



VIRGINIA

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation,

unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **29:5 VA.R. 1075-1192 November 5, 2012**, refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

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**, Chairman; **Gregory D. Habeeb**; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Tavenner**; **Christopher R. Nolen**; **J. Jasen Eige**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **Karen Perrine**, Assistant Registrar; **Anne Bloomsburg**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.dls.virginia.gov>).

February 2014 through March 2015

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
30:13	February 5, 2014	February 24, 2014
30:14	February 19, 2014	March 10, 2014
30:15	March 5, 2014	March 24, 2014
30:16	March 19, 2014	April 7, 2014
30:17	April 2, 2014	April 21, 2014
30:18	April 16, 2014	May 5, 2014
30:19	April 30, 2014	May 19, 2014
30:20	May 14, 2014	June 2, 2014
30:21	May 28, 2014	June 16, 2014
30:22	June 11, 2014	June 30, 2014
30:23	June 25, 2014	July 14, 2014
30:24	July 9, 2014	July 28, 2014
30:25	July 23, 2014	August 11, 2014
30:26	August 6, 2014	August 25, 2014
31:1	August 20, 2014	September 8, 2014
31:2	September 3, 2014	September 22, 2014
31:3	September 17, 2014	October 6, 2014
31:4	October 1, 2014	October 20, 2014
31:5	October 15, 2014	November 3, 2014
31:6	October 29, 2014	November 17, 2014
31:7	November 12, 2014	December 1, 2014
31:8	November 25, 2014 (Tuesday)	December 15, 2014
31:9	December 10, 2014	December 29, 2014
31:10	December 23, 2014 (Tuesday)	January 12, 2015
31:11	January 7, 2015	January 26, 2015
31:12	January 21, 2015	February 9, 2015
31:13	February 4, 2015	February 23, 2015
31:14	February 18, 2015	March 9, 2015

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 1. ADMINISTRATION VIRGINIA RETIREMENT SYSTEM

Initial Agency Notice

Title of Regulation: None Specified.

Statutory Authority: § 51.1-124.22 of the Code of Virginia.

Name of Petitioner: John J. Fisher.

Nature of Petitioner's Request: Mr. Fisher petitions the Virginia Retirement System (VRS) to promulgate regulations related to the purchase of prior service credit. Mr. Fisher requests specifically that such regulations include the following stipulations:

- To give notice and inform VRS members that they will be required to purchase all types of prior service from the most recent to the oldest in chronological order;
- To give notice and inform VRS members that they will be required to purchase prior service that they simply looked into purchasing in the past, even if they did not purchase the service;
- To give notice and inform VRS members what a "Purchase of service contract" is and what is required to validate the service contract; and
- To give notice and inform VRS members how VRS determines prior service "eligibility" for its members.

Agency Plan for Disposition of Request: VRS will thoroughly review this petition and determine the appropriate action to take.

Public Comment Deadline: March 17, 2014.

Agency Contact: Brian J. Goodman, Legal Affairs and Compliance Coordinator, Virginia Retirement System, 1200 East Main Street, Richmond, VA 23219, telephone (804) 344-3140, or email bgoodman@varetire.org.

VA.R. Doc. No. R14-16; Filed February 5, 2014, 6:10 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF SOCIAL WORK

Initial Agency Notice

Title of Regulation: 18VAC140-20. Regulations Governing the Practice of Social Work.

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

Name of Petitioner: Carol Gauzens.

Nature of Petitioner's Request: Amendment to 18VAC140-20-50, which requires at least 14 hours of continuing education within the five years preceding provision of supervision. Recommends an initial requirement and then two or three continuing education units per renewal for those wishing to be supervisors.

Agency Plan for Disposition of Request: In accordance with Virginia law, the notice regarding the petition was filed with the Register of Regulations and will be published on February 24, 2014, with a request for comment to be received until March 24, 2014. The petition will also be posted for comment on the Virginia Regulatory Townhall at www.townhall.virginia.gov. At the next meeting held after the close of the comment period, scheduled for April 25, 2014, the board will consider the petition and any comment received to decide whether or not to initiate the rulemaking process.

Public Comment Deadline: March 24, 2014.

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R14-13; Filed January 23, 2014, 11:17 a.m.

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: Cara Lubarsky.

Nature of Petitioner's Request: Deletion of a requirement for practical experience in 18VAC150-20-130 A that no student shall be qualified to receive practical training unless such student shall be duly enrolled and in good standing in a veterinary college or school accredited or approved by the AVMA and in the final year of his training or after completion of an equivalent number of hours as approved by the board.

Agency Plan for Disposition of Request: The notice regarding the petition will be published on February 24, 2014, in the Register of Regulations and also posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov to receive public comment until March 24, 2014. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its meeting scheduled for June 11, 2014.

Public Comment Deadline: March 24, 2014.

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960

Petitions for Rulemaking

Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R14-14; Filed January 24, 2014, 2:05 p.m.

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (amending 4VAC20-260-40).**

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

Effective Date: February 1, 2014.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendment clarifies that oysters less than the minimum cull size that are adhering so closely to the shell of any marketable oyster as to render removal impossible without destroying the oysters less than the minimum cull size need not be removed, and those oysters are not included in the culling tolerances or standards.

4VAC20-260-40. Culling tolerances or standards.

A. In the clean cull areas, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found in any bushel inspected by any police officer, it shall constitute a violation of this chapter, except as described in 4VAC20-260-30 E.

B. In the James River seed areas, if more than a six-quart measure of shells is found in any bushel of seed oysters inspected by any police officer, it shall constitute a violation of this chapter.

C. In the James River seed areas, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found in any bushel of clean cull oysters inspected by any police officer, it shall constitute a violation of this chapter.

D. From the seaside of the Eastern Shore, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found per bushel

of clean cull oysters inspected by any police officer, it shall constitute a violation of this chapter.

E. Any oysters less than the minimum cull size or any amount of shell that exceeds the culling standard shall be returned immediately to the natural beds, rocks, or shoals from where they were taken.

F. Oysters less than the minimum cull size that are adhering so closely to the shell of any marketable oyster as to render removal impossible without destroying the oysters less than the minimum cull size need not be removed ~~but shall be considered part of the culling tolerance during inspection, and~~ those oysters shall be considered lawful and shall not be included in the culling tolerances or standards as described in subsections A through D of this section.

VA.R. Doc. No. R14-3960; Filed January 30, 2014, 2:33 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-42).**

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

Effective Date: January 30, 2014.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments prohibit any individual from taking, harvesting, or possessing aboard any vessel or landing in Virginia more than 4,000 pounds of spiny dogfish per day for commercial purposes.

4VAC20-490-42. Spiny dogfish commercial quota and catch limitations.

A. For the 12-month period of May 1, 2013, through April 30, 2014, the spiny dogfish commercial landings quota shall be limited to 4,408,894 pounds.

B. It shall be unlawful for any person to take, harvest, or possess aboard any vessel or to land in Virginia any spiny dogfish harvested from federal waters for commercial purposes after it has been announced that the federal quota for spiny dogfish has been taken.

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C. It shall be unlawful for any person to take, harvest, or possess aboard any vessel or to land in Virginia more than ~~3,300~~ 4,000 pounds of spiny dogfish per day for commercial purposes.

D. It shall be unlawful for any person to harvest or to land in Virginia any spiny dogfish for commercial purposes after the quota specified in subsection A of this section has been landed and announced as such.

E. Any spiny dogfish harvested from state waters or federal waters, for commercial purposes, shall only be sold to a federally permitted dealer.

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

VA.R. Doc. No. R14-3961; Filed January 30, 2014; 2:28 p.m.

TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Final Regulation

REGISTRAR'S NOTICE: The Department of Environmental Quality is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Department of Environmental Quality will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC15-20. Guidelines for the Preparation of Environmental Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia (amending 9VAC15-20-10, 9VAC15-20-100, 9VAC15-20-110).**

Statutory Authority: § 62.1-195.1 of the Code of Virginia.

Effective Date: March 26, 2014.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, TTY (804) 698-4021, or email melissa.porterfield@deq.virginia.gov.

Small Business Impact Review Report of Findings: This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Summary:

The amendments update references to reflect current statutes and regulations.

Part I

Applicability and General Requirements

9VAC15-20-10. Definitions.

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

"Access road" means a paved or unpaved route or path from a public highway or public road to a well site or associated facility.

"Associated facilities" means any facility used for gas or oil operations in the Commonwealth, other than a well or well site.

"Chesapeake Bay Preservation Area" means an area delineated by a local government in accordance with ~~"9VAC10-20-10;~~ "9VAC25-830; Chesapeake Bay Preservation Area Designation and Management Regulations" and § ~~40.1-2109~~ 62.1-44.15:74 of the Chesapeake Bay Preservation Act. A Chesapeake Bay Preservation Area consists of Resource Protection Areas and Resource Management Areas.

"Cuttings" means fragments of rock produced in a well bore by a drill bit and brought to the surface by drilling fluids or air pressure.

"Department of Environmental Quality" means the Department of Environmental Quality as described in § 10.1-1182 et seq. of the Code of Virginia.

"Department of Mines, Minerals and Energy" means the Department of Mines, Minerals and Energy as described in § ~~45.1-14~~ 45.1-161.1 et seq. of the Code of Virginia.

"Director of the Department of Environmental Quality" means the Director of the Department of Environmental Quality or his authorized agent.

"Director of the Department of Mines, Minerals and Energy" means the Director of the Department of Mines, Minerals and Energy or his authorized agent.

"Drilling fluid" means any fluid or drilling mud circulated in the well bore during drilling operations.

"Economic characteristics" means activities associated with the production, distribution and consumption of goods and services.

"Enhanced recovery" means (i) any activity involving injection of any air, gas, water or other fluid into the productive strata; (ii) application of pressure, heat or other means for the reduction of viscosity of the hydrocarbons; or (iii) the supplying of additional motive force other than normal pumping to increase the production of gas or oil from any well, wells or pool.

"Environment" means the natural, scenic and historic attributes of Virginia.

"Environmental impact assessment" or "assessment" means that documentation ~~which~~ that is required by § 62.1-195.1 of

the Code of Virginia to be a part of any application for a permit to drill an oil or gas well in Tidewater Virginia.

"Exploratory well" means any well drilled (i) to find and produce gas or oil in an unproven area, (ii) to find a new reservoir in a field previously found to be productive of gas or oil in another reservoir, or (iii) to extend the limits of a known gas or oil reservoir.

"Facilities and equipment" means all infrastructure supporting the development, drilling, construction, completion or operation of any gas or oil operation including but not limited to well drilling equipment, well heads, separators, compressors, pumps, manifolds, vehicles, fluid circulation systems, waste handling facilities, storage tanks, valves, pipelines, etc., used to explore for, produce or transport oil or gas.

"Fiscal characteristics" means the structure of taxation, public revenue, public expenditure, and public debt.

"Gas" or "natural gas" means all natural gas whether hydrocarbon or nonhydrocarbon or any combination or mixture of them, including hydrocarbons, hydrogen sulfide, helium, carbon dioxide, nitrogen, hydrogen, casing head gas and all other fluids not defined as oil.

"Gas or oil operation" or "operation" means any activity relating to drilling, redrilling, deepening, stimulating, production, enhanced recovery, converting from one type of well to another, combining or physically changing to allow the migration of fluid from one formation to another, plugging or replugging any well, land disturbing activity relating to the development, construction, operation and abandonment of a gathering pipeline, the development, operation, maintenance and restoration of any site involved with gas or oil operations, or any work undertaken at a facility used for gas or oil operations. The term embraces all of the land or property that is used for or ~~which that~~ contributes directly or indirectly to a gas or oil operation, including all roads.

"Gas well" means any well ~~which that~~ produces or appears capable of producing a ratio of 6,000 cubic feet (6 Mcf) of gas or more to each barrel of oil, on the basis of a gas-oil ratio test.

"Gathering pipeline" means (i) a pipeline ~~which that~~ is used or intended for use in the transportation of gas or oil from the well to a transmission pipeline or other pipeline regulated by the Federal Energy Regulatory Commission or the State Corporation Commission or (ii) a pipeline ~~which that~~ is used or intended for use in the transportation of gas or oil from the well to an off-site storage, marketing, or other facility where the gas or oil is sold.

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, as defined by the Food Security Act (F.S.A.) Manual of August,

1988 in the "Field Office Technical Guide" of the U.S. Department of Agriculture, Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soils Handbook" of July 1983 in the "Field Service Technical Guide" of the U.S. Department of Agriculture, Soil Conservation Service.

"Historic properties" means any prehistoric or historic district, site, building, structure or object included in or eligible for inclusion in the National Register of Historic Places or the Virginia Historical Landmarks Register including any artifacts, records and remains that are related to and located within such properties.

"Historic properties survey" means a survey undertaken to establish the presence or absence of historic properties, and any related and necessary management plans developed to conserve such resources.

"Land-disturbing activity" means any change in or reconfiguration of the land surface or vegetation on the land surface through vegetation clearing or earth moving activities including but not limited to clearing, grading, excavating, drilling, transporting or filling.

"Mcf" means, when used with reference to natural gas, one thousand cubic feet of gas at a pressure base of 14.73 pounds per square inch gauge and at a temperature base of 60°F.

"Natural area preserve" means a natural area that has been dedicated pursuant to § 10.1-213 of the Code of Virginia.

"Natural heritage resources" means the habitat of rare, threatened or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.

"Natural heritage survey" means a survey undertaken to establish the presence or absence of natural heritage resources, and any related and necessary management plans developed to conserve such resources.

"Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency in response to § 404 of the Federal Water Pollution Control Act, in 33 CFR 328.3b.

"Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, ~~which that~~ are produced

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at the well in liquid form by ordinary production methods and ~~which that~~ are not the result of condensation of gas after it leaves the underground reservoir.

"Oil well" means any well ~~which that~~ produces or appears capable of producing a ratio of less than 6,000 cubic feet (6 Mcf) of gas to each barrel of oil, on the basis of a gas-oil ratio test.

"Open space" means any land, water, or submerged land ~~which that~~ is provided for, preserved for, or used for (i) park or recreational purposes; (ii) conservation of land or other natural resources; (iii) cultural, historic or scenic purposes; (iv) assisting in the shaping of the character, direction, and timing of community development; or (v) nontidal or tidal wetlands.

"Operations area" means the location of the well, well site, associated facilities, production facilities, access roads, pipeline systems, and other related facilities and equipment necessary to the conduct of a gas or oil operation.

"Person" means any individual or group, any partnership, corporation, association, organization or other legal entity, including any public body.

"Pipeline corridor" means those areas that pipeline systems pass through or will be constructed to pass through, including associated easements, leases, or rights-of-way.

"Pipeline systems" means all parts of those physical facilities through which gas or oil moves in transportation, including but not limited to pipes, valves, and other appurtenances attached to pipes such as compressor units, metering stations, regulator stations, delivery stations, holders, or other related facilities.

~~"Pipeline corridor" means those areas which pipeline systems pass through or will be constructed to pass through, including associated easements, leases, or rights of way.~~

"Production well" means a well, related production facilities and equipment and activities related to the drilling of a well for the purpose of developing and producing, or converting an exploratory well to develop or produce, oil or gas from geological strata for the purpose of sale, exchange, transfer or use by the owner or for the purpose of exchange, transfer, sale or use by any other person.

"Rare, threatened or endangered species" means any insect, fish, wildlife or plant species ~~which that~~ is listed as, is a candidate for listing as, or is recommended for listing as a rare, threatened or endangered species by the U.S. Fish and Wildlife Service, the Department of Agriculture and Consumer Services, the Department of Game and Inland Fisheries, or the Department of Conservation and Recreation.

"Recreational resources" means the broad range of outdoor and indoor public and private areas and facilities, many of which are identified in the "Virginia Outdoors Plan," used in meeting Virginia's recreational needs including but not limited to public parks, public forests, natural areas, wildlife management areas, lakes and reservoirs, historic resources,

trails, rivers, beaches, water access areas, Virginia byways, tidal and nontidal wetlands, and greenways.

"Scenic resources" means features ~~which that~~ characterize an area by giving it a special visual identity or ~~which that~~ present unique vistas or landscapes, including but not limited to such features as designated or candidate state or federal scenic rivers, federal or state scenic highways or parkways, Virginia byways, and scenic values as recognized by local, state or federal governments.

"Tidal wetlands" means "vegetated wetlands" and "nonvegetated wetlands" as defined in § ~~62.1-13.2~~ 28.2-1300 of the Code of Virginia.

"Tidewater Virginia" means that area of Virginia as defined in § ~~40.1-2104~~ 62.1-44.15:68 of the Code of Virginia and the localities of Manassas and Manassas Park.

"Virginia Outdoors Plan" means the State Comprehensive Outdoor Recreation Plan developed and administered by the Department of Conservation and Recreation.

"Waste from gas, oil, or geophysical operations" means any substance other than gas or oil ~~which that~~ is (i) produced or generated during or results from the development, drilling and completion of wells and associated facilities or the development and construction of gathering pipelines or (ii) produced or generated during or results from well, pipeline and associated facilities' operations including, but not limited to, brines and produced fluids other than gas or oil. In addition, this term shall include all rubbish and debris, including all material generated during or resulting from well plugging, site restoration, or the removal and abandonment of gathering pipelines and associated facilities.

"Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction, injection or replacement of any gaseous or liquid substance, or any shaft or hole sunk or used in conjunction with such extraction, injection or placement. The term shall not include any shaft or hole, sunk, drilled, bored, or dug into the earth for the sole purpose of pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural, or public use and shall not include water boreholes, methane drainage boreholes where the methane is vented or flared rather than produced and saved, subsurface boreholes drilled from the mine face or an underground coal mine, any other boreholes necessary or convenient for the extraction of coal or drilled pursuant to a uranium exploratory program carried out pursuant to the laws of this Commonwealth, or any coal or nonfuel mineral core hole or borehole for the purpose of exploration.

9VAC15-20-100. Spill release and contingency planning.

~~A.~~ The environmental impact assessment shall describe procedures ~~which that~~ will be developed and implemented to prepare for, equipment ~~which that~~ will be installed to detect and respond to, and facilities and equipment ~~which that~~ will be installed or available to contain minor, moderate and major

discharges of oil, condensate, natural gas, waste from gas, oil, or geophysical operations or fluids as defined pursuant to the requirements of 9VAC15-20-80 as well as fires or other hazards to the environment. A discharge contingency plan prepared in conformance with the requirements of the State Water Control Board's regulation entitled "~~Oil Discharge Contingency Plans and Administrative Fees for Approval~~" (9VAC25-90-10 et seq.) "Facility and Aboveground Storage Tank (AST) Regulation" (9VAC25-91) will fulfill the information requirement of this section.

9VAC15-20-110. Hydrogen sulfide release contingency planning.

A. A discussion of the potential for encountering hydrogen sulfide shall be included in the assessment. The assessment shall discuss steps that will be taken, if any, to respond if indicators of such gas are encountered, if there exists a potential for a release of hydrogen sulfide gas, or in the event of a hydrogen sulfide release.

B. A hydrogen sulfide release contingency plan should address the following:

1. Methods and devices that will be used to detect hydrogen sulfide gas to prevent the gas from becoming an environmental concern. ~~Include~~ and include a description of detection equipment to be used and equipment testing and calibration procedures.
2. Operating procedures to be employed if the operations area atmospheric concentration of hydrogen sulfide gas reaches limits established by the Department of Labor and Industry in "VR 425-02-36 Air Contaminants (1910.1000)" and ~~including~~ include a discussion of:
 - a. Appropriate emergency notification procedures for local residents, emergency service and medical personnel;
 - b. Notification procedures for responsible regulatory agencies; and
 - c. Appropriate visual and audible warning systems for atmospheric hydrogen sulfide gas within the operations area.
3. The potential for continuous low-level hydrogen sulfide emissions (one hour average) to result in concentrations in areas of public access above levels deemed harmful to human health in accordance with the State Air Pollution Control Board's "Emission Standards for Toxic Pollutants (~~9VAC5-40-160 through 9VAC5-40-230~~)" from Existing Sources" (9VAC5-60-200 through 9VAC5-60-270) and "~~Standards of Performance for Toxic Pollutants (9VAC5-50-160 through 9VAC5-50-230)~~" "Emission Standards for Toxic Pollutants from New and Modified Sources" (9VAC5-60-300 through 9VAC5-60-370).

VA.R. Doc. No. R14-3882; Filed February 4, 2014, 2:44 p.m.

