable:

(a)Type of BMP;

(b) Project name;

(c) Location;

(d) Percent removal efficiency for each pollutant of concern; and

(e) Calculation of the reduction expected to be achieved by the BMP calculated and reported in accordance with the methodologies established in Part II A 9 for each pollutant of concern; and

(6) A summary of any comments received as a result of public participation required in Part II A 13, the permittee's response, identification of any public meetings

to address public concerns, and any revisions made to Chesapeake Bay TMDL action plan as a result of public participation.

13. Prior to submittal of the action plan required in Part II A ~~11~~ 12 b, the permittee shall provide an opportunity for public comment for no fewer than 15 days on the additional BMPs proposed ~~to meet the reductions not previously approved by the department~~ in the ~~first~~ third phase Chesapeake Bay TMDL action plan ~~for no less than 15 days~~.

~~13. For each reporting period, the corresponding annual report shall include the following information:~~

a. ~~A list of BMPs implemented during the reporting period but not reported to the DEQ BMP Warehouse in accordance with Part I E 5 g and the estimated reduction of pollutants of concern achieved by each and reported in pounds per year;~~ Permittees previously covered under the General VPDES Permit for Discharges of Stormwater from MS4 effective November 1, 2018, shall submit a Chesapeake Bay TMDL implementation annual status report in a method (i.e., how the permittee must submit) and format (i.e., how the report shall be laid out) as specified by the department no later than October 1 of each year. The report shall cover the previous year from July 1 to June 30.

b. ~~If the permittee acquired credits during the reporting period to meet all or a portion of the required reductions in Part II A 3, A 4, or A 5, a statement that credits were acquired;~~ Following notification from the department of the start date for the required electronic submission of Chesapeake Bay TMDL implementation annual status reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with 9VAC25-31-1020 and this section. There shall be at least a three-month notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

c. ~~The progress, using the final design efficiency of the BMPs, toward meeting the required cumulative reductions for total nitrogen, total phosphorus, and total suspended solids; and~~ The year two Chesapeake Bay TMDL implementation annual status report shall contain a summary of any public comments on the Chesapeake Bay TMDL action plan received and how the permittee responded.

d. ~~A list of BMPs that are planned to be implemented during the next reporting period.~~ Each Chesapeake Bay TMDL implementation annual status report shall include the following information:

(1) A list of Chesapeake Bay TMDL action plan BMPs, not including annual practices, implemented prior to the reporting period that includes the following information for reported BMP;

(a) The number of BMPs for each BMP type;

(b) The estimated reduction of pollutants of concern achieved by each BMP type and reported in pounds of pollutant reduction per year; and

(c) A confirmation statement that the permittee electronically reported Chesapeake Bay TMDL action plan BMPs inspected using the DEQ BMP Warehouse in accordance with Part III B 5.

(2) A list of newly implemented BMPs including annual practices implemented during the reporting period that includes the following information for each reported BMP or a statement that no BMPs were implemented during the reporting period:

(a) The BMP type and a description of the location for each BMP;

(b) The estimated reduction of pollutants of concern achieved by each BMP and reported in pounds of pollutant reduction per year; and

(c) A confirmation statement that the permittee electronically reported BMPs using the DEQ BMP Warehouse in accordance with Part III B 3.

e. If the permittee acquired credits during the reporting period to meet all or a portion of the required reductions in Part II A 3, A 4, or A 5, a statement that credits were acquired.

f. Pollutant load reductions generated by annual practices, such as street and storm drain cleaning, shall only be applied to the compliance year in which the annual practice was implemented.

g. The progress, using the final design efficiency of the BMPs, toward meeting the required cumulative reductions for total nitrogen and total phosphorus.

h. Any revisions made to the Chesapeake Bay TMDL action plan.

i. A list of BMPs that are planned to be implemented during the next reporting period.

B. Local TMDL special condition.

1. ~~The permittee~~ Permittees applying for initial coverage under this general permit shall develop a local TMDL action plan designed to reduce loadings for pollutants of concern if the permittee discharges the pollutants of concern to an impaired water for which a TMDL has been approved by the U.S. Environmental Protection Agency (EPA) prior to October 31, 2023, and in which an individual or aggregate wasteload has been allocated to the permittee. The permittee shall develop action plans to meet the conditions of Part II B 4, B 5, B 6, B 7, and B 8 as applicable. Each local TMDL action plan shall be provided to the department no later than October 31, 2028, unless the department grants a later date.

2. Permittees previously covered under the General VPDES Permit for Discharges of Stormwater from MS4 effective

November 1, 2018, shall develop and maintain a local TMDL action plan designed to reduce loadings for pollutants of concern if the permittee discharges the pollutants of concern to an impaired water for which a TMDL has been approved by the U.S. Environmental Protection Agency (EPA) as described in Part II B ~~1 a and 1~~ 2 a and 2 b:

a. For TMDLs approved by ~~the~~ EPA prior to July 1, ~~2013~~ 2018, and in which an individual or aggregate wasteload has been allocated to the permittee, the permittee shall develop and initiate or update as applicable the ~~previously approved~~ local TMDL action plans to meet the conditions of Part II ~~B 3~~, B 4, ~~B 5,~~ B 6, ~~and~~ B 7, and B 8, as applicable, no later than 18 months after the permit effective date and continue implementation of the action plan~~; and~~. Updated action plans shall include:

(1) An evaluation of the results achieved by the previous action plan; and

(2) Any adaptive management strategies incorporated into updated action plans based on action plan evaluation.

b. For TMDLs approved by EPA on or after July 1, ~~2013~~ 2018, and prior to ~~June 30, 2018~~ October 31, 2023, and in which an individual or aggregate wasteload has been allocated to the permittee, the permittee shall develop and initiate implementation of action plans to meet the conditions of Part II ~~B 3,~~ B 4, B 5, B 6, ~~and~~ B 7, and B 8, as applicable ~~for each pollutant for which wasteloads have been allocated to the permittee's MS4~~ no later than 30 months after the permit effective date.

~~2.~~ 3. The permittee shall complete implementation of the TMDL action plans as soon as practicable. TMDL action plans may be implemented in multiple phases over more than one permit cycle using the adaptive iterative approach provided adequate progress is achieved in the implementation of BMPs designed to reduce pollutant discharges in a manner that is consistent with the assumptions and requirements of the applicable TMDL.

~~3.~~ 4. Each local TMDL action plan developed by the permittee shall include the following:

a. The TMDL project name;

b. The EPA approval date of the TMDL;

c. The wasteload allocated to the permittee (individually or in aggregate), and the corresponding percent reduction, if applicable;

d. Identification of the significant sources of the pollutants of concern discharging to the permittee's MS4 and that are not covered under a separate VPDES permit. For the purposes of this requirement, a significant source of pollutants of concern means a discharge where the expected pollutant loading is greater than the average pollutant loading for the land use identified in the TMDL;

e. The BMPs designed to reduce the pollutants of concern in accordance with ~~Parts~~ Part II ~~B 4,~~ B 5, ~~and~~ B 6, B 7, and B 8;

f. Any calculations required in accordance with Part II ~~B 4,~~ B 5, ~~or~~ B 6, B 7, or B 8;

g. For action plans developed in accordance with Part II ~~B 4 and~~ B 5, B 6, and B 8, an outreach strategy to enhance the public's education (including employees) on methods to eliminate and reduce discharges of the pollutants; and

h. A schedule of anticipated actions planned for implementation during this permit term.

~~4.~~ 5. Bacterial TMDLs.

a. ~~If the permittee is an approved VSMP authority, the permittee~~ Traditional permittees shall select and implement at least three of the strategies listed in Table 5 ~~below~~ designed to reduce the load of bacteria to the MS4. Selection of the strategies shall correspond to sources identified in Part II B ~~3~~ 4 d.

b. ~~If the permittee is not an approved VSMP authority, the permittee~~ Nontraditional permittees shall select at least one strategy listed in Table 5 ~~below~~ designed to reduce the load of bacteria to the MS4 relevant to sources of bacteria applicable within the MS4 regulated service area. Selection of the strategies shall correspond to sources identified in Part II B ~~3~~ 4 d.

Table 5

Strategies for Bacteria Reduction Stormwater Control/Management Strategy

Source	Strategies (provided as an example and not meant to be all inclusive or limiting)
Domestic pets (dogs and cats)	Provide signage to pick up dog waste, providing pet waste bags and disposal containers. Adopt and enforce pet waste ordinances or policies, or leash laws or policies. Place dog parks away from environmentally sensitive areas. Maintain dog parks by removing disposed of pet waste bags and cleaning up other sources of bacteria. Protect riparian buffers and provide unmanicured vegetative buffers along streams to dissuade stream access.

Urban wildlife	Educate the public on how to reduce food sources accessible to urban wildlife (e.g., manage restaurant dumpsters and grease traps, residential garbage, feed pets indoors). Install storm drain inlet or outlet controls. Clean out storm drains to remove waste from wildlife. Implement and enforce urban trash management practices. Implement rooftop disconnection programs or site designs that minimize connections to reduce bacteria from rooftops Implement a program for removing animal carcasses from roadways and properly disposing of the same (either through proper storage or through transport to a licensed facility).
Illicit connections or illicit discharges to the MS4	Implement an enhanced dry weather screening and illicit discharge, detection, and elimination program beyond the requirements of Part I E 3 to identify and remove illicit connections and identify leaking sanitary sewer lines infiltrating to the MS4 and implement repairs. Implement a program to identify potentially failing septic systems. Educate the public on how to determine whether their septic system is failing. Implement septic tank inspection and maintenance program. Implement an educational program beyond any requirements in Part I E 1 though E 6 to explain to citizens why they should not dump materials into the MS4.
Dry weather urban flows (irrigations, ~~carwashing~~ car washing, powerwashing, etc.)	Implement public education programs to reduce dry weather flows from storm sewers related to lawn and park irrigation practices, ~~carwashing~~ car washing, powerwashing and other nonstormwater flows. Provide irrigation controller rebates. Implement and enforce ordinances or policies related to outdoor water waste. Inspect commercial trash areas, grease traps, washdown practices, and enforce corresponding ordinances or policies.
Birds (Canadian geese, gulls, pigeons, etc.)	Identify areas with high bird populations and evaluate deterrents, population controls, habitat modifications and other measures that may reduce bird-associated bacteria loading. Prohibit feeding of birds.
Other sources	Enhance maintenance of stormwater management facilities owned or operated by the permittee. Enhance requirements for third parties to maintain stormwater management facilities. Develop BMPs for locating, transporting, and maintaining portable toilets used on permittee-owned sites. Educate third parties that use portable toilets on BMPs for use. Provide public education on appropriate recreational vehicle dumping practices.

~~5.~~ 6. Local sediment, phosphorus, and nitrogen TMDLs.

a. The permittee shall reduce the loads associated with sediment, phosphorus, or nitrogen through implementation of one or more of the following:

(1) One or more of the BMPs from the Virginia Stormwater BMP Clearinghouse listed in 9VAC25-870-65 or other approved BMPs found on the Virginia Stormwater BMP Clearinghouse website;

(2) One or more BMPs approved by the Chesapeake Bay Program. Pollutant load reductions generated by annual practices, such as street and storm drain cleaning, shall only be applied to the compliance year in which the annual practice was implemented; or

(3) Land disturbance thresholds lower than Virginia's regulatory requirements for erosion and sediment control and post development stormwater management.

b. The permittee may meet the local TMDL requirements for sediment, phosphorus, or nitrogen through BMPs implemented or sediment, phosphorus, or nitrogen credits acquired. BMPs implemented and nutrient and sediment credits acquired to meet the requirements of the Chesapeake Bay TMDL in Part II A may also be utilized to meet local TMDL requirements as long as the BMPs are implemented or the credits are generated in the watershed for which local water quality is impaired.

c. The permittee shall calculate the anticipated load reduction achieved from each BMP and include the calculations in the action plan required in Part II B ~~3~~ 4 f.

d. No later than 36 months after the effective date of this permit, the permittee shall submit to the department an update on the progress made toward achieving action plan goals and the anticipated end dates by which the permittee

will meet each ~~WLA~~ wasteload allocation for sediment, phosphorus, or nitrogen. The proposed end date may be developed in accordance with Part II B ~~2~~ 3.

