

---

# THE VIRGINIA REGISTER INFORMATION PAGE

---

**THE VIRGINIA REGISTER** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative. **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 OF REGULATIONS**. In addition, **THE VIRGINIA REGISTER** is a source of other information about state government, including all emergency regulations and executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

## 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 appropriate standing committee of each branch 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 committee, 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 standing committees 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 extension

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.

Proposed regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

## EMERGENCY REGULATIONS

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. 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 addressing specifically defined situations and may not exceed 12 months in duration. 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 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 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. **12:8 VA.R. 1096-1106 January 8, 1996**, refers to Volume 12, Issue 8, pages 1096 through 1106 of the *Virginia Register* issued on January 8, 1996.

**"THE VIRGINIA REGISTER OF REGULATIONS"** (USPS-001831) is published bi-weekly, with quarterly cumulative indices published in January, April, July and October, for \$100 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Periodical Postage Rates Paid at Richmond, Virginia. **POSTMASTER:** Send address changes to **THE VIRGINIA REGISTER OF REGULATIONS, 910 CAPITOL STREET, 2ND FLOOR, RICHMOND, VIRGINIA 23219.**

*The Virginia Register of Regulations* is published pursuant to Article 7 (§ 9-6.14:22 et seq.) of Chapter 1.1:1 of Title 9 of the Code of Virginia. Individual copies, if available, may be purchased for \$4.00 each from the Registrar of Regulations.

Members of the Virginia Code Commission: **Joseph V. Gartlan, Jr.**, Chairman; **W. Tayloe Murphy, Jr.**, Vice Chairman; **Robert L. Calhoun;** **Bernard S. Cohen;** **Jay W. DeBoer;** **Frank S. Ferguson;** **James E. Kulp;** **E.M. Miller, Jr.;** **Jackson E. Reasor, Jr.;** **James B. Wilkinson.**

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations.

---

---

# PUBLICATION DEADLINES AND SCHEDULES

---

This schedule is available on the *Register's* Internet home page (<http://legis.state.va.us/codecomm/register/regindex.htm>).

---

## December 1998 through September 1999

<u>Volume:Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
15:6	November 17, 1998 ( <b>Tuesday</b> )	December 7, 1998
15:7	December 2, 1998	December 21, 1998
<b>INDEX 1 - Volume 15</b>		<b>January 1999</b>
15:8	December 15, 1998 ( <b>Tuesday</b> )	January 4, 1999
15:9	December 29, 1998 ( <b>Tuesday</b> )	January 18, 1999
15:10	January 13, 1999	February 1, 1999
15:11	January 27, 1999	February 15, 1999
15:12	February 10, 1999	March 1, 1999
15:13	February 24, 1999	March 15, 1999
15:14	March 10, 1999	March 29, 1999
<b>INDEX 2 - Volume 15</b>		<b>April 1999</b>
15:15	March 24, 1999	April 12, 1999
15:16	April 7, 1999	April 26, 1999
15:17	April 21, 1999	May 10, 1999
15:18	May 5, 1999	May 24, 1999
15:19	May 19, 1999	June 7, 1999
15:20	June 2, 1999	June 21, 1999
<b>INDEX 3 - Volume 15</b>		<b>July 1999</b>
15:21	June 16, 1999	July 5, 1999
15:22	June 30, 1999	July 19, 1999
15:23	July 14, 1999	August 2, 1999
15:24	July 28, 1999	August 16, 1999
15:25	August 11, 1999	August 30, 1999
15:26	August 25, 1999	September 13, 1999
<b>FINAL INDEX - Volume 15</b>		<b>October 1999</b>

\*Filing deadlines are Wednesdays unless otherwise specified.

---

# TABLE OF CONTENTS

---

## CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

Cumulative Table .....761

## NOTICES OF INTENDED REGULATORY ACTION

### TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

Criminal Justice Services Board .....769

### TITLE 8. EDUCATION

State Board of Education .....769

### TITLE 9. ENVIRONMENT

State Water Control Board.....770

### TITLE 12. HEALTH

State Board of Health .....770

Department of Medical Assistance Services .....771

### TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

Board for Contractors .....771

Board of Pharmacy.....772

### TITLE 23. TAXATION

Department of Taxation .....772

## PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS

### TITLE 9. ENVIRONMENT

State Air Pollution Control Board .....773

## PROPOSED REGULATIONS

### TITLE 9. ENVIRONMENT

#### STATE AIR POLLUTION CONTROL BOARD

Regulations for the Control and Abatement of Air Pollution (Rev. G97). .....776

Existing Stationary Sources (repealing 9 VAC 5-40-160 through 9 VAC 5-40-230). .....776

New and Modified Stationary Sources (repealing 9 VAC 5-50-160 through 9 VAC 5-50-230).....776

Hazardous Pollutant Sources (adding 9 VAC 5-60-150 through 9 VAC 5-60-220 and 9 VAC 5-60-250 through 9 VAC 5-60-320).....776

Regulations for the Control and Abatement of Air Pollution (Rev. J97). .....793

Permits for Stationary Sources (adding 9 VAC 5-80-1400 through 9 VAC 5-80-1590).....793

## FINAL REGULATIONS

### TITLE 4. CONSERVATION AND NATURAL RESOURCES

#### DEPARTMENT OF MINES, MINERALS AND ENERGY

Coal Surface Mining Reclamation Regulations (amending 4 VAC 25-130-700.5, 4 VAC 25-130-779.25, 4 VAC 25-130-780.23, 4 VAC 25-130-780.25, 4 VAC 25-130-780.35, 4 VAC 25-130-783.25, 4 VAC 25-130-784.15, 4 VAC 25-130-784.16, 4 VAC 25-130-784.23, 4 VAC 25-130-800.40, 4 VAC 25-130-816.46, 4 VAC 25-130-816.49, 4 VAC 25-130-816.74, 4 VAC 25-130-816.81, 4 VAC 25-130-816.89, 4 VAC 25-130-816.104, 4 VAC 25-130-816.105, 4 VAC 25-130-817.46, 4 VAC 25-130-817.49, 4 VAC 25-130-817.74, 4 VAC 25-130-817.81, 4 VAC 25-130-817.89, 4 VAC 25-130-840.11, 4 VAC 25-130-843.14, 4 VAC 25-130-845.17, 4 VAC 25-130-845.18, 4 VAC 25-130-845.19, 4 VAC 25-130-846.17; repealing 4 VAC 25-130-779.22).....810

### TITLE 9. ENVIRONMENT

#### STATE WATER CONTROL BOARD

Roanoke River Basin Water Quality Management Plan (amending 9 VAC 25-430-20, 9 VAC 25-430-30, 9 VAC 25-430-40 and 9 VAC 25-430-60).....849

Upper Roanoke River Subarea Water Quality Management Plan (amending 9 VAC 25-440-150; adding 9 VAC 25-440-151).....872

### TITLE 12. HEALTH

#### STATE BOARD OF HEALTH

Regulations for Disease Reporting and Control (amending 12 VAC 5-90-10, 12 VAC 5-90-40, 12 VAC 5-90-50, 12 VAC 5-90-70, 12 VAC 5-90-80, 12 VAC 5-90-90, 12 VAC 5-90-100, 12 VAC 5-90-110, 12 VAC 5-90-130, 12 VAC 5-90-150, 12 VAC 5-90-160, 12 VAC 5-90-170 and 12 VAC 5-90-180; repealing 12 VAC 5-90-60, 12 VAC 5-90-120, 12 VAC 5-90-190, 12 VAC 5-90-210 and 12 VAC 5-90-220).....880

#### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Medicaid Coverage for Licensed Clinical Nurse Specialists-Psychiatric. ....893

Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-140 and 12 VAC

---

# Table of Contents

---

30-50-150). ..... 893  
Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-40 and 12 VAC 30-60-120). ..... 893

Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-30)..... 893

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### **BOARD OF OPTOMETRY**

Regulations of the Virginia Board of Optometry (amending 18 VAC 105-20-10, 18 VAC 105-20-20, 18 VAC 105-20-40, 18 VAC 105-20-50, 18 VAC 105-20-60 and 18 VAC 105-20-70; adding 18 VAC 105-20-15 and 18 VAC 105-20-45; repealing 18 VAC 105-20-30)..... 901

## TITLE 22. SOCIAL SERVICES

### **STATE BOARD OF SOCIAL SERVICES**

Virginia Independence Program (amending 22 VAC 40-35-10; adding 22 VAC 40-35-125)..... 922

### **EMERGENCY REGULATIONS**

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### **BOARD OF PHARMACY**

Virginia Board of Pharmacy Regulations (amending 18 VAC 110-20-10, 18 VAC 110-20-130, and 18 VAC 110-20-140; adding 18 VAC 110-20-135, 18 VAC 110-20-690, 18 VAC 110-20-700, and 18 VAC 110-20-710)..... 926

### **GENERAL NOTICES/ERRATA**

#### **STATE CORPORATION COMMISSION**

#### ORDER ON MOTION OF BELL ATLANTIC-VIRGINIA, INC. TO CLARIFY ITS OBLIGATION TO IMPLEMENT INTRALATA TOLL 1+PRESUBSCRIPTION

Implementation of IntraLATA Toll Dialing Parity pursuant to the provisions of 47 U.S.C. § 251(b)(3) ..... 931

#### ORDER GRANTING MOTION

Investigation of the termination of local exchange service for failure to pay for long distance services..... 932

#### **Bureau of Insurance**

#### ADMINISTRATIVE LETTERS

Service Area Concerns and Notices of Material Transactions.

(1998-11) .....933  
Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). (1998-15).....936

#### **DEPARTMENT OF HEALTH**

1999 Comprehensive Plan for HIV Care Grant.....936  
Virginia's Source Water Assessment Program.....937

#### **VIRGINIA CODE COMMISSION**

Notice to State Agencies.....937  
Forms for Filing Material for Publication in *The Virginia Register of Regulations*.....937

#### ERRATA

#### **DEPARTMENT OF MINES, MINERALS AND ENERGY**

Virginia Gas and Oil Regulation. (4 VAC 25-150-10 et seq.) .....938

### **CALENDAR OF EVENTS**

#### EXECUTIVE

Open Meetings and Public Hearings .....939

#### INDEPENDENT

Open Meetings and Public Hearings .....953

#### LEGISLATIVE

Open Meetings and Public Hearings .....954

#### CHRONOLOGICAL LIST

Open Meetings .....958  
Public Hearings .....959

# CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 1998 VAC Supplement includes final regulations published through *Virginia Register* Volume 14, Issue 25, dated August 31, 1998). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 1. Administration</b>			
1 VAC 30-130-10	Amended	15:1 VA.R. 44 (4390)	9/15/98
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 15-320-20	Amended	15:5 VA.R. 574	1/1/99
4 VAC 15-320-30	Amended	15:5 VA.R. 575	1/1/99
4 VAC 15-320-100	Amended	15:5 VA.R. 575	1/1/99
4 VAC 15-320-120	Amended	15:5 VA.R. 576	1/1/99
4 VAC 15-320-160	Added	15:5 VA.R. 576	1/1/99
4 VAC 15-330-110	Amended	15:5 VA.R. 577	1/1/99
4 VAC 15-330-120	Amended	15:5 VA.R. 577	1/1/99
4 VAC 15-330-140	Amended	15:5 VA.R. 577	1/1/99
4 VAC 15-330-150	Amended	15:5 VA.R. 578	1/1/99
4 VAC 15-330-160	Amended	15:5 VA.R. 578	1/1/99
4 VAC 15-340-60	Amended	15:5 VA.R. 578	1/1/99
4 VAC 15-360-10	Amended	15:5 VA.R. 579	1/1/99
4 VAC 20-20-10	Amended	15:5 VA.R. 579	10/28/98
4 VAC 20-20-35	Added	15:5 VA.R. 579	10/28/98
4 VAC 20-260-30	Amended	15:3 VA.R. 320	10/1/98
4 VAC 20-260-40	Amended	15:3 VA.R. 320	10/1/98
4 VAC 20-620-40	Amended	15:5 VA.R. 580	10/28/98
4 VAC 20-620-42 emer	Added	15:5 VA.R. 718	10/30/98-11/17/98
4 VAC 20-720-40	Amended	15:3 VA.R. 321	10/1/98
4 VAC 20-720-50	Amended	15:3 VA.R. 321	10/1/98
4 VAC 20-720-60	Amended	15:3 VA.R. 321	10/1/98
4 VAC 20-720-70	Amended	15:3 VA.R. 322	10/1/98
4 VAC 20-720-80	Amended	15:3 VA.R. 322	10/1/98
4 VAC 20-720-90	Amended	15:3 VA.R. 322	10/1/98
4 VAC 25-35 (Forms)	Amended	15:1 VA.R. 46 (4392)	--
4 VAC 25-150-10	Amended	15:2 VA.R. 135	11/11/98
4 VAC 25-150-50	Amended	15:2 VA.R. 138	11/11/98
4 VAC 25-150-60	Amended	15:2 VA.R. 138	11/11/98
4 VAC 25-150-70	Repealed	15:2 VA.R. 139	11/11/98
4 VAC 25-150-80 through 4 VAC 25-150-130	Amended	15:2 VA.R. 139- 143	11/11/98
4 VAC 25-150-135	Added	15:2 VA.R. 143	11/11/98
4 VAC 25-150-160 through 4 VAC 25-150-360	Amended	15:2 VA.R. 143- 156	11/11/98
4 VAC 25-150-380 through 4 VAC 25-150-430	Amended	15:2 VA.R. 156- 159	11/11/98
4 VAC 25-150-435	Added	15:2 VA.R. 159	11/11/98
4 VAC 25-150-440 through 4 VAC 25-150-460	Amended	15:2 VA.R. 161- 162	11/11/98