STATE WATER CONTROL BOARD

Forms

Title of Regulation: **9VAC25-91. Facility and Aboveground Storage Tank (AST) Regulation.**

Agency Contact: Russ Ellison, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, email russell.ellison@deq.virginia.gov.

NOTICE: Forms used in administering the following regulation have been filed by the State Water Control Board. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-91)

[Registration for Facility and Aboveground Storage Tank \(AST\), DEQ Form 7540-AST \(rev. 10/08\)](#)

[Approval Application for Facility Oil Discharge Contingency Plan \(rev. 8/07\)](#)

[Renewal Application for Facility Oil Discharge Contingency Plan \(rev. 8/07\)](#)

VA.R. Doc. No. R14-3910; Filed January 31, 2014, 2:15 p.m.

Forms

Title of Regulation: **9VAC25-610. Ground Water Withdrawal Regulations.**

Agency Contact: Craig Nicol, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, email craig.nicol@deq.virginia.gov.

NOTICE: Forms used in administering the following regulation have been filed by the State Water Control Board. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-610)

~~Water Division Permit Application Fee (rev. 9/12)~~

[Water Division Permit Application Fee \(rev. 11/12\)](#)

[Application Instructions for Completing a Groundwater Withdrawal Permit Application \(rev. 11/13\)](#)

[Application for a Groundwater Withdrawal Permit \(rev. 9/12\)](#)

[Groundwater Withdrawal Permit - Change of Ownership Agreement Form \(rev. 11/13\)](#)

[Uncontested Termination Agreement \(rev. 11/13\)](#)

[Water Well Completion Report, Form GW2 \(eff. 7/07\)](#)

Regulations

[Public Notice Authorization Form - Authorization for Public Notice Billing to Groundwater Withdrawal Permit Applicant \(rev. 11/13\)](#)

[Preapplication Meeting - Application for a Groundwater Withdrawal Permit \(rev. 9/12\)](#)

[Local and Areawide Planning Requirements \(rev. 9/12\)](#)

[Quarterly Groundwater Withdrawal Report \(rev. 11/13\)](#)

[Mitigation Plan \(rev. 11/13\)](#)

[Existing Users Groundwater Withdrawal Permit Application and Instructions \(eff. 2/14\)](#)

VA.R. Doc. No. R14-3949; Filed January 31, 2014, 1:46 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 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; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-880. General Permit for Discharges of Stormwater from Construction Activities (amending 9VAC25-880-1 through 9VAC25-880-70; repealing 9VAC25-880-80 through 9VAC25-880-90).**

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

Effective Date: July 1, 2014.

Agency Contact: Drew Hammond, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4037, or email drew.hammond@deq.virginia.gov.

Summary:

This regulatory action amends and reissues the existing general permit for discharges of stormwater from construction activities, which expires on June 30, 2014, to continue its availability as a permitting option for this type of discharger.

The amendments (i) add new definitions; (ii) authorize discharges from emergency-related construction activities; (iii) authorize discharges from single-family residences separately built, disturbing less than one acre, and part of a larger common plan of development or sale without the

submission of a registration statement or general permit fee; (iii) incorporate administrative continuance provisions for existing construction activities currently covered under the 2009 construction general permit (CGP); (iv) update provisions for discharges to impaired waters, surface waters with an applicable approved total maximum daily load, and exceptional waters for consistency with EPA's final 2012 CGP; (v) revise stormwater pollution prevention plan (SWPPP) requirements to incorporate the federal effluent limitation guidelines for the Construction and Development Point Source Category (40 CFR Part 450) and for consistency with the Virginia Stormwater Management Program (VSMP) Regulations and EPA's final 2012 CGP; (vi) clarify and update the existing SWPPP requirements for erosion and sediment control plans, stormwater management plans, and pollution prevention plans; and (vii) amend the existing SWPPP requirements for amendments/modifications/updates of the general permit, notification, availability, implementation, inspections, and corrective actions for clarity and consistency with EPA's final 2012 CGP.

Changes to the regulation since publication of the proposed amendments occur throughout the regulation. However, the substantive changes are primarily in 9VAC25-880-70 and include (i) adding registration statement provisions for new stormwater discharges from emergency-related construction activities; (ii) adding a registration statement waiver provision for single-family residences separately built, disturbing less than one acre, and part of a larger common plan of development or sale; (iii) updating the registration statement submission deadline for existing construction activities seeking continued coverage under this general permit to June 1, 2014; and (iv) updating the requirement for existing construction activities to update their SWPPPs no later than 60 days after coverage under the general permit.

CHAPTER 880

GENERAL [VPDES] PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES

9VAC25-880-1. 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), this chapter, and 9VAC25-870 unless the context clearly indicates otherwise, except as otherwise specified in this section. Terms not defined in the Act, this chapter, or 9VAC25-870 shall have the meaning attributed to them in the federal Clean Water Act (33 USC § 1251 et seq.) (CWA). For the purposes of this chapter:

["Business day" means Monday through Friday excluding state holidays.]

"Commencement of [~~construction~~ land disturbance]" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities (e.g., stockpiling of fill material).

["Construction site" means the land where any land-disturbing activity is physically located or conducted, including any adjacent land used or preserved in connection with the land-disturbing activity.]

"Final stabilization" means that one of the following situations has occurred:

1. All soil disturbing activities at the site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform (e.g., evenly distributed), mature enough to survive, and will inhibit erosion.
2. For individual lots in residential construction, final stabilization can occur by either:
 - a. The homebuilder completing final stabilization as specified in subdivision 1 of this definition; or
 - b. The homebuilder establishing temporary [soil] stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and informing the homeowner of the need for, and benefits of, final stabilization.
3. For construction projects on land used for agricultural purposes [~~(e.g., pipelines across crop or range land)~~], final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and areas that are not being returned to their preconstruction agricultural use must meet the final stabilization criteria specified in subdivision 1 or 2 of this definition.

"~~Minimize~~" means ~~to prevent, reduce, or eliminate using practicable control measures to meet the conditions of this state permit.~~

"Immediately" means as soon as practicable, but no later than the end of the next [~~work~~ business] day, following the day when the [~~earth-disturbing~~ land-disturbing] activities have temporarily or permanently ceased. In the context of this [general] permit, "immediately" is used to define the deadline for initiating stabilization measures.

"Impaired waters" means surface waters identified as impaired on the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report.

["Infeasible" means not technologically possible or not economically practicable and achievable in light of best industry practices.]

"Initiation of stabilization activities" means:

1. Prepping the soil for vegetative or nonvegetative stabilization;
2. Applying mulch or other nonvegetative product to the exposed area;
3. Seeding or planting the exposed area;
4. Starting any of the above activities on a portion of the area to be stabilized, but not on the entire area; or
5. Finalizing arrangements to have the stabilization product fully installed in compliance with the applicable deadline for completing stabilization.

This list [~~of examples~~] is not exhaustive.

"Measurable storm event" means a rainfall event producing 0.25 inches of rain or greater over 24 hours.

["Stabilized" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.]

9VAC25-880-10. Purpose.

This general permit regulation [~~authorizes~~ governs] stormwater discharges from regulated construction activities. For the purposes of this chapter, these discharges are defined as stormwater discharges associated with large construction activity, and stormwater discharges associated with small construction activity. [Stormwater discharges associated with other types of industrial activity shall not have coverage under this general permit.] This general permit covers only discharges through a point source to ~~state~~ surface waters or through a municipal or nonmunicipal separate storm sewer system to ~~state~~ surface waters. Stormwater discharges associated with industrial activity that originate from ~~the site~~ after construction activities that have been completed and the site has undergone final stabilization are not authorized by this [~~state general~~] permit. ~~The goal of this state permit is to minimize the discharge of stormwater pollutants from construction activity by requiring that the operator plan and implement appropriate control measures.~~

[**9VAC25-880-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the United States set forth in the Code of Federal Regulations is referenced and incorporated herein, that regulation shall be as it exists and has been published in the July 1, ~~2009~~ 2013, update.]

9VAC25-880-20. Effective date of [general] permit.

This general permit is effective on July 1, ~~2009~~ 2014. The general permit will expire on June 30, ~~2014~~ 2019. This general permit is effective for any covered operator upon compliance with all provisions of [~~4VAC50-60-1130~~ 9VAC25-880-30.]

9VAC25-880-30. Authorization to discharge.

A. Any operator [~~governed~~ covered] by this general permit is authorized to discharge ~~to state [stormwater associated with construction activities including stormwater associated with emergency-related construction-related activities] to~~

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surface waters of the Commonwealth of Virginia in accordance with 9VAC25-880-50 A-4 [provided that the operator] has filed [submits a complete and accurate registration statement in accordance with 9VAC25-880-50 and receives acceptance of the registration statement by the board,] submitted [submits any fees required by Part XIII of 9VAC25-870 (9VAC25-870-700 et seq.) unless exempted pursuant to 9VAC25-880-50 A-3 (a)], complied with the requirements of 9VAC25-880-50, complies with the requirements of 9VAC25-880-80 through 9VAC25-880-90 [, and complies with the requirements of 9VAC25-880-70 and] provided that:

[1. Prior to commencing] construction [land disturbing activities, the operator] shall obtain approval of an erosion and sediment control plan from the VESCP authority in the locality in which the construction activity is to occur unless the operator receives from the VESCP authority an "agreement in lieu of a plan" as defined in 9VAC25-840-10, or is exempt from the requirement to submit an erosion and sediment control plan by the Erosion and Sediment Control Law and Erosion and Sediment Control Regulations (9VAC25-840); [obtains approval of:

a. An erosion and sediment control plan from the appropriate VESCP authority as authorized under the Virginia Erosion and Sediment Control Regulations, 9VAC25-840, unless the operator receives from the VESCP an "agreement in lieu of a plan" as defined in 9VAC25-840-10 or prepares the erosion and sediment control plan in accordance with annual standards and specifications approved by the board. The operator of any land disturbing activity that is not required to obtain erosion and sediment control plan approval from a VESCP authority or is not required to adopt department-approved annual standards and specifications shall submit the erosion and sediment control plan to the department for review and approval prior to land disturbance; and

b. A stormwater management plan from the appropriate VSMP authority as authorized under the Virginia Stormwater Management Program Regulations, 9VAC25-870. The operator of any land disturbing activity that is not required to obtain stormwater management plan approval from a VSMP authority or is not required to adopt department approved annual standards and specifications shall submit the stormwater management plan to the department for review and approval prior to land disturbance.

Emergency related construction activities are not required to obtain the approvals specified in subdivisions 1 a and b of this subsection prior to the commencement of land disturbance.

2.] The stormwater discharge [Discharges authorized by this state permit may be] combined [commingled with other sources of stormwater that are not required to be

covered under a state permit, so long as the] combined [commingled discharge is in compliance with this state permit.] Any discharge [Discharges authorized by a] different [separate state or a VPDES permit may be commingled with discharges authorized by this state permit so long as all such discharges comply with all applicable state] permits [permit requirements;]

[3. Discharges to impaired waters] for which a "total maximum daily load" (TMDL) wasteload allocation has been established [, including discharges to surface waters located within a TMDL watershed are not eligible for coverage under this general permit unless] they are otherwise authorized in accordance with 9VAC25-880-70 Section II-D-6 and [the operator develops, implements, and maintains a stormwater pollution prevention plan that minimizes applicable observed sources identified in the 2012 §305(b)/303(d) Water Quality Assessment Integrated Report, minimizes pollutants of concern identified in a TMDL approved prior to July 1, 2014 and is consistent with the] requirements and assumptions [assumptions and requirements of] the wasteload allocations in the TMDL [, all applicable TMDL wasteload allocations. This only applies when construction activities discharge or are reasonable expected to discharge an applicable observed source identified in the 2012 §305(b)/303(d) Water Quality Assessment Report or a pollutant of concern identified in a TMDL approved prior to July 1, 2014.; and]

4. Discharges to waters that have been identified as impaired in the 2008 § 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under this general permit unless they are otherwise authorized in accordance with 9VAC25-880-70 Section I-H.

[4. Authorized nonstormwater discharges. The following nonstormwater discharges are authorized by this permit:

a. Discharges from fire fighting activities;

b. Fire hydrant flushings;

c. Water used to wash vehicles where detergents have not been used and the wash water has been treated;

d. Water used to control dust that has been filtered, settled, or similarly treated prior to discharge;

e. Potable water source, including uncontaminated waterline flushings;

f. Routine external building wash down that does not use detergents, solvents, or other wash chemicals and that have been filtered, settled, or similarly treated prior to discharge;

g. Pavement washwater where spills or leaks of toxic or hazardous materials have not occurred (or where all spilled material has been removed prior to washing); where detergents, solvents, or other wash chemicals are not used; and where the washwater has been filtered, settled, or similarly treated prior to discharge;

~~h. Uncontaminated air conditioning or compressor condensate;~~

~~i. Uncontaminated groundwater or spring water;~~

~~j. Foundation or footing drains where flows are not contaminated with process materials such as solvents;~~

~~k. Uncontaminated excavation dewatering, including dewatering of trenches and excavations that have been filtered, settled, or similarly treated prior to discharge; and~~

~~l. Landscape irrigation.~~

1. The operator submits a complete and accurate registration statement, if required to do so, in accordance with 9VAC25-880-50 and receives acceptance of the registration by the board;

2. The operator submits any permit fees, if required to do so, in accordance with 9VAC25-870-700 et seq.;

3. The operator complies with the applicable requirements of 9VAC25-880-70;

4. The operator obtains approval of:

a. An erosion and sediment control plan from the appropriate VESCP authority as authorized under the Erosion and Sediment Control Regulations (9VAC25-840), unless the operator receives from the VESCP an "agreement in lieu of a plan" as defined in 9VAC25-840-10 or prepares the erosion and sediment control plan in accordance with annual standards and specifications approved by the department. The operator of any land-disturbing activity that is not required to obtain erosion and sediment control plan approval from a VESCP authority or is not required to adopt department-approved annual standards and specifications shall submit the erosion and sediment control plan to the department for review and approval; and

b. A stormwater management plan from the appropriate VSMP authority as authorized under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870), unless the operator prepares the stormwater management plan in accordance with annual standards and specifications approved by the department. The operator of any land-disturbing activity that is not required to obtain stormwater management plan approval from a VSMP authority or is not required to adopt department-approved annual standards and specifications shall submit the stormwater management plan to the department for review and approval; and

5. The board has not notified the operator that the discharge is not eligible for coverage in accordance with subsection B of this section.]

B. In addition to other prohibitions, the following discharges are not eligible for coverage under this general permit The board 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. Discharges for which the operator has been The operator is required to obtain an individual permit [according to in accordance with] 9VAC25-870-410 B;

2. Discharges The operator is proposing discharges to state surface waters specifically named in other board regulations or policies that prohibit such discharges; and

3. Stormwater discharges that the department in consultation with the State Water Control Board determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards (9VAC25-260). The [discharges cause discharge causes], may reasonably be expected to cause, or [contribute contributes] to a violation of water quality standards (9VAC25-260) [as determined in consultation with the State Water Control Board];

4. The [discharges violate discharge violates] or would violate the antidegradation policy in the [Virginia] Water Quality Standards (9VAC25-260-30) [as determined in consultation with the State Water Control Board]; or

5. The [discharges are discharge is] not consistent with the assumptions and requirements of [a an applicable] TMDL approved prior to [July 1, 2014 the term of this general permit];

C. This [state general] permit [may] also be used to [authorize authorizes] stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

1. The support activity is directly related to a construction site that is required to have state permit coverage for discharges of stormwater associated with construction activity [applying for state permit coverage that is required to have general permit coverage for discharges of stormwater from construction activities];

2. The support activity is not a commercial operation serving [or does not, nor does it] serve multiple unrelated construction [projects activities] by different operators [, and does not operate beyond the completion of the construction activity at the last construction project it supports]; and

3. [The support activity does not operate beyond the completion of the last construction activity it supports;

4.] The support activity is identified in the registration statement at the time of [state general] permit coverage;

3. [4. 5.] Appropriate control measures [that will be implemented to minimize pollutant discharges from the support activity] are identified in a stormwater pollution prevention plan [covering and implemented to address] the discharges from the support activity areas]; and

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[5. 6.] All applicable, state, federal, and local approvals are obtained for the support activity.

D. Support activities located off-site are not required to be covered under this general permit. Discharges of stormwater from off-site support activities may be authorized under another state or [a] VPDES permit. Where stormwater discharges from off-site support activities are not authorized under this general permit, the land area of the off-site support activity need not be included in determining the total land disturbance acreage of the construction activity seeking general permit coverage.

E. [Discharges authorized by this general permit may be commingled with other sources of stormwater that are not required to be covered under a state permit, so long as the commingled discharge is in compliance with this general permit. Discharges authorized by a separate state or VPDES permit may be commingled with discharges authorized by this general permit so long as all such discharges comply with all applicable state and VPDES permit requirements.

F. Authorized nonstormwater discharges. The following nonstormwater discharges from construction activities are authorized by this general permit:

1. Discharges from firefighting activities;
2. Fire hydrant flushings;
3. Water used to wash vehicles or equipment where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;
4. Water used to control dust that has been filtered, settled, or similarly treated prior to discharge;
5. Potable water source, including uncontaminated waterline flushings;
6. Routine external building wash down where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;
7. Pavement wash water where spills or leaks of toxic or hazardous materials have not occurred (or where all spilled or leaked material has been removed prior to washing); where soaps, solvents, or detergents have not been used; and where the wash water has been filtered, settled, or similarly treated prior to discharge;
8. Uncontaminated air conditioning or compressor condensate;
9. Uncontaminated groundwater or spring water;
10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
11. Uncontaminated, excavation dewatering, including dewatering of trenches and excavations that have been filtered, settled, or similarly treated prior to discharge; and
12. Landscape irrigations.

G.] Receipt of Approval for coverage under this general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

F. The department may allow exceptions to technical criteria contained in the state permit in accordance with Part III of 9VAC25-870 (9VAC25-870-100 et seq.).

[F. H.] Continuation of [general] permit coverage.

[1.] Any operator that was authorized to discharge under the general permit issued in 2009 [under 9VAC25-880-70 Section III-M] and that submits a complete [and accurate] registration statement [that is stamped as received by the department or postmarked 90 days prior to the effective date of this general permit on or before June 30, 2014,] is authorized to continue to discharge under the terms of the 2009 general permit until such time as the board either:

[1. a.] Issues coverage to the operator under this general permit or

[2. b.] Notifies the operator that the discharge is not eligible for coverage under this general permit.

[2. When the operator is not in compliance with the conditions of the expiring or expired general permit the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the 2009 general permit;

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

c. Issue a new state permit with appropriate conditions; or

d. Take other actions authorized by the VSMP Regulation (9VAC25-870).]

9VAC25-880-40. Virginia erosion and sediment control programs Delegation of authorities to state and local programs.

VESCP requirements may be incorporated by reference into the Stormwater Pollution Prevention Plan (SWPPP) required by 9VAC25-880-70 of this state permit. Where a VESCP does not include one or more of the elements in this section, then the operator must include those elements as part of the SWPPP required by 9VAC25-880-70 of this permit. A VESCP is one that is approved by the board, meets the requirements of 9VAC25-870-460 L and includes:

1. Requirements for construction site operators to implement appropriate erosion and sediment control measures;

2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the

construction site that may cause adverse impacts to water quality; and

3. ~~Requirements for construction site operators to develop and implement a SWPPP in accordance with 9VAC25-880-70 Section II.~~

A board-approved VSMP authority is authorized to administer requirements of this general permit, including but not limited to: (i) registration statement acceptance; (ii) fee collection; (iii) [stormwater management] plan review and approval; and (iv) permit compliance and enforcement dependent upon conditions established as part of the board approval.

9VAC25-880-50. [State General] permit application (registration statement).

A. Deadlines for submitting registration statement. [Any operator seeking coverage under this general permit, and that is required to submit a registration statement, shall submit a complete and accurate general VPDES permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for discharges of stormwater from construction activities.]

1. ~~[Except as provided in subdivision 3 of this subsection, operators must certify that all information required in subsection B of this section has been entered completely and accurately into the available electronic database provided by the department and submit a complete and accurate registration statement to the VSMP authority in accordance with the requirements of this section prior to the issuance of coverage under the general permit that authorizes the commencement of land disturbing activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities). New construction activities.~~

a. Any operator proposing a new stormwater discharge from construction activities shall submit a complete and accurate registration statement to the VSMP authority prior to the commencement of land disturbance.

b. Any operator proposing a new stormwater discharge from construction activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment is authorized to discharge under this general permit, provided that:

(1) The operator submits a complete and accurate registration statement to the VSMP authority no later than 30 days after commencing land disturbance; and

(2) Documentation to substantiate the occurrence of the public emergency is provided with the registration statement.

c. Any operator proposing a new stormwater discharge associated with the construction of a single-family residence separately built, disturbing less than one acre

and part of a larger common plan of development or sale, is authorized to discharge under this general permit and is not required to submit a registration statement or the department portion of the permit fee, provided that the stormwater management plan for the larger common plan of development or sale provides permanent control measures (i.e., stormwater management facilities) encompassing the single family residence.]