~~6.~~ 7. Polychlorinated biphenyl (PCB) TMDLs.

a. For each PCB TMDL action plan, the permittee shall include an inventory of potentially significant sources of PCBs owned or operated by the permittee that drains to the MS4 that includes the following information:

(1) Location of the potential source;

(2) Whether or not the potential source is from current site activities or activities previously conducted at the site that have been terminated (i.e., legacy activities); and

(3) A description of any measures being implemented or to be implemented to prevent exposure to stormwater and the discharge of PCBs from the site.

b. If at any time during the term of this permit, the permittee discovers a previously unidentified significant source of PCBs within the permittee's MS4 regulated service area, the permittee shall notify DEQ in writing within 30 days of discovery.

c. As part of its annual reporting requirements, the permittee shall submit results of any action plan PCB monitoring or product testing conducted and any adaptive management strategies that have been incorporated into the updated action plan based upon monitoring or product testing results if the permittee has elected to perform monitoring or product testing or both.

8. Chloride TMDLs.

a. Traditional permittees shall develop an anti-icing and deicing agent education and outreach strategy that identifies target audiences for increasing awareness of anti-icing and deicing agent application impacts on receiving waters and encourages implementation of enhanced BMPs for application, handling, and storage of anti-icing and de-icing agents used for snow and ice management.

b. Traditional permittee anti-icing and deicing agent education and outreach strategies shall contain a schedule to implement two or more of the strategies listed in Part I E 1 d Table 1 per year to communicate to target audiences the importance of responsible anti-icing and deicing agent application, transport, and storage.

c. No later than 36 months after permit issuance, the permittee shall review good housekeeping procedures for anti-icing and deicing agent application, handling, storage, and transport activities required under Part I E 6 b (1) (a) and identify a minimum of two strategies for implementing enhanced BMPs that promote efficient management and application of anti-icing and deicing agents while maintaining public safety.

~~7.~~ 9. Prior to submittal of the action plan required in Part II B ~~1~~ 2, the permittee shall provide an opportunity for public comment ~~proposed~~ for no fewer than 15 days on the proposal to meet the local TMDL action plan requirements ~~for no less than 15 days~~.

~~8.~~ 10. The MS4 program plan as required by Part I B of this permit shall incorporate each local TMDL action plan. Local TMDL action plans may be incorporated by reference into the MS4 program plan provided that the program plan includes the date of the most recent local TMDL action plan and identification of the location where a copy of the local TMDL action plan may be obtained.

~~9.~~ 11. For each reporting period, each annual report shall include a summary of actions conducted to implement each local TMDL action plan.

C. Inspection and maintenance of ecosystem restoration projects used for TMDL compliance.

1. Within 36 months of permit issuance the permittee shall develop and maintain written inspection and maintenance procedures in order to ensure adequate long-term operation and maintenance of ecosystem restoration projects as defined in 9VAC25-890-1 and implemented as part of a TMDL action plan developed in accordance with Part II A, B, or both. The permittee may utilize inspection and maintenance protocols developed by the Chesapeake Bay Program or inspection and maintenance plans developed in accordance with the department's Stormwater Local Assistance Fund (SLAF) guidelines.

2. The permittee shall inspect ecosystem restoration projects owned or operated by the permittee and implemented as part of a current TMDL action plan developed in accordance with Part II A or B no less than once every 60 months.

Part III

~~Conditions Applicable to All State and VPDES Permits~~ DEQ BMP Warehouse Reporting

A. For the purpose of Part III of this permit, "best management practice" or "BMP" means a practice that achieves quantifiable nitrogen, phosphorus, or total suspended solids reductions, including stormwater management facilities, ecosystem restoration projects, annual practices, and other practices approved by the department for reducing nitrogen, phosphorus, and total suspended solids pollutants.

B. No later than October 1 of each year the permittee shall electronically report BMPs implemented and inspected as applicable between July 1 and June 30 of each year using the DEQ BMP Warehouse.

1. Traditional permittees specified in Part I E 5 a (1) shall use the DEQ Construction Stormwater Database or other application as specified by the department to report each stormwater management facility installed after July 1, 2014, to address the control of post-construction runoff from land disturbing activities for which the permittee is required to

obtain a General VPDES Permit for Discharges of Stormwater from Construction Activities.

2. The permittee shall use the associated reporting template for stormwater management facilities not reported in accordance with Part III B 1, including stormwater management facilities installed to control post-development stormwater runoff from land disturbing activities less than one acre in accordance with the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), if applicable, and for which a General VPDES Permit for Discharges of Stormwater from Construction Activities was not required.

3. The permittee shall use the DEQ BMP Warehouse to report BMPs that were not reported in accordance with Part III B 1 or B 2 and were implemented as part of a TMDL action plan to achieve nitrogen, phosphorus, and total suspended solids reductions in accordance with Part II A or B.

4. The permittee shall use the DEQ BMP Warehouse to report any BMPs that were not reported in accordance with Part III B 1, B 2, or B 3.

5. The permittee shall use the DEQ BMP Warehouse to report the most recent inspection date for BMPs in accordance with Part I E 5 b or 5 c, or in accordance with Part II C and the most recent associated TMDL action plan.

C. The following information for each BMP reported in accordance with Part III B 1, B 2, B 3, or B 4 shall be reported to the DEQ BMP Warehouse as applicable:

1. The BMP type;

2. The BMP location as decimal degree latitude and longitude;

3. The acres treated by the BMP, including total acres and impervious acres;

4. The date the BMP was brought online (MM/YYYY). If the date brought online is not known, the permittee shall use 06/2005;

5. The 6th Order Hydrologic Unit Code in which the BMP is located;

6. Whether the BMP is owned or operated by the permittee or privately owned;

7. Whether or not the BMP is part of the permittee's Chesapeake Bay TMDL action plan required in Part II A or local TMDL action plan required in Part II B, or both;

8. If the BMP is privately owned, whether a maintenance agreement exists;

9. The date of the permittee's most recent inspection of the BMP; and

10. Any other information specific to the BMP type required by the DEQ BMP Warehouse (e.g., linear feet of stream restoration).

D. No later than October 1 of each year the DEQ BMP Warehouse shall be updated if an existing BMP is discovered between July 1 and June 30 that was not previously reported to the DEQ BMP Warehouse.

Part IV
Conditions Applicable to All State and VPDES Permits

NOTE: Discharge monitoring is not required for compliance purposes by this general permit. If the operator chooses to monitor stormwater discharges for informational or screening purposes, the operator does not need to comply with the requirements of ~~Parts III~~ Part IV A, B, or C.

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitoring 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 state permit. Analyses performed according to test procedures approved under 40 CFR Part 136 shall be performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

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. Monitoring records and reports shall include:

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

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The 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 all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this state permit, and records of all data used to complete the registration statement for this state permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. 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~~ department.

C. Reporting monitoring results.

1. The operator shall submit the results of the monitoring as may be performed in accordance with this state permit with the annual report unless another reporting schedule is specified elsewhere in this state permit.

2. Monitoring results shall be reported on a discharge monitoring report (DMR); on forms provided, approved, or specified by the department; or in any format provided that the date, location, parameter, method, and result of the monitoring activity are included. Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with 9VAC25-31-1020 and this section. There shall be at least a three-month notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

3. If the operator monitors any pollutant specifically addressed by this state permit more frequently than required by this state 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 state permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in 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 state permit.

D. Duty to provide information. The operator shall furnish within a reasonable time, any information that the ~~board~~ department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this state permit or to determine compliance with this state permit. The ~~board,~~ department~~,~~ or EPA 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 surface waters, or such other information as may be necessary to accomplish the purposes of the CWA and Virginia Stormwater Management Act. The operator shall also furnish to the ~~board,~~ department~~,~~ or EPA upon request, copies of records required to be kept by this state 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 state permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized stormwater discharges. Pursuant to § 62.1-44.5 of the Code of Virginia, except in compliance with a state permit issued by the department, it shall be unlawful to cause a stormwater discharge from a MS4.

G. Reports of unauthorized discharges. Any operator of a ~~small~~ MS4 who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, or § 62.1-44.34:19 of the Code of Virginia that occurs during a 24-hour period into or upon surface waters or who discharges or causes or allows a discharge that may reasonably be expected to enter surface waters shall notify the department of the discharge immediately (see Part IV I 4) upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

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

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

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

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

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge, including a "bypass" ~~(~~ in Part ~~III~~ IV U~~)~~ or "an upset," ~~(~~ in Part ~~III~~ IV V~~)~~, should occur from a facility and the discharge enters or could be expected to enter surface waters, the operator shall promptly notify (see Part IV I 4), in no case later than within 24 hours, the department ~~by telephone~~ after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The operator shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with

Part ~~III~~ IV I 2. Unusual and extraordinary discharges include any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the facilities; and

4. Flooding or other acts of nature.

I. Reports of noncompliance.

1. The operator shall report any noncompliance ~~which~~ that may adversely affect surface waters or may endanger public health.

~~1.~~ a. An oral report to the department shall be provided within 24 hours from the time the operator becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under ~~this subdivision~~ Part IV I:

~~a.~~ (1) Any unanticipated bypass; and

~~b.~~ (2) Any upset that causes a discharge to surface waters.

~~2.~~ b. A written report shall be submitted within five days and shall contain:

~~a.~~ (1) A description of the noncompliance and its cause;

~~b.~~ (2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

~~c.~~ (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The department may waive the written report on a case-by-case basis for reports of noncompliance under Part ~~III~~ IV I if the oral report has been received within 24 hours and no adverse impact on surface waters has been reported.

~~3.~~ 2. The operator shall report all instances of noncompliance not reported under Part ~~III I 1 or 2~~ IV I 1 b, in writing, as part of the annual reports that are submitted. The reports shall contain the information listed in Part ~~III~~ IV I 2.

~~NOTE:~~ 3. The immediate (within 24 hours) reports required in Part ~~III~~ IV G, H, and I shall be made to the department. Reports may be made by telephone, email, ~~or~~ fax, or online at https://www.deq.virginia.gov/get-involved/pollution-response. For reports outside normal working hours, ~~leaving a recorded message shall fulfill the immediate reporting requirement~~ the online portal shall be used. For emergencies, call the Virginia Department of Emergency ~~Management maintains a 24-hour telephone service~~ Management's Emergency Operations Center (24-hours) at 1-800-468-8892.

4. Where the operator becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report, including a registrations statement, to the department, the operator shall promptly submit such facts or correct information.

J. Notice of planned changes.

1. The operator shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The operator plans an alteration or addition to any building, structure, facility, or installation that may meet one of the criteria for determining whether a facility is a new source in 9VAC25-870-420:

b. The operator plans an alteration or addition that would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this state permit; or

2. The operator shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with state permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this chapter, 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 facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term 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 state permit application requirements; and where 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 chapter, a principal executive officer of a public agency includes:

(1) The chief executive officer of the agency, or

(2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports and other information. All reports required by state permits, including annual reports, and other information requested by the ~~board or~~ department shall be signed by a person described in Part ~~III~~ IV K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part ~~III~~ IV K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the operator. (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 submitted to the department.