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 25-150-500 through 4 VAC 25-150-530	Amended	15:2 VA.R. 162- 163	11/11/98
4 VAC 25-150-540	Repealed	15:2 VA.R. 165	11/11/98
4 VAC 25-150-560	Amended	15:2 VA.R. 167	11/11/98
4 VAC 25-150-570	Repealed	15:2 VA.R. 167	11/11/98
4 VAC 25-150-580 through 4 VAC 25-150-610	Amended	15:2 VA.R. 168- 169	11/11/98
4 VAC 25-150-640	Repealed	15:2 VA.R. 171	11/11/98
4 VAC 25-150-650 through 4 VAC 25-150-700	Amended	15:2 VA.R. 171- 172	11/11/98
4 VAC 25-150-710	Repealed	15:2 VA.R. 172	11/11/98
4 VAC 25-150-711	Added	15:2 VA.R. 172	11/11/98
4 VAC 25-150-720 through 4 VAC 25-150-740	Amended	15:2 VA.R. 173	11/11/98
<b>Title 9. Environment</b>			
9 VAC 5-20-204	Amended	15:2 VA.R. 174	1/1/99
9 VAC 5-20-205	Amended	15:2 VA.R. 175	1/1/99
9 VAC 25-192 (Forms)	Added	15:3 VA.R. 331	--
9 VAC 25-192-40	Amended	15:3 VA.R. 323	12/1/98
9 VAC 25-192-50	Amended	15:3 VA.R. 323	12/1/98
9 VAC 25-192-60	Amended	15:3 VA.R. 323	12/1/98
9 VAC 25-192-70	Amended	15:3 VA.R. 324	12/1/98
9 VAC 25-193-70	Erratum	15:2 VA.R. 241	--
9 VAC 25-610-10	Amended	15:5 VA.R. 581	1/1/99
9 VAC 25-610-30	Repealed	15:5 VA.R. 582	1/1/99
9 VAC 25-610-90	Amended	15:5 VA.R. 582	1/1/99
9 VAC 25-610-110	Amended	15:5 VA.R. 586	1/1/99
9 VAC 25-610-130	Amended	15:5 VA.R. 589	1/1/99
9 VAC 25-610-140	Amended	15:5 VA.R. 590	1/1/99
9 VAC 25-610-160	Amended	15:5 VA.R. 591	1/1/99
9 VAC 25-610-250	Amended	15:5 VA.R. 591	1/1/99
9 VAC 25-610-330	Amended	15:5 VA.R. 592	1/1/99
9 VAC 25-610-400	Added	15:5 VA.R. 592	1/1/99
<b>Title 12. Health</b>			
12 VAC 5-90-230	Added	14:26 VA.R. 4250	10/14/98
12 VAC 5-90-240	Added	14:26 VA.R. 4250	10/14/98
12 VAC 5-90-250	Added	14:26 VA.R. 4251	10/14/98
12 VAC 5-90-260	Added	14:26 VA.R. 4251	10/14/98
12 VAC 5-90-270	Added	14:26 VA.R. 4251	10/14/98
12 VAC 30-20-170	Amended	14:26 VA.R. 4252	1/1/99
12 VAC 30-50-110	Amended	15:5 VA.R. 593	1/1/99
12 VAC 30-50-140	Amended	15:5 VA.R. 593	1/1/99
12 VAC 30-50-160	Amended	14:26 VA.R. 4252	1/1/99
12 VAC 30-50-210	Amended	15:5 VA.R. 595	1/1/99
12 VAC 30-60-40	Amended	14:26 VA.R. 4254	1/1/99
12 VAC 30-60-320	Amended	14:26 VA.R. 4257	1/1/99
12 VAC 30-60-340	Amended	14:26 VA.R. 4259	1/1/99
12 VAC 30-90-264	Amended	14:26 VA.R. 4261	1/1/99
12 VAC 30-90-290	Amended	14:26 VA.R. 4264	1/1/99
12 VAC 30-140-10 emer	Added	15:4 VA.R. 478	10/23/98-10/22/99
12 VAC 30-140-20 emer	Added	15:4 VA.R. 479	10/23/98-10/22/99
12 VAC 30-140-30 emer	Added	15:4 VA.R. 479	10/23/98-10/22/99
12 VAC 30-140-40 emer	Added	15:4 VA.R. 479	10/23/98-10/22/99
12 VAC 30-140-50 emer	Added	15:4 VA.R. 480	10/23/98-10/22/99
12 VAC 30-150-10 emer	Added	15:4 VA.R. 481	10/23/98-10/22/99

# Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-150-20 emer	Added	15:4 VA.R. 483	10/23/98-10/22/99
12 VAC 30-160-00 emer	Added	15:4 VA.R. 483	10/23/98-10/22/99
12 VAC 30-160-10 emer	Added	15:4 VA.R. 483	10/23/98-10/22/99
12 VAC 30-160-20 emer	Added	15:4 VA.R. 483	10/23/98-10/22/99
12 VAC 30-160-30 emer	Added	15:4 VA.R. 483	10/23/98-10/22/99
12 VAC 30-160-40 emer	Added	15:4 VA.R. 483	10/23/98-10/22/99
12 VAC 30-160-50 emer	Added	15:4 VA.R. 483	10/23/98-10/22/99
12 VAC 30-160-60 emer	Added	15:4 VA.R. 484	10/23/98-10/22/99
12 VAC 30-160-60 emer	Added	15:4 VA.R. 484	10/23/98-10/22/99
12 VAC 30-160-70 emer	Added	15:4 VA.R. 484	10/23/98-10/22/99
12 VAC 30-160-80 emer	Added	15:4 VA.R. 484	10/23/98-10/22/99
12 VAC 30-160-90 emer	Added	15:4 VA.R. 484	10/23/98-10/22/99
12 VAC 30-160-100 emer	Added	15:4 VA.R. 484	10/23/98-10/22/99
12 VAC 30-160-110 emer	Added	15:4 VA.R. 484	10/23/98-10/22/99
12 VAC 30-160-120 emer	Added	15:4 VA.R. 484	10/23/98-10/22/99
12 VAC 30-160-130 emer	Added	15:4 VA.R. 484	10/23/98-10/22/99
12 VAC 30-160-140 emer	Added	15:4 VA.R. 485	10/23/98-10/22/99
12 VAC 30-160-150 emer	Added	15:4 VA.R. 485	10/23/98-10/22/99
12 VAC 30-160-160 emer	Added	15:4 VA.R. 485	10/23/98-10/22/99
12 VAC 30-160-170 emer	Added	15:4 VA.R. 485	10/23/98-10/22/99
12 VAC 30-160-180 emer	Added	15:4 VA.R. 485	10/23/98-10/22/99
12 VAC 30-160-190 emer	Added	15:4 VA.R. 485	10/23/98-10/22/99
12 VAC 30-160-200 emer	Added	15:4 VA.R. 485	10/23/98-10/22/99
12 VAC 30-160-210 emer	Added	15:4 VA.R. 485	10/23/98-10/22/99
12 VAC 30-160-220 emer	Added	15:4 VA.R. 486	10/23/98-10/22/99
12 VAC 30-160-230 emer	Added	15:4 VA.R. 486	10/23/98-10/22/99
12 VAC 30-160-240 emer	Added	15:4 VA.R. 486	10/23/98-10/22/99
12 VAC 30-160-241 through 12 VAC 30-160-298 emer	Added	15:4 VA.R. 486	10/23/98-10/22/99
12 VAC 30-160-299 emer	Added	15:4 VA.R. 486	10/23/98-10/22/99
12 VAC 30-170-10 emer	Added	15:4 VA.R. 487	10/23/98-10/22/99
12 VAC 30-170-20 emer	Added	15:4 VA.R. 487	10/23/98-10/22/99
<b>Title 13. Housing</b>			
13 VAC 10-40-230	Amended	15:4 VA.R. 424	10/21/98
<b>Title 14. Insurance</b>			
14 VAC 5-395-10	Amended	14:26 VA.R. 4266	8/20/98
14 VAC 5-395-30	Amended	14:26 VA.R. 4266	8/20/98
14 VAC 5-395-50	Amended	14:26 VA.R. 4267	8/20/98
<b>Title 16. Labor and Employment</b>			
16 VAC 25-50-10	Amended	15:5 VA.R. 600	1/1/99
16 VAC 25-50-15	Added	15:5 VA.R. 603	1/1/99
16 VAC 25-50-20	Amended	15:5 VA.R. 603	1/1/99
16 VAC 25-50-50	Amended	15:5 VA.R. 604	1/1/99
16 VAC 25-50-70	Amended	15:5 VA.R. 605	1/1/99
16 VAC 25-50-80	Amended	15:5 VA.R. 606	1/1/99
16 VAC 25-50-90	Amended	15:5 VA.R. 606	1/1/99
16 VAC 25-50-120	Amended	15:5 VA.R. 606	1/1/99
16 VAC 25-50-150	Amended	15:5 VA.R. 607	1/1/99
16 VAC 25-50-190	Amended	15:5 VA.R. 608	1/1/99
16 VAC 25-50-240	Amended	15:5 VA.R. 608	1/1/99
16 VAC 25-50-250	Amended	15:5 VA.R. 608	1/1/99
16 VAC 25-50-270	Amended	15:5 VA.R. 608	1/1/99
16 VAC 25-50-290	Amended	15:5 VA.R. 608	1/1/99
16 VAC 25-50-350	Amended	15:5 VA.R. 608	1/1/99
16 VAC 25-50-360	Amended	15:5 VA.R. 608	1/1/99

---

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

---

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-50-370	Amended	15:5 VA.R. 612	1/1/99
16 VAC 25-50-380	Amended	15:5 VA.R. 615	1/1/99
16 VAC 25-50-390	Amended	15:5 VA.R. 616	1/1/99
16 VAC 25-50-430	Amended	15:5 VA.R. 616	1/1/99
16 VAC 25-50-440	Amended	15:5 VA.R. 617	1/1/99
16 VAC 25-50-480	Amended	15:5 VA.R. 617	1/1/99
16 VAC 25-90-1910.109	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.110	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.111	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.141	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.142	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.151	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.156	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.183	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.261	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.262	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.265	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.267	Repealed	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.268	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.1017	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.1018	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.1029	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-90-1910.1052	Amended	15:5 VA.R. 628	1/1/99
16 VAC 25-100-1915.1001	Amended	15:5 VA.R. 633	1/1/99
16 VAC 25-175-1926.31	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-175-1926.50	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-175-1926.152	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-175-1926.906	Amended	15:5 VA.R. 631	1/1/99
16 VAC 25-175-1926.1101	Amended	15:5 VA.R. 633	1/1/99
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 60-20-10	Amended	15:5 VA.R. 636	12/23/98
18 VAC 60-20-15	Added	15:5 VA.R. 637	12/23/98
18 VAC 60-20-16	Added	15:5 VA.R. 637	12/23/98
18 VAC 60-20-20	Amended	15:5 VA.R. 637	12/23/98
18 VAC 60-20-20	Amended	15:5 VA.R. 646	12/23/98
18 VAC 60-20-30	Amended	15:5 VA.R. 638	12/23/98
18 VAC 60-20-30	Amended	15:5 VA.R. 647	12/23/98
18 VAC 60-20-50	Amended	15:5 VA.R. 638	12/23/98
18 VAC 60-20-60	Amended	15:5 VA.R. 639	12/23/98
18 VAC 60-20-70	Amended	15:5 VA.R. 639	12/23/98
18 VAC 60-20-80	Amended	15:5 VA.R. 640	12/23/98
18 VAC 60-20-90	Amended	15:5 VA.R. 640	12/23/98
18 VAC 60-20-110	Amended	15:5 VA.R. 641	12/23/98
18 VAC 60-20-120	Amended	15:5 VA.R. 641	12/23/98
18 VAC 60-20-130	Amended	15:5 VA.R. 641	12/23/98
18 VAC 60-20-140	Amended	15:5 VA.R. 641	12/23/98
18 VAC 60-20-150	Repealed	15:5 VA.R. 642	12/23/98
18 VAC 60-20-160	Repealed	15:5 VA.R. 642	12/23/98
18 VAC 60-20-170	Amended	15:5 VA.R. 642	12/23/98
18 VAC 60-20-180	Amended	15:5 VA.R. 642	12/23/98
18 VAC 60-20-190	Amended	15:5 VA.R. 643	12/23/98
18 VAC 60-20-195	Added	15:5 VA.R. 644	12/23/98
18 VAC 60-20-220	Amended	15:5 VA.R. 644	12/23/98
18 VAC 60-20-230	Amended	15:5 VA.R. 644	12/23/98
18 VAC 60-20-240	Amended	15:5 VA.R. 645	12/23/98



## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 65-20-70	Amended	15:4 VA.R. 426	12/9/98
18 VAC 65-20-80	Repealed	15:4 VA.R. 426	12/9/98
18 VAC 65-20-90	Repealed	15:4 VA.R. 427	12/9/98
18 VAC 65-20-100	Repealed	15:4 VA.R. 427	12/9/98
18 VAC 65-40-40	Amended	15:4 VA.R. 433	12/9/98
18 VAC 65-40-50	Repealed	15:4 VA.R. 433	12/9/98
18 VAC 65-40-60	Repealed	15:4 VA.R. 433	12/9/98
18 VAC 65-40-70	Repealed	15:4 VA.R. 433	12/9/98
18 VAC 65-40-80	Repealed	15:4 VA.R. 433	12/9/98
18 VAC 85-110-10	Amended	15:4 VA.R. 436	12/9/98
18 VAC 85-110-20	Amended	15:4 VA.R. 437	12/9/98
18 VAC 85-110-30	Amended	15:4 VA.R. 437	12/9/98
18 VAC 85-110-35	Added	15:4 VA.R. 437	12/9/98
18 VAC 85-110-40	Repealed	15:4 VA.R. 438	12/9/98
18 VAC 85-110-50	Amended	15:4 VA.R. 438	12/9/98
18 VAC 85-110-60	Amended	15:4 VA.R. 438	12/9/98
18 VAC 85-110-70	Amended	15:4 VA.R. 439	12/9/98
18 VAC 85-110-80	Amended	15:4 VA.R. 439	12/9/98
18 VAC 85-110-90	Amended	15:4 VA.R. 439	12/9/98
18 VAC 85-110-100	Amended	15:4 VA.R. 439	12/9/98
18 VAC 85-110-120	Repealed	15:4 VA.R. 439	12/9/98
18 VAC 85-110-150	Amended	15:4 VA.R. 439	12/9/98
18 VAC 85-110-160	Amended	15:4 VA.R. 439	12/9/98
18 VAC 85-110-170	Repealed	15:4 VA.R. 440	12/9/98
18 VAC 90-20-10	Amended	15:3 VA.R. 333	12/3/98
18 VAC 90-20-20	Amended	15:3 VA.R. 334	12/3/98
18 VAC 90-20-35	Added	15:3 VA.R. 334	12/3/98
18 VAC 90-20-40	Amended	15:3 VA.R. 334	12/3/98
18 VAC 90-20-50	Amended	15:3 VA.R. 335	12/3/98
18 VAC 90-20-60	Amended	15:3 VA.R. 335	12/3/98
18 VAC 90-20-70	Amended	15:3 VA.R. 335	12/3/98
18 VAC 90-20-80	Amended	15:3 VA.R. 335	12/3/98
18 VAC 90-20-90	Amended	15:3 VA.R. 336	12/3/98
18 VAC 90-20-95	Added	15:3 VA.R. 337	12/3/98
18 VAC 90-20-100	Amended	15:3 VA.R. 337	12/3/98
18 VAC 90-20-110	Amended	15:3 VA.R. 337	12/3/98
18 VAC 90-20-120	Amended	15:3 VA.R. 338	12/3/98
18 VAC 90-20-130	Amended	15:3 VA.R. 338	12/3/98
18 VAC 90-20-140	Amended	15:3 VA.R. 339	12/3/98
18 VAC 90-20-150	Repealed	15:3 VA.R. 339	12/3/98
18 VAC 90-20-160	Amended	15:3 VA.R. 339	12/3/98
18 VAC 90-20-170	Amended	15:3 VA.R. 339	12/3/98
18 VAC 90-20-180	Repealed	15:3 VA.R. 340	12/3/98
18 VAC 90-20-190	Amended	15:3 VA.R. 340	12/3/98
18 VAC 90-20-210	Amended	15:3 VA.R. 341	12/3/98
18 VAC 90-20-250	Repealed	15:3 VA.R. 341	12/3/98
18 VAC 90-20-260	Repealed	15:3 VA.R. 341	12/3/98
18 VAC 90-20-275	Added	15:3 VA.R. 341	12/3/98
18 VAC 90-20-280	Amended	15:3 VA.R. 341	12/3/98
18 VAC 90-20-290	Amended	15:3 VA.R. 342	12/3/98
18 VAC 90-20-300	Amended	15:3 VA.R. 342	12/3/98
18 VAC 90-20-310	Amended	15:3 VA.R. 342	12/3/98
18 VAC 90-20-330	Amended	15:3 VA.R. 342	12/3/98
18 VAC 90-20-340	Amended	15:3 VA.R. 346	12/3/98
18 VAC 90-20-350	Amended	15:3 VA.R. 346	12/3/98

---

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

---

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 90-20-400	Added	15:3 VA.R. 347	12/3/98
18 VAC 90-20-410	Added	15:3 VA.R. 347	12/3/98
18 VAC 95-20-10	Amended	15:4 VA.R. 452	12/9/98
18 VAC 95-20-20	Repealed	15:4 VA.R. 453	12/9/98
18 VAC 95-20-30	Repealed	15:4 VA.R. 453	12/9/98
18 VAC 95-20-40	Repealed	15:4 VA.R. 453	12/9/98
18 VAC 95-20-50	Repealed	15:4 VA.R. 453	12/9/98
18 VAC 95-20-70	Amended	15:4 VA.R. 454	12/9/98
18 VAC 95-20-80	Amended	15:4 VA.R. 454	12/9/98
18 VAC 95-20-90	Repealed	15:4 VA.R. 454	12/9/98
18 VAC 95-20-100	Repealed	15:4 VA.R. 454	12/9/98
18 VAC 95-20-110	Repealed	15:4 VA.R. 454	12/9/98
18 VAC 95-20-120	Repealed	15:4 VA.R. 454	12/9/98
18 VAC 95-20-130	Amended	15:4 VA.R. 454	12/9/98
18 VAC 95-20-140	Repealed	15:4 VA.R. 455	12/9/98
18 VAC 95-20-150	Repealed	15:4 VA.R. 455	12/9/98
18 VAC 95-20-160	Repealed	15:4 VA.R. 455	12/9/98
18 VAC 95-20-170	Amended	15:4 VA.R. 455	12/9/98
18 VAC 95-20-175	Added	15:4 VA.R. 455	12/9/98
18 VAC 95-20-180	Amended	15:4 VA.R. 455	12/9/98
18 VAC 95-20-190	Repealed	15:4 VA.R. 456	12/9/98
18 VAC 95-20-200	Amended	15:4 VA.R. 456	12/9/98
18 VAC 95-20-210	Repealed	15:4 VA.R. 456	12/9/98
18 VAC 95-20-220	Amended	15:4 VA.R. 456	12/9/98
18 VAC 95-20-225	Added	15:4 VA.R. 457	12/9/98
18 VAC 95-20-230	Amended	15:4 VA.R. 457	12/9/98
18 VAC 95-20-240	Repealed	15:4 VA.R. 457	12/9/98
18 VAC 95-20-250	Repealed	15:4 VA.R. 457	12/9/98
18 VAC 95-20-260	Repealed	15:4 VA.R. 457	12/9/98
18 VAC 95-20-270	Repealed	15:4 VA.R. 458	12/9/98
18 VAC 95-20-280	Repealed	15:4 VA.R. 458	12/9/98
18 VAC 95-20-290	Amended	15:4 VA.R. 458	12/9/98
18 VAC 95-20-300	Amended	15:4 VA.R. 458	12/9/98
18 VAC 95-20-310	Amended	15:4 VA.R. 458	12/9/98
18 VAC 95-20-320	Repealed	15:4 VA.R. 458	12/9/98
18 VAC 95-20-330	Amended	15:4 VA.R. 459	12/9/98
18 VAC 95-20-340	Amended	15:4 VA.R. 459	12/9/98
18 VAC 95-20-350	Repealed	15:4 VA.R. 459	12/9/98
18 VAC 95-20-360	Repealed	15:4 VA.R. 459	12/9/98
18 VAC 95-20-370	Repealed	15:4 VA.R. 459	12/9/98
18 VAC 95-20-380	Amended	15:4 VA.R. 459	12/9/98
18 VAC 95-20-390	Amended	15:4 VA.R. 459	12/9/98
18 VAC 95-20-400	Amended	15:4 VA.R. 459	12/9/98
18 VAC 95-20-410	Repealed	15:4 VA.R. 460	12/9/98
18 VAC 95-20-420	Repealed	15:4 VA.R. 460	12/9/98
18 VAC 95-20-430	Amended	15:4 VA.R. 460	12/9/98
18 VAC 95-20-440	Amended	15:4 VA.R. 460	12/9/98
18 VAC 95-20-450	Repealed	15:4 VA.R. 460	12/9/98
18 VAC 95-20-460	Repealed	15:4 VA.R. 460	12/9/98
18 VAC 95-20-470	Amended	15:4 VA.R. 460	12/9/98
18 VAC 95-20-480 through 18 VAC 95-20-740	Repealed	15:4 VA.R. 460- 463	12/9/98
Appendices I, II and III of 18 VAC 95-20	Repealed	15:4 VA.R. 463- 464	12/9/98
18 VAC 135-20-10	Amended	15:5 VA.R. 648	1/1/99

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 135-20-20	Amended	15:5 VA.R. 649	1/1/99
18 VAC 135-20-30	Amended	15:5 VA.R. 650	1/1/99
18 VAC 135-20-40	Amended	15:5 VA.R. 650	1/1/99
18 VAC 135-20-45	Added	15:5 VA.R. 650	1/1/99
18 VAC 135-20-50	Amended	15:5 VA.R. 651	1/1/99
18 VAC 135-20-60	Amended	15:5 VA.R. 651	1/1/99
18 VAC 135-20-80	Amended	15:5 VA.R. 652	1/1/99
18 VAC 135-20-90	Amended	15:5 VA.R. 652	1/1/99
18 VAC 135-20-100	Amended	15:5 VA.R. 652	1/1/99
18 VAC 135-20-110	Amended	15:5 VA.R. 653	1/1/99
18 VAC 135-20-120	Amended	15:5 VA.R. 654	1/1/99
18 VAC 135-20-150	Amended	15:5 VA.R. 654	1/1/99
18 VAC 135-20-160	Amended	15:5 VA.R. 654	1/1/99
18 VAC 135-20-170	Amended	15:5 VA.R. 654	1/1/99
18 VAC 135-20-180	Amended	15:5 VA.R. 655	1/1/99
18 VAC 135-20-190	Amended	15:5 VA.R. 656	1/1/99
18 VAC 135-20-200	Amended	15:5 VA.R. 657	1/1/99
18 VAC 135-20-210	Amended	15:5 VA.R. 657	1/1/99
18 VAC 135-20-220	Amended	15:5 VA.R. 657	1/1/99
18 VAC 135-20-240	Amended	15:5 VA.R. 658	1/1/99
18 VAC 135-20-250	Amended	15:5 VA.R. 658	1/1/99
18 VAC 135-20-260	Amended	15:5 VA.R. 658	1/1/99
18 VAC 135-20-270	Amended	15:5 VA.R. 658	1/1/99
18 VAC 135-20-280	Amended	15:5 VA.R. 658	1/1/99
18 VAC 135-20-290	Amended	15:5 VA.R. 659	1/1/99
18 VAC 135-20-300	Amended	15:5 VA.R. 659	1/1/99
18 VAC 135-20-310	Amended	15:5 VA.R. 660	1/1/99
18 VAC 135-20-320	Amended	15:5 VA.R. 660	1/1/99
18 VAC 135-20-350	Amended	15:5 VA.R. 660	1/1/99
18 VAC 135-20-360	Amended	15:5 VA.R. 661	1/1/99
18 VAC 135-20-370	Amended	15:5 VA.R. 662	1/1/99
18 VAC 135-20-380	Amended	15:5 VA.R. 662	1/1/99
18 VAC 135-20-390	Amended	15:5 VA.R. 662	1/1/99
18 VAC 135-20-400	Amended	15:5 VA.R. 662	1/1/99
18 VAC 135-20-410	Amended	15:5 VA.R. 662	1/1/99
18 VAC 135-20-420	Repealed	15:5 VA.R. 663	1/1/99
18 VAC 135-20-430	Repealed	15:5 VA.R. 663	1/1/99
18 VAC 135-20-440	Repealed	15:5 VA.R. 663	1/1/99
18 VAC 140-20-10	Amended	15:5 VA.R. 663	12/23/98
18 VAC 140-20-30	Amended	15:5 VA.R. 664	12/23/98
18 VAC 140-20-35	Added	15:5 VA.R. 664	12/23/98
18 VAC 140-20-37	Added	15:5 VA.R. 664	12/23/98
18 VAC 140-20-40	Amended	15:5 VA.R. 664	12/23/98
18 VAC 140-20-45	Added	15:5 VA.R. 665	12/23/98
18 VAC 140-20-50	Amended	15:5 VA.R. 665	12/23/98
18 VAC 140-20-60	Amended	15:5 VA.R. 667	12/23/98
18 VAC 140-20-70	Amended	15:5 VA.R. 668	12/23/98
18 VAC 140-20-80	Repealed	15:5 VA.R. 668	12/23/98
18 VAC 140-20-90	Repealed	15:5 VA.R. 668	12/23/98
18 VAC 140-20-110	Amended	15:5 VA.R. 668	12/23/98
18 VAC 140-20-150	Amended	15:5 VA.R. 669	12/23/98
18 VAC 150-20-10	Amended	15:5 VA.R. 687	12/23/98
18 VAC 150-20-30	Amended	15:5 VA.R. 688	12/23/98
18 VAC 150-20-40	Repealed	15:5 VA.R. 688	12/23/98
18 VAC 150-20-50	Repealed	15:5 VA.R. 688	12/23/98

---

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

---

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 150-20-60	Repealed	15:5 VA.R. 688	12/23/98
18 VAC 150-20-70	Amended	15:5 VA.R. 688	12/23/98
18 VAC 150-20-75	Added	15:5 VA.R. 690	12/23/98
18 VAC 150-20-80	Repealed	15:5 VA.R. 690	12/23/98
18 VAC 150-20-90	Repealed	15:5 VA.R. 690	12/23/98
18 VAC 150-20-100	Amended	15:5 VA.R. 690	12/23/98
18 VAC 150-20-110	Amended	15:5 VA.R. 691	12/23/98
18 VAC 150-20-115	Added	15:5 VA.R. 691	12/23/98
18 VAC 150-20-120	Amended	15:5 VA.R. 692	12/23/98
18 VAC 150-20-130	Amended	15:5 VA.R. 692	12/23/98
18 VAC 150-20-140	Amended	15:5 VA.R. 692	12/23/98
18 VAC 150-20-150	Repealed	15:5 VA.R. 693	12/23/98
18 VAC 150-20-160	Repealed	15:5 VA.R. 693	12/23/98
18 VAC 150-20-170	Repealed	15:5 VA.R. 693	12/23/98
18 VAC 150-20-180	Amended	15:5 VA.R. 694	12/23/98
18 VAC 150-20-185	Added	15:5 VA.R. 694	12/23/98
18 VAC 150-20-190	Amended	15:5 VA.R. 694	12/23/98
18 VAC 150-20-195	Added	15:5 VA.R. 696	12/23/98
18 VAC 150-20-200	Amended	15:5 VA.R. 696	12/23/98
18 VAC 150-20-205	Added	15:5 VA.R. 701	12/23/98
18 VAC 150-20-210	Amended	15:5 VA.R. 701	12/23/98
<b>Title 19. Public Safety</b>			
19 VAC 30-70-5	Amended	15:2 VA.R. 177	11/11/98
19 VAC 30-70-7	Amended	15:2 VA.R. 178	11/11/98
19 VAC 30-70-10	Amended	15:2 VA.R. 178	11/11/98
19 VAC 30-70-50	Amended	15:2 VA.R. 180	11/11/98
19 VAC 30-70-70 through 19 VAC 30-70-100	Amended	15:2 VA.R. 181- 184	11/11/98
19 VAC 30-70-140	Amended	15:2 VA.R. 185	11/11/98
19 VAC 30-70-160	Amended	15:2 VA.R. 187	11/11/98
19 VAC 30-70-180	Amended	15:2 VA.R. 190	11/11/98
19 VAC 30-70-200	Amended	15:2 VA.R. 192	11/11/98
19 VAC 30-70-440 through 19 VAC 30-70-500	Amended	15:2 VA.R. 192- 203	11/11/98
19 VAC 30-70-550	Amended	15:2 VA.R. 207	11/11/98
19 VAC 30-70-570	Amended	15:2 VA.R. 208	11/11/98
19 VAC 30-70-580	Amended	15:2 VA.R. 209	11/11/98
19 VAC 30-70-680	Amended	15:2 VA.R. 211	11/11/98
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 30-200-10	Amended	14:26 VA.R. 4267	10/14/98
24 VAC 30-200-10	Erratum	15:1 VA.R. 50 (4396)	--
24 VAC 30-200-20	Amended	14:26 VA.R. 4268	10/14/98
24 VAC 30-200-30	Amended	14:26 VA.R. 4269	10/14/98
24 VAC 30-200-40	Added	14:26 VA.R. 4270	10/14/98
24 VAC 30-200-40	Erratum	15:1 VA.R. 50	--