2. [Existing construction activities.

a. Any operator that was authorized to discharge under the general permit issued in 2009 and that intends to continue coverage under this general permit shall:

(1) Submit a complete and accurate registration statement to the VSMP authority on or before June 1, 2014; and

(2) Update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

b. Any operator with an existing stormwater discharge associated with the construction of a single-family residence separately built, disturbing less than one acre and part of a larger common plan of development or sale, and that intends to continue coverage under this general permit, is authorized to discharge under this general permit and is not required to submit a registration statement or the department portion of the permit fee, provided that:

(1) The stormwater management plan for the larger common plan of development or sale provides permanent control measures (i.e., stormwater management facilities) encompassing the single-family residence; and

(2) The operator updates its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

3.] For stormwater discharges from construction activities where the operator changes, the new operator must [~~certify that all information required in subsection B of this section has been entered completely and accurately into the available electronic database provided by the department and~~] submit a complete [and accurate] registration statement or transfer [agreement] form [~~to the VSMP authority~~] prior to assuming operational control over site specifications or commencing work on-site.

[~~3. In order to continue state permit coverage, operators of ongoing construction activity projects as of July 1,] 2009 [2014, that received authorization to discharge for those projects under the construction stormwater general permit issued in] 2004 [~~2009 must:~~~~

a.] Submit [~~Certify that all information required in subsection B of this section has been entered completely and accurately into the available electronic database provided by the department and submit a complete and~~

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accurate registration statement by] June 1, 2009 [to the department 90 days prior to the effective date of this general permit. Provided that a complete and accurate registration statement is submitted by] the June 1 reapplication date [at least 90 days before the expiration date of the existing state permit, the state permit application (registration statement) fee will be waived for land disturbing activities for which the department initially issued state permit coverage on or after July 1,] 2008 [2013; and

b. ~~Update their stormwater pollution prevention plan to comply with the requirements of this general permit within no later than 30 days after the date of coverage under this general permit.]~~

4. ~~Effective date of state permit coverage. The operator of a construction activity is authorized to discharge stormwater under the terms and conditions of this state permit 15 business days following submission of a complete and accurate registration statement to the VSMP authority as the administering entity for the board unless notification of coverage is made by the department at an earlier time. For the purposes of this state permit, a registration statement that is mailed is considered to be submitted once it is postmarked. Operators are not authorized to discharge if the registration statement is incomplete or incorrect, or if the discharge(s) was not eligible for coverage under this state permit.~~

NOTE: ~~A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the General Permit for Stormwater Discharges from Construction Activities prior to submitting the registration statement. By signing the registration statement the operator certifies that the SWPPP has been prepared.~~

~~5. 4. Late notifications. Operators are not prohibited from submitting registration statements after [initiating clearing, grading, excavation activities, or other land disturbing activities commencing land disturbance]. When a late registration statement is submitted, authorization for discharges shall not occur until coverage under the general permit is issued. The department VSMP authority, department, board, and the EPA [reserves reserve] the right to take enforcement action for any unpermitted discharges that occur between the commencement of [construction land disturbance] and discharge authorization.~~

~~[5. Any discharge from a construction activity that was previously permitted under the 2009 General Permit but failed to maintain uninterrupted permit coverage is considered an unauthorized discharge.]~~

B. Registration statement. The operator shall submit a registration statement [~~on~~ to the VSMP authority] ~~the official department form [a form specified by the department]~~ that shall contain the following information:

1. Name, [contact,] mailing address, telephone number, and email address [if available] of the construction activity operator. No more than one operator may receive coverage under each registration statement.

NOTE: [~~The state General~~] permit [coverage] will be issued to this operator, and the certification in subdivision [~~42 11~~] of this subsection must be signed by the appropriate person associated with this operator;

2. Name and location [if available] of the construction activity [~~, including town, city, or county, and latitude and longitude (degrees, minutes, seconds), and all off-site support activities to be covered under the state permit.~~] If a street address is unavailable, provide latitude and longitude [and all off-site support activities to be covered under this general permit, including city or county, and latitude and longitude in decimal degrees];

3. Status of the [construction] activity: federal, state, public, or private;

4. Nature of the construction activity (e.g., commercial, industrial, residential, agricultural, oil and gas, etc.);

5. Name of the receiving water(s) and HUC [~~Direct discharges to any receiving water identified as impaired on the] 2008 [2012 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL WLA has been established for stormwater discharges from a construction activity shall be noted];~~

6. If the discharge is through a municipal separate storm sewer system (MS4), the name of the municipal [separate storm sewer system] operator [~~of the storm sewer~~];

7. Estimated project start date and completion date;

8. Total land area of development and estimated area to be disturbed by the construction activity (to the nearest [~~one-tenth~~ one-hundredth] of an acre);

9. Whether the area to be disturbed by the construction activity is part of a larger common plan of development or sale;

~~10. An indication of whether nutrient offsets are intended to be acquired in accordance with § 62.1-44.15:35 of the Code of Virginia; [10. Certifications. All information required by 9VAC25-880-50 B has been entered into the electronic database provided by the department. By signing the registration statement, the operator certifies that all information has been entered completely and accurately. By signing the registration statement, the operator certifies that all necessary approvals required by the permit will be obtained prior to land disturbance;~~

~~11. 10.]~~ A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the General [VPDES] Permit for Stormwater Discharges from Construction Activities prior to [submitting the registration statement land disturbance]. By signing the registration statement the operator certifies that the SWPPP

[has been will be] prepared [~~prior to land disturbance~~]; and

[~~42~~, 11.] The following certification: "I certify under penalty of law that I have read and understand this registration statement and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated 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 9VAC25-880-70, [~~Section Part~~] III K.

[~~D. Where to submit. The registration statement shall be submitted to the VSMP authority as the administering entity for the board.~~

~~E. Registration statements in the custody of the VSMP authority or the department are subject to requests made pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).~~]

9VAC25-880-60. Termination of [state general] permit coverage.

A. Requirements. The operator [~~of the construction activity~~] shall [~~certify that all information required in subsection B of this section has been entered completely and accurately into the electronic database provided by the department and shall~~] submit a notice of termination ~~on the official department form~~ [~~on a form specified by the department~~ to the VSMP authority] after one or more of the following conditions have been met:

1. Necessary [~~post construction~~ permanent] control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator is responsible [~~. When applicable, long-term responsibility and maintenance requirements for permanent control measures shall be recorded in the local land records prior to the submission of a notice of termination~~];
2. Another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge;
3. Coverage under an alternative VPDES or state permit has been obtained; or
4. For residential construction only, temporary [soil] stabilization has been completed and the residence has been transferred to the homeowner.

The notice of termination ~~must~~ should be submitted [~~within no later than~~] 30 days [~~of after~~] one of the above conditions being met. Authorization to discharge terminates at midnight

on the date that the notice of termination is submitted [~~unless otherwise notified by the VSMP authority or the department~~] for the conditions set forth in subdivisions 2 through 4 of this subsection [~~unless otherwise notified by the VSMP authority or the department~~]. Termination of authorizations to discharge for the conditions set forth in subdivision 1 of this subsection shall be effective upon notification from the department that the provisions of subdivision 1 of this subsection have been met or 60 days after submittal of the notice of terminations, whichever occurs first.

B. Notice of termination. The notice of termination shall contain the following information:

1. Name, [contact,] mailing address, telephone number, and email address [if available] of the construction activity operator.
2. Name and location [if available] of the construction activity [covered under this general permit, including city or county, and latitude and longitude in decimal degrees]. If a street address is unavailable, latitude and longitude shall be provided.
3. The ~~stormwater~~ general permit registration number.
4. The basis for submission of the notice of termination, pursuant to subsection A of this section.
5. Where applicable, a list of the [on-site and off-site] permanent control measures (both structural and nonstructural) that were installed [~~or employed to meet the post development stormwater quality criteria at the construction activity site~~ to comply with the stormwater management technical criteria]. For each permanent control measure that was installed [~~or employed~~], the following information shall be included:
 - a. [~~Where applicable, the following information related to onsite control measures:~~ (1) Type The type] of [onsite] permanent control measure installed and the date that it became functional as a permanent control measure;
 - [b.] Geographic location (county or city and Hydrologic Unit Code); [~~(2) Latitude and longitude~~] may additionally be included if available; [~~(in degrees, minutes, and seconds to the nearest 15 seconds) of the permanent control measure outfall~~ The location if available of the permanent control measure, including city or county, and latitude and longitude in decimal degrees];
 - [c.] ~~Waterbody the control measure discharges into; and~~ [The receiving water of the permanent control measures; and
 - d.] ~~Number~~ [The number of total and impervious acres treated by the permanent control measure (to the nearest one-tenth of an acre).
 - [~~(3) Construction activity acres treated onsite (to the nearest one-tenth of an acre); and~~

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~~(4) Construction activity nutrient reductions achieved onsite (lbs. per acre per year);~~

6. Where applicable, the following information related to participation in a regional stormwater management plan. For each regional stormwater management facility, the following information shall be included:

~~b. Where applicable, the following information related to offsite control measures:~~

~~(1) Type of offsite permanent control measure to which the construction activity contributes (e.g., a permanent control measure installed as part of a larger common plan of development or a permanent control measure installed in accordance with a comprehensive stormwater management plan adopted pursuant to 4VAC50-60-92/9VAC25-870-92);~~

~~(2) Approximate latitude and longitude (in degrees, minutes, and seconds to the nearest 15 seconds) of the offsite control measure; and~~

~~(3) Construction activity nutrient reductions achieved offsite (lbs. per acre per year);~~

a.] ~~Type [The type of regional facility] or facilities [to which the site contributes;~~

b.] ~~Geographic location of any regional facility to which the site contributes (county or city and Hydrologic Unit Code); [The location if available of the regional facility, including city or county, and latitude and longitude in decimal degrees; and~~

c.] ~~Geographic location of the site (county or city and Hydrologic Unit Code). Latitude and longitude may additionally be included if available; and [The number of total and impervious site acres treated by the regional facility (to the nearest one-tenth of an acre).]~~

d. ~~Number of acres treated by a regional facility.~~

[7. ~~e.~~] Where applicable, the following information related to perpetual nutrient [~~offsets~~] credits that were acquired in accordance with § 62.1-44.15:35 of the Code of Virginia:

~~[(1) Name of the nonpoint source nutrient bank from which nutrient credits were acquired. a. The name of the nonpoint nutrient credit generating entity from which perpetual nutrient credits were acquired]; and~~

~~[(2) Number b. The number] of [perpetual] nutrient credits acquired (lbs. per acre per year).~~

a. ~~Name of the broker from which offsets were acquired;~~

b. ~~Geographic location (county or city and Hydrologic Unit Code) of the broker's offset generating facility;~~

c. ~~Number of nutrient offsets acquired (lbs. per acre per year); and~~

d. ~~Nutrient reductions achieved on site (lbs. per acre per year);~~

~~[6. Any instrument recorded for the long term maintenance of any permanent stormwater management facilities, required pursuant to 9VAC25-870-112 has been submitted to the VSMP authority;~~

8. ~~7.~~] The following certification: "I certify under penalty of law that I have read and understand this notice of termination and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated 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 notice of termination shall be signed in accordance with 9VAC25-880-70 [~~Section Part~~] III K.

[~~D. Where to submit. The notice of termination shall be submitted to the VSMP authority as the administering entity for the board.~~

~~E. D.~~] Termination by the [~~department in coordination with the VSMP authority board~~]. The department in coordination with the VSMP authority board may terminate coverage under this [state general] permit during its term and require application for an individual permit or deny a [state general] permit renewal application on its own initiative in accordance with the Act, this chapter, and [the VSMP Regulation,] 9VAC25-870.

9VAC25-880-70. General permit.

Any operator whose registration statement is accepted by the department board [~~or its designated authority~~] will receive the following [state general] permit and shall comply with the requirements in it and be subject to all requirements of the Virginia Stormwater Management Act and the Virginia Stormwater Management Program (VSMP) Regulations (9VAC25-870) [contained] therein [and be subject to all requirements of 9VAC25-870]. [~~No more than one operator may receive coverage under each registration statement.~~]

General Permit No.: VAR10

Effective Date: July 1, 2009 2014

Expiration Date: June 30, 2014 2019

GENERAL [VPDES] PERMIT FOR DISCHARGES OF
STORMWATER FROM CONSTRUCTION ACTIVITIES

AUTHORIZATION TO DISCHARGE UNDER THE
VIRGINIA STORMWATER MANAGEMENT PROGRAM
AND THE VIRGINIA STORMWATER MANAGEMENT
ACT

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the Virginia Stormwater Management Act and [~~attendant~~] regulations [adopted

pursuant thereto], operators of construction activities [covered by this state permit with stormwater discharges] are authorized to discharge to state surface waters, ~~including discharges to a regulated MS4 system,~~ within the boundaries of the Commonwealth of Virginia, except those specifically named in State Water Control Board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, [Section Part] I - Discharge Authorization and Special Conditions, [Section Part] II - Stormwater Pollution Prevention Plan, and [Section Part] III - Conditions Applicable to All [State VPDES] Permits as set forth herein.

[SECTION PART] I

DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

A. Coverage under this [state general] permit.

1. During the period beginning with the date of coverage under this general permit and lasting until the [state general] permit's expiration date, the operator is authorized to discharge stormwater from [the following] construction activities [:]

~~a. New construction activities. Construction activities for which initial permit coverage is sought under this permit provided permit compliance is maintained or construction activities previously covered under the 2009 Virginia General Permit for Stormwater Discharges for Construction Activities and for which a registration statement was submitted in accordance with Section III M of the 2009 permit in order to maintain uninterrupted coverage.~~

~~b. Previously covered construction activities. Construction activities that have obtained VSMP permit coverage under the 2009 Construction Activities and submitted a registration statement in accordance with Section III M of the 2009 permit in order to maintain uninterrupted permit coverage.~~

~~c. Emergency related construction activities. Construction activities in response to a public emergency (e.g., natural disaster, disruption in essential public services), and the related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment. The operator shall have coverage under this permit in order to address these public emergencies provided that:~~

~~(1) The operator advises the VSMP authority of the construction activity within seven days of commencing land disturbance;~~

~~(2) State permit coverage is applied for within 30 days of commencing the land disturbing activity; and~~

~~(3) Documentation is provided with the registration statement to substantiate the occurrence of the public emergency.]~~

2. This [state general] permit ~~may~~ also ~~authorize~~ authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

a. The support activity is directly related to the construction site ~~that is required to have activity [applying for state that is required to have general] permit coverage [for discharges of stormwater] associated with [from construction] activity [activities];~~

b. The support activity is not a commercial operation [,] ~~serving [or does not nor does it] serve~~ multiple unrelated construction [projects activities] by different operators [, ~~and does not operate beyond the completion of~~] the construction activity at [the last construction project it supports]; ~~and~~

[c. The support activity does not operate beyond the completion of the last construction activity it supports;

~~e. d.] The support activity is identified in the registration statement at the time of [general permit] coverage;~~

[e. d. e.] Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas; ~~and~~

[e. f.] All applicable state, federal, and local approvals are obtained for the support activity.

3. There shall be no discharge of floating solids or visible foam that contravenes established standards or interferes directly or indirectly with designated uses of surface waters.

B. ~~Limitation~~ Limitations on coverage.

1. Post-construction discharges. This [state general] permit does not authorize stormwater discharges that originate from the site after construction activities have been completed and the site, including any ~~temporary~~ support activity site sites covered under the [general] permit registration, has undergone final stabilization. ~~Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit [and permit coverage has been terminated].~~ Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit.

[2. Discharges mixed with nonstormwater. This general] state [permit does not authorize discharges that are mixed with sources of nonstormwater, other than those discharges that are identified in] Section I D 2 (Exceptions to prohibition of nonstormwater discharges) [Part I E (Authorized nonstormwater discharges)] and are in compliance with Section II D 5 (Nonstormwater discharge management) [this general permit.]

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[3. ~~2.~~] Discharges covered by another state permit. This [state general] permit does not authorize [stormwater discharges associated with construction activity discharges of stormwater from construction activities] that have been covered under an individual permit or required to obtain coverage under an alternative general permit.

4. TMDL limitation. Discharges to waters for which a wasteload allocation (WLA) for a pollutant has been established in an approved "total maximum daily load" (TMDL) that would apply to stormwater discharges from a construction activity are not eligible for coverage under this state permit unless the stormwater pollution prevention plan (SWPPP) developed by the operator is consistent with the requirements related to TMDLs contained in Section II D-6.

5. Impaired waters limitation. Discharges to waters that have been identified as impaired in the 2008 § 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under this state permit unless the operator implements strategies and control measures consistent with Sections I H and II D-7.

[3. ~~Limitations on coverage for discharges to impaired waters. This only applies when construction activities discharge or are reasonably expected to discharge an applicable observed source identified in the 2012 § 305(b)/303(d) Water Quality Integrated Report or a pollutant of concern identified in a TMDL approved prior to July 1, 2014.~~

~~a. Discharges to impaired waters, including discharges to surface waters located within a TMDL watershed, are not eligible for coverage under this general permit unless the following requirements are implemented:~~

~~(1) The impaired water(s), associated impairment(s), TMDL name(s), and TMDL pollutant(s) of concern when applicable shall be identified in the registration statement and in the SWPPP;~~

~~(2) The operator shall develop, implement, and maintain a SWPPP that minimizes applicable observed sources identified in the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report, minimizes pollutants of concern identified in a TMDL approved prior to July 1, 2014, and is consistent with the assumptions and requirements of all associated TMDL wasteload allocations when applicable; and~~

~~(3) The following modifications to the SWPPP inspection schedule shall be implemented:~~

~~(a) Inspections shall be conducted at a frequency of:~~

~~(i) At least once every four days; or~~

~~(ii) At least once every seven days and no later than 48 hours following any measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between normal working days, the inspection shall be conducted on the next working day.~~

~~(b) Where areas have been temporarily stabilized or runoff is unlikely due to winter conditions (e.g., the site is covered with snow or ice, or continuous frozen ground exists), the inspection frequency may be reduced to once every 30 days. If unexpected weather conditions (such as above freezing temperature or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency.~~

~~(c) Representative inspections utilized by utility line installation, pipeline construction, or other similar linear construction activities in Section II F 2 c shall also inspect all outfalls discharging directly to an impaired water.~~

~~(4) The requirements of Sections I B 3 a (1) through I B 3 a (3) shall be implemented for:~~

~~(a) All construction activities outside of Tidewater Virginia, as defined in § 62.1-44.15:68 of the Code of Virginia, that discharge to a surface water in the Chesapeake Bay watershed and disturb greater than or equal to 20 acres;~~

~~(b) All construction activities inside of Tidewater Virginia, as defined in § 62.1-44.15:68 of the Code of Virginia, that discharge to a surface water in the Chesapeake Bay watershed and disturb greater than or equal to 10 acres;~~

~~(c) All construction activities that discharge to a surface water located within a TMDL watershed other than the Chesapeake Bay watershed and disturb greater than or equal to five acres; and~~

~~(d) All construction activities that discharge directly to an impaired water. For the purposes of this permit, a construction activity will be considered to discharge directly to an impaired water if the first surface water to which it discharges has been identified in the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report as not meeting an applicable water quality standard. For discharges that enter a storm sewer system prior to discharge, the surface water to which the operator discharges is the first surface water that receives the stormwater discharge from the storm sewer system.~~

~~b. Discharges to impaired waters, including discharges to surface waters located within a TMDL watershed, where sediment, a sediment related parameter (e.g., total suspended solids or turbidity) or nutrients (e.g., nitrogen or phosphorus) are an applicable observed source identified in the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report or a pollutant of concern identified in a TMDL approved prior to July 1, 2014, shall also implement the following requirements:~~

~~(1) Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site; and~~

(2) Nutrients shall be applied in accordance with manufacturer's recommendations and shall not be applied during rainfall events.