3. Changes to authorization. If an authorization under Part ~~III~~ IV K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the MS4, a new authorization satisfying the requirements of Part ~~III~~ IV K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part ~~III~~ IV K 1 or K 2 shall make the following certification:

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

L. Duty to comply. The operator shall comply with all conditions of this state permit. Any state permit noncompliance constitutes a violation of the Virginia Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this state permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for state permit termination, revocation and reissuance, or modification; or denial of a state permit 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 or standards for sewage sludge use or disposal, even if this state permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the operator wishes to continue an activity regulated by this state permit after the expiration date of this state permit, the operator shall submit a new registration statement at least 90 days before the expiration date of the existing state permit, unless permission for a later date has been granted by the ~~board~~ department. The ~~board~~ department shall not grant permission for registration statements to be submitted later than the expiration date of the existing state permit.

N. Effect of a state permit. This state 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.

O. State law. Nothing in this state 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. Except as provided in state permit conditions on ~~"~~bypassing~~" (~~ in Part ~~III~~ IV U~~),~~ and ~~"~~upset~~" (~~ in Part ~~III~~ IV V~~)~~ nothing in this state permit shall be construed to relieve the operator from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this state 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 or § 311 of the Clean Water Act.

Q. 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), which are installed or used by the operator to achieve compliance with the conditions of this state permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by the operator only when the operation is necessary to achieve compliance with the conditions of this state permit.

R. 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 surface waters and in compliance with all applicable state and federal laws and regulations.

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

T. 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 state permit.

U. Bypass.

1. "Bypass," as defined in 9VAC25-870-10, means the intentional diversion of waste streams from any portion of a treatment facility. The operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part ~~III~~ IV U 2 and U 3 .

2. Notice.

a. Anticipated bypass. If the operator knows in advance of the need for a bypass, the operator shall submit prior notice to the department, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The operator shall submit notice of an unanticipated bypass as required in Part ~~III~~ IV I.

3. Prohibition of bypass.

a. Except as provided in Part ~~III~~ IV U 1, bypass is prohibited, and the ~~board or~~ department may take enforcement action against an operator for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The operator submitted notices as required under Part ~~III~~ IV U 2.

b. The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three conditions listed in Part ~~III~~ IV U 3 a.

V. Upset.

1. An "upset," as defined in 9VAC25-870-10, means an exceptional incident in which there is unintentional and temporary noncompliance with technology based state permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based state permit effluent limitations if the requirements of Part ~~III~~ IV V 4 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

3. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

4. An operator who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the operator can identify the causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The operator submitted notice of the upset as required in Part ~~III~~ IV I; and

d. The operator complied with any remedial measures required under Part ~~III~~ IV S.

5. In any enforcement proceeding the operator seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The operator shall allow the department ~~as the board's designee~~, EPA, or an authorized representative (including an authorized contractor), upon presentation of credentials and other documents as may be required by law, to:

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

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

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

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the Clean Water Act and the Virginia Stormwater

Management Act, any substances or parameters at any location.

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

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

Y. Transfer of state permits.

1. State permits are not transferable to any person except after notice to the department. Except as provided in Part ~~III~~ IV Y 2, a state permit may be transferred by the operator to a new operator only if the state permit has been modified or revoked and reissued, or a minor modification made, to identify the new operator and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.

2. As an alternative to transfers under Part ~~III~~ IV Y 1, this state permit may be automatically transferred to a new operator if:

a. The current operator notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new operators containing a specific date for transfer of state permit responsibility, coverage, and liability between them; and

c. The department does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the state permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part ~~III~~ IV Y 2 b.

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

VA.R. Doc. No. R22-6940; Filed January 19, 2023, 11:59 a.m.

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TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **10VAC5-60. Consumer Finance Companies (amending 10VAC5-60-45).**

Statutory Authority: §§ 6.2-1535 and 12.1-13 of the Code of Virginia.

Effective Date: January 27, 2023.

Agency Contact: Todd Rose, Senior Counsel, Office of General Counsel, Financial Institutions, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9671, FAX (804) 371-9240, or email todd.rose@scc.virginia.gov.

Summary:

Pursuant to the State Corporation Commission Order dated December 14, 2022, the amendments strike 10VAC5-60-45 F 1, removing a prohibition on licensed consumer finance company ability to make a loan to a borrower in connection with purchasing or paying for goods or services sold or for loans offered by another business operating from the licensee's consumer finance offices.

AT RICHMOND, DECEMBER 14, 2022

VIRGINIA FINANCIAL SERVICES ASSOCIATION,
ATLANTIC DISCOUNT CORP.,
FRANKLIN FINANCE COMPANY, INCORPORATED,
LENDMARK FINANCIAL SERVICES, LLC,
MARINER FINANCE OF VIRGINIA LLC,
REGIONAL FINANCE COMPANY OF VIRGINIA, LLC,
SOUTHERN FINANCE CORP., and
VIRGINIA FINANCE, LLC,

Petitioners,

v.

VIRGINIA BUREAU OF FINANCIAL INSTITUTIONS — Case No. BFI-2022-00084

and

E. JOSEPH FACE, JR., COMMISSIONER OF FINANCIAL INSTITUTIONS,

Respondents.

ORDER

On July 22, 2022, the Virginia Financial Services Association ("VFSA"), and Atlantic Discount Corp; Franklin Finance Company, Incorporated; Lendmark Financial Services, LLC; Mariner Finance of Virginia, LLC; Regional Finance Company of Virginia, LLC; Republic Finance Company of Virginia, LLC; Southern Finance Corp.; and Virginia Finance LLC (collectively, "Licensees" and with VFSA, the "Petitioners"), filed a Petition for Declaratory Judgment and Other Relief ("Petition") in the Office of the Clerk pursuant to Rules 100 B and 100 C of the State Corporation Commission's ("Commission") Rules of Practice and Procedure, 5 VAC 5-20-10 et seq. ("Rules of Practice"), naming the Bureau of Financial Institutions and Commissioner of Financial Institutions, E. Joseph Face, Jr. (collectively, the "Bureau"), as respondents. On August 5, 2022, VFSA and the Licensees filed an errata copy of the Petition to correct certain errors regarding the identification of the intended Petitioners. Additionally, on September 15, 2022, the Petitioners sought leave to strike Republic Finance Company of Virginia, LLC as a named Licensee Petitioner in this matter.[1]

The VFSA is a trade association representing the interests of consumer finance companies licensed to do business in the Commonwealth of Virginia ("Virginia").[2] The Licensees are consumer finance companies licensed by the Commission,[3] operating under the laws of Virginia, including § 6.2-1500 et seq. of the Code of Virginia ("Code"). Through the Commission, the Bureau has regulatory authority to administer laws and regulations applicable to state-licensed consumer finance companies, such as the Licensees.

In the Petition, the Petitioners assert that 10 VAC 5-60-45 F (1) of the Commission's rules governing Consumer Finance Companies, 10 VAC 5-60-5, et seq. ("Consumer Finance Rules") is contrary to statutory law, including specifically § 6.2-1518 of the Code.[4] The Petitioners further allege that the uncertainty as to their right to continue to offer a financing option for ancillary products and services has meant the Licensees have stopped allowing their borrowers to finance ancillary products and services. The Petitioners assert that this has caused harm to the Licensees as a disruption of their longstanding business model and a limitation on their ability to fully serve their customers.[5] Accordingly, the Petitioners ask the Commission, pursuant to Rules 100 B and 100 C, to: (a) grant declaratory judgment that the Licensees are authorized to finance the costs of ancillary products and services offered in connection with the loans they make; and, (b) grant any further or other relief deemed appropriate.[6]

Pursuant to the Commission's August 9, 2022 scheduling order, the Bureau filed a Motion to Dismiss and a response to the Petition. The Petitioners filed their reply in support of the Petition and a response to the Motion to Dismiss on September 15, 2022. The Bureau submitted its reply in support of its Motion to Dismiss, as authorized by Rules 110 and 140 of the Commission's Rules of Practice, on September 29, 2022.

On October 14, 2022, the Commission issued an order directing the filing of additional briefs. The Bureau filed its supplemental brief on October 28, 2022. Petitioners filed their supplemental brief on November 18, 2022.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows:[7]

First, the Commission finds that the plain language of Code § 6.2-1518 authorizes consumer finance companies to conduct other businesses, so long as certain statutory requirements therein are met.8 Because Code § 6.2-1518 does not categorically prohibit therefrom a licensee's business of financing the costs of ancillary products and services offered in connection with the consumer finance loans they make, the Commission finds that Rule 10 VAC 5-60-45 F (1) – which prohibits all such other business in the first instance – shall be stricken from the Commission's Consumer Finance Rules.

Second, consistent with the above, the Commission further finds that the plain language of Code § 6.2-1518 requires the Licensees to follow the express requirements therein prior to conducting such other business.9 Moreover, the statute contemplates the Commission addressing any limitation or prohibition on a licensee's other business on a case-by-case basis.10 Thus, any analysis resulting in limitation or prohibition by the Commission of such other business, Accordingly, the Petition is granted in part and denied in part as set forth above, and this matter is dismissed.

A COPY hereof shall be sent by the Clerk of the Commission to the following by electronic mail and CERTIFIED MAIL, RETURN RECEIPT REQUESTED: Counsel for the Petitioners, Joseph E. Spruill, III, Esquire (jspruill@woodsrogers.com) and John K. Byrum, Jr., Esquire (jbyrum@woodsrogers.com), Woods Rogers PLC, Riverfront Plaza, West Tower, 901 East Byrd Street, Suite 1550, Richmond, Virginia 23219; and a copy shall be delivered to the Commission's Office of General Counsel.

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[1]The Commission granted this request in its October 14, 2022 Order. See October 14, 2022 Order at 3, ftn. 7.
[2]See Petition at 1.
[3]See id. at 2.
[4]See id. at 8, 15.
[5]See id. at 26.
[6]See id. at 9.
[7]In making the specific findings herein, the Commission need not reach the question of VFSA's standing.
[8]For example, Petitioners recognize that "Code § 6.2-1518 A authorizes [consumer finance companies] to conduct other business – such as the financing of other products and services sold in connection with consumer finance loans – so long as the [consumer finance company] provides the Commission 30 days' advanced written notice and pays a $300 fee." Petitioners' Nov. 18, 2022 Response to the Brief of the Bureau of Financial Institutions and the Commissioner of Financial Institutions at 6.
[9]See, e.g., Code §§ 6.2-1518 A and B.
[10]See, e.g., Code § 6.2-1518 D.

10VAC5-60-45. Conducting other business.

A. This section governs the conduct of any business other than consumer finance lending where a licensed consumer finance lending business is conducted. As used in this section, the term "other business operator" refers to a licensed consumer finance company or third party, including an affiliate or subsidiary of the licensed consumer finance company, that conducts or wants to conduct other business from one or more consumer finance offices.

1. This section shall not apply to any other business that is transacted solely with persons residing outside of the Commonwealth.

2. If a licensee accepts loan applications, sends or receives loan-related information or documents, disburses loan funds, or accepts loan payments on or through the licensee's website or mobile application, and any other products or services are or will be offered or sold to Virginia residents on or through such website or mobile application, then the offer or sale of such other products or services shall constitute the conduct of other business and shall be subject to all of the provisions of this section to the same extent as if such other business was conducted by an other business operator from the licensee's consumer finance offices.

B. Notwithstanding any provision of this section or authority obtained under § 6.2-1518 of the Code of Virginia or a predecessor statute prior to January 1, 2021, a licensee shall not make consumer finance loans at the same location at which the licensee, or any affiliate or subsidiary of the licensee, conducts business under Chapter 18 (§ 6.2-1800 et seq.) or Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia. However, if prior to January 1, 2021, a licensee obtained authority under § 6.2-1518 or a predecessor statute for the licensee or its affiliate or subsidiary to make payday loans or motor vehicle title loans from the licensee's consumer finance offices, then the licensee or its affiliate or subsidiary may continue collecting payments on any outstanding payday loans or motor vehicle title loans (i) in accordance with the preexisting terms of the loan contracts provided that such terms were permitted by law when the loans were made, and (ii) subject to the general conditions set forth in subsection F of this section.