---

# NOTICES OF INTENDED REGULATORY ACTION

---

## Symbol Key

† Indicates entries since last publication of the *Virginia Register*

---

## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### CRIMINAL JUSTICE SERVICES BOARD

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Criminal Justice Services Board intends to consider repealing regulations entitled: **6 VAC 20-170-10 et seq. Regulations Relating to Private Security Services.** The purpose of the proposed action is to repeal the current regulations and promulgate new regulations (6 VAC 20-171-10 et seq.) for the purpose of substantive format changes. The agency does not intend to hold a public hearing on the proposed repeal of this regulation after publication.

Statutory Authority: § 9-182 of the Code of Virginia.

Public comments may be submitted until January 6, 1999.

**Contact:** Leon D. Baker, Jr., Section Chief, Department of Criminal Justice Services, Private Security Services Section, P. O. Box 10110, Richmond, VA 23240-9998, telephone (804) 786-0460.

VA.R. Doc. No. R99-55; Filed November 13, 1998, 3:16 p.m.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Criminal Justice Services Board intends to consider promulgating regulations entitled: **6 VAC 20-171-10 et seq. Regulations Relating to Private Security Services.** The purpose of the proposed action is to ensure the efficiency of the regulations by preventing misleading or deceptive practices by unqualified or incompetent persons in the private security industry in the least burdensome fashion. These regulations will replace 6 VAC 2-170-10 et seq., being repealed due to the substantive format changes. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 9-182 of the Code of Virginia.

Public comments may be submitted until January 6, 1999.

**Contact:** Leon D. Baker, Jr., Section Chief, Department of Criminal Justice Services, Private Security Services Section, P. O. Box 10110, Richmond, VA 23240-9998, telephone (804) 786-0460.

VA.R. Doc. No. R99-56; Filed November 13, 1998, 3:17 p.m.

---

## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to consider **repealing** regulations entitled: **8 VAC 20-540-10 et seq. Regulations Governing Approved Programs for Virginia Institutions of Higher Education,** and **promulgating** regulations entitled: **8 VAC 20-541-10 et seq. Regulations Governing Approved Programs for Virginia Institutions of Higher Education.** The purpose of the proposed action is to ensure that prospective teachers and other instructional personnel are provided the background necessary for quality instruction in the public schools and a level of quality in the professional education sequence that fosters competent practice. The agency intends to hold a public hearing on these regulatory actions after publication.

Statutory Authority: §§ 22.1-16, 22.1-298, and 22.1-316 of the Code of Virginia.

Public comments may be submitted until December 9, 1998.

**Contact:** Dr. Thomas A. Elliott, Assistant Superintendent for Teacher Education and Licensure, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-2522 or FAX (804) 225-2831.

VA.R. Doc. Nos. R99-41 and R99-39; Filed October 21, 1998, 11:19 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to consider promulgating regulations entitled: **8 VAC 20-630-10 et seq. Regulations Governing Substitute Teachers.** The purpose of the proposed action is to ensure that substitute teachers meet basic requirements before teaching in Virginia classrooms. House Bill 2853, passed by the 1997 Session of the General Assembly, requires the Board of Education to promulgate regulations for temporarily employed teachers. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 22.1-16 and 22.1-302 of the Code of Virginia.

Public comments may be submitted until December 9, 1998.

---

# Notices of Intended Regulatory Action

---

**Contact:** Dr. Thomas A. Elliott, Assistant Superintendent for Teacher Education and Licensure, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-2522 or FAX (804) 225-2831.

VA.R. Doc. No. R99-40; Filed October 21, 1998, 11:20 a.m.

---

## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider promulgating regulations entitled: **9 VAC 25-215-10 et seq. General Virginia Water Protection Permit for the Discharge of Dredge and Fill Materials to Surface Waters for Specified Land Development, Shoreline Protection and Dredging Materials.** The intent of this proposed regulatory action is to establish for several similar activities a general permit that contains appropriate and necessary permitting requirements for discharges of dredge and fill material in surface waters. State Water Control Law requires that a Virginia Water Protection Permit provide Section 401 Water Quality Certification in accordance with the Clean Water Act and protect instream beneficial uses. Instream beneficial uses include but are not limited to the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation and cultural and aesthetic values.

A technical advisory committee will be formed to assist in the development of the regulation. The primary function of the committee will be to develop recommendations to the board for the content of the general permit through a process of negotiation and consensus. Persons who desire to be on the committee should notify the agency contact person in writing by 4:30 p.m. on Wednesday, January 6, 1999, and provide your name, address, telephone number and the organization you represent (if any). Notification of the composition of the committee will be sent to all applicants. Following the publication of the draft general permit the board will hold at least one public hearing to provide opportunity for public comment.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 et seq. of the Code of Virginia.

Public comments are solicited on the content of the draft general permit regulation. Comments may be submitted until 4:30 p.m. on Wednesday, January 6, 1999, to Mr. Joseph Hassell, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia 23240-0009.

**Contact:** Joseph Hassell, Office of Water Permit Programs, P.O. Box 10009, Richmond, VA 23240-0009, e-mail

jphassell@deq.state.va.us, telephone (804) 698-4072, FAX (804) 698-4032.

VA.R. Doc. No. R99-58; Filed November 17, 1998, 10:06 a.m.

---

## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to consider repealing regulations entitled: **12 VAC 5-190-10 et seq. State Plan for the Provision of Children's Specialty Services.** The purpose of the proposed action is to terminate the state plan as a regulation and to allow the state plan to exist as an agency guidance and reference document. The department has completed its regulations review in accordance with Executive Order 15 (94) and is implementing this action based on an Executive Order 15 (94) recommendation. The agency does not intend to hold a public hearing on the proposed repeal after publication.

Statutory Authority: §§ 32.1-12 and 32.1-77 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on December 11, 1998.

**Contact:** Nancy R. Bullock, Children with Special Health Care Needs Program Director, Division of Child and Adolescent Health, Department of Health, 1500 E. Main St., P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-3693, FAX (804) 225-3307, toll-free 1-800-523-4019 or 1-800-828-1120/TTY ☎

VA.R. Doc. No. R99-38; Filed October 20, 1998, 4:27 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to consider amending regulations entitled: **12 VAC 5-530-10 et seq. Regulations Governing the Virginia Medical Scholarship Program.** The purpose of the proposed action is to review and amend the regulations to improve operation of the Virginia Medical Scholarship Program and to reflect recent statutory changes. Resulting amendments may (i) encourage applications from students attending the School of Osteopathic Medicine at Pikeville College, especially bona fide residents of Virginia and, specifically, residents of Southwest Virginia, in accordance with § 32.1-122.5:1 of the Code of Virginia and the 1998 Appropriations Act (Chapter 464, 1998 Acts of Assembly); (ii) allow unexpended and repaid medical scholarship money to revert to the Physician Loan Repayment Program, as defined in § 32.1-122.6:1 of the Code of Virginia; (iii) allow for a combination residency

---

# Notices of Intended Regulatory Action

---

program of two primary care specialties (e.g. internal medicine/pediatrics and internal medicine/family practice) for an allowance variance of one additional year to the maximum three year residency limitation; and (iv) clarify the intent of the program and reduce redundancy. Resulting amendments may address other issues relating to the regulations that the public, regulated persons, and the health planning community deem appropriate to raise following this notice. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 32.1-12 and 32.1-122.6 of the Code of Virginia.

Public comments may be submitted until December 10, 1998.

**Contact:** Bernadette D. Nettemeyer, Program Coordinator, Department of Health, Center for Primary Care Resource Development, 1500 E. Main St., Room 227, Richmond, VA 23219, telephone (804) 786-4891, FAX (804) 371-0116 or toll-free 1-800-828-1120/TTY ☎.

VA.R. Doc. No. R99-23; Filed September 21, 1998, 11:51 a.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services: Clinic Services.** The purpose of the proposed action is to establish criteria that the staff of mental health clinics must meet in order to be reimbursed by DMAS for therapy services which they provide. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until December 23, 1998, to Dr. Marlene Eisenberg, Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850 or FAX (804) 371-4981.

VA.R. Doc. No. R99-52; Filed November 2, 1998, 12:45 p.m.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider promulgating regulations entitled: **12 VAC 30-140-10 et seq. Virginia Children's Health Insurance Program (VCMSIP).** The purpose of the

proposed action is promulgate permanent regulations for the Virginia Children's Health Insurance Program which establish the program, the eligible groups and requirements for eligibility, the covered benefits and benefit limits, and quality assurance and utilization control measures to be used. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public comments may be submitted until January 6, 1999, to Kathryn Kotula, Director of Policy, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850 or FAX (804) 371-4981.

VA.R. Doc. No. R99-59; Filed November 17, 1998, 10:03 a.m.

---

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR CONTRACTORS

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Contractors intends to consider amending regulations entitled: **18 VAC 50-30-10 et seq. Tradesman Rules and Regulations.** The purpose of the proposed action is to amend the current regulations to include the liquefied petroleum gas fitter as a stand-alone category in the trades regulated by this program as required by Chapter 403 of the Acts of the 1997 Session of the General Assembly. The agency intends to hold a public hearing on the proposed regulation after publication.

There are no changes proposed in the current fee structure.

In addition, any review usually uncovers awkward sentence construction and/or errors in the existing regulations. Any such discovery will be amended in keeping with the purposes of the program.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public comments may be submitted until December 23, 1998.

**Contact:** George O. Bridewell, Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785 or FAX (804) 367-2474.

VA.R. Doc. No. R99-48; Filed October 27, 1998, 11:02 a.m.

---

# Notices of Intended Regulatory Action

---

## BOARD OF PHARMACY

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Pharmacy intends to consider amending regulations entitled: **18 VAC 110-20-10 et seq. Virginia Board of Pharmacy Regulations.** The purpose of the proposed action is to replace emergency regulations establishing requirements for the closing or acquisition of a pharmacy, for a change of hours, and for the issuance of a control substance registration to persons or entities maintaining large amounts of Schedule II through VI drugs, which were adopted pursuant to Chapters 470 and 490 of the 1998 Acts of Assembly. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400, 54.1-3307 and 54.1-3400 et seq. of the Code of Virginia.

Public comments may be submitted until January 6, 1999.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911 or FAX (804) 662-9943.

VA.R. Doc. No. R99-53; Filed November 5, 1998, 12:06 p.m.

---

**Contact:** Bland Sutton, Tax Policy Analyst, Department of Taxation, P.O. Box 1880, Richmond, VA 23218-1880, telephone (804) 367-6358 or FAX (804) 367-0045.

VA.R. Doc. No. R99-60; Filed November 17, 1998, 9:12 a.m.

---

---

## TITLE 23. TAXATION

### DEPARTMENT OF TAXATION

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled: **23 VAC 10-210-2032, Retail Sales and Use Tax: Penalties and interest; audits.** The purpose of the proposed action is to review and amend the regulation to set forth the department's calculation and use of a compliance ratio to determine if audit penalty is applicable to the purchased portion of audits. The department also intends to incorporate an alternative method for calculating the use tax compliance ratio. The regulation will also set forth acceptable exceptions for avoiding audit penalty. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until January 8, 1999, to Howard Macrae, Office of Tax Policy, P.O. Box 1880, Richmond, VA 23218-1880.



# PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



## PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

This section gives notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

Notice is given in compliance with § 9-6.14:7.1 of the Code of Virginia that the following public hearings and public comment periods regarding proposed state agency regulations are set to afford the public an opportunity to express their views.

## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

**January 20, 1999 - 9 a.m.** – Public Hearing  
Department of Environmental Quality, 629 East Main Street,  
Training Room, First Floor, Richmond, Virginia.

**February 5, 1999** – Public comments may be submitted until  
this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **Regulations for the Control and Abatement of Air Pollution (G-97): 9 VAC 5-40-10 et seq. Existing Stationary Sources; 9 VAC 5-50-10 et seq., New and Modified Stationary Sources; and 9 VAC 5-60-10 et seq., Hazardous Air Pollutant Sources.** The regulation amendments concern provisions covering hazardous pollutants and are summarized below:

With certain exemptions, stationary sources which emit hazardous pollutants and which fall into specified applicability limits shall comply with the specified standard and shall employ a control strategy to achieve that standard. Unlike most other regulations, these contain no definitive emission limits in the emission standards themselves. These regulations do, however, provide significant ambient air concentration guidelines as a mechanism for the board to require the owner, on a case-by-case basis, to reduce emissions after analysis and review by the agency. Subject sources shall also observe the provisions governing the submittal of information, the determination of ambient air concentrations, the compliance options and schedules, and the public participation procedures.