4. Limitations on coverage for new discharges to exceptional waters identified in 9VAC25-260-30 A 3 c. Discharges from new construction activities to exceptional waters are not eligible for coverage under this general permit unless the following requirements are implemented:

a. The exceptional water shall be identified in the registration statement and in the SWPPP;

b. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;

c. The following modifications to the SWPPP inspection schedule shall be implemented:

(1) Inspections shall be conducted at a frequency of:

(a) At least once every four days; or

(b) At least once every seven days and no later than 48 hours following any measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between normal working days, the inspection shall be conducted on the next working day;

(c) Where areas have been temporarily stabilized or runoff is unlikely due to winter conditions (e.g., the site is covered with snow or ice, or continuous frozen ground exists), the inspection frequency may be reduced to once every 30 days. If unexpected weather conditions (such as above freezing temperature or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency;

(2) Representative inspections utilized by utility line installation, pipeline construction, or other similar linear construction activities in Section II F 2 c shall also inspect all outfalls discharging directly to an exceptional water.

5. There shall be no discharges of floating solids or visible foam in other than trace amounts.

4. Impaired waters and TMDL limitation. Discharges of stormwater from construction activities to surface waters identified as impaired in the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit for (i) sediment or a sediment-related parameter (i.e., total suspended solids or turbidity) or (ii) nutrients (i.e., nitrogen or phosphorus) are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a SWPPP that minimizes the pollutants of concern and, when applicable, is consistent with the assumptions and requirements of the approved TMDL wasteload allocations. In addition, the operator shall implement the following items:

a. The impaired water(s), approved TMDL(s), and pollutant(s) of concern, when applicable, shall be identified in the SWPPP;

b. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;

c. Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and

d. The applicable SWPPP inspection requirements specified in Part II F 2 shall be amended as follows:

(1) Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day; and

(2) Representative inspections used by utility line installation, pipeline construction, or other similar linear construction activities shall inspect all outfalls discharging to surface waters identified as impaired or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit.

5. Exceptional waters limitation. Discharges of stormwater from construction activities not previously covered under the general permit issued in 2009 to exceptional waters identified in 9VAC25-260-30 A 3 c are not eligible for coverage under this general permit unless the operator implements the following:

a. The exceptional water(s) shall be identified in the SWPPP;

b. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;

c. Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and

d. The applicable SWPPP inspection requirements specified in Part II F 2 shall be amended as follows:

(1) Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day; and

(2) Representative inspections used by utility line installation, pipeline construction, or other similar linear

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construction activities shall inspect all outfalls discharging to exceptional waters.

6. There shall be no discharge of floating solids or visible foam in other than trace amounts.]

C. Commingled discharges. ~~Any discharge authorized by a different state or VPDES permit may be commingled with discharges authorized by this state permit. Discharges authorized by this [general] permit may be commingled [with other sources of stormwater that are not required to be covered under a state permit, so long as the commingled discharge is in compliance with this general permit]. Discharges authorized by a separate [VSMP state] or VPDES permit may be commingled with discharges authorized by this [general] permit [so long as all such discharges comply with all applicable state and VPDES permit requirements].~~

D. Prohibition of nonstormwater discharges. ~~4. Except as provided in Sections I A 2, I C and I D 2 [Sections Parts] I A 2, I C and I E, all discharges covered by this [state general] permit shall be composed entirely of stormwater associated with construction [activity activities]. All other discharges including the following are prohibited:~~

1. Wastewater from washout of concrete [, unless managed by an appropriate control as described at Section H A 2 d (5) (e);]

2. Wastewater from [the] washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;

4. Oils, toxic substances, or hazardous substances from spills or other releases; and

5. Soaps [and,] solvents [, or detergents] used in equipment and vehicle washing.

~~2. The following nonstormwater discharges from active construction sites are authorized by this state permit provided the nonstormwater component of the discharge is in compliance with Section II D 5 (Nonstormwater discharges):~~

E. Authorized nonstormwater discharges. The following nonstormwater discharges from construction activities are authorized by this [general] permit when discharged in compliance with this [general] permit:

~~a. 1. Discharges from firefighting activities;~~

~~b. 2. Fire hydrant flushings;~~

~~c. 3. Waters used to wash vehicles [or equipment] where [soaps, solvents, or] detergents are not have not been used and the wash water has been [filtered, settled, or similarly] treated [prior to discharge];~~

~~d. 4. Water used to control dust that has been filtered, settled, or similarly treated prior to discharge;~~

~~e. 5. Potable water sources, including uncontaminated waterline flushings;~~

~~f. 6. Routine external building wash down [which does not use detergents where soaps], solvents or [other wash chemicals and that have detergents have not been used and the wash water has] been filtered, settled, or similarly treated prior to discharge;~~

~~g. 7. Pavement [washwaters wash waters] where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) (or where all spilled [or leaked] material has been removed [prior to washing] and; where [soaps, solvents, or] detergents [, solvents, or other wash chemicals are have] not [been] used [;] and where the [washwater wash water] has been filtered, settled, or similarly treated prior to discharge;~~

~~h. 8. Uncontaminated air conditioning or compressor condensate;~~

~~i. 9. Uncontaminated ground water or spring water;~~

~~j. 10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;~~

~~k. 11. Uncontaminated excavation dewatering, including dewatering of trenches and excavations that have been filtered, settled, or similarly treated prior to discharge; and~~

~~l. 12. Landscape irrigation.~~

~~E. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the stormwater discharges from the construction site shall be prevented or minimized in accordance with the stormwater pollution prevention plan for the site. This state permit does not relieve the state permittee of the reporting requirements of 40 CFR Part 110, 40 CFR Part 117 and 40 CFR Part 302 or § 62.1 44.34.19 of the Code of Virginia.~~

~~Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, or § 62.1 44.34.19 of the Code of Virginia occurs during a 24-hour period:~~

~~1. The operator is required to notify the department and the VSMP authority in accordance with the requirements of Section III G as soon as he has knowledge of the discharge;~~

~~2. Where a release enters a municipal separate storm sewer system (MS4), the operator shall also notify the operator of the MS4; and~~

~~3. The stormwater pollution prevention plan required under Section II D of this state permit must be reviewed by the operator to identify measures to prevent the recurrence of such releases and to respond to such releases, and the plan must be modified where appropriate within seven calendar days of knowledge of a release.~~

~~F. Spills. This state permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.~~

~~G. F. Termination of [state general] permit coverage. [Coverage under this state permit may be terminated in accordance with 9VAC25-880-60.~~

1. The operator of the construction activity shall submit a notice of termination in accordance with 9VAC25-880-60 to the VSMP authority after one or more of the following conditions have been met:

a. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator is responsible. When applicable, long term responsibility and maintenance requirements shall be recorded in the local land records prior to the submission of a notice of termination;

b. Another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge;

c. Coverage under an alternative VPDES or state permit has been obtained; or

d. For residential construction only, temporary soil stabilization has been completed and the residence has been transferred to the homeowner.

2. The notice of termination should be submitted no later than 30 days after one of the above conditions in subdivision 1 of this subsection are met. Authorization to discharge terminates at midnight on the date that the notice of termination is submitted for the conditions set forth in subdivisions 1 b through 1 d of this subsection. Termination of authorizations to discharge for the conditions set forth in subdivision 1 a of this subsection shall be effective upon notification from the department that the provisions of subdivision 1 a of this subsection have been met or 60 days after submittal of the notice of termination, whichever occurs first.

3. The notice of termination shall be signed in accordance with Part III K of this general permit.]

~~H. G. Water quality protection.~~

1. The operator must select, install, implement and maintain control measures as identified in the SWPPP at the construction site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standards standard.

2. If it is determined by the department [in consultation with the State Water Control Board] at any time that the operator's stormwater discharges are causing, have reasonable potential to cause, or contribute are contributing to an excursion above any applicable water quality standard, the department shall, in consultation with the

VSMP authority, may take appropriate enforcement action and require the operator to:

a. Modify [or implement additional] control measures in accordance with [Section Part] II ~~C~~ B to adequately address the identified water quality concerns;

b. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or

c. [Cease discharges of pollutants from construction activity and submit Submit] an individual permit application [according to in accordance with] 9VAC25-870-410 B 3.

All written responses required under this chapter must include a signed certification consistent with [Section Part] III K.

[SECTION PART] II

STORMWATER POLLUTION PREVENTION PLAN

[A stormwater pollution prevention plan (SWPPP) shall be developed prior to the submission of a registration statement and implemented for the construction activity, including any support activity, covered by this general permit. SWPPPs shall be prepared in accordance with good engineering practices. Construction activities that are part of a larger common plan of development or sale and disturb less than one acre may utilize a SWPPP template provided by the department and need not provide a separate stormwater management plan if one has been prepared and implemented for the larger common plan of development or sale.

The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other plans such as a spill prevention control and countermeasure (SPCC) plan developed for the site under § 311 of the federal Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Part II A. All plans incorporated by reference into the SWPPP become enforceable under this general permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP, the operator must develop the missing elements and include them in the SWPPP.

Any operator that was authorized to discharge under the general permit issued in 2009, and that intends to continue coverage under this general permit, shall update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.]

A. Stormwater [Pollution Prevention Plan] Framework. [pollution prevention plan contents. The SWPPP shall include the following items:]

[1. A stormwater pollution prevention plan (SWPPP) shall be developed prior to land disturbance] submission of a registration statement and implemented [for the

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construction activity covered by this state permit. SWPPPs shall be prepared in accordance with good engineering practices. Construction activities that are part of a common plan of development and disturb less than one acre may utilize a SWPPP template provided by the department and need not provide a separate stormwater management plan if one has been prepared and implemented for the planned development.

2. The SWPPP shall include:]

- a. Identify potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site;
- b. Describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site; and
- c. Comply with the terms and conditions of this state permit.

[a. General Information:

(1) A copy of the Registration for Coverage under the General Permit for Discharges of Stormwater for Construction Activities signed in accordance with 9VAC25-870-370;

(2) Upon receipt of coverage, a copy of the Notice of Coverage under the General Permit for Discharges of Stormwater from Construction Activities;

(3) A copy of the General Permit for Discharges of Stormwater from Construction Activities;

(4) A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);

(5) A legible site plan identifying:

(a) Directions of stormwater flow and approximate slopes anticipated after major grading activities;

(b) Limits of land disturbance including steep slopes and natural buffers around surface waters that will not be disturbed;

(c) Locations of major structural and nonstructural control measures including sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to filter or similarly treat sediment that will be installed between disturbed areas and the undisturbed vegetated areas, in order to increase sediment removal and maximize stormwater infiltration;

(d) Locations of surface waters;

(e) Locations where concentrated stormwater is discharged;

(f) Location of the on-site rain gauge, or a description of the methodology to identify measurable storm events established in consultation with the VSMP authority,

used to identify a measurable storm event for inspection purposes; and

(g) Locations of on-site and off-site, when applicable and when required by the VSMP authority, support activities, including: (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids, fuels, fertilizers and other lawn care chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; and (vi) construction waste storage.

(6) Previously covered construction activities, as identified in Section I A 1 b, shall review and update their SWPPP no later than 30 days following permit coverage to include the required information listed in Section II A 2 a.

b. Erosion and Sediment Control Plan:

(1) An erosion and sediment control plan or an agreement in lieu of a plan, as defined in 9VAC25-840-10, approved by a board approved VESCP authority or, where appropriate, an erosion and sediment control plan designed in accordance with annual standards and specifications approved by the department. The operator of any land disturbing activity that is not required to obtain erosion and sediment control plan approval from a VESCP authority or adopts department approved annual standards and specifications shall submit the erosion and sediment control plan to the department for review and approval prior to land disturbance. Plan approval prior to land disturbance does not apply to emergency related construction activities.

(2) For off-site support activities such as borrow or fill areas, all required erosion and sediment control plans approved by a VESCP authority or, where appropriate, an erosion and sediment control plan designed in accordance with annual standards and specifications approved by the department. The operator of any land disturbing activity that is not required to obtain erosion and sediment control plan approval from a VESCP authority or adopts department approved annual standards and specifications shall submit the erosion and sediment control plan to the department for review and approval prior to land disturbance.

(3) All erosion and sediment control plans shall include a statement describing the maintenance responsibilities required for the erosion and sediment controls utilized.

(4) Unless there is evidence as the result of an inspection as required under Section II F, an approved and properly implemented erosion and sediment control plan; an agreement in lieu of a plan approved by the VESCP authority without exception; or an erosion and sediment control plan designed and implemented in accordance

with annual standards and specifications approved by the department that adequately:

(a) Controls the volume and velocity of stormwater runoff within the site to minimize soil erosion;

(b) Controls stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

(c) Minimizes the disturbance of steep slopes;

(d) Minimizes the amount of soil exposed during construction activity;

(e) Minimizes sediment discharges from the site in a manner that addresses the amount, frequency, intensity, and duration of precipitation, the nature of resulting stormwater runoff and soil characteristics, including the range of soil particle sizes expected to be present on the site;

(f) Provides and maintains natural buffers around surface waters, directs stormwater to vegetated areas to increase sediment removal, and maximizes stormwater infiltration, unless infeasible;

(g) Minimizes soil compaction and preserves topsoil where feasible;

(h) Ensures that stabilization will begin immediately upon installation of earthen structures such as dams, dikes, and diversions and that stabilization of denuded areas shall be initiated immediately upon reaching final grade or for areas that may not be at final grade but will remain dormant for longer than 14 days. Temporary stabilization shall be installed within seven days of initiation; and

(i) Discharges stormwater from the surface of basins and other impoundments when the impoundment is designed to include wet storage and is designed to discharge above the permanent pool elevation.

(5) Previously covered construction activities, as identified in Section I A 1 b, shall implement the inspection requirements in Section II F and update their erosion and sediment control plan no later than 30 days following permit coverage to include the required modifications resulting from the inspection requirements.

c. Stormwater Management Plan. A stormwater management plan from the appropriate VSMP authority as authorized under the Virginia Stormwater Management Program Regulations, 9VAC25 870. The operator of any land disturbing activity that is not required to obtain stormwater management plan approval from a VSMP authority or is not required to adopt department approved annual standards and specifications shall submit the stormwater management plan to the department for review and approval prior to land disturbance. Plan approval prior to land disturbance does not apply to emergency related construction activities.

d. Pollution Prevention Plan. A pollution prevention plan that addresses expected pollutant generating activities from both on site and off site support activities covered under the general permit that may reasonably be expected to affect the quality of stormwater discharges. In order to comply with 9VAC25 870 56, the pollution prevention plan shall:

(1) Identify the potential pollutant generating activities and the pollutant that is expected to be exposed to stormwater for on site and off site activities, including support activities;

(2) Describe the location where the pollutant generating activities will occur; or if identified on the site plan, reference to the site plan;

(3) Identify all nonstormwater discharges, as authorized in Section I E of this permit, that are or will be commingled with stormwater discharges from the construction activity at the site;

(4) Identify the person responsible for the pollution prevention activities for each pollutant generating activity (if other than the person listed as the qualified personnel);

(5) Describe procedures and practices that will be implemented to:

(a) Prevent and respond to leaks, spills and other releases including (i) procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases; and (ii) procedures for reporting leaks, spills, and other releases in accordance with Section III G;

(b) Eliminate the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities (e.g., providing secondary containment such as spill berms, decks, spill containment pallets, providing cover where appropriate, and having spill kits readily available);

(c) Prevent the discharge of soaps, detergents, solvents, and wash water from construction materials, such as clean up of stucco, paint form release oils, and curing compounds, by providing (i) cover (e.g., plastic sheeting or temporary roofs) to prevent contact with stormwater; (ii) collection and proper disposal in a manner to prevent contact with stormwater; and (iii) a similarly effective means designed to prevent discharge of these pollutants.

(d) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water and other types of washing (e.g., locating activities away from surface waters and stormwater inlets or conveyance and directing wash waters to sediment basins or traps, using filtration devices such as filter bags or sand filters or using similarly effective controls);

(e) Direct concrete wash water into a leak proof container or leak proof settling basin that is designed so that no overflows can occur due to inadequate sizing or

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precipitation. Hardened concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wastes. Liquid concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wash waters and shall not be discharged to surface waters;

(f) Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes including (i) building products such as asphalt sealants, copper flashing, roofing materials, adhesives, concrete admixtures; (ii) pesticides, herbicides, insecticides, fertilizers, and landscape materials; and (iii) construction and domestic wastes such as packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, styrofoam, concrete, and other trash or building materials;

(g) Prevent the discharge of fuels, oils, and other petroleum products, hazardous or toxic wastes, and sanitary wastes; and

(h) Address any other discharges from the potential pollutant generating activity not addressed above.

(6) The pollution prevention plan shall describe procedures for providing pollution prevention awareness of all applicable wastes, including any wash water, disposal practices and applicable disposal locations of such wastes, to personnel in order to comply with the conditions of this permit. The operator shall implement the procedures described in the SWPPP.

(7) Previously covered construction activities, as identified in Section I A 1 b, shall review and update their pollution prevention plan no later than 30 days following permit coverage to ensure compliance with these permit conditions.

e. Applicable state or local programs. Certain requirements of this general permit may be fulfilled by incorporating by reference other plans such as a spill prevention control and countermeasure (SPCC) plan developed for the site under § 311 of the federal Clean Water Act or BMP programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Section II A 2 a. All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP, the operator must develop the missing elements and include them in the SWPPP.

f. SWPPP requirements for discharges to impaired waters, surface waters located within a TMDL watershed, and exceptional waters. The SWPPP shall:

(1) Identify impaired water(s), associated impairment(s), TMDL name(s), TMDL pollutant(s) of concern, and exceptional waters when applicable; and

(2) Provide clear direction that:

(a) Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site, when applicable;

(b) Nutrients shall be applied in accordance with manufacturer's recommendations and shall not be applied during wet weather events when applicable; and

(c) A modified inspection schedule shall be implemented, when applicable.

g. Qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this permit.

h. Delegation of authority. The individuals or positions with delegated authority, in accordance with Section III K, to sign inspection reports or modify the SWPPP.

i. SWPPP signature. The SWPPP shall be signed and dated in accordance with Section III K.]

3. The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other state or local plans such as (i) an erosion and sediment control (ESC) plan, (ii) an agreement in lieu of a plan as defined in 9VAC25 840 10, (iii) a stormwater management plan, (iv) a spill prevention control and countermeasure (SPCC) plan developed for the site under § 311 of the federal Clean Water Act or (v) best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Section II D. If an erosion and sediment control plan for the land disturbing activity is being incorporated by reference, the referenced plan must be approved by the VESCP authority of the locality in which the construction activity is to occur prior to the commencement of land disturbance.

4. All plans incorporated by reference into the SWPPP become enforceable under this state permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Section II D, the operator must develop the missing elements and include them in the required SWPPP.

5. Once a definable area has been finally stabilized, the operator may mark this on the SWPPP and no further SWPPP or inspection requirements apply to that portion of the site (e.g., earth disturbing activities around one of three buildings in a complex are done and the area is finally stabilized; one mile of a roadway or pipeline project is done and finally stabilized, etc.).

6. The SWPPP shall identify all properties that are no longer under the control of the operator and the dates on which the operator no longer had control over each property.

7. The operator must implement the SWPPP as written and updated in accordance with Section II C from

~~commencement of construction activity until final stabilization is complete.~~

[1. General information.

a. A signed copy of the registration statement for coverage under the general VPDES permit for discharges of stormwater from construction activities;

b. Upon receipt, a copy of the notice of coverage under the general VPDES permit for discharges of stormwater from construction activities (i.e., notice of coverage letter);

c. Upon receipt, a copy of the general VPDES permit for discharges of stormwater from construction activities;

d. A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);

e. A legible site plan identifying:

(1) Directions of stormwater flow and approximate slopes anticipated after major grading activities;

(2) Limits of land disturbance including steep slopes and natural buffers around surface waters that will not be disturbed;

(3) Locations of major structural and nonstructural control measures, including sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to filter, settle, or similarly treat sediment, that will be installed between disturbed areas and the undisturbed vegetated areas in order to increase sediment removal and maximize stormwater infiltration;

(4) Locations of surface waters;

(5) Locations where concentrated stormwater is discharged;

(6) Locations of support activities, when applicable and when required by the VSMP authority, including but not limited to (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids, fuels, fertilizers, and other lawn care chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; and (vi) construction waste storage; and

(7) When applicable, the location of the on-site rain gauge or the methodology established in consultation with the VSMP authority used to identify measurable storm events for inspection purposes.