C. The sale of insurance or enrolling of borrowers under a group insurance policy by a licensee shall not constitute other business for purposes of § 6.2-1518 of the Code of Virginia or this section when such insurance covers potential risks or losses associated with consumer finance loans made by the licensee. This subsection shall be applicable only to (i) credit life insurance, credit accident and sickness insurance, credit involuntary unemployment insurance, non-filing insurance, and property insurance; and (ii) other types of insurance that the commissioner determines meet the condition prescribed in this subsection.

D. If prior to January 1, 2021, a licensee obtained authority under § 6.2-1518 of the Code of Virginia or a predecessor statute for an other business operator to conduct other business in its consumer finance offices, then the following rules shall govern:

1. If the other business is identified in subsections G through R of this section, then the other business shall be conducted in accordance with (i) the general conditions set forth in subsection F of this section and (ii) the specific conditions prescribed for such business in subsections G through R of this section. These conditions shall supersede the conditions that were prescribed by regulation or established by the commissioner at the time the authority was obtained. Subject to the conditions referenced in this subsection, the other business may be conducted in any or all of the licensee's consumer finance offices.

2. If the other business is not identified in subsections G through R of this section, then the other business shall be conducted in accordance with (i) the general conditions set forth in subsection F of this section and (ii) the most recent set of conditions that were established by the commissioner. Subject to these conditions, the other business may be conducted in any or all of the licensee's consumer finance offices.

E. Beginning January 1, 2021, if a licensee seeks to conduct the business of making consumer finance loans from one or more of its consumer finance offices in which an other business operator will conduct other business, then the licensee shall give the commissioner written notice at least 30 days prior to the conduct of the other business, pay a fee of $300, and provide the commissioner with any additional information pertaining to the other business that the commissioner may require.

1. If the other business specified in the licensee's written notice is identified in subsections G through R of this section, then the other business shall be conducted in accordance with (i) the general conditions set forth in subsection F of this section and (ii) the specific conditions prescribed for such business in subsections G through R of this section.

2. If the other business specified in the licensee's written notice is not identified in subsections G through R of this section, then the following rules shall govern:

a. The commissioner may, after providing notice to the licensee and offering the licensee an opportunity to request a hearing before the commission, prohibit or establish additional conditions for the conduct of such other business in the licensee's consumer finance offices if the commissioner finds that the other business is or would otherwise be (i) of such a nature or conducted in such a manner as to conceal or facilitate a violation or evasion of the provisions of the Act or this chapter; (ii) contrary to

the public interest; or (iii) conducted in an unlawful manner.

b. Unless the conduct of such other business is prohibited, the other business shall be conducted in accordance with (i) the general conditions set forth in subsection F of this section and (ii) any specific conditions established by the commissioner pursuant to this subdivision.

3. Subject to the other provisions in this subsection and except as otherwise provided in subdivision E 2 of this section, the other business may be conducted in any or all of the licensee's consumer finance offices beginning on the earlier of (i) 30 days after the licensee furnishes the commissioner with the written notice, payment, and any additional information required by the commissioner, or (ii) the date the commissioner notifies the licensee that the other business may be conducted in the licensee's offices.

F. All other businesses conducted from a licensee's consumer finance offices shall be conducted in accordance with the following conditions:

1. ~~The licensee shall not make a consumer finance loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator from the licensee's consumer finance offices.~~

~~2.~~ The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing or registration requirements.

~~3.~~ 2. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business or (ii) the extent to which it is subject to supervision or regulation.

~~4.~~ 3. The licensee shall not make a consumer finance loan or vary the terms of a consumer finance loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a consumer finance loan from the licensee.

~~5.~~ 4. The other business operator shall maintain books and records for its other business separate and apart from the licensee's consumer finance lending business and in a different location within the licensee's consumer finance offices. The bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.

G. The following additional conditions shall be applicable to conducting open-end credit business from a licensee's consumer finance offices, which, for purposes of this section, includes a line of credit business, a revolving loan business, and the servicing of open-end loans, lines of credit, and revolving loans:

1. The open-end credit business shall be conducted by a separate legal entity and not by the licensee.

2. The licensee shall not make a consumer finance loan to a person if (i) the person has an outstanding open-end loan from the other business operator or (ii) on the same day the person repaid or satisfied in full an open-end loan from the other business operator.

3. The other business operator shall not make an open-end loan to a person if (i) the person has an outstanding consumer finance loan from the licensee or (ii) on the same day the person repaid or satisfied in full a consumer finance loan from the licensee.

4. The licensee and other business operator shall not make a consumer finance loan and an open-end loan contemporaneously or in response to a single request for a loan or credit.

5. The licensee and other business operator shall provide each applicant for a consumer finance loan or open-end loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's consumer finance offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

H. The following additional conditions shall be applicable to conducting business under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia from a licensee's consumer finance offices:

1. Pursuant to § 6.2-1507 A 4 of the Code of Virginia, the other business shall be conducted by a person other than the licensee or an affiliate or subsidiary of the licensee.

2. The licensee shall not make a consumer finance loan to a person if (i) the person has an outstanding short-term loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a short-term loan from the other business operator.

3. The other business operator shall not make a short-term loan to a person if (i) the person has an outstanding consumer finance loan from the licensee or (ii) on the same day the

person repaid or satisfied in full a consumer finance loan from the licensee.

4. The licensee and other business operator shall not make a consumer finance loan and a short-term loan contemporaneously or in response to a single request for a loan or credit.

5. The licensee and other business operator shall provide each applicant for a consumer finance loan or short-term loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's consumer finance offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

I. The following additional conditions shall be applicable to conducting business under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia from a licensee's consumer finance offices:

1. Pursuant to § 6.2-1507 A 4 of the Code of Virginia, the other business shall be conducted by a person other than the licensee or an affiliate or subsidiary of the licensee.

2. The licensee shall not make a consumer finance loan to a person if (i) the person has an outstanding motor vehicle title loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the other business operator.

3. The other business operator shall not make a motor vehicle title loan to a person if (i) the person has an outstanding consumer finance loan from the licensee or (ii) on the same day the person repaid or satisfied in full a consumer finance loan from the licensee.

4. The licensee and other business operator shall not make a consumer finance loan and a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.

5. The licensee and other business operator shall provide each applicant for a consumer finance loan or motor vehicle title loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's consumer finance offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

J. The following additional condition shall be applicable to conducting a mortgage lender or mortgage broker business from a licensee's consumer finance offices: the licensee and other business operator shall not make a consumer finance loan and make or broker a mortgage loan contemporaneously or in response to a single request for a loan or credit.

K. The following additional conditions shall be applicable to conducting an auto club membership business from a licensee's consumer finance offices:

1. A membership shall not be sold to any person who does not own or lease an automobile, motorcycle, mobile home, truck, van, or other vehicle operated on public highways and streets.

2. A renewal membership shall not be offered or sold more than one month prior to the expiration of a current membership term.

3. A membership shall not be offered or sold for more than a three-year term.

L. The following additional conditions shall be applicable to conducting business as an authorized delegate or agent of a money order seller or money transmitter from a licensee's consumer finance offices:

1. The other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

2. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order seller or money transmitter with whom it has a written agreement.

M. The following additional conditions shall be applicable to conducting the business of (i) tax preparation or electronic tax filing services, or (ii) facilitating third party tax preparation or electronic tax filing services, from a licensee's consumer finance offices:

1. The other business operator shall not engage in the business of (i) accepting funds for transmission to the Internal Revenue Service or other government instrumentalities, or (ii) receiving tax refunds for delivery to individuals, unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

2. The licensee shall not make a consumer finance loan that is secured by an interest in a borrower's tax refund.

N. The following additional conditions shall be applicable to conducting the business of facilitating or arranging tax refund anticipation loans or tax refund payments from a licensee's consumer finance offices:

1. The other business operator shall not engage in the business of receiving tax refunds or tax refund payments for delivery to individuals unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

2. The other business operator shall not facilitate or arrange a tax refund anticipation loan or tax refund payment to enable a person to pay any amount owed to the licensee as a result of a consumer finance loan transaction.

3. The other business operator and the licensee shall not facilitate or arrange a tax refund anticipation loan or tax refund payment and make a consumer finance loan contemporaneously or in response to a single request for a loan or credit.

4. The licensee shall not make a consumer finance loan that is secured by an interest in a borrower's tax refund.

5. The licensee and other business operator shall provide each applicant for a consumer finance loan or tax refund anticipation loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's consumer finance offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

O. The following additional conditions shall be applicable to conducting business as a check casher from a licensee's consumer finance offices:

1. Pursuant to § 6.2-2107 of the Code of Virginia, the check casher business shall be conducted by a person other than the licensee unless the licensee would not be required to be registered under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia.

2. The other business operator shall not charge a fee to cash a check issued by the licensee or any other person operating in the licensee's consumer finance offices.

P. The following additional condition shall be applicable to conducting the business of operating an automated teller machine from a licensee's consumer finance offices: the other business operator shall not charge a fee or receive other compensation in connection with the use of its automated teller machine by a person when the person is withdrawing funds in order to make a payment on a loan that was made by the licensee or any other lender conducting business from the licensee's consumer finance offices.

Q. The following additional condition shall be applicable to conducting the business of selling noncredit-related life insurance from a licensee's consumer finance offices: the licensee and other business operator shall comply with 10VAC5-70, Sale of Noncredit-Related Life Insurance in Consumer Finance Offices.

R. The conduct of the following businesses from a licensee's consumer finance offices shall have no conditions other than the conditions prescribed in subsection F of this section:

1. Mortgage servicing business.

2. Sales finance business.

S. Notwithstanding any other provision of this section, the commissioner may, after providing notice to affected licensees and offering them an opportunity to request a hearing before the commission, establish additional conditions for the conduct of any other business in consumer finance offices if the commissioner finds that the other business is or would otherwise be (i) of such a nature or conducted in such a manner as to conceal or facilitate a violation or evasion of the provisions of the Act or this chapter; (ii) contrary to the public interest; or (iii) conducted in an unlawful manner.

T. Failure by a licensee or other business operator to comply with any provision of this section or any condition established by the commissioner, or failure by a licensee to comply with the Act or this chapter, may result in revocation of the authority to conduct other business or any form of enforcement action specified in 10VAC5-60-65.

VA.R. Doc. No. R23-7466; Filed January 27, 2023, 12:35 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Title of Regulation: **24VAC30-325. Urban Maintenance and Construction Policy (amending 24VAC30-325-10).**

Statutory Authority: §§ 33.2-210 and 33.2-319 of the Code of Virginia.

Effective Date: March 17, 2023.

Agency Contact: JoAnne P. Maxwell, Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Summary:

Pursuant to Chapter 684 of the 2015 Acts of Assembly, the amendments remove references to the urban construction allocation to localities, which is no longer used to establish distribution of road construction funds to qualifying cities and towns.

24VAC30-325-10. Eligibility criteria and conditions governing receipt and use of urban maintenance ~~and construction~~ funds.

A. In addition to the eligibility requirements identified in § 33.2-319 of the Code of Virginia, the road and street eligibility criteria for urban maintenance payments shall also include the following:

1. The basic right-of-way width for cul-de-sacs eligible for payment will be 40 feet, with consideration of requests for pavement widths less than 30 feet. For the purpose of making this assessment, a cul-de-sac will be defined as a dead-end street, open only at one end.