**Request for Comments:** The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

**Localities Affected:** There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

**Location of Proposal:** The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Office of Program Development (eighth floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office  
Department of Environmental Quality  
355 Deadmore Street  
Abingdon, Virginia  
Ph: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
3019 Peters Creek Road  
Roanoke, Virginia  
Ph: (540) 562-6700

Lynchburg Satellite Office  
Department of Environmental Quality  
7705 Timberlake Road  
Lynchburg, Virginia  
Ph: (804) 582-5120

Valley Regional Office  
Department of Environmental Quality  
4411 Early Road  
Harrisonburg, Virginia 22801  
Ph: (540) 574-7800

Fredericksburg Satellite Office  
Department of Environmental Quality  
300 Central Road, Suite B  
Fredericksburg, Virginia  
Ph: (540) 899-4600

Northern Regional Office  
Department of Environmental Quality  
13901 Crown Court  
Woodbridge, Virginia  
Ph: (703) 583-3800

---

# Public Comment Periods - Proposed Regulations

---

Piedmont Regional Office  
Department of Environmental Quality  
4949-A Cox Road  
Glen Allen, Virginia  
Ph: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
5636 Southern Boulevard  
Virginia Beach, Virginia  
Ph: (757) 518-2000

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., February 5, 1999, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Kathleen R. Sands, Policy Analyst, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413 or FAX (804) 698-4510.

\* \* \* \* \*

**January 20, 1999 - 9 a.m.** – Public Hearing  
Department of Environmental Quality, 629 East Main Street,  
Training Room, First Floor, Richmond, Virginia.

**February 5, 1999** – Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **Regulations for the Control and Abatement of Air Pollution (J-97): 9 VAC 5-80-10 et seq., Permits for Stationary Sources.** The regulation concerns new source review for sources of hazardous air pollutants (HAPs). The regulation applies to the construction or reconstruction of a major source of HAPs. Electric utility steam generating units and research and development activities are specifically exempt.

The regulation encompasses permitting for all potential major sources of HAPs in addition to those affected by § 112(g) of the federal Clean Air Act. Thus, a major source for this rule may be a § 112(g) source, a § 112(i) source, or a 40 CFR Part 61 source.

The regulation addresses the following subjects: applicability; general requirements; permit application requirements; application information required; action on permit applications; public participation; standards and conditions for granting permits; application review and analysis; compliance determination and verification by performance testing; permit invalidation, rescission, revocation and enforcement; existence of permit no defense; compliance with local zoning requirements; transfer of and changes to permits; administrative and minor permit amendments; significant amendment procedures; reopening for cause; requirements for

constructed or reconstructed major sources subject to a subsequently promulgated MACT standard or MACT requirements

**Request for Comments:** The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

**Localities Affected:** There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

**Location of Proposal:** The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Office of Program Development (eighth floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office  
Department of Environmental Quality  
355 Deadmore Street  
Abingdon, Virginia  
Ph: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
3019 Peters Creek Road  
Roanoke, Virginia  
Ph: (540) 562-6700

Lynchburg Satellite Office  
Department of Environmental Quality  
7705 Timberlake Road  
Lynchburg, Virginia  
Ph: (804) 582-5120

Valley Regional Office  
Department of Environmental Quality  
4411 Early Road  
Harrisonburg, Virginia 22801  
Ph: (540) 574-7800

Fredericksburg Satellite Office  
Department of Environmental Quality  
300 Central Road, Suite B  
Fredericksburg, Virginia  
Ph: (540) 899-4600

Northern Regional Office  
Department of Environmental Quality  
13901 Crown Court  
Woodbridge, Virginia  
Ph: (703) 583-3800

---

## Public Comment Periods - Proposed Regulations

---

Piedmont Regional Office  
Department of Environmental Quality  
4949-A Cox Road  
Glen Allen, Virginia  
Ph: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
5636 Southern Boulevard  
Virginia Beach, Virginia  
Ph: (757) 518-2000

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., February 5, 1999, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Kathleen R. Sands, Policy Analyst, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413 or FAX (804) 698-4510.



---

# PROPOSED REGULATIONS

---

For information concerning Proposed Regulations, see Information Page.

---

## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates proposed new text.  
Language which has been stricken indicates proposed text for deletion.

---

## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **Regulations for the Control and Abatement of Air Pollution (Rev. G97).**

**9 VAC 5-40-10 et seq. Existing Stationary Sources (repealing 9 VAC 5-40-160 through 9 VAC 5-40-230).**

**9 VAC 5-50-10 et seq. New and Modified Stationary Sources (repealing 9 VAC 5-50-160 through 9 VAC 5-50-230).**

**9 VAC 5-60-10 et seq. Hazardous Pollutant Sources (adding 9 VAC 5-60-150 through 9 VAC 5-60-220 and 9 VAC 5-60-250 through 9 VAC 5-60-320).**

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public Hearing Date: January 20, 1999 - 9 a.m.

Public comments may be submitted until February 5, 1999.

(See Calendar of Events section for additional information)

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

Purpose: The purpose of the regulations is to require the owner to limit source emissions of hazardous pollutants to a level that will not produce ambient air concentrations that may cause or contribute to the endangerment of human health. Unlike most other regulations, these contain no definitive emission limits in the emission standards themselves. These regulations do, however, provide significant ambient air concentration guidelines as a mechanism for the board to require the owner, on a case-by-case basis, to reduce emissions after analysis and review by the agency. The proposal is being made to integrate the state hazardous pollutant program more logically with the federal Clean Air Act, according to a determination made pursuant to the review of existing regulations mandated by Executive Order 15(94).

Substance: The major provisions of the proposal are summarized below:

1. With certain exceptions, the regulations apply to stationary sources throughout Virginia that emit or may emit hazardous pollutants at certain levels (9 VAC 5-60-150; 9 VAC 5-60-250).
2. Terms essential to the regulations are defined (9 VAC 5-60-160; 9 VAC 5-60-260).

3. Sources shall meet specified standards which (i) prohibit the discharge of hazardous pollutants in such quantities as to cause or contribute to the endangerment of human health and (ii) mandate the use of control strategies for the control of hazardous pollutants (9 VAC 5-60-170; 9 VAC 5-60-270).

4. Case-by-case decisions of the board shall take into consideration specified significant ambient air concentrations (9 VAC 5-60-180; 9 VAC 5-60-280).

5. The owner of a subject source shall submit information as required for the board to determine the applicability of or compliance with the regulations (9 VAC 5-60-190; 9 VAC 5-60-290).

6. The owner shall provide an assessment as to whether his facility emits or may emit any hazardous pollutant in such quantities as to cause or contribute to and exceedance of any significant ambient air concentration. Ambient air concentrations shall be determined using modeling based on emission rates equal to the source's potential to emit for the applicable averaging time (9 VAC 5-60-200; 9 VAC 5-60-300).

7. If the board believes that the emissions from a source may be discharged in such quantities so as to cause or contribute to any ambient air concentration that (i) is in excess of any significant ambient air concentration or (ii) has the potential to cause or contribute to substantial and imminent endangerment of human health, the owner shall choose one or more of the specified compliance options and shall abide by their associated schedules. In the case of new source, a permit shall not be issued until the owner either (i) demonstrates that the emissions will not cause or contribute to and exceedance of a significant ambient air concentration, (ii) demonstrates that applicable significant ambient air concentration is inappropriate for the pollutant in question, or (iii) controls the emissions to a level resulting in ambient air concentrations that are below the significant ambient air concentrations (9 VAC 5-60-210; 9 VAC 5-60-310).

8. If the owner of an affected facility chooses to demonstrate that the emissions from his source do not and will not cause or contribute to an exceedance of the significant ambient air concentration, this demonstration shall be subject to a public comment period of at least 30 days. The public shall be notified of the opportunity to comment on the information available for public inspection. This information shall include a brief description of the pollutants of concern and their possible health impacts, the source's demonstration, a statement listing the pertinent regulatory requirements, and the name and telephone number of a department staff person. In conjunction with the public comment

period, the board will also receive written requests for a public hearing to consider the source's demonstration. Within 30 days following the expiration of the public comment period, the board shall grant a public hearing if it finds that there is significant public interest or that there are substantial issues in dispute (9 VAC 5-60-220; 9 VAC 5-60-320).

Issues: The primary advantages of implementation and compliance with the regulation by the public and the department are discussed below. No disadvantages to either public or department are anticipated.

1. Public: Adoption of these regulations will benefit the public in several ways. Although the initial cost of compliance with the amended regulations will initially be the same as the cost of compliance with the current regulations, as more federal MACT standards are promulgated, sources will be eliminated from applicability, thus reducing sources' compliance costs as well as the indirect costs to taxpayers. Furthermore, because the relationship between the state and federal programs has been clarified and because the two programs no longer overlap, the compliance burden on sources is reduced. Additionally, the environmental community will be assured that the state program will provide adequate protection for public health until the federal program is fully implemented.

2. Department: The primary advantage to the department will be the reduction of enforcement costs. Because the amended regulations are clearer and easier to comply with than the current regulations, and because the relationship between the state and federal programs has been clarified, sources will comply more readily. Thus, enforcement costs will be reduced, allowing the department to divert scarce resources to other areas.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. This proposal makes two substantive changes to the existing regulation. First, it limits the list of hazardous air pollutants (HAPs) covered by the rules to those 188 substances regulated under § 112 of the federal Clean Air Act. This has been the policy and practice at least since 1991, but that practice has not been reflected in the wording of the regulation. Second, the revision excludes from coverage those HAPs that are

regulated by or exempted from federal rules governing HAP emissions.

Estimated economic impact. The first change in the rule, limiting coverage to § 112 HAPs, will not have any significant economic impact because this is already the policy and practice.

The proposed language of this regulation explicitly exempts from applicability of this rule those emissions that are subject to an emission standard under § 112 of the Clean Air Act (CAA) or is in a category of sources that are covered by § 112 but are exempted from emission standards. This change will have a substantial impact both on industry compliance costs and on the pattern of HAP emissions in Virginia. Currently, Virginia HAP emission standards are explicitly based on a public health standard which establishes limits on the concentrations of HAPs in air to which the public is exposed.

The Environmental Protection Agency (EPA) is required, under the CAA, to regulate HAPs in two stages. First, EPA must establish maximum achievable control technology standard (MACTs) for each of the 188 substances on the federal § 112 list. Some facilities may be exempted by EPA if the agency determines that those facilities present a minimal risk from HAP exposure. The MACT standard for existing sources is determined by the average performance the top 12% of existing sources. MACT for new sources is based on the best performing similar source currently in use. This standard is not sensitive to the level of risk posed by emissions from a source, only by the emissions technology in use at the time the determination is made by EPA. The first stage emission standards are based on the amount of HAPs released, not their concentration in the air.

The second phase of federal HAP regulation requires EPA to review each HAP emission standard for risk of health effects from exposure to HAPs. If the risk implicit in the MACT standard is greater than the level deemed acceptable in the CAA, then additional emission controls may be imposed.

Once the federal risk assessment is completed, differences between the state and federal standards will arise from a number of possible sources. There may be differences in the acceptable level of risk specified in each of the standards. The available scientific evidence on which the risk-based standard is established will be greater when the federal risk-based standards are adopted. Finally, the current state rules are based on ambient concentrations of HAPs in the air. Federal rules will include consideration of other possible avenues of exposure such as accumulation of the HAPs in the environment and subsequent human exposure.

Under the current rules, sources must comply with both sets of rules. This implies that, if the state rule would require a more stringent control of emissions than that required by the federal MACT, the source would have to implement the MACT plus whatever additional actions were necessary to bring the source into compliance with the state standard. Under the new rule, sources will only need to comply with one set of regulations. For substances covered by a federal standard, this could mean either a tightening or a relaxation

---

## Proposed Regulations

---

of the emissions standard. Sources that generate substantial amounts of HAPs but in relatively low concentrations will generally find the federal rules tighter than the state rules since the federal rules are not based on HAP concentrations in the air but rather on what type of source is generating the emissions and what the best available control technologies are for that type of source.

Alternatively, it is possible that the state concentration-based standards would imply a more stringent standard than a federal MACT standard, since the latter is not sensitive to population risk but only to technologies in place at a certain point in time. In such cases it may be expected that some HAPs would be subject to stricter emission standards once the second stage of federal HAP regulation is completed. In the intervening period, some facilities may be subject to less stringent rules once the state standard is replaced by the federal MACT standard. Because the second stage federal rules will take into account both population risk due to ambient concentrations and due to indirect exposures, those rules will tend to be at least as stringent as state standards in almost every case.

DEQ staff have indicated that the circumstances where eliminating the state ambient concentration standard in deference to the federal MACT standard would lead to greater HAP emissions should be unusual, even rare. However, since ambient air concentration modeling will not have to be carried out by sources covered by a MACT standard, there will presumably be circumstances where, without the air quality modeling, there would be no way to know whether the current concentration standards would be violated.

It is not unreasonable to conclude from this that the implementation of this proposal could increase risk from exposure to HAPs in some instances. Currently available information does not allow a reliable assessment of any potential increase in risks although DEQ staff indicates that these should be small. That said, it is not possible at this time to assess the change in the economic value of HAP exposure risk resulting from this regulatory change although it is expected that the total exposure risk will fall due to the gradual imposition of federal MACT standards and their eventual replacement with risk-based standards.

It is possible to conclude that compliance costs incurred by HAP sources will fall as a result of this change. For those sources where the federal standard is more stringent than the state standard, the reduction in compliance costs is a net economic gain since there is no offsetting increase in risk due to HAP exposure. In any cases where the current state standard is more stringent than an applicable federal standard, the reduction in compliance costs must be weighed against the potential increase in risk due to increased HAP exposure.

Given the lack of reliable scientific data on exposure risks and the lack of information on compliance costs, it is not possible at this time to estimate the magnitude of the net economic impact of this regulatory change on Virginia, although, based on comments of DEQ staff, it appears more

likely than not that these changes will lead to significant cost savings with little net increase in risk to the public.