2. Erosion and sediment control plan.

a. An erosion and sediment control plan approved by the VESCP authority as authorized under the Erosion and Sediment Control Regulations (9VAC25-840), an "agreement in lieu of a plan" as defined in 9VAC25-840-10 from the VESCP authority, or an erosion and

sediment control plan prepared in accordance with annual standards and specifications approved by the department. Any operator proposing a new stormwater discharge from construction activities that is not required to obtain erosion and sediment control plan approval from a VESCP authority or does not adopt department-approved annual standards and specifications shall submit the erosion and sediment control plan to the department for review and approval.

b. All erosion and sediment control plans shall include a statement describing the maintenance responsibilities required for the erosion and sediment controls used.

c. A properly implemented approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, that adequately:

(1) Controls the volume and velocity of stormwater runoff within the site to minimize soil erosion;

(2) Controls stormwater discharges, including peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

(3) Minimizes the amount of soil exposed during the construction activity;

(4) Minimizes the disturbance of steep slopes;

(5) Minimizes sediment discharges from the site in a manner that addresses (i) the amount, frequency, intensity, and duration of precipitation; (ii) the nature of resulting stormwater runoff; and (iii) soil characteristics, including the range of soil particle sizes present on the site;

(6) Provides and maintains natural buffers around surface waters, directs stormwater to vegetated areas to increase sediment removal, and maximizes stormwater infiltration, unless infeasible;

(7) Minimizes soil compaction and, unless infeasible, preserves topsoil;

(8) Ensures that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days; and

(9) Utilizes outlet structures that withdraw stormwater from the surface (i.e., above the permanent pool or wet storage water surface elevation), unless infeasible, when discharging from sediment basins or sediment traps.

3. Stormwater management plan.

a. New construction activities. A stormwater management plan approved by the VSMP authority as authorized under the Virginia Stormwater Management

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Program (VSMP) Regulation (9VAC25-870), or a stormwater management plan prepared in accordance with annual standards and specifications approved by the department. Any operator proposing a new stormwater discharge from construction activities that is not required to obtain stormwater management plan approval from a VSMP authority or does not adopt department-approved annual standards and specifications shall submit the stormwater management plan to the department for review and approval.

b. Existing construction activities. Any operator that was authorized to discharge under the general permit issued in 2009, and that intends to continue coverage under this general permit, shall ensure compliance with the requirements of 9VAC25-870-93 through 9VAC25-870-99 of the VSMP Regulation, including but not limited to the water quality and quantity requirements. The SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed prior to the completion of the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree possible. Such measures must be designed and installed in accordance with applicable VESCP authority, VSMP authority, state, and federal requirements, and any necessary permits must be obtained.

4. Pollution prevention plan. A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity. The pollution prevention plan shall:

a. Identify the potential pollutant-generating activities and the pollutant that is expected to be exposed to stormwater;

b. Describe the location where the potential pollutant-generating activities will occur, or if identified on the site plan, reference the site plan;

c. Identify all nonstormwater discharges, as authorized in Part I E of this general permit, that are or will be commingled with stormwater discharges from the construction activity, including any applicable support activity;

d. Identify the person responsible for implementing the pollution prevention practice or practices for each pollutant-generating activity (if other than the person listed as the qualified personnel);

e. Describe the pollution prevention practices and procedures that will be implemented to:

(1) Prevent and respond to leaks, spills, and other releases including (i) procedures for expeditiously

stopping, containing, and cleaning up spills, leaks, and other releases; and (ii) procedures for reporting leaks, spills, and other releases in accordance with Part III G;

(2) Prevent the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities (e.g., providing secondary containment such as spill berms, decks, spill containment pallets, providing cover where appropriate, and having spill kits readily available);

(3) Prevent the discharge of soaps, solvents, detergents, and wash water from construction materials, including the clean-up of stucco, paint, form release oils, and curing compounds (e.g., providing (i) cover (e.g., plastic sheeting or temporary roofs) to prevent contact with stormwater; (ii) collection and proper disposal in a manner to prevent contact with stormwater; and (iii) a similarly effective means designed to prevent discharge of these pollutants);

(4) Minimize the discharge of pollutants from vehicle and equipment washing, wheel wash water, and other types of washing (e.g., locating activities away from surface waters and stormwater inlets or conveyance and directing wash waters to sediment basins or traps, using filtration devices such as filter bags or sand filters, or using similarly effective controls);

(5) Direct concrete wash water into a leak-proof container or leak-proof settling basin. The container or basin shall be designed so that no overflows can occur due to inadequate sizing or precipitation. Hardened concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wastes. Liquid concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wash waters and shall not be discharged to surface waters;

(6) Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes including (i) building products such as asphalt sealants, copper flashing, roofing materials, adhesives, and concrete admixtures; (ii) pesticides, herbicides, insecticides, fertilizers, and landscape materials; and (iii) construction and domestic wastes such as packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, styrofoam, concrete, and other trash or building materials;

(7) Prevent the discharge of fuels, oils, and other petroleum products, hazardous or toxic wastes, and sanitary wastes; and

(8) Address any other discharge from the potential pollutant-generating activities not addressed above; and

f. Describe procedures for providing pollution prevention awareness of all applicable wastes, including any wash

water, disposal practices, and applicable disposal locations of such wastes, to personnel in order to comply with the conditions of this general permit. The operator shall implement the procedures described in the SWPPP.

5. SWPPP requirements for discharges to impaired waters, surface waters with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit, and exceptional waters. The SWPPP shall:

a. Identify the impaired water(s), approved TMDL(s), pollutant(s) of concern, and exceptional waters identified in 9VAC25-260-30 A 3 c, when applicable;

b. Provide clear direction that:

(1) Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;

(2) Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and

(3) A modified inspection schedule shall be implemented in accordance with Part I B 4 or Part I B 5.

6. Qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit.

7. Delegation of authority. The individuals or positions with delegated authority, in accordance with Part III K, to sign inspection reports or modify the SWPPP.

8. SWPPP signature. The SWPPP shall be signed and dated in accordance with Part III K.]

B. Signature, SWPPP review and making SWPPPs available.

1. The SWPPP shall be signed in accordance with Section III K.

2. The SWPPP shall be retained, along with a copy of this state permit, registration statement, and state permit coverage letter from the department, at the construction site or other location easily accessible during normal business hours from the date of commencement of construction activity to the date of final stabilization. Operators with day to day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on site for the use of all operators and those identified as having responsibilities under the SWPPP whenever they are on the construction site. The SWPPP must be made available, in its entirety, to the department, the VSMP authority, and the operator of a municipal separate storm sewer system receiving discharges from the site for review at the time of an on-site inspection. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the

SWPPP's location must be posted near the main entrance at the construction site.

3. The operator shall make SWPPPs and all updates available upon request to the department; the VSMP authority; EPA; a state or local agency approving erosion and sediment control plans, grading plans, or stormwater management plans; local government officials; or the operator of a municipal separate storm sewer system receiving discharges from the site.

4. A sign or other notice must be posted conspicuously near the main entrance of the construction site. The sign or other notice must contain the following information:

a. A copy of the state permit coverage letter that includes the registration number for the construction activity; and

b. The Internet address at which a copy of the SWPPP may be found or the location of a hard copy of the SWPPP and name and telephone number of a contact person for scheduling viewing times.

For linear projects, the sign or other notice must be posted at a publicly accessible location near an active part of the construction project (e.g., where a pipeline project crosses a public road).

5. For discharges that commence on or after July 1, 2009, that have not previously held coverage under a state or VPDES permit, the operator shall make the SWPPP available to the public for review. A copy of the SWPPP for each site shall be made available on the Internet or in hard copy. The website address or contact person for access to the SWPPP shall be posted on the sign required by subdivision B 4 of this section. If not provided electronically, access to the SWPPP may be arranged upon request at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less than once per month and shall be during normal business hours. If a reproduced copy of the SWPPP is provided to the requestor, the requestor shall be responsible for the costs of reproduction. Information excluded from disclosure under applicable law shall not be required to be released. Information not required to be contained within the SWPPP by this state permit is not required to be released.

C. Maintaining an updated SWPPP.

1. The operator shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP.

2. The SWPPP must be amended if during inspections or investigations by the operator's qualified personnel, or by VESCP authority, VSMP authority, state or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in stormwater discharges from the construction site. Revisions to the

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~~SWPPP shall include additional or modified control measures designed to correct problems identified. If approval by a VSMP authority is necessary for the control measure, revisions to the SWPPP shall be completed within seven calendar days of approval. Implementation of these additional or modified control measures must be accomplished as described in Section II D 3 b.~~

~~3. Revisions to the SWPPP must be dated and signed in accordance with Section III K 2, but are not required to be certified in accordance with Section III K 4.~~

~~4. The SWPPP must clearly identify the contractor(s) or subcontractor(s) that will implement and maintain each measure identified in the SWPPP. The SWPPP shall be revised to identify any new contractor that will implement a measure.~~

~~D. Stormwater pollution prevention plan contents. The SWPPP shall include the registration statement, this state permit, and the following items:~~

~~1. Site and activity description. Each SWPPP shall provide the following information:~~

~~a. A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);~~

~~b. The intended sequence and timing of activities that disturb soils at the site (e.g., grubbing, excavation, grading, utilities and infrastructure installation);~~

~~c. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated;~~

~~d. Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities including off-site borrow and fill areas;~~

~~e. A description of any other potential pollutant sources, such as vehicle fueling, storage of fertilizers or chemicals, sanitary waste facilities, etc.;~~

~~f. Identification of the nearest receiving waters at or near the construction site that will receive discharges from disturbed areas of the project;~~

~~g. The location and description of any discharge associated with industrial activity other than construction at the site. This includes stormwater discharges from dedicated asphalt plants and dedicated concrete plants that are covered by this state permit;~~

~~h. A legible general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) with sufficient detail to identify the location of the construction activity and surface waters within one mile of the construction activity; and~~

~~i. A legible site map identifying:~~

~~(1) Directions of stormwater flow and approximate slopes anticipated after major grading activities;~~

~~(2) Areas of soil disturbance and areas of the site which will not be disturbed;~~

~~(3) Locations of major structural and nonstructural control measures identified in the SWPPP, including those that will be permanent after construction activities have been completed;~~

~~(4) Locations where stabilization practices are expected to occur;~~

~~(5) Locations of surface waters;~~

~~(6) Locations where concentrated stormwater discharges;~~

~~(7) Locations of off-site material, waste, borrow or equipment storage areas covered by the SWPPP;~~

~~(8) Locations of other potential pollutant sources, such as vehicle fueling, storage of chemicals, concrete wash-out areas, sanitary waste facilities, including those temporarily placed on the construction site, etc.; and~~

~~(9) Areas where final stabilization has been accomplished.~~

~~2. Controls to minimize pollutants. The SWPPP shall include a description of all control measures that will be implemented as part of the construction activity to minimize pollutants in stormwater discharges. For each major activity identified in the project description, the SWPPP shall clearly describe appropriate control measures, the general sequencing during the construction process in which the control measures will be implemented, and which operator is responsible for the control measure's implementation.~~

~~a. Erosion and sediment controls.~~

~~(1) An erosion and sediment control plan or an agreement in lieu of a plan shall be approved by the appropriate VESCP authority for the land disturbing activity in accordance with the Virginia Erosion and Sediment Control Law and regulations (9VAC25-840). Where applicable, a plan shall be developed in accordance with board approved annual general erosion and sediment control specifications.~~

~~(2) All control measures required by the plan shall be designed, installed, and maintained in accordance with good engineering practices and the minimum standards of the Virginia Erosion and Sediment Control Law and regulations (9VAC25-840).~~

~~b. Management practices.~~

~~(1) Plans should ensure that existing vegetation is preserved where possible and that disturbed portions of the site are stabilized.~~

~~(2) All control measures must be properly selected, installed, and maintained in accordance with good engineering practices and, where applicable, manufacturer specifications. If periodic inspections or~~

other information indicates a control has been used inappropriately or incorrectly, the operator must replace or modify the control for site situations as soon as practicable and update the SWPPP in accordance with Section II C.

(3) If sediment escapes the construction site, off site accumulations of sediment must be removed as soon as practicable to minimize off site impacts. If approval by a VESCP authority is necessary, control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.

(4) Construction debris and construction chemicals exposed to stormwater shall be prevented from becoming a pollutant source in stormwater discharges.

(5) Litter exposed to stormwater shall be prevented from becoming a pollutant source in stormwater discharges and the construction site shall be policed daily to control litter.

e. Stormwater management.

(1) The operator shall ensure compliance with the requirements of 9VAC25-880-80 through 9VAC25-880-90 of the General Permit for Discharges of Stormwater from Construction Activities regulations, including but not limited to water quality and quantity requirements. The SWPPP shall include a description of, and all necessary calculations supporting, all post construction stormwater management measures that will be installed prior to the completion of the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree possible. Such measures must be designed and installed in accordance with applicable VESCP authority, VSMP authority, state, and federal requirements, and any necessary permits must be obtained.

(2) Control measures contained in Part II (9VAC25-870-40 et seq.) of the Virginia Stormwater Management Regulations, 9VAC25-880-84, or on the Virginia BMP Clearinghouse Website may be utilized. Innovative or alternate control measures may be allowed by the department provided such measures effectively address water quality and quantity in accordance with the requirements of 9VAC25-880-80 through 9VAC25-880-90 and are not restricted by the locality in accordance with § 62.1-44.15:33 of the Code of Virginia.

(3) Where applicable, the SWPPP shall contain additional information related to participation in a regional stormwater management plan, including:

(a) Type of regional facility or facilities to which the site contributes;

(b) Geographic location of any regional facility to which the site contributes (county or city and Hydrologic Unit Code);

(c) Geographic location of the site (county or city and Hydrologic Unit Code). Latitude and longitude may additionally be included if available; and

(d) Number of acres treated by a regional facility.

(4) Where applicable, the SWPPP shall contain additional information related to nutrient offsets to be acquired in accordance with § 62.1-44.15:35 of the Code of Virginia, including:

(a) Name of the broker from which offsets will be acquired;

(b) Geographic location (county or city and Hydrologic Unit Code) of the broker's offset generating facility;

(c) Number of nutrient offsets to be acquired (lbs. per acre per year); and

(d) Nutrient reductions to be achieved on site (lbs. per acre per year).

(5) Outflows from a stormwater management facility or stormwater conveyance system shall be discharged to an adequate channel as defined in the Virginia Erosion and Sediment Control Regulations (9VAC25-840). In addition, all control measures shall be employed in a manner that minimizes impacts on the physical, chemical and biological integrity of rivers, streams, and other state waters, is protective of water quality standards, and is consistent with Section II D 6 and D 7 and other applicable provisions of this state permit.

d. Other controls.

(1) The SWPPP shall describe measures to prevent the discharge of solid materials, including building materials, garbage, and debris to state waters, except as authorized by a Clean Water Act § 404 permit.

(2) The SWPPP shall describe control measures used to comply with applicable state or local waste disposal, sanitary sewer or septic system regulations.

(3) The SWPPP shall include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The SWPPP shall also include a description of controls including storage practices, to minimize exposure of the materials to stormwater, and for spill prevention and response.

(4) The SWPPP shall include a description of pollutant sources from off site areas (including stormwater discharges from dedicated asphalt plants and dedicated concrete plants), and a description of control measures that will be implemented at those sites to minimize pollutant discharges.

e. Applicable state or local programs. The control measures implemented at the site shall be consistent with all applicable federal, state, or VESCP or VSMP authority requirements for erosion and sediment control and stormwater management. The SWPPP shall be updated as necessary to reflect any revisions to

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applicable federal, state or VESCP or VSMP authority requirements that affect the control measures implemented at the site.

3. Maintenance of controls.

a. All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If site inspections required by Section II D 4 identify control measures that are not operating effectively, maintenance shall be performed as soon as practicable to maintain the continued effectiveness of stormwater controls.

b. If site inspections required by Section II D 4 identify existing control measures that need to be modified or if additional control measures are necessary for any reason, implementation shall be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, the situation shall be documented in the SWPPP and alternative control measures shall be implemented as soon as practicable.

4. Inspections. The name and phone number of qualified personnel conducting inspections shall be included in the SWPPP.

a. Inspections shall be conducted (i) at least every seven calendar days or (ii) at least once every 14 calendar days and within 48 hours following any runoff producing storm event. Where areas have been temporarily stabilized or runoff is unlikely due to winter conditions (e.g., the site is covered with snow or ice, or frozen ground exists) such inspections shall be conducted at least once every month.

b. Inspections must include all areas of the site disturbed by construction activity, off site areas covered by the state permit, and areas used for storage of materials that are exposed to precipitation, but does not need to include areas identified pursuant to Section II A 5. Inspectors must look for evidence of, or the potential for, pollutants entering a stormwater conveyance system. Control measures identified in the SWPPP shall be inspected for proper installation, maintenance, and operation. Discharge locations, where accessible, shall be inspected to ascertain whether control measures are effective in minimizing impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of off site sediment tracking.

c. Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may limit the access of inspection personnel to the areas described in Section II D 4 b. Inspection of these areas could require that vehicles compromise

temporarily or even permanently stabilized areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected on the same frequencies as other construction projects, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction site for 0.25 miles above and below each access point where a roadway, undisturbed right of way, or other similar feature intersects the construction site and allows access to the areas described above. The conditions of the controls along each inspected 0.25 mile segment may be considered as representative of the condition of controls along that reach extending from the end of the 0.25 mile segment to either the end of the next 0.25 mile segment, or to the end of the project, whichever occurs first. Inspection locations must be listed in the report required by Section II D 4 d.

d. A report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the dates of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with Section II D 4 d of the state permit shall be made and retained as part of the SWPPP in accordance with Section III B of this state permit. Major observations should include:

- (1) The location(s) of discharges of sediment or other pollutants from the site;
- (2) Location(s) of control measures that need to be maintained;
- (3) Location(s) of control measures that failed to operate as designed or proved inadequate for a particular location;
- (4) Location(s) where additional control measures are needed that did not exist at the time of inspection;
- (5) Corrective action required including any changes to the SWPPP that are necessary and implementation dates;
- (6) An estimate of the amount of rainfall at the construction site (in inches) from the runoff producing storm event requiring the inspection, or if inspecting on a seven day schedule, the amount of rainfall (in inches) since the previous inspection; and
- (7) Weather information and a description of any discharges occurring at the time of inspection.

A record of each inspection and of any actions taken in accordance with Section II must be retained by the operator as part of the SWPPP for at least three years from the date that state permit coverage expires or is terminated. The inspection reports shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the

SWPPP and this state permit. The report shall be signed in accordance with Section III K of this state permit.

5. ~~Nonstormwater discharge management. The SWPPP shall identify all allowable sources of nonstormwater discharges listed in Section I D 2 of this state permit that are combined with stormwater discharges from the construction activity at the site, except for flows from firefighting activities. The SWPPP shall identify and require the implementation of appropriate control measures for the nonstormwater components of the discharge.~~

6. ~~Total maximum daily loads. An approved total maximum daily load (TMDL) may include a wasteload allocation to the regulated construction activity that identifies the pollutant for which stormwater control measures are necessary for the surface waters to meet water quality standards. The pollutant identified in a wasteload allocation as of the effective date of this state permit must be specified in the SWPPP. The SWPPP shall include strategies and control measures to ensure consistency with the assumptions and requirements of the TMDL WLA that apply to the operator's discharge. In a situation where a TMDL has specified a general wasteload allocation applicable to construction stormwater discharges, but no specific requirements for construction sites have been identified in the TMDL, the operator shall consult with the state or federal TMDL authority to confirm that meeting state permit requirements will be consistent with the approved TMDL. If the TMDL specifically precludes such discharges, the operator is not eligible for coverage under the general permit.~~

7. ~~Impaired waters. In accordance with Section I H, control measures shall be protective of water quality standards for impaired waters identified as having impairments for pollutants that may be discharged from the construction activity in the 2008 § 305(b)/303(d) Water Quality Assessment Integrated Report.~~

B. SWPPP [amendments,] modification, [and] updates [; and records].

1. The operator shall amend the SWPPP whenever there is a change in [the] design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.

2. The SWPPP must be amended if, during inspections or investigations by the operator's qualified personnel, or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction [site activity]. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP authority, VSMP authority, or [the] department is necessary for the control measure, revisions to the SWPPP shall be completed no later than seven [calendar] days

following approval. Implementation of these additional or modified control measures must be accomplished as described in [Section Part] II G.

[~~3. Revisions to the SWPPP shall be signed and dated in accordance with Section III K 2 but are not required to be certified in accordance with Section III K 4.~~

4. 3.] The SWPPP must clearly identify the contractor(s) that will implement and maintain each control measure identified in the SWPPP. The SWPPP shall be [revised amended] to identify any new contractor that will implement and maintain a control measure.