2. If a municipality has jurisdiction over and operates a toll facility, such facility is eligible for street payments.

3. Local one-way streets, loop roads, and school bus entrances will be eligible for payment provided that they are constructed to a width of 16 feet with a right-of-way width of not less than 40 feet. This includes service and frontage roads where contiguous to an interstate, primary, or urban system route.

4. VDOT can consider a waiver of standards on a site-specific basis with appropriate supporting information. Each case will be considered on its own merits.

B. In determining lane mileage eligibility, the following conditions will apply:

1. Turning lanes and ramps will not be considered for street payments. This includes center turn lanes unless they serve as moving through lanes during peak hours.

2. Parking must be restricted and enforced by towing during peak traffic periods.

3. Each road or street with more than two moving lanes must have pavement markings in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition, including Revision 1 dated November 2004, published by the U.S. Department of Transportation, Federal Highway Administration.

4. Pavement widths of less than 14 feet qualify for only one moving lane even if it carries traffic in two directions.

5. Nonhard surfaced streets do not qualify for street payments.

C. Mileage adjustments, including the results of annexations, mergers, or incorporations, will be made on an annual basis as part of the board's approval of the annual maintenance payments. All adjustments submitted to the department by February 1 will be eligible for payment effective July 1 of the following fiscal year.

D. For the purpose of calculating maintenance payments, streets will be functionally classified based on the Federal Functional Classification system, except where the federal system is not parallel with the state system.

E. Bridge safety and regular inspection is of utmost importance. The Federal Highway Administration and the department require strict compliance with the National Bridge Inspection Standards (23 CFR Part 650) regarding the frequency of inspection and load posting requirements. The Commissioner of Highways may elect to withhold street payments from a municipality for delinquent or inadequate bridge inspection reports.

F. ~~Municipalities, by resolution of their governing body and agreement with the department, may elect to utilize up to one-third of their urban construction allocation for reimbursement of debt incurred for eligible project costs on approved projects. The payback is limited to a maximum 20-year timeframe.~~

~~G. Landscaping is important to enhance the safety and visual quality of roads and to maintain quality of life for communities. It is the intent of the board that a maximum of 3.0% of the construction budget for individual urban construction projects may be allocated for landscape improvements. Pavers and stamped asphalt for crosswalks are considered a pedestrian safety and traffic calming measure for project participation and are not subject to this limitation. Elements of streetscape can also be constructed at project expense if the project is an identified gateway project or located within a historic or cultural district.~~

~~H.~~ The Commissioner of Highways is directed to establish administrative procedures to assure the provisions of this chapter and legislative directives are adhered to and complied with.

VA.R. Doc. No. R23-7435; Filed January 25, 2023, 11:23 a.m.

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Proposed Regulation

Title of Regulation: **24VAC35-80. Alcohol Safety Action Program Regulation (adding 24VAC35-80-10 through 24VAC35-80-140).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 14, 2023.

Agency Contact: Christopher Morris, Special Programs Coordinator, Commission on the Virginia Alcohol Safety Action Program, 1111 East Main Street, Suite 801, Richmond, VA 23219, telephone (804) 786-5895, FAX (804) 786-6286, or email chris.morris@vasap.virginia.gov.

Basis: The Commission on the Virginia Alcohol Safety Action Program (VASAP) is empowered by § 18.2-271.2 of the Code of Virginia to establish and ensure the maintenance of minimum standards and criteria for program operations and

performance, accounting, auditing, public information, and administrative procedures for the various local alcohol safety action programs and shall be responsible for overseeing the administration of the statewide VASAP system.

Purpose: The statewide VASAP system is crucial to highway safety throughout the Commonwealth of Virginia. It is imperative that local alcohol safety action programs operate efficiently and are managed appropriately to ensure financial solvency and adequate services for citizens of the Commonwealth.

Substance: Following are the substantive provisions of the new chapter, Alcohol Safety Action Program Regulation (24VAC35-80):

24VAC35-80-10 provides definitions of terms.

24VAC35-80-30 grants the commission the right to suspend service-related requirements of the regulation in geographical areas where there exists a federal or state disaster or declaration of emergency.

24VAC35-80-40 requires minimum alcohol safety action program (ASAP) staffing requirements and hours of operation for public access.

24VAC35-80-50 establishes a process for the creation and overall make-up of ASAP policy boards and meeting requirements.

24VAC35-80-60 grants the commission the right to collect unexpected ASAP revenues in the commission's duties to establish and ensure the maintenance of minimum standards and criteria for program operations.

24VAC35-80-70 cites ASAP audit and financial record requirements, specifically the requirements for submitting required financial documents to the commission in a timely fashion.

24VAC35-80-80 provides requirements pertaining to the ASAP budgetary process and procedures to be followed for requests for allocation of commission funds.

24VAC35-80-90 sets forth the certification process for all ASAPs and the option of the executive director to establish a regional leadership team to assist ASAPs in achieving and maintaining commission certification standards.

24VAC35-80-100 lists the reasons and processes related to suspension or revocation of certification of an ASAP. This section covers reasons for suspension and the process when a revocation of an ASAP certification occurs.

24VAC35-80-110 addresses ASAP personnel requirements, including mandated training attendance.

24VAC35-80-120 lists the requirements for handling ASAP offender records in a confidential manner and document retention.

24VAC35-80-130 lists requirements for ASAP employee personnel policies, conflicts of interest in supervision, and employee evaluations.

24VAC35-80-140 establishes ASAP employee certification requirements to perform any ASAP services, including the process for obtaining certification and reasons for denial, suspension, or revocation of the individual certification.

Issues: The advantages for the public and the agency or Commonwealth of the proposed Alcohol Safety Action Program Regulation is that the regulation establishes standards for hours of operation, program and employee certification, staffing levels, auditing and financial reporting, and case management processes and procedures. In addition, the regulation provides the commission with the right to collect ASAP unexpended revenues to ensure financial solvency of the ASAPs and the maintenance of minimum standards and criteria for program operations and performance, accounting, auditing, public information, and administrative procedures for the various local alcohol safety action programs. The regulation standardizes processes and ensures financial solvency throughout the state so that citizens receive equitable, high-quality services no matter where they reside and improves transportation safety in the Commonwealth of Virginia.

There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented represents DPB's best estimate of these economic impacts.

Summary of the Proposed Amendments to Regulation. The Commission on Virginia Alcohol Safety Action Program (VASAP) proposes to create a new regulation, 24VAC35-80, Alcohol Safety Action Program, that would govern the statewide Virginia Alcohol Safety Action Program.

Background. The Alcohol Safety Action Program (ASAP) is a criminal justice program that uses community and state services to address the problem of driving under the influence of alcohol and other drugs. The ASAP system is composed of 24 local programs that provide services throughout the Commonwealth.[2] Local ASAPs receive referrals from local courts or the Commission and deliver intervention services within locally-administered programs to specific municipal jurisdictions within Virginia pursuant to §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia. Local ASAPs are certified by the Commission on the VASAP every three years; they were last certified in 2021 and would thus need to be certified again in 2024. The proposed regulation would contain requirements for local ASAPs to maintain their certification. The new chapter would include definitions, authorization for the Commission to suspend certain requirements if a federal or state disaster or emergency is declared, requirements for ASAP staffing and accessibility to the public, various requirements regarding ASAP budgets, unexpended revenues, financial reporting and audits, case management process and

procedures, privacy and security procedures, and personnel policies and employee certification. The chapter would include the requirement that ASAPs be certified every three years, authorize the Commission to certify, de-certify, regionalize, re-organize, or merge local ASAPs, and covers what would happen if an ASAP was found to be out of compliance and what actions would lead to a suspension or revocation of certification. The chapter also includes requirements for staff certification, including the actions that could lead to the suspension or revocation of certification. Most of the requirements in the proposed chapter have been in place through the Certification Manual or reflect current practice for ASAP operations.[3] However, the proposed chapter includes a number of new requirements. The Commission on VASAP reports that the requirements in this chapter would, "set forth a standardization of processes and ensures financial solvency throughout the state ensuring that citizens receive equitable, high-quality services no matter where they reside and improves transportation safety in the Commonwealth of Virginia."[4] New requirements for local ASAPs are as follows:

24VAC35-80-40 (ASAP administrative structure and accessibility) requires local ASAPs to maintain a staff size and hours of operation as determined by the Commission.

24VAC35-80-50 (ASAP policy boards) would require that each ASAP's policy board include a defense attorney member who practices DUI [driving while under the influence] law.

24VAC35-80-60 (ASAP revenues) would authorize the Commission to collect unexpended revenues from individual ASAPs.[5]

24VAC35-80-70 (ASAP audits and financial records) would add late fees of $25 per day for the first five days and $100 per day after the fifth day for monthly financial reports due on the 15th day of the following month, and establish August 1 of each calendar year as the deadline for submitting annual income statements.[6]

24VAC35-80-80 (ASAP budgets and requests for allocation of Commission funds) would add an allowance for some local programs (provided they meet their target collection rate, do not own their own building, and do not have the means to sustain six months' operating expenses) to submit a request for Commission funds as part of the budget approval process.

24VAC35-80-90 (ASAP certification) would allow the Commission's Executive Director, at their discretion, to establish a Regional Leadership Team to assist an ASAP in maintaining certification standards.

24VAC35-80-100 (Suspension or revocation of certification) would provide reasons for suspension and the process when a suspension, or revocation, of an ASAP certification occurs.[7]

24VAC35-80-130 (ASAP personnel policies) would require ASAP directors to perform an annual in-person employee evaluation on an official Commission-issued evaluation form.

24VAC35-80-140 (ASAP employee certification, revocation or suspension) contains entirely new requirements for individual employees to obtain a certification letter, and provides reasons for denial, suspension, or revocation of certification. The certification requirements include a local and national criminal history, a complete driver's record, and successful completion of the VASAP Certification Exam.[8] ASAP directors would also be subject to these certification requirements. This section also includes ten hours of Commission-approved annual continuing education for employees to maintain their certification. ASAPs would have to pay a $250 fee to the Commission for employees who need to re-take the certification exam due to failing the first attempt (scoring less than 80%) and a $500 per occurrence fee if an ASAP employee provides services without a valid certification letter.[9]

The Commission on the VASAP has indicated that although the regulation contains a number of new requirements, they expect local ASAPs will be able to fulfil these requirements in time for the next round of certification in 2024.

Estimated Benefits and Costs. The proposed regulation contains a number of new requirements, particularly with respect to employee certification, background checks requirements, and continuing education. In addition, ASAPs would be subject to fines if they fail to meet the monthly financial reporting deadline, and if employees have to retake the certification exam, or provide services without a valid certification.

ASAPs are primarily funded through the fees paid by offenders who are legally required to obtain services; however, some ASAPs also receive substantial financial contributions from their localities. The proposed changes would allow the Commission to regionalize expenditures so that unexpended revenues could be collected and reallocated to ASAPs that meet their target collection rate but do not own their own buildings or carry a balance that would cover six months' operating expenses. These changes would directly benefit less well-funded ASAPs while passing on the costs to more well-funded ASAPs. In aggregate, this flexibility would benefit the overall state-wide VASAP system by allowing local ASAPs to remain financially solvent and continue to provide services in their region.[10] The Commission on the VASAP reports that there were 42,657 referrals for services into the state-wide VASAP system in 2021, and 39,909 referrals in 2022.[11] Individuals referred to the statewide VASAP system are legally mandated to obtain these services, which are exclusively provided at local ASAPs. Depending on their location, these individuals may only have one ASAP that they can reasonably access, especially if they are legally prevented from driving. The proposed changes would directly benefit the individuals referred to ASAP services, as well as their families and communities, to the extent that they are effective in increasing accountability and program compliance throughout the Commonwealth, thereby standardizing and improving service quality. Further, to the extent that these programs effectively reduce recidivism among drivers under the influence of alcohol and drugs, other motorists would be

protected, and highway safety would be improved by higher quality and more effective ASAP service provision.