Businesses and entities affected. All of the permitted stationary sources of hazardous air pollutants in Virginia may be affected by this rule. This comprises approximately 300 sources.

Localities particularly affected. No localities in Virginia are expected to share disproportionately in the impact of this regulation.

Projected impact on employment. While the federal MACT standards are somewhat different from the existing state rules, the gradual shift from coverage under the state program to the federal MACT standard is not expected to have any significant net impact on employment in Virginia.

Effects on the use and value of private property. The sources covered by these rules may see some reduction in compliance costs. Since the gradual reduction in compliance costs is small relative to total compliance costs, the value of these sources to their owners is not likely to appreciate noticeably.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget prepared an economic impact analysis for the proposal as required by § 9-6.14:7.1 G of the Administrative Process Act. This analysis states, "It is not unreasonable to conclude from this that the implementation of this proposal could increase risk from exposure to HAPs in some instances." The Department of Environmental Quality does not agree with this statement. DEQ anticipates no increase in risk from exposure to HAPs as a result of the implementation of the proposal. On the contrary, the eventual federal risk-based standards will be grounded in scientific evidence superior to that which was used to develop the original Virginia regulations and will therefore be more accurate. DEQ thus expects the risk from HAPs exposure to be decreased rather than increased.

Otherwise, the Department of Environmental Quality takes no issue with the economic impact analysis prepared by the Department of Planning and Budget.

### Summary:

*The regulation amendments concern provisions covering hazardous pollutants and are summarized below:*

*With certain exemptions, stationary sources which emit hazardous pollutants and which fall into specified applicability limits shall comply with the specified standard and shall employ a control strategy to achieve that standard. Unlike most other regulations, these contain no definitive emission limits in the emission standards themselves. These regulations do, however, provide significant ambient air concentration guidelines as a mechanism for the board to require the owner, on a case-by-case basis, to reduce emissions after analysis and review by the agency. Subject sources shall also observe the provisions governing the submittal of information, the determination of ambient air*

concentrations, the compliance options and schedules, and the public participation procedures. The proposed amendments will repeal Emission Standards for Toxic Pollutants (9 VAC 5-40-160 et seq.) and Standards of Performance for Toxic Pollutants (9 VAC 5-50-160 et seq.) and replace them with Emission Standards for Hazardous Pollutants from Existing Sources (9 VAC 5-60-150 et seq.) and Emission Standards for Hazardous Pollutants from New and Modified Sources (9 VAC 5-60-250 et seq.).

CHAPTER 40.  
EXISTING STATIONARY SOURCES.

PART II.  
EMISSION STANDARDS.

Article 3.  
Emission Standards for Toxic Pollutants (Rule 4-3).

**9 VAC 5-40-160. Applicability and designation of affected facility.**

A. Regardless of the provisions of 9 VAC 5-40-10 and, except as provided in subsections D and E of this section, the affected facility to which the provisions of this article apply is each facility or operation that emits or may emit any toxic pollutant and which is not subject to Article 3 (9 VAC 5-50-160 et seq.) of 9 VAC 5 Chapter 50. Implementation of this article shall occur upon notification to the owner by the board through means such as an information request from the board or an operating permit review under 9 VAC 5-80-40.

B. The board may establish the priorities for implementation of this article by either affected facility type or pollutant type. The priorities may be established in consideration of the following factors: potential public health impact, nature and amount of pollutants emitted on a statewide basis, degree of regulation by other governmental entities, and available resources. The board, at the request of an owner or owners, may defer implementation of this article for a facility or any group of facilities where technical issues necessitate further analysis and study in order to implement the article or the affected facility or facilities. The board may prescribe the procedures for the prioritization of implementation of this article and for the deferral of implementation of this article by policy.

C. The provisions of this article apply throughout the Commonwealth of Virginia.

D. Exemption determination.

1. Exempted from the provisions of this article is any stationary source or operation not part of a stationary source which has a potential to emit a toxic pollutant at a level equal to or less than the exempt emission rate calculated using the following exemption formulas for the applicable TLV<sup>®</sup>. If more than one exemption formula applies to a toxic pollutant emitted by a source, the potential to emit that pollutant shall be equal to or less than both applicable exemption formulas in order for the source to be exempt for that pollutant. The

exemption formulas apply on an individual basis to each toxic pollutant for which a TLV<sup>®</sup> has been established.

a. For toxic pollutants with a TLV-C<sup>®</sup>, the following exemption formula applies, provided the potential to emit does not exceed 22.8 pounds per hour:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-C}^{\text{®}} \text{ (mg/m}^3\text{)} \times 0.033$$

b. For toxic pollutants with both a TLV-STEEL<sup>®</sup> and a TLV-TWA<sup>®</sup>, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TVL-STEEL}^{\text{®}} \text{ (mg/m}^3\text{)} \times 0.033$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TVL-TWA}^{\text{®}} \text{ (mg/m}^3\text{)} \times 0.145$$

c. For toxic pollutants with only a TLV-TWA<sup>®</sup>, the following exemption formula applies, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TVL-TWA}^{\text{®}} \text{ (mg/m}^3\text{)} \times 0.066$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TVL-TWA}^{\text{®}} \text{ (mg/m}^3\text{)} \times 0.145$$

2. Exemption from the provisions of this article for any stationary source or operation not part of a stationary source which has a potential to emit any toxic pollutant without a TLV<sup>®</sup> shall be determined by the board using available health effects information.

3. The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in 9 VAC 5-40-200.

E. Exemptions for toxic pollutants otherwise regulated.

1. Owners of sources emitting toxic pollutants regulated under any of the following may apply to the board for an exemption from this article:

a. Hazardous air pollutants regulated under § 112 of the Federal Clean Air Act, except to the extent such pollutants are emitted from facilities which are not subject to emission standards in Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.

b. Designated pollutants regulated under § 111(d) of the federal Clean Air Act, except to the extent such pollutants are emitted from facilities which are not subject to other emission standards in this chapter.

c. Substances regulated under the Virginia Hazardous Waste Management (HWM) Regulations, 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.) which are disposed of in an incinerator as defined by those regulations that (i) meets the 99.99% destruction and removal efficiency standard required by 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.), and (ii) has received an HWM permit or qualified for interim status

---

# Proposed Regulations

---

in accordance with 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.). The board shall be furnished with an acceptable certification that such incinerator is in compliance with the standards of its HWM permit or interim status and applicable provisions of 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.). Facilities which burn hazardous waste for energy recovery are not exempt from this article.

2. Exemptions for these pollutants shall be granted provided the regulation of the toxic pollutant listed is based on an assessment of health effects and not solely on control technology considerations.

F. Provisions of this article do not apply to any consumer product used in the same manner as normal consumer use, provided the use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers. This may include, but not be limited to, personal use items, janitorial cleaning supplies, and facility grounds maintenance products, such as fertilizers, pesticides, and paints for structural components.

G. With regard to the application of pesticides, the provisions of this article shall apply only to the air quality impact from emissions from application inside the premises of the following affected facilities:

1. Industrial and manufacturing operations, including warehouse and storage operations related to the operation of these facilities.

2. Warehouse and storage operations at transportation terminals.

H. No provision of this article shall limit the power of the board to apply the provisions of this article to any affected facility in order to prevent or remedy a condition that may cause or contribute to the endangerment of human health.

## 9 VAC 5-40-170. Definitions.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

*"Best available control technology"* means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each toxic pollutant which the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. If the board determines that technological or economic limitations on the application of measurement methodology to a particular

emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination of them may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

*"Pesticide"* means the same as the definition given in § 3.1-249.27 of the Virginia Pesticide Control Act.

*"Potential to omit"* means an emission rate based on the maximum capacity of a stationary source to emit a toxic pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a toxic pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state or federally enforceable.

*"Significant ambient air concentration"* means the concentration of a toxic pollutant in the ambient air that if exceeded may have the potential to injure human health.

*"Threshold limit value (TLV)<sup>®</sup>"* means the maximum airborne concentration of a substance to which the ACGIH believes that nearly all workers may be repeatedly exposed day after day without adverse effects and which is published in the American Conference of Governmental Industrial Hygienists (ACGIH) Handbook (see 9 VAC 5-20-21). The TLV<sup>®</sup> is divided into three categories: TLV Time-Weighted Average<sup>®</sup> (TLV-TWA<sup>®</sup>), TLV Short-Term Exposure Limit<sup>®</sup> (TLV-STEL<sup>®</sup>), and TLV-Ceiling<sup>®</sup> (TLV-C<sup>®</sup>).

*"TLV-TWA<sup>®</sup>"* means the time-weighted average concentration for a normal eight-hour workday and a 40-hour workweek, to which nearly all workers may be repeatedly exposed, day after day, without adverse effect (as defined in the ACGIH Handbook).

*"TLV-STEL<sup>®</sup>"* means the concentration to which workers may be exposed continuously for a short period of time without suffering from irritation, chronic or irreversible tissue damage, or narcosis of sufficient degree to increase the likelihood of accidental injury, impair self-rescue or materially reduce work efficiency. The TLV-STEL<sup>®</sup> supplements the TLV-TWA<sup>®</sup> where there are recognized acute effects from a substance whose toxic effects are primarily of a chronic nature.

*"TLV-C<sup>®</sup>"* means the concentration that should not be exceeded during any part of the working exposure.

*"Toxic pollutant"* means any air pollutant for which no ambient air quality standard has been established. Particulate matter and volatile organic compounds are not toxic pollutants as generic classes of substances but individual substances within these classes may be toxic pollutants because of their toxic properties or because a TLV<sup>®</sup> has been established.



**9-VAC 5-40-180. Standard for toxic pollutants.**

If a stationary source or operation not part of a stationary source is not exempt under 9-VAC 5-40-160 C or D, then the following standards shall be met:

1. ~~Regardless of any other provision of these regulations, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions of toxic pollutants in such quantities as to cause, or contribute to, any significant ambient air concentration that may cause, or contribute to, the endangerment of human health.~~
2. ~~The owner of an affected facility shall employ control strategies as may be directed by the board for the control of toxic pollutants. The board may consider the potency and toxicity of each regulated toxic pollutant as well as the technical and economic feasibility of any available control strategies. Possible control strategies may include but are not limited to emission control equipment, process changes, substitution of less toxic or nontoxic materials, or operation and maintenance procedures which lower or eliminate emissions of toxic pollutants.~~

**9-VAC 5-40-190. Significant ambient air concentration guidelines.**

~~For the purpose of case-by-case consideration between the board and the owner, significant ambient air concentrations are any of the following:~~

1. ~~For pollutants with a TLV-C<sup>®</sup>, any one-hour concentration of a toxic pollutant in excess of 1/40 of the TLV-C<sup>®</sup>.~~
2. ~~For pollutants with both a TLV-STEL<sup>®</sup> and a TLV-TWA<sup>®</sup>, any one-hour concentration of a toxic pollutant in excess of 1/40 of the TLV-STEL<sup>®</sup> and any annual concentration of a toxic pollutant in excess of 1/500 of the TLV-TWA<sup>®</sup>.~~
3. ~~For pollutants with only a TLV-TWA<sup>®</sup>, any annual concentration of a toxic pollutant in excess of 1/500 of the TLV-TWA<sup>®</sup> and any one-hour concentration of a toxic pollutant in excess of 1/20 of the TLV-TWA<sup>®</sup>.~~
4. ~~Any concentration resulting from the emissions of a toxic pollutant from an affected facility which the owner knows, or reasonably should be expected to know, may cause, or contribute to, the endangerment of human health.~~
5. ~~Any concentration, other than those specified in subdivision 1, 2, 3, or 4 of this section, including those resulting from toxic pollutants not having a TLV<sup>®</sup>, which the board determines to cause, to have the potential to cause, or to contribute to, the endangerment of human health. This determination shall be made by considering information by recognized authorities on the specific health effects of such toxic pollutants.~~

**9-VAC 5-40-200. Submittal of information.**

~~The owner of an affected facility shall upon the request of the board submit such information as may be needed to determine the applicability of, or compliance with, this article. The board may determine the manner and form for the submittal of the information. Such information shall be submitted within 60 days of the request. Reasonable extensions may be granted when deemed appropriate by the board for extensive information gathering, such as emissions testing or review of large and complex facilities, and only if the request is accompanied by a written schedule.~~

**9-VAC 5-40-210. Determination of ambient air concentrations.**

- A. ~~The owner shall, upon the request of the board, provide an assessment as to whether his facility emits, or may emit, any toxic pollutant in such quantities as to cause, or contribute to, any concentration exceeding, or which may exceed, any significant ambient air concentration.~~
- B. ~~Ambient air concentrations shall be determined using air quality analysis techniques (modeling) based on emission rates equal to the potential to emit of the stationary source for the applicable averaging time or any other method acceptable to the board.~~

**9-VAC 5-40-220. Compliance.**

- A. ~~If the board has reason to believe that the emissions from an affected facility are, or may be, discharged in such quantities so as to cause, or contribute to, any ambient air concentration that is in excess of any significant ambient air concentration specified in 9-VAC 5-40-190, the owner shall comply with the following:~~
  1. ~~For emissions resulting in concentrations which exceed the significant ambient air concentration by a factor of 10 or more times or which the board determines exceed the significant ambient air concentration so as to have the potential to cause or contribute to substantial and imminent endangerment of human health, the owner shall within an approved timetable implement controls which reduce these emissions to a level specified by the board. For any emissions which remain in excess of the guidelines established under 9-VAC 5-40-190, the owner shall choose one or more of the options available under 9-VAC 5-40-220 A 2 and shall comply with the schedules contained in 9-VAC 5-40-220 B.~~
  2. ~~For emissions other than those specified in 9-VAC 5-40-220 A 1, the owner shall choose one or more of the following options and comply with the schedules contained in 9-VAC 5-40-220 B.~~
    - a. ~~Demonstrate that the emissions from the facility do not, and will not, cause, or contribute to, any of the significant ambient air concentration in 9-VAC 5-40-190 being exceeded.~~
    - b. ~~Demonstrate that the applicable significant ambient air concentration in 9-VAC 5-40-190 is inappropriate for the toxic air pollutant in question by showing that~~