[~~5. 4.] The operator shall update the SWPPP no later than seven days following any [modifications modification] to its implementation. All modifications or [changes updates] to the SWPPP shall be noted [; Updates and modifications shall be signed and dated in accordance with Section III K] and shall include [the following items]:~~

a. A record of dates when:

(1) Major grading activities occur;

(2) Construction activities temporarily or permanently cease on a portion of the site; and

(3) Stabilization measures are initiated [;]

b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and where modified as soon as possible;

c. Areas that have reached final stabilization and where no further SWPPP or inspection requirements apply;

d. All properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property;

e. The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release;

f. Measures taken to prevent the reoccurrence of any prohibited discharge; [and]

g. Measures taken to address any evidence identified as a result of an inspection required under [Section Part] II F [; and.

h. Updates necessary to reflect any revisions to applicable federal, state, or local requirements that affect the control measures implemented at the site.

5. Amendments, modifications, or updates to the SWPPP shall be signed in accordance with Part III K.]

C. Public Notification. Upon commencement of land disturbance, the operator shall [~~maintain—and~~] post conspicuously [a copy of the notice of coverage letter] near the main entrance of the construction activity [; 1. A copy of the Notice of Coverage letter; 2.] For linear projects, the [operators operator] shall post the [information notice of coverage letter] at a publicly accessible location near an

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active part of the construction project (e.g., where a pipeline [~~project~~] crosses a public road) [~~and 3.~~] The operator shall maintain the posted information until termination of general permit coverage [~~as specified in Part I F~~].

D. SWPPP availability.

1. Operators with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for use by those identified as having responsibilities under the SWPPP whenever they are on the construction site.

2. The operator shall make [~~SWPPPs~~ the SWPPP] and all [~~updates~~ amendments, modifications, and updates] available upon request to the department, the VSMP authority, the EPA, [~~the~~] VESCP [~~authorities~~ authority], local government officials, or the operator of a municipal separate storm sewer system receiving discharges from the construction activity. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance of the construction site.

[3. The operator shall make the SWPPP available for public review in an electronic format or in hard copy. Information for public access to the SWPPP shall be posted and maintained in accordance with Part II C. If not provided electronically, public access to the SWPPP may be arranged upon request at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less than once per month and shall be during normal business hours. Information not required to be contained within the SWPPP by this general permit is not required to be released.]

E. SWPPP implementation. The operator shall implement the SWPPP and subsequent [~~amendments, modifications, and~~] updates from commencement of [~~construction activity~~ land disturbance] until [~~permit~~] termination [~~of general permit coverage as specified in Part I F~~].

1. All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If [~~a~~] site [~~inspections~~ inspection] required by [~~Section Part~~] II F [~~identify~~ identifies a] control [~~measures~~ measure] that [~~are~~ is] not operating effectively, corrective [~~action~~ action(s)] shall be [~~performed~~ completed] as soon as practicable, but no later than seven days after discovery [~~or a longer period as established by the VSMP authority~~], to maintain the continued effectiveness of [~~stormwater controls~~ the control measures].

2. If site inspections required by [~~Section Part~~] II F identify [~~an~~] existing control [~~measures~~ measure] that [~~need~~ needs] to be modified or if [~~an~~] additional control [~~measures~~ measure is] necessary for any reason, implementation shall be completed prior to the next anticipated [~~measurable~~] storm event. If implementation

prior to the next anticipated [~~measurable~~] storm [~~even~~ event] is impracticable, then [~~the situation shall be documented in the SWPPP and~~] alternative control measures shall be implemented as soon as practicable, but no later than seven days after discovery [~~or a longer period as established by the VSMP authority~~].

F. [SWPPP] Inspections.

1. Personnel responsible for on-site and off-site inspections. Inspections required by this [~~general~~] permit shall be conducted by the qualified personnel identified by the operator in the SWPPP. The operator is responsible for insuring that the qualified personnel conduct the inspection.

2. Inspection schedule.

a. Inspections shall be conducted at a frequency of:

(1) At least once every [~~seven~~ five business] days; or

(2) At least once every [~~14~~ 10 business] days and no later than 48 hours following [~~any a~~] measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between [~~normal working~~ business] days, the inspection shall be conducted no later than the next business day.

b. Where areas have been temporarily stabilized or [~~runoff is unlikely due to winter conditions (e.g., the site is covered with snow or ice, or continuous frozen ground exists)~~] land-disturbing activities will be suspended due to continuous frozen ground conditions and stormwater discharges are unlikely], the inspection frequency may be reduced to once [~~every 30 days per month.~~] If [~~unexpected~~] weather conditions (such as above freezing temperatures or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency.

c. Representative inspections may be utilized for utility line installation, pipeline construction, or other similar linear construction activities provided that:

(1) Temporary or permanent [~~soil~~] stabilization has been installed and [~~where~~] vehicle access may compromise [~~the~~] temporary or permanent [~~soil~~] stabilization and potentially cause additional [~~land~~] disturbance [~~of soils~~] increasing the potential for erosion;

(2) Inspections occur on the same [~~frequencies~~ frequency] as other construction [~~projects. Controls~~ activities];

(3) Control measures] are inspected along the construction site [~~of~~] 0.25 miles above and below each access point [~~(i.e.,~~] where a roadway, undisturbed right-of-way, or other similar feature intersects the construction [~~site activity~~] and [~~allows~~] access [~~to the areas without compromising~~ does not compromise] temporary or permanent [~~soil~~] stabilization []]; and

[~~(3)~~ (4)] Inspection locations [~~shall be listed~~ are provided] in the report required by [~~Section Part~~] II F.

3. Inspection requirements.

a. As part of the inspection, the qualified personnel shall:

(1) Record the date and time of the inspection and [~~when applicable~~] the [~~amount of cumulative rainfall since the last inspection~~] date and rainfall amount of the last measurable storm event];

(2) Record the information and a description of any discharges occurring at the time of the inspection;

(3) Record any land-disturbing activities that have occurred outside of the approved erosion and sediment control plan;

(4) Inspect the following for installation in accordance with the approved erosion and sediment control plan, [~~identify~~ identification of any] maintenance needs [,] and [~~evaluate~~ evaluation of] effectiveness in minimizing sediment discharge, including whether the control has been inappropriately or incorrectly used:

(a) All perimeter erosion and sediment controls, such as silt fence;

(b) Soil stockpiles [, when applicable,] and borrow areas for stabilization or sediment trapping measures;

(c) Completed earthen structures, such as dams, dikes, ditches, and diversions for stabilization;

(d) Cut and fill slopes;

(e) Sediment basins and traps, sediment barriers, and other measures installed to control sediment discharge from [~~concentrated~~] stormwater;

(f) Temporary or permanent channel, flume, or other slope drain structures installed to convey concentrated runoff [~~flowing~~] down cut and fill slopes;

(g) Storm inlets that have been made operational to ensure that sediment laden stormwater does not enter without first being filtered or similarly treated; and

(h) Construction vehicle access routes that intersect or access paved roads for minimizing sediment tracking [;]

(5) Inspect areas that have reached final grade or that will remain dormant for more than 14 days for initiation of stabilization activities;

(6) Inspect areas that have reached final grade or that will remain dormant for more than 14 days for completion of stabilization activities within seven days of reaching grade or stopping work;

(7) Inspect for evidence that the [~~approved~~] erosion and sediment control plan [, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications] has not been properly implemented [~~and~~

is not meeting the requirements of Section II A 2 b (4). Evidence. This] includes but is not limited to:

(a) [~~Evidence of concentrated~~ Concentrated] flows of stormwater [~~in conveyances~~] such as rills, rivulets or channels that [~~cause erosion when such flows are have~~] not [~~been~~] filtered, settled [,] or similarly treated prior to discharge [, or evidence thereof];

(b) Sediment laden or turbid flows of stormwater that [~~are have~~] not [~~been~~] filtered or settled to remove sediments prior to discharge;

(c) [~~Deposits of sediment~~ Sediment deposition] in areas that drain to unprotected stormwater inlets or [~~to~~] catch basins that discharge to surface waters. Inlets and catch basins with failing sediments controls due to improper installation, lack of maintenance, or inadequate design are considered unprotected;

(d) [~~Deposits of sediment from the construction activity~~ Sediment deposition] on any property (including public and private streets) outside of the construction activity covered by this [~~general~~] permit;

(e) [~~Portions of the site where required~~ Required] stabilization has not been initiated or completed [~~on~~ portions of the site];

(f) Sediment basins without [~~a dewatering device~~ allowing for discharge from below the designed permanent pool elevation] adequate wet or dry storage volume or sediment basins that allow the discharge of stormwater from below the surface of the wet storage portion of the basin];

(g) Sediment traps without adequate wet [~~and or~~] dry storage [~~and without restricted discharge from the drawdown of dry~~ or sediment traps that allow the discharge of stormwater from below the surface of the wet] storage portion of the trap; and

(h) Land disturbance outside of the [~~delineated~~ approved] area to be disturbed;

(8) Inspect pollutant generating activities identified in the pollution prevention plan for the proper implementation, maintenance and effectiveness of the procedures and practices;

(9) Identify any pollutant generating activities not identified in the pollution prevention plan; and

(10) Identify and document the presence of any evidence of the discharge of pollutants prohibited by this [~~general~~] permit.

4. Inspection report. Each inspection [~~report~~] shall [~~document in a report~~] include the following items]:

a. The date and time of the inspection [~~and when applicable, the date and rainfall amount of the last measurable storm event~~];

b. Summarized findings of the inspection;

c. The location(s) of prohibited discharges;

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d. The location(s) of control measures that require maintenance;

e. The location(s) of control measures that failed to operate as designed or proved inadequate [or inappropriate] for a particular location;

f. The location(s) where [any] evidence identified under [~~Section Part~~] II F 3 a (7) exists;

g. The location(s) where [any] ~~additional control measures are~~ measure is] needed that did not exist at the time of inspection;

h. A list of corrective actions required [including (including) any changes to the SWPPP that are necessary [to implement)] as a result of the inspection [and in order or] to maintain permit compliance;

i. Documentation of any corrective actions required from a previous inspection that have [yet to be not been] implemented; and

j. The date and signature of the qualified personnel and [the] operator or [~~the~~ its duly] authorized representative.

The inspection report and any actions taken in accordance with [~~Section Part~~] II must be retained by the operator as part of the SWPPP for at least three years from the date that [general] permit coverage expires or is terminated. The inspection [~~reports report~~] shall identify any incidents of noncompliance. Where [a an inspection] report does not identify any incidents of noncompliance, the report shall contain a certification that the [~~facility~~ construction activity] is in compliance with the SWPPP and this [~~state~~ general] permit. The report shall be signed in accordance with [~~Section Part~~] III K of this [general] permit.

G. Corrective actions.

1. The operator shall implement the corrective action(s) identified as a result of an inspection as soon as practicable but no later than seven days after discovery [or a longer period as approved by the VSMP authority]. If approval [of a corrective action] by a regulatory authority (e.g., VSMP authority, VESCP authority [, or the department]) [~~of a corrective action~~] is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.

2. The operator may be required to remove accumulated sediment deposits located outside of the construction activity covered by this [general] permit as soon as practicable in order to minimize environmental impacts. The operator shall notify the [VSMP authority and the] department [and as well as] obtain all applicable federal, state, and local authorizations, approvals, and permits prior to the removal of sediments accumulated in surface waters including wetlands.

[~~SECTION PART~~] III

CONDITIONS APPLICABLE TO ALL [~~STATE~~ VPDES] PERMITS

NOTE: Discharge monitoring is not required for this [~~state~~ general] permit. If the operator chooses to monitor stormwater discharges or control measures, the operator must comply with the requirements of subsections A, B, and C, as appropriate.

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~~ general] 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 individual(s) who performed the sampling or measurements;
- c. The date(s) and time(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

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~~ general] permit, and records of all data used to complete the registration statement for this [~~state~~ general] 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.

C. Reporting monitoring results.

1. The operator shall update the SWPPP to include the results of the monitoring as may be performed in

accordance with this [state general] permit, unless another reporting schedule is specified elsewhere in this [state general] 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.

3. If the operator monitors any pollutant specifically addressed by this [general] permit more frequently than required by this [state general] 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 [general] 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 which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this [state general] permit.

D. Duty to provide information. The operator shall furnish, within a reasonable time, any information which the board, ~~department, or other VSMP authority~~ may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this [state general] permit or to determine compliance with this [state general] permit. The board, department, [EPA] or [other] VSMP authority 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 discharge on the quality of state surface waters, or such other information as may be necessary to accomplish the purposes of the CWA and the Virginia Stormwater Management Act. The operator shall also furnish to the board, department, EPA, or ~~other~~ VSMP authority, upon request, copies of records required to be kept by this [state general] 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 general] 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 construction activity.

G. Reports of unauthorized discharges. Any operator 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 § [~~62.1-44.15-19~~ 62.1-44.34:19] of the Code of Virginia that occurs during a 24-hour period into or upon state surface

waters or who discharges or causes or allows a discharge that may reasonably be expected to enter state surface waters, shall notify the Department of Environmental Quality of the discharge immediately 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 and the VSMP authority 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 general] permit.

Discharges reportable to the department and the VSMP authority 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" or "upset", as defined herein, should occur from a facility and the discharge enters or could be expected to enter state surface waters, the operator shall promptly notify, in no case later than within 24 hours, the department and the VSMP authority 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 and the VSMP authority within five days of discovery of the discharge in accordance with [Section Part] III I 2. Unusual and extraordinary discharges include but are not limited to 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 of some or all of the facilities; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The operator shall report any noncompliance which may adversely affect state surface waters or may endanger public health.

1. An oral report to the department and the VSMP authority shall be provided within 24 hours from the time the operator becomes aware of the circumstances. The

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following shall be included as information that shall be reported within 24 hours under this subdivision:

- a. Any unanticipated bypass; and
 - b. Any upset that causes a discharge to ~~state~~ surface waters.
2. A written report shall be submitted within five days and shall contain:
- a. A description of the noncompliance and its cause;
 - b. 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. 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 [~~Section Part~~] III I if the oral report has been received within 24 hours and no adverse impact on ~~state~~ surface waters has been reported.

3. The operator shall report all instances of noncompliance not reported under [~~Section Part~~] III I 1 or 2 in writing as part of the SWPPP. The reports shall contain the information listed in [~~Section Part~~] III I 2.

NOTE: The reports required in [~~Section Part~~] III G, H and I shall be made to the department and the VSMP authority. Reports may be made by telephone, email, or by fax. For reports outside normal working hours, leaving a recorded message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the operator becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report, including a registration statement, to the department or the VSMP authority, the operator shall promptly submit such facts or correct information.

J. Notice of planned changes.

1. The operator shall give notice to the department and the VSMP authority as soon as possible of any planned physical alterations or additions to the permitted facility or activity. 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~~ general] permit; or

2. The operator shall give advance notice to the department and VSMP authority of any planned changes in the

permitted facility or activity, which 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: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by [~~state permits this~~ general permit], including SWPPPs, and other information requested by the board or the department shall be signed by a person described in [~~Section Part~~] III 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 [~~Section Part~~] III 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 included in the SWPPP. A copy must be provided to the department and VSMP authority, if requested.

3. Changes to authorization. If an authorization under [~~Section Part~~] III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the construction activity, a new authorization satisfying the requirements of [~~Section Part~~] III K 2 shall be submitted to the VSMP authority as the administering entity for the board prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under [~~Section Part~~] III K 1 or 2 shall make the following certification:

"I certify under penalty of law that I have read and understand this document and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated 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 general] 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 general] 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 general] 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 [general] permit after the expiration date of this [state general] permit, the operator shall submit a new registration statement at least 90 days before the expiration date of the existing [state general] permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing [state general] permit.

N. Effect of a state permit. This [state general] 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 general] 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 general] permit conditions on "bypassing" [~~(Section Part)~~] III U) and "upset" [~~(Section Part)~~] III V), nothing in this [state general] 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 general] 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 general] 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 general] 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 state 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 general] 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 general] permit.

U. Bypass.

1. "Bypass," as defined in 9VAC25-870-10, means the intentional diversion of waste streams from any portion of

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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 [~~Section Part~~] III U 2 and 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 [~~Section Part~~] III I.

3. Prohibition of bypass.

a. Except as provided in [~~Section Part~~] III 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. Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production;

(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 [~~Section Part~~] III 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 [~~Section Part~~] III 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 [~~Section Part~~] III 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 preventative 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 cause(s) 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 [~~Section Part~~] III I; and

d. The operator complied with any remedial measures required under [~~Section Part~~] III 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, the VSMP authority, EPA, or an authorized representative of either entity (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 general~~] permit;

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

4. Sample or monitor at reasonable times, for the purposes of ensuring state permit compliance or as otherwise authorized by the Clean Water Act or the Virginia Stormwater Management Act, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and

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 [Section Part] III 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 [Section Part] III 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 [Section Part] III Y 2 b.

3. For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the site.

Z. Severability. The provisions of this [state general] permit are severable, and if any provision of this [state general] 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 general] permit shall not be affected thereby.

9VAC25-880-80. Applicability. (Repealed.)

~~Operators receiving coverage under this general permit shall remain subject to the water quality and quantity criteria set forth in 9VAC25-880-82 through 9VAC25-880-90, which specify technical criteria for every land disturbing activity regulated by this general permit.~~

9VAC25-880-82. General. (Repealed.)

~~A. Determination of flooding and channel erosion impacts to receiving streams due to land disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed that also contributes to that point of discharge.~~

~~B. The specified design storms shall be defined as either a 24 hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.~~

~~C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.~~

~~D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws and regulations. Evidence of approval of all necessary permits shall be presented.~~

~~E. Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity during the 100 year storm event.~~

~~F. Predevelopment and postdevelopment runoff rates shall be verified by calculations that are consistent with good engineering practices.~~

~~G. Outflows from a stormwater management facility or stormwater conveyance system, shall be discharged to an adequate channel.~~

~~H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.~~

~~I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.~~

~~J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100 year floodplain shall be avoided to the extent possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.~~

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K. Natural channel characteristics shall be preserved to the maximum extent practicable.

L. Land disturbing activities shall comply with the Virginia Erosion and Sediment Control Law and attendant regulations.

M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas defined in the Chesapeake Bay Preservation Act, provided that (i) the local government has conclusively established that the location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; and (iii) the facility must be consistent with a stormwater management program that has been approved by the board, the Chesapeake Bay Local Assistance Board prior to its abolishment on July 1, 2012, or the Board of Conservation and Recreation.

9VAC25-880-84. Water quality. (Repealed.)

A. Compliance with the water quality criteria may be achieved by applying the performance based criteria or the technology based criteria to either the site or a planning area.

B. Performance based criteria. For land disturbing activities, the calculated postdevelopment nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 of this section to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:

1. Situation 1 consists of land disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is less than the average land cover condition.

Requirement: No reduction in the after disturbance pollutant discharge is required.

2. Situation 2 consists of land disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.

3. Situation 3 consists of land disturbing activities where the existing percent impervious cover is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on

existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.

4. Situation 4 consists of land disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.

C. Technology based criteria. For land disturbing activities, the postdeveloped stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the postdeveloped condition percent impervious cover as specified in Table 1 of this section. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1. Design standards and specifications for the BMPs in Table 1 that meet the required target pollutant removal efficiency will be available at the department.

Table 1*

Water Quality BMP*	Target Phosphorus Removal Efficiency	Percent Impervious Cover
Vegetated filter strip	10%	16-21%
Grassed Swale	15%	
Constructed wetlands	20%	22-37%
Extended detention (2 x WQ Vol)	35%	
Retention basin I (3 x WQ Vol)	40%	
Bioretention basin	50%	38-66%
Bioretention filter	50%	
Extended detention-enhanced	50%	
Retention basin II (4 x WQ Vol)	50%	
Infiltration (1 x WQ Vol)	50%	
Sand filter	65%	67-100%
Infiltration (2 x WQ	65%	

Vol)		
Retention basin III (4 x WQ Vol with aquatic bench)	65%	
<p>*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department.</p>		

9VAC25-880-86. Stream channel erosion. (Repealed.)

A. Properties and receiving waterways downstream of any land disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The permit issuing authority shall require compliance with subdivision 19 of 9VAC25-840-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

C. The permit issuing authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land disturbing activities. Therefore, in lieu of the reduction of the two-year post developed peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24 hour extended detention of the runoff generated by the one year, 24 hour duration storm.