Businesses and Other Entities Affected. The proposed changes would primarily affect the Commission on the VASAP and the 24 local ASAPs that would be required to meet these requirements for certification in 2024. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[12] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the new requirements would require additional staff time, at least initially as they are implemented, and require ASAPs to contract with and pay for background checks for employees.[13] Thus, an adverse impact is indicated.

Small Businesses[14] Affected.[15] The proposed regulation would not affect small businesses.

Localities[16] Affected.[17] The proposed amendments would not create new costs for local governments. Localities that are currently served by ASAPs that may be financially precarious or that receive a high volume of customer complaints would indirectly benefit to the extent that the proposed regulation improves accountability and oversight.

Projected Impact on Employment. The Commission reports that the staffing standards, financial reporting, and other programmatic changes would not require additional hiring. Thus, the proposed amendment does not appear to affect total employment.

Effects on the Use and Value of Private Property. The proposed amendment would not affect the value of any private property or real estate development costs.

[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]See https://vasap.virginia.gov/.

[3]Note that 24VAC35-40 Certification Requirements Manual was repealed effective August 1, 2022. This manual has been updated and published as a guidance document, effective January 3, 2023; see https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=7385.

[4]See Agency Background Document (ABD), page 4. https://townhall.virginia.gov/L/GetFile.cfm?File=130\6094\9868\AgencyStatement_VASAP_9868_v3.pdf.

[5]This is intended to address discrepancies among ASAPs throughout the state. See ABD, page 9.

[6]While monthly financial and annual income statement reporting is already required, these changes are intended to increase compliance and timeliness of reporting. The Commission state office is also working with some local ASAP directors to create a new web-based financial platform that is intended to simplify report submission. See ABD, page 10.

[7]While the authority to suspend certification is not new, clarifying these details in the regulation is intended to increase accountability of local programs, improve the quality of customer service, improve highway safety, and protect the integrity of the state-wide VASAP program. See ABD, page 11.

[8]These requirements are modeled on current state-wide VASAP requirements for vendors contracted to provide ignition interlock and remote alcohol monitoring services. New employees would have 90 days to obtain certification.

[9]The Commission on the VASAP covers the training and credentialing costs; only the cost of conducting background checks would be passed on the ASAPs and is expected to be minimal.

[10]The Commission has clarified that if1to any other ASAPs.

[11]The 2022 figure is current as of December 29, 2022. See ABD, page 6.

[12]Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[13]The only direct cost to ASAPs would be for employees' background checks; these costs are expected to be minimal.

[14]Pursuant to § 2.2-4007.04, 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."

[15]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[16]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[17]Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Commission on the Virginia Alcohol Safety Action Program concurs with the content of the Department of Planning and Budget's economic impact analysis.

Summary:

The proposed action adds the new chapter, Alcohol Safety Action Program Regulation (24VAC35-80), which includes (i) definitions; (ii) authorization for the Commission on the Virginia Alcohol Safety Action Program (VASAP) to suspend certain requirements if a federal or state disaster or emergency is declared; (iii) requirements for Alcohol Safety Action Program (ASAP) staffing and accessibility to the public; (iv) various requirements regarding ASAP budgets, unexpended revenues, financial reporting and audits, case

management process and procedures, privacy and security procedures, personnel policies, and employee certification; (v) a requirement that ASAPs be certified every three years; (vi) authorization for the Commission on the VASAP to certify, decertify, regionalize, reorganize, and merge local ASAPs; (vii) procedures if an ASAP is found to be out of compliance and actions that would lead to a suspension or revocation of certification; and (iv) requirements for staff certification, including the actions that could lead to the suspension or revocation of certification.

Chapter 80
Alcohol Safety Action Program Regulation

24VAC35-80-10. Definitions.

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

"ASAP" means an alcohol safety action program established by the commission or any county, city, town, or any combination thereof, as provided in § 18.2-271.1 of the Code of Virginia, for the purposes of providing probation, education, and rehabilitation services for individuals referred to the program by the court, the DMV, or any other commission-approved referral source.

"ASAP Code of Conduct" means a standard of ethics for all ASAP employees.

"ASAP director" means the person who provides supervisory, managerial, or oversight of an alcohol safety action program.

"Budget" means a written financial plan for expenditures of a program for a given period of time that is subject to approval by the commission.

"Case Management Operational Guidelines" means a manual, created by the commission, establishing case management policy and procedure guidelines.

"Certification" means the process of certifying ASAPs as set forth in the Commission on VASAP Certification Manual or the process for certifying ASAP employees to provide ASAP services in the Commonwealth of Virginia and to ASAP offenders residing out of state.

"Commission" means the Commission on Virginia Alcohol Safety Action Program or its designee.

"Commission on VASAP Certification Manual" means The Commission on the VASAP Certification Manual, version January 3, 2023, a manual required by § 18.2-271.2 of the Code of Virginia to be created by the commission, which evaluates an ASAP for its organization management, fiscal standing, and overall operation.

"DMV" means the Virginia Department of Motor Vehicles.

"Executive director" means the executive director of the commission.

"Executive finance committee" means the advisory subcommittee of the commission composed of the executive director of the commission, two commission members, and such other persons as the commission may designate.

"Policy board" means an ASAP policy board that is advisory in nature, chosen and operated in accordance with procedures promulgated by the commission.

"Regional leadership team" means a regional team, established by the executive director, charged with assisting ASAPs in achieving and maintaining commission certification requirements.

"Revenues" means any fee due to or collected by an ASAP for services provided by the ASAP.

"Target collection rate" means a rate of collection by an ASAP of offender fees in any given time period equal to or greater than 90% of offender fees owed to the program for services provided during the same given time period. The given time period shall be established by the commission.

"VASAP" means the Virginia Alcohol Safety Action Program.

"VASAP Certification Exam" is a commission-created certification exam that is administered by the commission to ASAP employees and is part of the application process for individuals seeking a VASAP Certification Letter to perform ASAP services in the Commonwealth of Virginia and for ASAP offenders residing out of state. Successful completion of the exam requires a score of 80% or higher.

"VASAP Certification Letter" means a certification letter issued by the commission to any eligible ASAP employee authorizing the employee to perform ASAP-related duties in the Commonwealth of Virginia. ASAP-related duties include management of cases, administrative functions, courtroom testimony, supervision of employees, program management, or any other duty determined by the commission. The letter shall be issued in a format and method determined by the commission.

24VAC35-80-20. [Reserved].

24VAC35-80-30. Emergency declarations.

The commission reserves the right to suspend service-related requirements of this chapter in applicable geographical areas when there exists a federal or state disaster or declaration of emergency.

24VAC35-80-40. Alcohol safety action program administrative structure and accessibility.

A. Alcohol safety action programs shall consist of, at a minimum, an ASAP director, staff deemed necessary by the

commission, and the local policy board to efficiently accomplish all duties of the program.

B. ASAPs shall be accessible to the public for all ASAP-related services during days and times established by the commission. The commission shall determine the method of accessibility.

C. ASAPs that incur a pattern of verified sub-standard customer service complaints resulting in the use of commission resources, including rental vehicle expenses, fuel, labor hours, and office supplies, may be billed by the commission for any of the aforementioned accrued expenses in their entirety. ASAPs that are billed by the commission for reimbursement under this section shall remit a payment to the commission within 30 days of the date of the invoice sent by the commission to the ASAP unless otherwise approved by the executive director.

24VAC35-80-50. Alcohol safety action program policy boards.

A. Each ASAP shall operate under the direction of a local independent policy board, advisory in nature, chosen in accordance with procedures approved and promulgated by the commission.

B. The policy board shall consist of five to 15 members. The governing bodies of each participating jurisdiction shall appoint one member for a term of three years. The remaining members shall be elected for a term of three years by majority vote of those members selected by each represented locality unless these appointments are the first appointments to the policy board.

C. Upon initial appointment of a policy board, one-third of the members shall be appointed for one year, one-third of the members shall be appointed for two years, and one-third of the members shall be appointed for three years. ASAP employees shall not serve as a member of the board outside of an ex officio capacity.

D. The policy board members not appointed by the governing bodies of represented jurisdictions, at the discretion of the board, shall be selected from the Bar Association, law enforcement, and education and treatment professionals, at a minimum.

E. The designated terms of office for each member may be modified if approved by the commission.

F. Policy board vacancies shall be filled by a majority vote of the remaining board members from the nomination of other board members and the participating governing bodies of the jurisdiction.

G. Policy board members shall be selected by the commission in situations where the locality cannot agree on board member selections.

H. The officers of the policy board shall consist of a chairperson and such subordinate officers as the board may elect or appoint. Each policy board (i) shall include at least one Commonwealth attorney member, a defense attorney member who practices DUI law, a law-enforcement member, and a behavioral health member and (ii) may appoint a local sitting or retired District Court judge who regularly hears or heard cases involving driving under the influence and is familiar with local alcohol safety action programs. Members shall serve without compensation. The offices of the chairperson, and vice-chairperson if one is elected, shall be held by members from different participating jurisdictions. The policy board chair is subject to final confirmation approval by the executive director. Individuals serving in a policy board chair capacity prior to (insert the effective date of this regulation) shall apply to the executive director for approval to remain in their current position within 30 days of (insert the effective date of this regulation).

I. Excluding the original officers, who shall be elected at the second meeting after the formation of the board, each officer shall be elected at the annual meeting of the board to serve a term of three years. Terms of office shall not be modified without commission approval. Vacancies occurring in any office shall be filled by the board for the unexpired term.

J. Election of officers requires that a majority of policy board members be present and voting in order to be valid. Members who are unable to attend may vote in any election by letter directed to the chairman and delivered prior to, or at, the meeting. At the regular meeting of the policy board immediately preceding the annual meeting, the chairman shall appoint a nominating committee, which shall present to the board at its annual meeting a slate of nominees for election as officers and a slate of nominees to fill any board vacancies. All board members and officers shall take office on the first day of the month following their election and shall serve until their successors take office. No officer shall serve more than two consecutive terms in office.

K. The annual meeting of the board is that meeting so designated in the bylaws for the purpose of electing officers and filling expired member terms and shall be open to the public.

L. Regular meeting of the board shall be held quarterly. Special meetings may be called at the policy board's pleasure. The policy board is required to provide notice to the public of all meetings as required by state and federal Freedom of Information Act laws.

M. The policy board or its executive committee may go into executive session when legally appropriate.

N. Policy board meetings shall adhere to state and federal Freedom of Information Act laws.

O. The policy board may change the date and time of any regular meeting at any prior meeting and may adjourn any

meeting to another place if notice of the change is provided in adherence to state and federal Freedom of Information Act laws.

P. Two-thirds attendance of the policy board membership shall constitute a quorum for any policy board meeting.

Q. The commission may merge or regionalize a policy board in instances where the commission is merging or regionalizing the ASAP in which the policy board provides oversight.

24VAC35-80-60. Alcohol safety action program revenues.

The commission shall be empowered to collect unexpended revenue from local ASAPs in the commission's duties to establish and ensure the maintenance of minimum standards and criteria for program operations and performance, accounting, auditing, public information, and administrative procedures for the various alcohol safety action programs and oversight of the administration of the local statewide VASAP system. In instances where the commission intends to collect unexpended revenue from a local ASAP, the commission shall provide the local ASAP a 30-day notice of the amount of unexpended revenue to be collected and the date of collection by the commission. Once notice of the collection amount and date is given to the local ASAP by the commission, the local ASAP shall release the total amount of the unexpended revenue cited by the commission to the commission within 15 calendar days of the collection date provided by the commission. The payment method shall be established by the commission.

24VAC35-80-70. Alcohol safety action program audits and financial records.