---

# Proposed Regulations

---

~~the emissions from the affected facility produce no endangerment of human health.~~

~~e. Control the emissions from the affected facility to a level resulting in ambient air concentrations that are below the significant ambient air concentrations or resulting in such other ambient air concentrations acceptable to the board.~~

~~B. The owner shall notify the board of his choice under subdivision A 2 of this section within 45 days of notification by the department that his facility exceeds the significant ambient air concentration specified in 9 VAC 5-40-190. Within 45 days of notifying the board of the option under subdivision A 2 of this section, the owner shall submit a plan and schedule to the board for approval. If the owner fails to submit either his choice of an option or a plan and schedule to implement that option, the board may require the owner to install best available control technology to control the facility's emissions in a manner and by a schedule set out by the board. All options shall be completed within a reasonable time: 30 days for 9 VAC 5-40-220 A 2 a, 60 days for 9 VAC 5-40-220 A 2 b, and 18 months for 9 VAC 5-40-220 A 2 c. None of the times specified in this subsection include time needed for board approval. Reasonable extensions may be granted when deemed appropriate by the board.~~

~~C. Failure of the owner to accomplish any of the alternatives set forth in subsection A of this section in a manner acceptable to the board shall constitute a violation of 9 VAC 5-40-180.~~

## **9 VAC 5-40-230. Public participation.**

~~If the owner of an affected facility chooses the demonstration under 9 VAC 5-40-220 A 2 b, the provisions of this section shall apply.~~

~~1. Prior to the decision of the board on the acceptability of the demonstration, the demonstration shall be subject to a public comment period of at least 30 days.~~

~~2. The board shall notify the public of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section. The notification shall be made by advertisement in one newspaper of general circulation in the affected air quality control region and, if available, one newspaper that circulates in the area where the affected facility is located. A copy of the notice shall be sent to the governing body of the locality where the affected facility is located and to the governing bodies of the localities where ambient air quality impacts from the affected facility exceed the significant ambient air concentration guidelines in 9 VAC 5-40-190. The notice shall include a brief description of the demonstration, a statement listing the requirements in 9 VAC 5-40-230 4 and 5, and the name and telephone number of a person from whom detailed information on the demonstration may be obtained.~~

~~3. Information relevant to the demonstration, including (i) information produced by the owner showing that the emissions from the affected facility do not endanger~~

~~human health and (ii) the preliminary review, analysis and tentative determination of the board, shall be available for public inspection during the entire comment period in at least one location in the affected air quality control region.~~

~~4. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to consider the source's demonstration under 9 VAC 5-40-220 A 2 b. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:~~

~~a. The name, mailing address and telephone number of the requester;~~

~~b. The names and addresses of all persons for whom the requester is acting as a representative;~~

~~c. The reason why a hearing is requested; and~~

~~d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including an explanation of how and to what extent such interest would be directly and adversely affected by the demonstration in question.~~

~~5. The board shall review all timely requests for public hearing filed during the 30 days following the appearance of the public comment notice in the newspaper. Within 30 calendar days following the expiration of the public comment period the board shall grant a public hearing if it finds that one or both of the following apply:~~

~~a. There is significant public interest in the demonstration in question.~~

~~b. There are substantial, disputed issues relevant to the demonstration in question.~~

~~6. The board shall notify by mail the owner making the demonstration and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain a description of the procedures for the public hearing and for the final determination under this section.~~

~~7. If the board decides to hold a public hearing, the hearing shall be scheduled at a time between 30 and 60 days after mailing the notification required by 9 VAC 5-40-230 6. The public hearing shall be held in the affected air quality control region.~~

~~8. The procedures for notification to the public and availability of information used for the public comment period and provided in subsections B and C of this section shall also be followed for the public hearing.~~

~~NOTE: In adopting amendments to this article to be effective October 1, 1991, the board replaced the term "noncriteria" with the term "toxic." In the interest of economy and efficiency, the board did not make the corresponding change at each place the term "noncriteria" occurs~~

throughout the Regulations for the Control and Abatement of Air Pollution. However, it is the intent of the board to make that change in other parts of the regulations as the opportunity presents itself. Until such changes are made the term "noncriteria" shall be construed to mean "toxic" throughout these chapters.

CHAPTER 50.  
NEW AND MODIFIED STATIONARY SOURCES.

PART II.  
EMISSION STANDARDS.

Article 3.

Standards of Performance for Toxic Pollutants (Rule 5-3).

**9 VAC 5-50-160. Applicability and designation of affected facility.**

A. ~~Regardless of the provisions of 9 VAC 5-50-10 and, except as provided in subsections D and E of this section, the affected facility to which the provisions of this article apply is each facility or operation, which has a permit containing emission limits and other requirements pursuant to this article or which is subject to the new and modified source provisions of 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.), that emits or may emit any toxic pollutant.~~

B. ~~The board may establish the priorities for implementation of this article by either affected facility type or pollutant type. The priorities may be established in consideration of the following factors: potential public health impact, nature and amount of pollutants emitted on a statewide basis, degree of regulation by other governmental entities, and available resources. The board, at the request of an owner or owners, may defer implementation of this article for a facility or any group of facilities where technical issues necessitate further analysis and study in order to implement the article for the affected facility or facilities. The board may prescribe the procedures for the prioritization of implementation of this article and for the deferral of implementation of this article by policy.~~

C. ~~The provisions of this article apply throughout the Commonwealth of Virginia.~~

D. ~~Exemption determination.~~

1. ~~Exempted from the provisions of this article is any stationary source or operation not part of a stationary source which has a potential to emit a toxic pollutant at a level equal to or less than the exempt emission rate calculated using the following exemption formulas for the applicable TLV<sup>®</sup>. If more than one exemption formula applies to a toxic pollutant emitted by a source, the potential to emit that pollutant shall be equal to or less than both applicable exemption formulas in order for the source to be exempt for that pollutant. The exemption formulas apply on an individual basis to each toxic pollutant for which a TLV<sup>®</sup> has been established.~~

a. ~~For toxic pollutants with a TLV-C<sup>®</sup>, the following exemption formula applies, provided the potential to emit does not exceed 22.8 pounds per hour:~~

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-C}^{\text{®}} (\text{mg/m}^3) \times 0.033$$

b. ~~For toxic pollutants with both a TLV-STEL<sup>®</sup> and a TLV-TWA<sup>®</sup>, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:~~

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-STEL}^{\text{®}} (\text{mg/m}^3) \times 0.033$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA}^{\text{®}} (\text{mg/m}^3) \times 0.145$$

c. ~~For toxic pollutants with only a TLV-TWA<sup>®</sup>, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:~~

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-TWA}^{\text{®}} (\text{mg/m}^3) \times 0.066$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA}^{\text{®}} (\text{mg/m}^3) \times 0.145$$

2. ~~Exemption from the provisions of this article for any stationary source or operation not part of a stationary source which has a potential to emit any toxic pollutant without a TLV<sup>®</sup> will be determined by the board using available health effects information.~~

3. ~~The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in 9 VAC 5-50-200.~~

E. ~~Exemptions for toxic pollutants otherwise regulated.~~

1. ~~Owners of sources emitting toxic pollutants regulated under any of the following may apply to the board for an exemption from this article:~~

a. ~~Hazardous air pollutants regulated under § 112 of the Federal Clean Air Act, except to the extent such pollutants are emitted from facilities which are not subject to emission standards in Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.~~

b. ~~Substances regulated under 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.) (the Virginia Hazardous Waste Management (HWM) Regulations) which are disposed of in an incinerator as defined by those regulations that (i) meets the 99.99% destruction and removal efficiency standard required by 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.) and (ii) has received an HWM permit or qualified for interim status in accordance with 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.). The board shall be furnished with an acceptable certification that such incinerator is in compliance with the standards of its HWM permit or interim status and applicable provisions of 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.). Facilities which burn hazardous waste for energy recovery are not exempt from this article.~~

2. ~~Exemptions for these pollutants shall be granted provided the regulation of the toxic pollutant listed is~~

---

# Proposed Regulations

---

based on an assessment of health effects and not solely on control technology considerations.

F. Provisions of this article do not apply to any consumer product used in the same manner as normal consumer use, provided the use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers. This may include, but not be limited to, personal use items, janitorial cleaning supplies, and facility grounds maintenance products, such as fertilizers, pesticides, and paints for structural components.

G. With regard to the application of pesticides, the provisions of this article shall apply only to the air quality impact from emissions from application inside the premises of the following affected facilities:

1. Industrial and manufacturing operations, including warehouse and storage operations related to the operation of these facilities; and
2. Warehouse and storage operations at transportation terminals.

H. No provision of this article shall limit the power of the board to apply the provisions of this article to any affected facility in order to prevent or remedy a condition that may cause or contribute to the endangerment of human health.

## 9 VAC 5-50-170. Definitions.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meanings given them in 9 VAC 5-Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

*"Best available control technology"* means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each toxic pollutant which the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination of them, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

*"Pesticide"* means the same as the definition given in § 3.1-249.27 of the Virginia Pesticide Control Act.

*"Potential to omit"* means an emission rate based on the maximum capacity of a stationary source to emit a toxic pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a toxic pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state or federally enforceable.

*"Significant ambient air concentration"* means the concentration of a toxic pollutant in the ambient air that if exceeded may have the potential to injure human health.

*"Threshold limit value (TLV<sup>®</sup>)"* means the maximum airborne concentration of a substance to which the ACGIH believes that nearly all workers may be repeatedly exposed day after day without adverse effects and which is published in the American Conference of Governmental Industrial Hygienists (ACGIH) Handbook (see 9 VAC 5-20-21). The TLV<sup>®</sup> is divided into three categories: TLV-Time-Weighted Average<sup>®</sup> (TLV-TWA<sup>®</sup>), TLV-Short-Term Exposure Limit<sup>®</sup> (TLV-STEL<sup>®</sup>), and TLV-Ceiling<sup>®</sup> (TLV-C<sup>®</sup>).

*"TLV-TWA<sup>®</sup>"* means the time-weighted average concentration for a normal eight-hour workday and a 40-hour workweek, to which nearly all workers may be repeatedly exposed, day after day, without adverse effect (as defined in the ACGIH Handbook).

*"TLV-STEL<sup>®</sup>"* means the concentration to which workers may be exposed continuously for a short period of time without suffering from irritation, chronic or irreversible tissue damage, or narcosis of sufficient degree to increase the likelihood of accidental injury, impair self-rescue or materially reduce work efficiency. The TLV-STEL supplements the TLV-TWA<sup>®</sup> where there are recognized acute effects from a substance whose toxic effects are primarily of a chronic nature.

*"TLV-C<sup>®</sup>"* means the concentration that should not be exceeded during any part of the working exposure.

*"Toxic pollutant"* means any air pollutant for which no ambient air quality standard has been established. Particulate matter and volatile organic compounds are not toxic pollutants as generic classes of substances but individual substances within these classes may be toxic pollutants because of their toxic properties or because a TLV<sup>®</sup> has been established.

## 9 VAC 5-50-180. Standard for toxic pollutants.

If a stationary source or operation not part of a stationary source is not exempt under 9 VAC 5-50-160 C or D, then the following standards shall be met:

1. Regardless of any other provision of these regulations, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions of toxic pollutants in such quantities as to cause, or contribute to, any significant

ambient air concentration that may cause, or contribute to, the endangerment of human health.

2. The owner of new or modified sources shall employ best available control technology as may be approved by the board for the control of toxic pollutants.

**9 VAC 5-50-190. Significant ambient air concentration guidelines.**

For the purpose of case-by-case consideration between the board and the owner, significant ambient air concentrations are any of the following:

1. For pollutants with a TLV-C<sup>®</sup>, any one-hour concentration of a toxic pollutant in excess of 1/40 of the TLV-C<sup>®</sup>.
2. For pollutants with both a TLV-STEL<sup>®</sup> and a TLV-TWA<sup>®</sup>, any one-hour concentration of a toxic pollutant in excess of 1/40 of the TLV-STEL<sup>®</sup> and any annual concentration of a toxic pollutant in excess of 1/500 of the TLV-TWA<sup>®</sup>.
3. For pollutants with only a TLV-TWA<sup>®</sup>, any annual concentration of a toxic pollutant in excess of 1/500 of the TLV-TWA<sup>®</sup> and any one-hour concentration of a toxic pollutant in excess of 1/20 of the TLV-TWA<sup>®</sup>.
4. Any concentration resulting from the emissions of a toxic pollutant from an affected facility which the owner knows, or reasonably should be expected to know, may cause, or contribute to, the endangerment of human health.
5. Any concentration, other than those specified in subdivision 1, 2, 3, or 4 of this section, including those resulting from toxic pollutants not having a TLV<sup>®</sup>, which the board determines to cause, to have the potential to cause, or to contribute to, the endangerment of human health. This determination will be made by considering information by recognized authorities on the specific health effects of such toxic pollutants.

**9 VAC 5-50-200. Submittal of information.**

The owner of an affected facility shall upon the request of the board submit such information as may be needed to determine the applicability of, or compliance with, this article. The board may determine the schedule, manner and form for the submittal of the information.

**9 VAC 5-50-210. Determination of ambient air concentrations.**

A. The owner shall, upon the request of the board, provide an assessment as to whether his facility emits, or may emit, any toxic pollutant in such quantities as to cause, or contribute to, any concentration exceeding, or which may exceed, any significant ambient air concentration.

B. Ambient air concentrations shall be determined using air quality analysis techniques (modeling) based on emission rates equal to the facility's potential to emit for the applicable averaging time or any other method acceptable to the board.