D. In addition to subsections B and C of this section, permit-issuing authorities, by local ordinance may, or the board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land disturbing activities. These criteria may include, but are not limited to, the following:

1. Criteria and procedures for channel analysis and classification.
2. Procedures for channel data collection.
3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.
4. Criteria for the selection of proposed natural or manmade channel linings.

9VAC25-880-88. Flooding. (Repealed.)

A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in

runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The 10 year postdeveloped peak rate of runoff from the development site shall not exceed the 10 year predeveloped peak rate of runoff.

C. In lieu of subsection B of this section, localities may, by ordinance, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors or other downstream conveyance factors as appropriate.

D. Linear development projects shall not be required to control post developed stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.

9VAC25-880-90. Regional (watershed-wide) stormwater management plans. (Repealed.)

This section enables localities to develop regional stormwater management plans. State agencies intending to develop large tracts of land such as campuses or prison compounds are encouraged to develop regional plans where practical.

The objective of a regional stormwater management plan is to address the stormwater management concerns in a given watershed with greater economy and efficiency by installing regional stormwater management facilities versus individual, site specific facilities. The result will be fewer stormwater management facilities to design, build and maintain in the affected watershed. It is also anticipated that regional stormwater management facilities will not only help mitigate the impacts of new development, but may also provide for the remediation of erosion, flooding or water quality problems caused by existing development within the given watershed.

If developed, a regional plan shall, at a minimum, address the following:

1. The specific stormwater management issues within the targeted watersheds.
2. The technical criteria in 9VAC25-880-80 through 9VAC25-880-88 as needed based on subdivision 1 of this section.
3. The implications of any local comprehensive plans, zoning requirements, local ordinances pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and other planning documents.
4. Opportunities for financing a watershed plan through cost sharing with neighboring agencies or localities; implementation of regional stormwater utility fees, etc.
5. Maintenance of the selected stormwater management facilities.

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6. ~~Future expansion of the selected stormwater management facilities in the event that development exceeds the anticipated level.~~

NOTICE: The following forms used in administering the regulation were 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, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-880)

~~[Department of Environmental Quality Construction Activity Operator Permit Fee Form Form DEQ 199 213 (rev. 08/13)~~

~~General Permit for Discharges of Stormwater from Construction Activities (VAR10) Notice of Termination Form DEQ 199 147 (rev. 08/13)~~

~~General Permit for Discharges of Stormwater from Construction Activities (VAR10) Registration Statement Form DEQ 199 146 (rev. 08/13)~~

~~General Permit for Discharges of Stormwater from Construction Activities (VAR10) Transfer Agreement Form DEQ 199 191 (rev. 08/13)~~

[Department of Environmental Quality Construction Activity Operator Permit Fee Form \(rev. 01/2014\)](#)

[Notice of Termination - General VPDES Permit for Discharges of Stormwater from Construction Activities \(VAR10\) \(rev. 01/2014\)](#)

[Registration Statement - General VPDES Permit for Discharges of Stormwater from Construction Activities \(VAR10\) \(rev. 01/2014\)](#)

[Transfer Agreement - General VPDES Permit for Discharges of Stormwater from Construction Activities \(VAR10\) \(rev. 01/2014\)](#)]

VA.R. Doc. No. R12-3208; Filed January 30, 2014, 4:17 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 20VAC5-315. Regulations Governing Net Energy Metering (amending 20VAC5-315-10 through 20VAC5-315-70).

Statutory Authority: §§ 12.1-13 and 56-594 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: March 27, 2014.

Agency Contact: Armando J. de Leon, Utilities Engineer, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9392, FAX (804) 371-9350, or email armando.deleon@scc.virginia.gov.

Summary:

Pursuant to Chapter 268 of the 2013 Acts of Assembly, § 56-594 of the Code of Virginia was amended to expand net energy metering in the Commonwealth to include eligible agricultural customer-generators. Chapter 268 requires the State Corporation Commission to establish by regulation a program, beginning no later than July 1, 2014, for customers of investor-owned utilities and July 1, 2015, for customers of electric cooperatives, to afford eligible agricultural customer-generators the opportunity to participate in net energy metering. The proposed amendments provide a definition of agricultural customer-generators; require electric utilities to permit such customer-generators to aggregate loads served by separate meters, as required by Chapter 268; and establish the parameters for participation in net energy metering by agricultural customer-generators.

AT RICHMOND, JANUARY 27, 2014

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2014-00003

Ex Parte: In the matter of amending regulations governing net energy metering

ORDER ESTABLISHING PROCEEDING

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Code"), establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.¹

Chapter 268 of the 2013 Acts of Assembly amended § 56-594 of the Code to expand net energy metering in the Commonwealth to include eligible agricultural customer-

generators. Chapter 268 requires the Commission to establish by regulation a program, beginning no later than July 1, 2014, for customers of investor-owned utilities and July 1, 2015, for customers of electric cooperatives, to afford eligible agricultural customer-generators the opportunity to participate in net energy metering. The current Net Energy Metering Rules must therefore be revised to: (1) provide a definition of eligible agricultural customer-generators; (2) require utilities to permit agricultural customer-generators to aggregate loads served by multiple meters, as specified by Chapter 268; and (3) to establish the required parameters for participation by such customer-generators in the net energy metering programs offered by investor-owned utilities and electric cooperatives under the Net Energy Metering Rules.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that a proceeding should be established to amend the Net Energy Metering Rules to provide a definition of eligible agricultural customer-generators and to establish the required parameters for participation by such customer-generators in the net energy metering programs offered by investor-owned utilities and electric cooperatives. To initiate this proceeding, the Commission Staff has prepared proposed rules ("Proposed Rules") which are appended to this Order. We will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We will further direct that each Virginia electric distribution company within the meaning of 20 VAC 5-315-20 serve a copy of this Order upon each of their respective net metering customers and file a certificate of service with the Commission. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules and address only those issues pertaining to the amendment of § 56-594 of the Code pursuant to Chapter 268 of the 2013 Acts of Assembly. Issues outside the scope of implementing these amendments will not be open for consideration.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2014-00003.
- (2) The Commission's Division of Information Resources shall forward a copy of this Order Establishing Proceeding to the Registrar of Regulations for publication in the Virginia Register of Regulations.
- (3) On or before February 19, 2014, each Virginia electric distribution company shall serve a copy of this Order upon each of their respective net metering customers and file a certificate of service with the Commission no later than February 26, 2014, consistent with the findings above.
- (4) On or before March 27, 2014, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing an original and fifteen (15) copies of such comments or

requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules and address only those issues pertaining to the amendment of § 56-594 of the Code pursuant to Chapter 268 of the 2013 Acts of Assembly. Issues outside the scope of implementing this amendment will not be open for consideration. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein. Interested parties shall refer in their comments or requests to Case No. PUE-2014-00003. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(5) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all electric distribution companies licensed in Virginia as shown on Appendix A, attached hereto; and a copy shall be sent to the Commission's Office of General Counsel and Divisions of Energy Regulation and Utility Accounting and Finance.

¹ The Commission previously amended the Net Metering Rules on August 7, 2008, April 13, 2010, and November 1, 2011, to reflect statutory changes enacted in the 2007, 2009, and 2011 Acts of Assembly.

20VAC5-315-10. Applicability and scope.

These regulations are promulgated pursuant to the provisions of § 56-594 of the Virginia Electric Utility Regulation Act (§ 56-576 et seq. of the Code of Virginia). They establish requirements intended to facilitate net energy metering for customers owning and operating, or contracting with persons to own or operate, or both, ~~an electrical generator~~ generators that use specific types of renewable energy, as defined by § 56-576 of the Code of Virginia as its ~~the~~ total fuel source. These regulations will standardize the interconnection requirements for such facilities and will govern the metering, billing, payment and contract requirements between net metering customers, electric distribution companies and energy service providers. Agricultural net metering customers are subject to the same provisions as nonagricultural net metering customers unless otherwise specified.

20VAC5-315-20. Definitions.

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

"Agricultural business" means any sole proprietorship, corporation, partnership, electing small business (Subchapter S) corporation, or limited liability company engaged

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primarily in the production and sale of plants and animals useful to the public.

"Agricultural net metering customer" means a customer that operates an electrical generating facility consisting of one or more agricultural renewable fuel generators having an aggregate generation capacity of not more than 500 kilowatts as part of an agricultural business under a net metering service arrangement. An agricultural net metering customer may be served by multiple meters of one utility that are located at separate but contiguous sites and that may be virtually aggregated into one account. This account shall be served under the appropriate rate schedule.

"Agricultural renewable fuel generator" means an electrical generator that:

1. Uses as its sole energy source solar power, wind power, or aerobic or anaerobic digester gas;
2. The agricultural customer owns and operates, or has contracted with other persons to own or operate, or both;
3. Is located on land owned or controlled by the agricultural business;
4. Is connected to the customer's wiring on the customer's side of its interconnection with the distributor;
5. Is interconnected and operated in parallel with an electric company's distribution facilities; and
6. Is used primarily to provide energy to metered accounts of the agricultural business.

"Billing period" means, as to a particular customer, the time period between the two meter readings upon which the electric distribution company and the energy service provider calculate the a customer's bills.

"Billing period credit" means, for a nontime-of-use net metering customer, the quantity of electricity generated and fed back into the electric grid by the customer's renewable fuel generator or generators in excess of the electricity supplied to the customer over the billing period. For time-of-use net metering customers, billing period credits are determined separately for each time-of-use tier.

"Contiguous sites" means a group of land parcels in which each parcel shares at least one boundary point with at least one other parcel in the group. Property whose surface is divided only by public right-of-way is considered contiguous.

"Customer" means a net metering customer or an agricultural net metering customer.

"Demand charge-based time-of-use tariff" means a retail tariff for electric supply service that has two or more time-of-use tiers for energy-based charges and an electricity supply demand (kilowatt) charge.

"Electric distribution company" means the entity that owns and/or operates the distribution facilities delivering electricity to the net metering a customer's premises.

"Energy service provider (supplier)" means the entity providing electricity supply service to a net metering customer either as tariffed or competitive service.

"Excess generation" means the amount of electricity generated by the renewable fuel generator a customer's electrical generating facility consisting of one or more generators in excess of the electricity consumed by the customer over the course of the net metering period. For time-of-use net metering customers, excess generation is determined separately for each time-of-use tier.

"Generator" means a renewable fuel generator or an agricultural renewable fuel generator.

"Net metering customer-(customer)" means a customer owning and operating, or contracting with other persons to own or operate, or both, a an electrical generating facility consisting of one or more renewable fuel generator generators having an aggregate generation capacity of not more than 20 kilowatts for residential customers and not more than 500 kilowatts for nonresidential customers unless the electric distribution company has chosen a higher capacity limit for nonresidential customers in its net metering tariff. This facility shall be operated under a net metering service arrangement.

"Net metering period" means each successive 12-month period beginning with the first meter reading date following the date of final interconnection of the renewable fuel generator a customer's electrical generating facility consisting of one or more generators with the electric distribution company's distribution facilities.

"Net metering service" means providing retail electric service to a customer operating a renewable fuel generator or generators and measuring the difference, over the net metering period, between the electricity supplied to the customer from the electric grid and the electricity generated and fed back to the electric grid by the customer.

"Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, association, company, business, trust, joint venture, or other private legal entity and, the Commonwealth, or any municipality.

"Renewable Energy Certificate-(REC)" or "REC" represents the renewable energy attributes associated with the production of one megawatt-hour (MWh) of electrical energy generated by a renewable fuel generator.

"Renewable fuel generator" means an electrical generating facility generator that:

1. Has an alternating current capacity of not more than 20 kilowatts for residential customers and not more than 500 kilowatts for nonresidential customers unless the electric distribution company has chosen a higher capacity limit for nonresidential customers in its net metering tariff;
2. 1. Uses renewable energy, as defined by § 56-576 of the Code of Virginia, as its total fuel source;

3. ~~2.~~ The net metering customer owns and operates, or has contracted with other persons to own or operate, or both;
4. ~~3.~~ Is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor;
5. ~~4.~~ Is interconnected pursuant to a net metering arrangement and operated in parallel with the electric ~~distribution~~ company's distribution facilities; and
6. ~~5.~~ Is intended primarily to offset all or part of the net metering customer's own electricity requirements.

"Time-of-use ~~net metering~~ customer (~~time-of-use customer~~)" means a ~~net metering~~ customer receiving retail electricity supply service under a demand charge-based time-of-use tariff.

"Time-of-use period" means an interval of time over which the energy (kilowatt-hour) rate charged to a time-of-use customer does not change.

"Time-of-use tier (~~tier~~)" or "tier" means all time-of-use periods given the same name (e.g., on-peak, off-peak, critical peak, etc.) for the purpose of time-differentiating energy (kilowatt-hour)-based charges. The rates associated with a particular tier may vary by day and by season.

20VAC5-315-30. Company notification.

A. ~~The A~~ prospective net metering customer ~~or a prospective agricultural net metering customer~~ shall submit a completed commission-approved notification form to the electric distribution company and, if different from the electric distribution company, to the energy service provider, according to the time limits in this subsection. If the ~~prospective net metering~~ customer has contracted with another person to own or operate, or both, the ~~renewable fuel generator or generators~~, then the notice will include detailed, current, and accurate contract information for the owner or operator, or both, including without limitation, the name and title of one or more individuals responsible for the interconnection and operation of the generator ~~or generators~~, a telephone number, a physical street address other than a post office box, a fax number, and an email address for each such person ~~or persons~~.

1. ~~For a renewable fuel generator~~ A customer proposing to install an electrical generating facility with an alternating current capacity of 25 kilowatts or less, ~~the notification form shall be submitted~~ submit the notification form at least 30 days prior to the date the customer intends to interconnect ~~his renewable fuel generator~~ the facility's generator or generators to the electric ~~distribution~~ company's distribution facilities. ~~Such net metering customer shall have all~~ All equipment necessary to complete the ~~grid~~ interconnection shall have been installed prior to such notification. The electric distribution company shall have 30 days from the date of notification to determine whether the requirements contained in 20VAC5-315-40 have been met. The date of notification shall be

considered to be the third day following the mailing of ~~such the~~ notification form by the ~~prospective net metering~~ customer.

2. ~~For a renewable fuel generator~~ The customer proposing to install an electrical generating facility with an alternating current capacity greater than 25 kilowatts, shall submit the notification form ~~shall be submitted~~ at least 60 days prior to the date the customer intends to interconnect ~~his renewable fuel generator~~ the facility's generator or generators to the electric ~~distribution~~ company's distribution facilities. ~~Such net metering~~ The customer shall have contacted the electric distribution company prior to making financial commitments and shall have installed all equipment necessary to complete the grid interconnection installed of the facility's generator or generators prior to such submitting the notification form. ~~Such net metering customer should contact his electric distribution company prior to making financial commitments.~~ The electric distribution company shall have 60 days from the date of notification to determine whether the requirements contained in 20VAC5-315-40 have been met. The date of notification shall be considered to be the third day following the mailing of ~~such the~~ notification form by the ~~prospective net metering~~ customer.

B. Thirty-one days after the date of notification for ~~renewable fuel generators~~ an electrical generating facility with ~~a rated~~ an alternating current capacity of 25 kilowatts or less, and 61 days after the date of notification for ~~renewable fuel generators~~ a facility with an alternating current capacity greater than 25 kilowatts, ~~a net metering the~~ customer may interconnect ~~his renewable fuel generator and begin operation of said renewable fuel generator~~ and begin operation of the facility unless the electric distribution company or the energy service provider requests a waiver of this requirement under the provisions of 20VAC5-315-80 prior to ~~said the~~ 31st or 61st day, respectively. In cases where the electric distribution company or energy service provider requests a waiver, a copy of the request for waiver must be mailed simultaneously by the requesting party to the ~~net metering~~ customer and to the commission's Division of Energy Regulation.

C. The electric distribution company shall file with the commission's Division of Energy Regulation a copy of each completed notification form within 30 days of final interconnection.

20VAC5-315-40. Conditions of interconnection.

A. A prospective net metering customer ~~or prospective agricultural net metering customer~~ may begin operation of ~~his renewable fuel generator~~ the electrical generating facility on an interconnected basis when:

1. The ~~net metering~~ customer has properly notified both the electric distribution company and energy service provider (in accordance with 20VAC5-315-30) of his intent to interconnect.

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2. If required by the electric distribution company's ~~net metering~~ tariff, the ~~net metering~~ customer has installed a lockable, electric distribution company accessible, load breaking manual disconnect switch at each of the facility's generators.

3. A licensed electrician has certified, by signing the commission-approved notification form, that any required manual disconnect switch ~~has~~ or switches have been installed properly and that the ~~renewable fuel~~ generator ~~has~~ or generators have been installed in accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code.

4. The vendor has certified, by signing the commission-approved notification form, that the ~~renewable fuel~~ generator or generators being installed ~~is~~ are in compliance with the requirements established by Underwriters Laboratories or other national testing laboratories in accordance with IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003.

5. In the case of static inverter-connected ~~renewable fuel~~ generators with an alternating current capacity in excess of 10 kilowatts, the ~~net metering~~ customer has had the inverter settings inspected by the electric distribution company. The ~~inspecting~~ electric distribution company may impose a fee on the ~~net metering~~ customer of no more than \$50 for ~~such inspection~~ each generator that requires this inspection.

6. In the case of nonstatic inverter-connected ~~renewable fuel~~ generators, the ~~net metering~~ customer has interconnected according to the electric distribution company's interconnection guidelines and the electric distribution company has inspected all protective equipment settings. The ~~inspecting~~ electric distribution company may impose a fee on the ~~net metering~~ customer of no more than \$50 for ~~such~~ each generator that requires this inspection.

7. In the case of ~~renewable fuel generators with a~~ customer's electrical generating facility having an alternating current capacity greater than 25 kilowatts, the following requirements shall be met before interconnection may occur:

a. Electric distribution facilities and customer impact limitations. A ~~renewable fuel~~ customer's generator shall not be permitted to interconnect to distribution facilities if the interconnection would reasonably lead to damage to any of the electric distribution company's facilities or would reasonably lead to voltage regulation or power quality problems at other customer revenue meters due to the incremental effect of the generator on the performance of the electric distribution system, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.

b. Secondary, service, and service entrance limitations. The capacity of the ~~renewable fuel generator~~ generators at any one service location shall be less than the capacity of the electric distribution company-owned secondary, service, and service entrance cable connected to the point of interconnection, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.

c. Transformer loading limitations. ~~The renewable fuel~~ A customer's generator shall not have the ability to overload the electric distribution company transformer, or any transformer winding, beyond manufacturer or nameplate ratings, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.

d. Integration with electric distribution company facilities grounding. The grounding scheme of the ~~renewable fuel~~ each generator shall comply with IEEE 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003, and shall be consistent with the grounding scheme used by the electric distribution company. If requested by a prospective net metering customer, the electric distribution company shall assist the prospective net metering customer in selecting a grounding scheme that coordinates with its distribution system.

e. Balance limitation. The ~~renewable fuel~~ generator or generators shall not create a voltage imbalance of more than 3.0% at any other customer's revenue meter if the electric distribution company transformer, with the secondary connected to the point of interconnection, is a three-phase transformer, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.

B. A prospective ~~net metering~~ customer shall not be allowed to interconnect a ~~renewable fuel~~ generator if doing so will cause the total rated generating alternating current capacity of all interconnected ~~renewable fuel~~ net metered generators within that customer's electric distribution company's Virginia service territory to exceed 1.0% of that company's Virginia peak-load forecast for the previous year. In any case where a prospective ~~net metering~~ customer has submitted a notification form required by 20VAC5-315-30 and that customer's interconnection would cause the total rated generating alternating current capacity of all interconnected ~~renewable fuel~~ net metered generators within that electric distribution company's service territory to exceed 1.0% of that company's Virginia peak-load forecast for the previous year, the electric distribution company shall, at the time it becomes aware of the fact, send written notification to ~~such~~ the prospective ~~net metering~~ customer and to the commission's Division of Energy Regulation that the interconnection is not allowed. In addition, upon request from

any customer, the electric distribution company shall provide to the customer the amount of capacity still available for interconnection pursuant to § 56-594 D of the Code of Virginia.

C. Neither the electric distribution company nor the energy service provider shall impose any charges upon a ~~net metering~~ customer for any interconnection requirements specified by this chapter, except as provided under subdivisions A 5 and 6 of this section, and 20VAC5-315-50 as related to additional metering.

D. ~~The net energy metering~~ A customer shall immediately notify the electric distribution company of any changes in the ownership of, operational responsibility for, or contact information for any of the generator customer's generators.