A. Financial records shall be subject to local, state, and federal audits and shall be maintained in an orderly fashion using generally accepted accounting principles and shall be retained per the Library of Virginia retention schedule.

B. An annual income statement shall be submitted to the commission by August 1 of each calendar year.

C. Monthly financial reports shall be submitted to the commission by the 15th calendar day of the following month. ASAPs that fail to send in their monthly financial report by the 15th calendar day of the following month shall pay the following daily late fees to the commission, unless otherwise approved by the commission:

1. $25 daily late fee for the first five calendar days in which the monthly financial report is not received by the commission; and

2. $100 daily late fee for any calendar days after the first five days in which the monthly financial report is not received by the commission.

ASAPs that are more than 15 calendar days late in submitting the prior month's financial report may be decertified by the commission.

D. All ASAP financial reports, to include monthly financial reports, budgets, or any other financial report required by the commission, shall be submitted to the commission via a method established by the commission.

24VAC35-80-80. Alcohol safety action program budgets and requests for allocation of commission funds.

A. ASAPs are required to submit annual budgets to the commission via a method approved by the commission by May 1 of each calendar year for approval by the commission. Submitted budgets shall include all information required by the commission along with the prior year's collection rate. Budgets submitted by local programs with collection rates below the target collection rate are subject to a reduction in the approved budget amount by a percentage equal to the target collection rate minus the actual collection rate.

B. The commission may reduce the approved budget amount for any ASAP budget by the total salary amount of any employee included in the budget who does not possess a valid VASAP Certification Letter or for any delinquent ASAP administrative fees owed to the commission.

C. ASAPs may use a local political subdivision as a fiscal agent if approved by the commission. Any desired change in fiscal agent by an ASAP shall be submitted to the executive director for approval at least 60 days prior to the desired date of change.

D. In instances where an unforeseen circumstance occurs, which requires a budget amendment, the ASAP may submit the budget amendment to the commission clearly identifying the circumstances and the dollar amount of the budget amendment change requested. The commission shall respond to the ASAP on the approval status of the budget amendment within 30 calendar days.

E. In instances where an ASAP is requesting an allocation of commission funds, the ASAP is required to submit a commission-approved application detailing the reason for the allocation of commission funds request along with other commission-requested financial information. ASAPs that own buildings that possess a collection rate below the target collection rate or possess the financial means to fund operations more than six months into the future, factoring in a zero-revenue sum over the same period of time, are ineligible to apply for an allocation of commission funds from the commission. ASAP requests to the commission for an allocation of commission funds are subject to commission approval. ASAPs that receive substantial financial contributions from their localities and have received these contributions for a substantial period of time prior to their request for an allocation of commission funds, may be eligible for an allocation of commission funds if approved by the commission. Substantial financial contributions and substantial period of time shall be determined by the commission.

24VAC35-80-90. Alcohol Safety Action Program certification.

A. The commission shall be empowered to certify, decertify, regionalize, reorganize, or merge local ASAPs, including their finances and personnel, to establish and ensure the maintenance of minimum standards and criteria for program operations and performance, accounting, auditing, public information, and administrative procedures for the various local ASAPs and shall be responsible for overseeing the administration of the statewide VASAP system.

B. ASAPs shall adhere to the certification process and procedures for certifying ASAPs as established in the Commission on VASAP Certification Manual and maintain the required certification standards of the commission at all times.

C. ASAPs shall be certified, at a minimum, at least every three years.

D. If an ASAP is found out of compliance during certification, the ASAP shall complete an action plan within 10 days of notice of any compliance issue citing the procedures to be implemented to attain compliance. The commission shall conduct a secondary review to validate the corrective action has occurred and make a recommendation for certification if the ASAP has resolved all outstanding noncompliance issues in a satisfactory manner. If noncompliance issues remain, the ASAP's conditional certification may be extended or their full certification may be revoked by the commission.

E. An ASAP may submit a waiver in writing to the commission of certification standards that are impacted directly by staffing issues or emergency declarations. An exemption may be granted from a specific ASAP certification requirement or any part thereof by the executive director.

F. The executive director may at the executive director's discretion establish or conclude a regional leadership team to assist ASAPs in achieving and maintaining commission certification standards. The executive director shall establish the members, duties, process, and procedures of the regional leadership team.

G. ASAPs that fail to meet certification standards set forth in the Commission on VASAP Certification Manual may be conditionally certified by the commission permitting the ASAP to continue to receive referrals from the courts and provide services for DMV administrative cases.

24VAC35-80-100. Suspension or revocation of certification of an Alcohol Safety Action Program.

A. The executive finance committee, for a period not to exceed 90 days, may suspend certification of an ASAP for the following reasons, including:

1. When an ASAP knowingly violates any state or federal law;

2. When an ASAP violates any requirements of the Commission on VASAP certification manual;

3. When an ASAP abuses access to the DMV system or any system created or co-created by the commission and provided to the ASAPs by the commission for use;

4. When an ASAP consistently fails to adhere to the case management operational guidelines;

5. When an ASAP violates law or commits an unethical act that negatively impacts the integrity of the state VASAP system;

6. When there is a pattern of ASAP noncompliance or customer service issues;

7. When the ASAP or an ASAP's policy board impedes, interrupts, disrupts, or negatively impacts an investigation conducted by the commission of the ASAP related to customer service issues, a violation of law, financial discrepancies of any form, unethical acts or any complaint brought forward by a third party;

8. When an ASAP attempts to conceal any source of income or financial assets owned by or in control of in whole or in part by the ASAP;

9. When an ASAP uses a treatment service provider that is not on the state approved treatment provider list without prior approval from the commission;

10. When an ASAP fails to cooperate, in any way, with the regional leadership team; or

11. When an ASAP fails to abide by the recommendations of the regional leadership team.

B. If a suspension of an ASAP occurs by the executive finance committee, the executive director may:

1. Prohibit the suspended ASAP from receiving any court referrals or from providing services for DMV administrative cases during the suspension period.

2. Eliminate ASAP access to the DMV system or any system created or co-created by the commission and provided to the ASAP by the commission for use.

C. In cases where the certification of an ASAP is suspended, the ASAP shall continue to provide services for all referrals received prior to the suspension date unless otherwise desired by the commission. The ASAP will not be permitted to receive referrals from the court or provide services for DMV administrative cases during the period of suspension unless otherwise approved by the commission.

D. In cases where an ASAP decides to dissolve on its own accord, the ASAP shall continue to provide services for all referrals received up until the date the ASAP communicates to the commission its intent to dissolve. The ASAP shall continue

services for these referrals until all referrals are completed in a satisfactory manner as determined by the commission.

E. ASAPs that fail to meet the certification standards set forth in the Commission on VASAP Certification Manual and are not conditionally certified by the commission pursuant to 24VAC35-80-90 G shall have their certification revoked and shall be prohibited from receiving referrals for service from any court or providing services for DMV administrative cases indefinitely unless otherwise approved by the commission. If the certification of an ASAP is revoked, the ASAP shall be responsible for the continued monitoring of referrals received and all duties normally entailed prior to the revocation of certification until all referrals are properly managed and permanently closed, unless otherwise approved by the commission.

24VAC35-80-110. Alcohol Safety Action Program case management processes and procedures.

ASAP employees will find processes and procedures for case management, which are important to successful ASAP certification, via the Case Management Policy and Procedure Guidelines established by the commission. ASAP employees shall attend any commission-provided training via a method approved by the commission.

24VAC35-80-120. Alcohol Safety Action Program privacy and security procedures.

A. ASAPs shall maintain and handle all offender records and all other confidential information as required by federal, state, and local guidelines and laws.

B. ASAPs shall maintain all offender case files via the applicable Library of Virginia retention schedule.

24VAC35-80-130. Alcohol Safety Action Program personnel policies.

A. Each ASAP employee will be provided the ASAP Code of Conduct.

B. ASAP employees, serving in any type of supervisory capacity, shall not supervise any employee, directly or indirectly, who is a spouse, partner, family member, or household member or a party deemed as a conflict of interest by the commission. "Family member" or "household member" includes any person who cohabitates with or is related by blood, marriage, or adoption.

C. ASAP directors shall administer in person evaluations for all employees unless otherwise approved by the commission. Employee evaluations shall be:

1. Completed by the ASAP director or an ASAP-designated supervisor on an official commission evaluation form;

2. Completed for each ASAP employee on no less than an annual basis;

3. Signed and dated by both the ASAP director or a supervisor-designee and the ASAP employee who is being evaluated. In situations where an ASAP employee refuses to sign the evaluation, the ASAP director or a supervisor-designee shall write "refused to sign" under the employee signature line. The ASAP director or a supervisor-designee shall initial and date the evaluation.

24VAC35-80-140. Alcohol Safety Action Program employee certification, revocation, or suspension.

A. All ASAP employees are required to possess a VASAP Certification Letter in order to perform any ASAP services in the Commonwealth of Virginia, including servicing ASAP offenders with an ASAP requirement that may reside out of state. Newly hired employees, however, may perform ASAP services for training purposes up to 90 days prior to obtaining a VASAP Certification Letter. In order to apply for a VASAP Certification Letter, the ASAP shall submit a completed application to the commission for approval for any ASAP employee not in possession of a VASAP Certification Letter, excluding an ASAP employee who is newly hired and within the first 90 days of training. The completed application shall include submission to the commission of:

1. A complete local and national criminal history;

2. A complete driver's record; and

3. Successful completion of the VASAP Certification Exam.

Failure to submit a completed application will result in disqualification of the applicant from consideration for a VASAP Certification Letter by the commission to perform ASAP services in the Commonwealth of Virginia or to ASAP offenders who may reside out of state.

B. All applicants shall be required to complete a VASAP Certification Exam. Successful completion of the exam requires a score of 80% or higher. Applicants who fail to successfully complete the VASAP Certification Exam on the first attempt shall be allowed a second opportunity to successfully complete the exam. Applicants who fail to successfully complete the VASAP Certification Exam on the second attempt shall not be allowed to reapply to provide ASAP services for the Commonwealth of Virginia or for ASAP offenders residing out of state for six months from the date of the second failed exam. ASAPs shall be required to pay an administrative fee of $250 to the commission for each second and subsequent VASAP Certification Exam taken by an employee as the result of a prior failed exam by the same ASAP employee.

C. In addition to the requirements of subsections A and B of this section, ASAP employees who serve in an ASAP director capacity shall be required to successfully complete the following requirements to obtain a VASAP Certification Letter:

1. A minimum of 40 hours of commission-approved training via a format and location determined by the executive director; and

2. Verification of meetings conducted with stakeholders of the assigned ASAP to include all Circuit and General District Court judges along with their clerk of court, Commonwealth attorneys, sheriffs, and police chiefs unless otherwise approved by the commission. Newly hired ASAP directors will be granted a six-month grace period to fulfill this requirement.