20VAC5-315-50. Metering, billing, payment and contract or tariff considerations.

Net metered energy shall be measured in accordance with standard metering practices by metering equipment capable of measuring (but not necessarily displaying) power flow in both directions. Each contract or tariff governing the relationship between a ~~net metering~~ customer, electric distribution company or energy service provider shall be identical, with respect to the rate structure, all retail rate components, and monthly charges, to the contract or tariff under which the same customer would be served if such customer ~~was~~ were not a net metering customer with the exceptions that a residential ~~customer-generator~~ net metering customer or an agricultural net metering customer whose generating facility has a capacity that exceeds 10 kilowatts shall pay any applicable tariffed monthly standby charges to ~~his~~ the supplier, and that time-of-use metering under an electricity supply service tariff having no demand charges is not permitted. Said contract or tariff shall be applicable to both the electric energy supplied to, and consumed from, the grid by that customer.

In instances where a ~~net metering~~ customer's metering equipment is of a type for which meter readings are made off site and where this equipment has, or will be, installed for the convenience of the electric distribution company, the electric distribution company shall provide the necessary additional metering equipment to enable net metering service at no charge to the ~~net metering~~ customer. In instances where a ~~net metering~~ customer has requested, and where the electric distribution company would not have otherwise installed, metering equipment that is intended to be read off site, the electric distribution company may charge the ~~net metering~~ customer its actual cost of installing any additional equipment necessary to implement net metering service. A time-of-use ~~net metering~~ customer shall bear the incremental metering costs associated with net metering. Any incremental metering costs associated with measuring the ~~total~~ output of the ~~renewable fuel~~ any generator or generators for the purposes of receiving renewable energy certificates shall be installed at the customer's expense unless otherwise negotiated between

the customer and the REC purchaser. Agricultural net metering customers may be responsible for the cost of additional metering equipment necessary to accomplish virtual aggregation.

~~A net metering~~ The customer shall receive no compensation for excess generation unless the ~~net metering~~ customer has entered into a power purchase agreement with its supplier.

Upon the written request of the ~~net metering~~ customer, the customer's supplier shall enter into a power purchase agreement for the excess generation for one or more net metering periods, as requested by the ~~net metering~~ customer. The written request of the ~~net metering~~ customer shall be submitted prior to the beginning of the first net metering period covered by the power purchase agreement. The power purchase agreement shall be consistent with this chapter. If the customer's supplier is an investor-owned electric distribution company, the supplier shall be obligated by the power purchase agreement to purchase the excess generation for the requested net metering periods at a price equal to the PJM Interconnection, L.L.C. (PJM) zonal day-ahead annual, simple average LMP (locational marginal price) for the PJM load zone in which the electric distribution company's Virginia retail service territory resides (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the electric distribution company and the ~~net metering~~ customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology. If the Virginia retail service territory of the investor-owned electric distribution company does not reside within a PJM load zone, the power purchase agreement shall obligate the electric distribution company to purchase excess generation for the requested net metering periods at a price equal to the systemwide PJM day-ahead annual, simple average LMP (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the electric distribution company and the ~~net metering~~ customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

If the customer's supplier is a member-owned electric cooperative, the supplier shall be obligated by the power purchase agreement to purchase excess generation for the requested net metering periods at a price equal to the simple average (by tiers for time-of-use customers) of the electric cooperative's hourly avoidable cost of energy, including fuel, based on the energy and energy-related charges of its primary wholesale power supplier for the net metering period, unless the electric distribution company and the ~~net metering~~ customer mutually agree to a higher price or unless, after

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notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

If the customer's supplier is a competitive supplier, the supplier shall be obligated by the power purchase agreement to purchase the excess generation for the requested net metering periods at a price equal to the systemwide PJM day-ahead annual, simple average LMP (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the supplier and the ~~net-metering~~ customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

The customer's supplier shall make full payment annually to the ~~net-metering~~ customer within 30 days following the latter of the end of the net metering period or, if applicable, the date of the PJM Market Monitoring Unit's publication of the previous calendar-year's applicable zonal or systemwide PJM day-ahead annual, simple average LMP, or hourly LMP, as appropriate. The supplier may offer the ~~net-metering~~ customer the choice of an account credit in lieu of a direct payment. The option of a ~~net-metering~~ customer to request payment from its supplier for excess generation and the price or pricing formula shall be clearly delineated in the net metering tariff of the electric distribution company or timely provided by the customer's competitive supplier, as applicable. A copy of such tariff, or an Internet link to such tariff, at the option of the customer, shall be provided to each customer requesting interconnection of ~~a renewable fuel generator~~ an electrical generating facility. A competitive supplier shall provide in its contract with the ~~net-metering~~ customer the price or pricing formula for excess generation.

For a nontime-of-use ~~net-metering~~ customer, in any billing period in which there is a billing period credit, the customer shall be required to pay only the nonusage sensitive charges, including any applicable standby charges, for that billing period. For a time-of-use ~~net-metering~~ customer, in any billing period for which there are billing period credits in all tiers, the customer shall be required to pay only the demand charge or charges, nonusage sensitive charges, and any applicable standby charges, for that billing period. Any billing period credits shall be accumulated, carried forward, and applied at the first opportunity to any billing periods having positive net consumptions (by tiers, in the case of time-of-use customers). However, any accumulated billing period credits remaining unused at the end of a net metering period shall be carried forward into the next net metering period only to the extent that such accumulated billing period credits carried forward do not exceed the ~~net-metering~~ customer's billed consumption for the current net metering period, adjusted to exclude accumulated billing period credits carried forward and applied from the previous net metering period (recognizing tiers for time-of-use customers).

A ~~net-metering~~ customer owns any renewable energy certificates associated with the total output of its ~~renewable fuel generator~~ electrical generating facility. A supplier is only obligated to purchase a ~~net-metering~~ customer's RECs if the ~~net-metering~~ customer has exercised its one-time option at the time of signing a power purchase agreement with its supplier to include a provision requiring the purchase by the supplier of all generated RECs over the duration of the power purchase agreement.

Payment for all whole RECs purchased by the supplier during a net metering period in accordance with the ~~purchase~~ power purchase agreement shall be made at the same time as the payment for any excess generation. The supplier will post a credit to the customer's account, or the customer may elect a direct payment. Any fractional REC remaining shall not receive immediate payment, but may be carried forward to subsequent net metering periods for the duration of the power purchase agreement.

The rate of the payment by the supplier for a customer's RECs shall be the daily unweighted average of the "CR" component of Virginia Electric and Power Company's Virginia jurisdiction Rider G tariff in effect over the period for which the rate of payment for the excess generation is determined, unless the customer's supplier is not Virginia Electric and Power Company, and that supplier has an applicable Virginia retail renewable energy tariff containing a comparable REC commodity price component, in which case that price component shall be the basis of the rate of payment. The commission may, with notice and opportunity for hearing, set another rate of payment or methodology for setting the rate of payment for RECs.

To the extent that RECs are not sold to the ~~net-metering~~ customer's supplier, they may be sold to any willing buyer at any time at a mutually agreeable price.

20VAC5-315-60. Liability insurance.

A ~~net-metering~~ customer ~~with a renewable fuel generator operating an electrical generating facility with a rated an alternating current~~ capacity not exceeding 10 kilowatts shall maintain homeowners, commercial, or other insurance providing coverage in the amount of at least \$100,000 for the liability of the insured against loss arising out of the ~~use operation of a renewable fuel generator the facility~~, and for a ~~renewable fuel generator facility with a rated an alternating current~~ capacity exceeding 10 kilowatts such coverage shall be in the amount of at least \$300,000. ~~Net-metering customers~~ Customers shall not be required to obtain liability insurance with limits higher than that which is stated in this section; nor shall such customers be required to purchase additional liability insurance where the customer's existing insurance policy provides coverage against loss arising out of the ~~use operation of a renewable fuel generator an electrical generating facility~~ by virtue of not explicitly excluding coverage for such loss.

20VAC5-315-70. Additional controls and tests.

Except as provided in 20VAC5-315-40 A 5 and 6 and 20VAC5-315-50 as related to additional metering, no ~~net metering~~ customer shall be required to pay for additional metering, testing or controls in order to interconnect with the electric distribution company or energy service provider. However, this chapter shall not preclude a ~~net-metering~~ customer, an electric distribution company or an energy service provider from installing additional controls or meters, or from conducting additional tests. The expenses associated with these additional meters, tests or equipment shall be borne by the party desiring the additional meters, tests or equipment.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the form, which has a hyperlink, to access it. The form is also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (20VAC5-315)

~~Net Metering Interconnection Notification, Form NMIN (eff. 9/06).~~

[Net Metering Interconnection Notification, Form NMIN \(rev. 7/14\)](#)

VA.R. Doc. No. R14-3950; Filed January 28, 2014, 3:50 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 6 (2014)

Declaration of a State of Emergency for the Commonwealth of Virginia in Support of Emergency Relief Supplies Due to Severe Winter Weather

Importance of the Issue

On January 30, 2014, I verbally declared a State of Emergency to exist for the Commonwealth of Virginia due to severe winter weather and continuing cold temperatures requiring relief efforts, and the transport of emergency supplies and home heating fuel.

The health and general welfare of the citizens of Virginia require that state action be taken to help alleviate the impacts caused by this situation. Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing that verbal order issued on January 30, 2014, whereby a State of Emergency was found to exist and appropriate assistance was directed to be rendered by agencies of state government to alleviate any impediments to the transport of relief supplies.

In order to marshal public resources to meet this threat, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia, I hereby order the following measures:

A. The authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential emergency relief supplies (including but not limited to deicing chemicals and roadway abrasives) and home heating fuels in and through any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination.

Such exemptions shall not be valid on posted structures for restricted weight. All over width loads, up to a maximum of 12 feet, and over height loads up to a maximum of 14 feet must follow Virginia Department of Motor Vehicles (DMV) hauling permit and safety guidelines.

In addition to described overweight/over width transportation privileges, carriers are also exempt from registration with the DMV. This includes vehicles en route and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

The foregoing overweight/over width transportation privileges, as well as the regulatory exemption, provided by § 52-8.4 (A) of the Code of Virginia, and implemented in 19VAC30-20-40 (B) of the "Motor Carrier Safety Regulations," shall remain in effect until March 1, 2014, or

until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

B. Authorization of the State Coordinator of Emergency Management to grant limited exemption of hours of service worked by any carrier when transporting critical supplies in and through any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination, pursuant to § 52-8.4 of the Code of Virginia and Title 49 Code of Federal Regulations, Section 390.23 and Section 395.3

The discontinuance of provisions authorized in paragraphs A and B above may be implemented and disseminated by publication of administrative notice to all affected and interested parties. I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet Secretaries, the authority to implement this order as set forth in § 2.2-104 of the Code of Virginia.

Effective Date of this Executive Order

This Executive Order shall be effective January 30, 2014, and shall remain in full force and effect until March 1, 2014, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 3rd day of February 2014.

/s/ Terence R. McAuliffe
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY Crab Creek Water Quality Improvement Plan Working Group Meeting

The Virginia Department of Environmental Quality (DEQ) will hold a working group meeting for the Crab Creek (Montgomery County) water quality improvement plan on Tuesday, March 13, 2014. The Agricultural Working Group and the Residential/Urban Working Group will meet from 6:30 p.m. to 8:30 p.m. at the Christiansburg Town Hall, 100 East Main Street, Christiansburg, VA.

The purpose of the meeting is to gather input from stakeholders on the types and amounts of agricultural, residential, and urban practices needed to reduce sediment and bacteria pollution in Crab Creek to a level that meets water quality goals and how stakeholders can collaborate on a coordinated approach for achieving water quality goals.

Fecal bacteria levels (e.g., *E. coli*) in Crab Creek exceed state water quality standards designed to protect primary contact recreation (e.g., swimming, wading, kayaking, etc.). Additionally, Crab Creek does not meet Virginia's general standard for water quality, due to an excessive accumulation of sand, silt, and clay on the streambed that is harmful to aquatic life.

In response to these impairments, DEQ developed total maximum daily loads (TMDLs) for *E. coli* and sediment in Crab Creek in 2004. A TMDL describes the amount of pollution that a water body can receive and still meet water quality standards. The Fecal Bacteria and General Standard TMDL Development for Crab Creek document can be located on DEQ's website at <http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/newrvr/crabcr.pdf>.

Virginia's 1997 Water Quality Monitoring, Information, and Restoration Act (WQMIRA) directs the State Water Control Board (SWCB) to develop and implement a plan to achieve fully supporting status for impaired waters (§§ 62.1-44.19:4 through 62.1-44.19:8 of the Code of Virginia). The working group meeting to be held on March 13, 2014, is part of the process for developing the water quality improvement plan (i.e., TMDL Implementation Plan) for Crab Creek.

Questions or information requests can be addressed to:

Patrick Lizon, TMDL/Watershed Field Coordinator,
Department of Environmental Quality, Southwest Region,
355-A Deadmore Street, Abingdon, VA 24210, telephone
(276) 676-4803, or email patrick.lizon@deq.virginia.gov.

Diana Hackenburg, TMDL/Watershed Field Coordinator,
Department of Environmental Quality, Blue Ridge Region,
3019 Peters Creek Road, Roanoke, VA 24019, telephone
(540) 562-6738, or email diana.hackenburg@deq.virginia.gov.

In the case of inclement weather, please contact Diana Hackenburg for more information. If the meeting needs to be rescheduled, it will occur on Thursday, March 20, 2014, from 6:30 p.m. to 8:30 p.m. at the Christiansburg Town Hall.

Water Quality Improvement Plan for Cripple Creek (Smyth and Wythe Counties) and Elk Creek (Grayson County)

The Virginia Department of Environmental Quality is providing interested persons an opportunity to comment on the draft water quality improvement plan for reducing agricultural and residential sources of fecal bacteria in Cripple Creek (Smyth and Wythe Counties) and Elk Creek (Grayson County). A meeting on this draft plan was canceled due to inclement weather and was rescheduled for February 11, 2014. The public comment period provides an opportunity for citizens and interested parties to submit comments on the plan.

Elk Creek and segments of Cripple Creek do not meet state water quality standards for fecal bacteria (e.g., *E. coli*). Elevated levels of *E. coli* indicate an increased risk of illness for people who come in contact with water in the affected streams. Identified sources of *E. coli* in these watersheds include failing septic systems, discharges of untreated human waste (e.g., straight pipes), and livestock waste.

Public comment period: The public comment period will end on March 13, 2014.

Questions, information requests, and comments should be addressed to Patrick Lizon, Watershed Field Coordinator, Department of Environmental Quality, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4803, or email patrick.lizon@deq.virginia.gov.

Water Quality Study for the James River Watershed

Purpose of notice: To seek public comment and announce a public meeting on a water quality study by the Department of Environmental Quality (DEQ) for the James River watershed in Lynchburg, Virginia.

Public meeting time and location: Tuesday, March 4, 2014, from 6:30 p.m. to 8:30 p.m. at Randolph College 2500 Rivermont Avenue, Lynchburg, Virginia. The meeting will be located in the Nichols Theater, located in the Student Center.

Description of study: Virginia agencies are working to identify sources of fecal bacteria contamination in stream segments from the James River watershed in Central Virginia. This contamination exceeds water quality standards and thus impairs or decreases the quality of the water.

The streams segments that will be included in the study are: 10.53 miles James River, 20.8 miles Ivy Creek, 5.89 miles Tomahawk Creek, 6.89 miles Burton Creek, 3.43 miles unnamed tributary to Burton Creek, 10.54 miles Judith Creek,

General Notices/Errata

5.44 miles Fishing Creek, 10.3 miles Blackwater Creek, 8.5 miles Beaver Creek, 7.72 miles Harris Creek, 4.69 miles Dreaming Creek, 3.04 miles Opossum Creek, 6.37 miles Williams Run, 5.17 miles Graham Creek, and 9.46 miles Pedlar River.

During the study, DEQ will develop a total maximum daily load (TMDL) for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels have to be reduced to the TMDL amount.

Public comment period: The public comment period on the materials presented at the public meeting will extend from March 4, 2014, to April 3, 2014.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received during the comment period. DEQ also accepts written and oral comments at the public meeting announced in this notice. For additional information, or to submit comments, contact Paula Nash, Department of Environmental Quality, Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-6216, or email paula.nash@deq.virginia.gov.

Water Quality Improvement Plan Revision for Reducing Excessive Sediment Accumulation within the Guest River (Wise County)

The Upper Tennessee River Roundtable will host a public meeting at which the draft version of the revised water quality improvement plan for reducing excessive sediment accumulation within the Guest River (Wise County, VA) and fecal bacteria contamination within the following tributaries of the Guest River: Crab Orchard Creek, Sepulcher Creek, Little Toms Creek, and Toms Creek will be presented. The public meeting will be held on March 3, 2014, from 6:30 p.m. to 8:30 p.m. at the Norton Community Center located at 201 East Park Avenue NE, Norton, VA from 6 p.m. to 8 p.m. The back-up date in case the meeting is canceled due to bad weather is March 10, 2014 (same location and time).

The development of this plan is required by Virginia's 1997 Water Quality Monitoring, Information, and Restoration Act (§§ 62.1-44.19:4 through 62.1-44.19:8 of the Code of Virginia). The public meeting provides an opportunity for citizens and interested parties to ask questions, provide comments, and will begin a 30-day period during which written public comments on the plan will be accepted. The draft water quality improvement plan will be available on DEQ's website the day after the public meeting at <http://www.deq.state.va.us/Programs/Water/WaterQualityInformationTMDLs/TMDL/PublicNotices.aspx>.

The Guest River does not meet Virginia's general standard for water quality due to an excessive accumulation of sand, silt,

and clay on the streambed that is harmful to aquatic life. Fecal bacteria levels (e.g., *E. coli*) in Crab Orchard Creek, Sepulcher Creek, Little Toms Creek, and Toms Creek exceed state water quality standards designed to protect primary contact recreation (e.g., swimming, wading, kayaking, etc.). Due to these water quality impairments, total maximum daily loads (TMDLs) for *E. coli* and sediment have been developed by DEQ. A TMDL describes the amount of pollution that a water body can receive and still meet water quality standards. The sediment TMDL study for the Guest River was completed in 2003, and the TMDL study for fecal bacteria in the Guest River tributaries listed above was completed in 2004. These studies can be located on DEQ's website at <http://www.deq.state.va.us/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx>.

Public comment period: The public comment period on the materials presented at the public meeting will extend from March 3, 2014, to April 3, 2014.

Please contact Adam Wells, Guest River Coordinator with questions about the public meeting at telephone (276) 926-5527 or email guesriverproject@gmail.com. Comments or questions associated with the draft water quality improvement plan for the Guest River watershed should be addressed to Patrick Lizon, TMDL/Watershed Field Coordinator, Virginia Department of Environmental Quality, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4803, or email patrick.lizon@deq.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Bexley Properties, LLC

An enforcement action has been proposed for Bexley Properties, LLC for alleged violations of the Virginia Ground Water Management Act of 1992 at the Bexley Mobile Home Park Water System located in Prince George County. Corrective action is pending, and the consent order requires payment of a civil charge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov/Programs/Enforcement/PublicNotices.aspx. Previn Smith will accept comments by email at previn.smith@deq.virginia.gov or postal mail at Department of Environmental Quality, Central Office, 629 East Main Street, Richmond, VA 23219, from February 25, 2014, to March 27, 2014.

Proposed Consent Special Order for Centerpoint Crossing, LLC

An enforcement action has been proposed for Centerpoint Crossing, LLC for alleged violations at Centerpoint Crossing Subdivision, Chesterfield County. The State Water Control Board proposes to issue a consent special order to Centerpoint Crossing, LLC to address noncompliance with

State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Gina Pisoni will accept comments by email at gina.pisoni@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from February 24, 2014, to March 28, 2014.

Proposed Consent Special Order for Greenwood Motor Lines, Inc.

An enforcement action has been proposed for Greenwood Motor Lines, Inc. for violations in Montgomery County. The special order by consent will address and resolve violations of environmental law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email at jerry.ford@deq.virginia.gov or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from February 24, 2014, to March 26, 2014.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *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 <http://www.virginia.gov/connect/commonwealth-calendar>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: 9VAC25-151. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity.

Publication: 30:11 VA.R. 1467-1550 January 27, 2014

Correction to Final Regulation:

Page 1523, 9VAC25-151-180, Table 180-2, first column, line 10, before "Magnesium" replace "Recoverable" with "[Recoverable]"

VA.R. Doc. No. R13-3382; Filed February 5, 2014 9:42 a.m.