D. The executive director may deny, revoke, suspend, or terminate a VASAP Certification Letter for any ASAP employee for any of the following reasons:

1. Having been convicted of a felony;

2. Having been convicted of a misdemeanor potentially punishable by confinement;

3. Committing an unethical, deceptive, or dishonest act that negatively impacts the integrity of the state VASAP system;

4. Failing to demonstrate the ability to consistently comply with ordinances, statutes, administrative rules, or court orders at the local, state, or federal level;

5. Failing to demonstrate sufficient knowledge or skill required to perform ASAP services in the Commonwealth of Virginia or for ASAP offenders residing out of state;

6. Making a material misstatement or omission on the application;

7. Defrauding any client, service provider, or other person or entity in the conduct of the ASAP's business;

8. Unethical behavior. Proper employee conduct is outlined in the ASAP Code of Conduct;

9. Failing to attend any commission-mandated training without prior commission approval;

10. Failing to timely enter ASAP enrollments or completions or ignition interlock installs and completions into the DMV system;

11. Displaying a pattern of substandard customer service;

12. Mismanagement of ASAP finances;

13. Failing to submit reports required by the commission to the commission within the timeframes provided by the commission; or

14. Expending or directing another to expend budgetary funds not approved by the commission.

An ASAP employee whose VASAP Certification Letter has been denied, revoked, suspended, or terminated may request a judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). In the event that the decision to suspend the VASAP Certification Letter of an ASAP employee is upheld, the ASAP employee shall not perform any ASAP services in the Commonwealth of Virginia or for ASAP offenders residing out of state for the entire suspension period, or in the case of a denial, revocation, or termination, on a permanent basis. This prohibition includes any period during which the denial, suspension, revocation, or termination is being contested. The ASAP director, or the policy board in the situation where the action pertains to an ASAP director, shall return the VASAP Certification Letter to the commission within 15 days of the date that the certification was suspended, revoked, or terminated by the commission.

E. ASAP directors shall be responsible for any ASAP employee, including themselves, who provides any ASAP services without a valid VASAP Certification Letter, excluding a new employee who is within the first 90 days of employment, and shall be subject to a fine of up to $500 per occurrence, to be approved by the executive finance committee, payable to the Treasurer of Virginia. In this instance, the commission will notify the applicable jurisdictions of the violation. If the violation continues, the commission shall review the ASAP's certification at the next commission meeting.

F. Once the completed application has been approved by the commission, and all other qualifications have been met by the applicant, a VASAP Certification Letter to perform ASAP services in the Commonwealth of Virginia and to ASAP offenders residing out of state shall be issued to the applicant in a method approved by the commission. In the event that an applicant is not approved for a VASAP Certification Letter to perform ASAP services in the Commonwealth of Virginia or to ASAP offenders residing out of state, the commission will notify the ASAP employee in writing within 10 days of the determination. The VASAP Certification Letter is subject to review by the commission at its discretion during the course of the certification period.

G. ASAP employees are required to successfully complete 10 hours of commission-approved continuing education on an annual basis in order for their certification to perform ASAP services in the Commonwealth of Virginia and to ASAP offenders residing out of state to remain valid. ASAP employees who fail to successfully complete 10 hours of commission-approved continuing education on an annual basis shall have their certification suspended by the executive director on the annual expiration date of the certification unless otherwise approved by the executive director. The annual time period to complete the 10 hours of commission-approved continuing education for all ASAP employees is calculated as 365 days from their original certification date and falls on the same date on an annual basis for all subsequent years. The executive director shall determine the parameters required for successful completion and awarding of commission-approved continuing education courses.

H. An ASAP employee who has had state certification denied, revoked, or terminated shall be ineligible to reapply for a VASAP Certification Letter unless otherwise approved by the commission.

I. ASAPs are required to notify the commission in writing of any employee who is no longer an employee of the ASAP within 48 hours of the ASAP employee's employment end date.

J. In addition to the successful completion of the VASAP Certification Exam required for application, the executive director may order that an ASAP employee review requirements and retake the VASAP Certification Exam to demonstrate that the employee possesses the knowledge required to adequately perform ASAP services in the Commonwealth of Virginia and to ASAP offenders residing out of state.

K. ASAP employees are permitted to perform ASAP duties without a VASAP Certification Letter for up to (insert a date six months after the effective date of this regulation) unless otherwise approved by the executive director.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (24VAC35-80)

Application for Distribution of Commission on VASAP Funds (filed 1/2023)

DOCUMENTS INCORPORATED BY REFERENCE (24VAC35-80)

Commission on the Virginia Alcohol Safety Action Program Certification Manual, effective January 3, 2023

VA.R. Doc. No. R23-7298; Filed January 14, 2023, 5:07 p.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (http://www.townhall.virginia.gov) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Titles of Documents: Adult Protective Services Division Uniform Assessment Instrument Manual.

Assisted Living Facility Private Pay Assessment Manual.

Auxiliary Grant in Supportive Housing Provider Operating Manual.

Auxiliary Grant Manual Chapter K Supportive Housing.

Long Term Employment Support Services and Extended Employment Services Policy Manual.

Pre-Employment Transition Services Manual.

Vocational Rehabilitation Policy and Procedure Manual Chapters 1, 4, 5, 8, 12, 14, and 15.

Public Comment Deadline: March 15, 2023.

Effective Date: March 16, 2023.

Agency Contact: Elizabeth Patacca, Administrative Staff Assistant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Henrico, VA 23229, telephone (804) 726-6625, or email elizabeth.patacca@dars.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

Title of Document: Frequency of Providing School Rosters.

Public Comment Deadline: March 15, 2023.

Effective Date: March 16, 2023.

Agency Contact: Steve Kirschner, Executive Director, Board for Barbers and Cosmetology, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, or email steve.kirschner@dpor.virginia.gov.

STATE BOARD OF HEALTH

Title of Document: Nursing Scholarship Programs 2022 Guidelines.

Public Comment Deadline: March 15, 2023.

Effective Date: March 16, 2023.

Agency Contact: Olivette Burroughs, Statewide Health Workforce Manager, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7431, or email olivette.burroughs@vdh.virginia.gov.

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Title of Document: Criminal History Matrix.

Public Comment Deadline: March 15, 2023.

Effective Date: March 16, 2023.

Agency Contact: Steve Kirschner, Executive Director, Board for Hearing Aid Specialists and Opticians, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, or email steve.kirschner@dpor.virginia.gov.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Titles of Documents: Virginia Enterprise Zone Certified Public Accountant Agreed Upon Procedures Manual.

Virginia Enterprise Zone GY2022 Job Creation Grant Instruction Manual.

Virginia Enterprise Zone Real Property Investment Grant Instruction Manual.

Public Comment Deadline: March 15, 2023.

Effective Date: March 16, 2023.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, or email kyle.flanders@dhcd.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: Cardinal Care℠ - Virginia's Medicaid Program.

Public Comment Deadline: March 15, 2023.

Effective Date: March 16, 2023.

Agency Contact: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, or email meredith.lee@dmas.virginia.gov.

DEPARTMENT OF TRANSPORTATION

Titles of Documents: Administrative Services Division Procurement Procedures Manual.

Locally Administered Projects Manual.

Neighborhood Traffic Programs.

Public Involvement Manual.

Public Comment Deadline: March 15, 2023.

Effective Date: March 16, 2023.

Agency Contact: Jo Anne P. Maxwell, Regulator Coordinator, Policy Division, Department of Transportation, 1401 East Broad Street, 11th Floor, Richmond, VA 23219, telephone (804) 786-1830, or email joanne.maxwell@vdot.virginia.gov.

STATE BOARD OF EDUCATION

Public Hearing on the Proposed Revised History and Social Science Standards of Learning

The State Board of Education will hold public hearings on the proposed revised History and Social Science Standards of Learning. The Standards of Learning identify the essential content, processes, and skills for grade levels and subject courses. The proposed History and Social Science Standards of Learning can be accessed on the Virginia Department of Education's website. Public comment regarding the proposed revised Standards of Learning may be offered through public hearings of public comment through the Virginia Department of Education website.

Each public hearing will begin at 7 p.m. Registration of speakers will begin at 6:30 p.m. Speakers will have three minutes to speak and should bring copies of their comments for the Board of Education. The public hearings will be held at the following locations:

Monday, March 13, 2023: Jamestown Settlement, 2110 Jamestown Road, Williamsburg, VA; Directions to this location

Tuesday, March 14, 2023: George Washington's Mount Vernon, 3200 Mount Vernon Memorial Highway, Mount Vernon, VA; Directions to this location

Wednesday, March 15, 2023: Piedmont Community College, 501 College Drive, Charlottesville, VA; Directions to this location

Thursday, March 16, 2023: O. Winston Link & History Museum of Western Virginia, 101 Shenandoah Avenue NE, Roanoke, VA; Directions to this location

Monday, March 20, 2023: Southwest Higher Education Center**,** 1 Partnership Circle, Abingdon, VA; Directions to this location

Tuesday, March 21, 2023: Robert Russa Moton Museum, 900 Griffin Blvd, Farmville, VA; Directions to this location

For additional information about the proposed revised History and Social Science Standards of Learning, contact Christonya Brown by email at christonya.brown@doe.virginia.gov.

Contact Information: Jim Chapman, Regulatory and Legal Coordinator, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Special Order for Chincoteague Hotel LC

A consent special order has been proposed for Chincoteague Hotel LC for violations at Comfort Suites waste water treatment plant. The State Water Control Board proposes to issue a special order by consent to Chincoteague Hotel LC to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or postal mail from February 13, 2023, to March 15, 2023.

Contact Information: John Brandt, Enforcement Manager, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, FAX (804) 698-4178, or email john.brandt@deq.virginia.gov.

Proposed Consent Special Order for Sandy's MHC LLC

An enforcement action has been proposed for Sandy's MHC LLC for violations at Sandy's MHC LLC sewage treatment plant in Frederick County. The Virginia Department of Environmental Quality (DEQ) proposes to issue a consent order with penalty and injunctive relief to Sandy's MHC LLC to address noncompliance with State Water Control Law. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email, fax, or postal mail from February 13, 2023, to March 15, 2023.

Contact Information: Eric Millard, Construction Stormwater and Virginia Water Protection Program Manager, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email eric.millard@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Hospice Provider Manual Chapter VI

The draft Hospice Provider Manual Chapter VI is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Physician/Practitioner Provider Manual Chapter VI

The draft Physician/Practitioner Chapter VI Provider Manual is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until February 23, 2023.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical

Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Psychiatric Services Provider Manual Chapter V

The draft Psychiatric Services Provider Manual Chapter V is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until February 24, 2023.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

BOARD OF PHARMACY

Public Hearing for Placement of Chemicals in Schedule I

Pursuant to § 54.1-3443 D of the Code of Virginia, the Board of Pharmacy is giving notice of a public hearing to consider placement of chemical substances in Schedule I of the Drug Control Act. The virtual public hearing will be conducted at 9:05 a.m. on March 30, 2023. Instructions will be included in the agenda for the board meeting, also on March 30, 2023. Public comment may also be submitted electronically or in writing prior to March 30, 2023, to Caroline Juran, Executive Director of the Board of Pharmacy, via email at caroline.juran@dhp.virginia.gov.

Pursuant to § 54.1-3443 D of the Code of Virginia, the Virginia Department of Forensic Science (DFS) has identified five compounds for recommended inclusion into the Code of Virginia.

The following compounds are classified as synthetic opioids. Compounds of this type have been placed in Schedule I pursuant to subdivision 1 of § 54.1-3446 of the Code of Virginia in previous legislative sessions.

N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)pentanamide (other names: para-fluoro valeryl fentanyl, para-fluoro pentanoyl 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.

N-(4-fluorophenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]acetamide (other name: para-fluoroacetyl 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.

Based on their chemical structures, the following compounds are expected to have hallucinogenic properties. Compounds of this type have been placed in Schedule I pursuant to subdivision 3 of § 54.1-3446 in previous legislative sessions.

1-[1-(3-fluorophenyl)cyclohexyl]piperidine (other names: 3-fluoro Phencyclidine, 3F-PCP), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2-(ethylamino)-2-(2-fluorophenyl)-cyclohexanone (other names: 2-fluoro-2-oxo PCE, 2-fluoro NENDCK), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The following compound is classified as a central nervous system stimulant. Compounds of this type have been placed in Schedule I pursuant to subdivision 5 of § 54.1-3446 in previous legislative sessions.

2-(3-chlorophenyl)-3-methylmorpholine (other name: 3-chlorophenmetrazine), its salts, isomers (optical, position, and geometric), and salts of isomers.

Contact Information: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472.

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.