**9 VAC 5-50-220. Compliance.**

If the board has reason to believe that the emissions from an affected facility are, or may be, discharged in such quantities so as to cause, or contribute to, any ambient air concentration that is in excess of any significant ambient air concentration specified in 9 VAC 5-50-190, a permit shall not be issued until the owner complies with one or more of the following:

1. Demonstrate that the emissions from the facility do not, and will not, cause, or contribute to, any of the significant ambient air concentrations in 9 VAC 5-50-190 being exceeded;
2. Demonstrate that the applicable significant ambient air concentration in 9 VAC 5-50-190 is inappropriate for the toxic air pollutant in question by showing that the emissions from the affected facility produce no endangerment of human health; or
3. Control the emissions from the affected facility to a level resulting in ambient air concentrations that are below the significant ambient air concentrations or resulting in such other ambient air concentrations acceptable to the board.

**9 VAC 5-50-230. Public participation.**

If the owner of an affected facility chooses the demonstration under 9 VAC 5-50-220 subdivision 2, the provisions of this section shall apply.

1. Prior to the decision of the board on the acceptability of the demonstration, the demonstration shall be subject to a public comment period of at least 30 days.
2. The board shall notify the public of the opportunity for public comment on the information available for public inspection under the provisions of subdivision 3 of this section. The notification shall be made by advertisement in one newspaper of general circulation in the affected air quality control region and, if available, one newspaper that circulates in the area where the affected facility is located. A copy of the notice shall be sent to the governing body of the locality where the affected facility is located and to the governing bodies of the localities where ambient air quality impacts from the affected facility exceed the significant ambient air concentration guidelines in 9 VAC 5-50-190. The notice shall include a brief description of the demonstration, a statement listing the requirements in subdivisions 4 and 5 of this section, and the name and telephone number of a person from whom detailed information on the demonstration may be obtained.
3. Information relevant to the demonstration, including (i) information produced by the owner showing that the emissions from the affected facility do not endanger human health and (ii) the preliminary review, analysis and tentative determination of the board, shall be available for public inspection during the entire comment period in at least one location in the affected air quality control region.

---

# Proposed Regulations

---

~~4. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to consider the source's demonstration under 9 VAC 5-50-220 subdivision 2. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:~~

- ~~a. The name, mailing address and telephone number of the requester;~~
- ~~b. The names and addresses of all persons for whom the requester is acting as a representative;~~
- ~~c. The reason why a hearing is requested; and~~
- ~~d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including an explanation of how and to what extent such interest would be directly and adversely affected by the demonstration in question.~~

~~5. The board shall review all timely requests for public hearing filed during the 30 days following the appearance of the public comment notice in the newspaper. Within 30 calendar days following the expiration of the public comment period the board shall grant a public hearing if it finds that one or both of the following apply:~~

- ~~a. There is significant public interest in the demonstration in question.~~
- ~~b. There are substantial, disputed issues relevant to the demonstration in question.~~

~~6. The board shall notify by mail the owner making the demonstration and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain a description of the procedures for the public hearing and for the final determination under this section.~~

~~7. If the board determines to hold a public hearing, the hearing shall be scheduled at a time between 30 and 60 days after mailing the notification required by subdivision 6 of this section. The public hearing shall be held in the affected air quality control region.~~

~~8. The procedures for notification to the public and availability of information used for the public comment period and provided in subdivisions 2 and 3 of this section shall also be followed for the public hearing.~~

~~NOTE: In adopting amendments to this article to be effective October 1, 1991, the board replaced the term "noncriteria" with the term "toxic." In the interest of economy and efficiency, the board did not make the corresponding change at each place the term "noncriteria" occurs throughout the Regulations for the Control and Abatement of Air Pollution. However, it is the intent of the board to make that change in other parts of the regulations as the opportunity presents itself. Until such changes are made the~~

~~term "noncriteria" shall be construed to mean "toxic" in these chapters.~~

## CHAPTER 60. HAZARDOUS AIR POLLUTANTS.

### PART II. EMISSION STANDARDS.

#### Article 3.

*Emission Standards for Hazardous Pollutants from Existing Sources (Rule 6-3).*

#### **9 VAC 5-60-150. Applicability and designation of affected facility.**

*A. Regardless of the provisions of 9 VAC 5-40-10 and, except as provided in subsections C, D, and E of this section, the affected facility to which the provisions of this article apply is each stationary source that emits or may emit any hazardous pollutant and which is not subject to Article 4 (9 VAC 5-60-250 et seq.) of this part. Implementation of this article shall occur upon notification to the owner by the board through means such as an information request from the board.*

*B. The provisions of this article apply throughout the Commonwealth of Virginia.*

*C. This article shall not apply to the following:*

*1. A stationary source which has a potential to emit a hazardous pollutant with a TLV<sup>®</sup> at a level equal to or less than the exemption emission rate calculated using the exemption formulas set forth below for the applicable TLV<sup>®</sup>. If more than one exemption formula applies to a hazardous pollutant emitted by a source, the potential to emit for that pollutant shall be equal to or less than both applicable exemption formulas in order for the source to be exempted for that pollutant. The exemption formulas apply on an individual basis to each hazardous pollutant for which a TLV<sup>®</sup> has been established.*

*a. For hazardous pollutants with a TLV-C<sup>®</sup>, the following exemption formula applies, provided the potential to emit does not exceed 22.8 pounds per hour:*

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-C}^{\circledR} (\text{mg/m}^3) \times 0.033$$

*b. For hazardous pollutants with both a TLV-STEL<sup>®</sup> and a TLV-TWA<sup>®</sup>, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:*

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-STEL}^{\circledR} (\text{mg/m}^3) \times 0.033$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA}^{\circledR} (\text{mg/m}^3) \times 0.145$$

*c. For hazardous pollutants with only a TLV-TWA<sup>®</sup>, the following exemption formulas apply, provided the*

potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

Exempt Emission Rate (pounds per hour) = TLV-TWA<sup>®</sup> (mg/m<sup>3</sup>) x 0.066

Exempt Emission Rate (tons per year) = TLV-TWA<sup>®</sup> (mg/m<sup>3</sup>) x 0.145

2. A stationary source which has a potential to emit a hazardous pollutant without a TLV<sup>®</sup> if, upon request, the board determines to exempt that hazardous pollutant from the provisions of this article using available health effects information. The exemption determination shall be made by the board using information submitted by the owner in accordance with 9 VAC 5-60-190.

3. A stationary source subject to an emission standard or other requirement set forth in Article 2 (9 VAC 5-60-90 et seq.) of this part. If less than all of the stationary source is regulated by such an emission standard or other requirement, then only that part of the stationary source regulated by the emission standard or other requirement is exempted.

4. A stationary source in a source category which is regulated by an emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act and subject to the source category schedule for standards. If less than all of the stationary source is in a source category which is regulated by such an emission standard or other requirement, then only that part of the stationary source in the source category regulated by the emission standard or other requirement is exempted.

5. A stationary source in a source category for which the U.S. Environmental Protection Agency has made a formal determination that no regulations or other requirements need to be established pursuant to § 112 of the federal Clean Air Act and has published the determination in the Federal Register at 63 FR 7155, February 12, 1998.

6. A boiler, incinerator, or industrial furnace as defined in 9 VAC 20-60-10 and subject to 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.), provided it (i) meets the 99.99% destruction and removal efficiency standard required by 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.) and (ii) has received a permit or has qualified for interim status in accordance with 9 VAC 20-60-10 et seq. The board shall be furnished with an acceptable certification that such boiler, incinerator, or industrial furnace is in compliance with the standards of its permit or interim status and applicable provision of 9 VAC 20-60-10 et seq. Facilities which burn hazardous waste for energy recovery are not exempted from this article.

7. A generator or boiler which burns only natural gas, #2 fuel oil, #4 fuel oil, #6 fuel oil, propane, or kerosene.

D. Provisions of this article do not apply to any consumer product used in the same manner as normal consumer use, provided the use results in a duration and frequency of

exposure which is not greater than exposures experienced by consumers. This may include, but not be limited to, personal use items, janitorial cleaning supplies, and facility grounds maintenance products, such as fertilizers, pesticides, and paints for structural components.

E. With regard to the application of pesticides, the provisions of this article shall apply only to the air quality impact from emissions from application inside the premises of the following affected facilities:

1. Industrial and manufacturing operations, including warehouse and storage operations related to the operation of these facilities.

2. Warehouse and storage operations at transportation terminals.

F. No provision of this article shall limit the power of the board to apply the provisions of this article to any affected facility in order to prevent or remedy a condition that may cause or contribute to the endangerment of human health.

## 9 VAC 5-60-160. Definitions.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Hazardous pollutant" means any air pollutant listed in § 112(b) of the Act, as amended by 40 CFR 63.60, or any other air pollutant which the board determines, through adoption of regulation, to present a significant risk to public health. This term excludes asbestos, fine mineral fibers, radionuclides, and any glycol ether that does not have a TLV<sup>®</sup>.

"Pesticide" means the same as the definition given in § 3.1-249.27 of the Virginia Pesticide Control Act.

"Potential to emit" means an emission rate based on the maximum capacity of a stationary source to emit a hazardous pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a hazardous pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state or federally enforceable.

"Significant ambient air concentration" means the concentration of a hazardous pollutant in the ambient air that if exceeded may have the potential to injure human health.

"Source category schedule for standards" means the schedule for promulgating MACT standards issued

---

# Proposed Regulations

---

pursuant to § 112(e) of the Act and published in the Federal Register at 63 FR 7155, February 12, 1998.

"Threshold limit value (TLV)<sup>®</sup>" means the maximum airborne concentration of a substance to which the ACGIH believes that nearly all workers may be repeatedly exposed day after day without adverse effects and which is published in the American Conference of Governmental Industrial Hygienists (ACGIH) Handbook (see 9 VAC 5-20-21). The TLV<sup>®</sup> is divided into three categories: TLV-Time-Weighted Average<sup>®</sup> (TLV-TWA<sup>®</sup>), TLV-Short-Term Exposure Limit<sup>®</sup> (TLV-STEL<sup>®</sup>), and TLV-Ceiling<sup>®</sup> (TLV-C<sup>®</sup>).

"TLV-TWA<sup>®</sup>" means the time-weighted average concentration for a normal eight-hour work day and a 40-hour work week, to which nearly all workers may be repeatedly exposed, day after day, without adverse effect (as defined in the ACGIH Handbook).

"TLV-STEL<sup>®</sup>" means the concentration to which workers may be exposed continuously for a short period of time without suffering from irritation, chronic or irreversible tissue damage, or narcosis of sufficient degree to increase the likelihood of accidental injury, impair self-rescue or materially reduce work efficiency. The TLV-STEL<sup>®</sup> supplements the TLV-TWA<sup>®</sup> where there are recognized acute effects from a substance whose toxic effects are primarily of a chronic nature.

"TLV-C<sup>®</sup>" means the concentration that should not be exceeded during any part of the working exposure.

## **9 VAC 5-60-170. Standard for hazardous pollutants.**

If a stationary source is not exempt under 9 VAC 5-60-150 C, D, or E, then the following standards shall be met:

1. Regardless of any provision of any other regulation of the board, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions of hazardous pollutants in such quantities as to cause, or contribute to, any significant ambient air concentration that may cause, or contribute to, the endangerment of human health.
2. The owner of an affected facility shall employ control strategies as may be directed by the board for the control of hazardous pollutants. The board may consider the potency and toxicity of each regulated hazardous pollutant as well as the technical and economic feasibility of any available control strategies. Possible control strategies may include but are not limited to emission control equipment, process changes, substitution of less toxic or nontoxic materials, or operation and maintenance procedures which lower or eliminate emissions of hazardous pollutants.

## **9 VAC 5-60-180. Significant ambient air concentration guidelines.**

For the purpose of case-by-case consideration between the board and the owner, significant ambient air concentrations are any of the following:

1. For pollutants with a TLV-C<sup>®</sup>, any one-hour concentration of a hazardous pollutant in excess of 1/40 of the TLV-C<sup>®</sup>.
2. For pollutants with both a TLV-STEL<sup>®</sup> and a TLV-TWA<sup>®</sup>, any one-hour concentration of a hazardous pollutant in excess of 1/40 of the TLV-STEL<sup>®</sup> and any annual concentration of a hazardous pollutant in excess of 1/500 of the TLV-TWA<sup>®</sup>.
3. For pollutants with only a TLV-TWA<sup>®</sup>, any annual concentration of a hazardous pollutant in excess of 1/500 of the TLV-TWA<sup>®</sup> and any one-hour concentration of a hazardous pollutant in excess of 1/20 of the TLV-TWA<sup>®</sup>.
4. Any concentration resulting from the emissions of a hazardous pollutant from an affected facility which the owner knows, or reasonably should be expected to know, may cause, or contribute to, the endangerment of human health.
5. Any concentration, other than those specified in subdivision 1, 2, 3, or 4 of this section, including those resulting from hazardous pollutants not having a TLV<sup>®</sup>, which the board determines to cause, to have the potential to cause, or to contribute to, the endangerment of human health. This determination shall be made by considering information by recognized authorities on the specific health effects of such hazardous pollutants.

## **9 VAC 5-60-190. Submittal of information.**

The owner of an affected facility shall upon the request of the board submit such information as may be needed to determine the applicability of, or compliance with, this article. The board may determine the manner and form for the submittal of the information. Such information shall be submitted within 60 days of the request. Reasonable extensions may be granted when deemed appropriate by the board for extensive information gathering, such as emissions testing or review of large and complex facilities, and only if the request is accompanied by a written schedule.

## **9 VAC 5-60-200. Determination of ambient air concentrations.**

A. The owner shall, upon the request of the board, provide an assessment as to whether his facility emits, or may emit, any hazardous pollutant in such quantities as to cause, or contribute to, any concentration exceeding, or which may exceed, any significant ambient air concentration.

B. Ambient air concentrations shall be determined using air quality analysis techniques (modeling) based on emission rates equal to the potential to emit of the stationary source for the applicable averaging time or any other method acceptable to the board.

## **9 VAC 5-60-210. Compliance.**

A. If the board has reason to believe that the emissions from an affected facility are, or may be, discharged in such quantities so as to cause, or contribute to, any ambient air



concentration that (i) is in excess of any significant ambient air concentration specified in 9 VAC 5-60-180 or (ii) has the potential to cause or contribute to substantial and imminent endangerment of human health, the owner shall choose one or more of the following options and comply with the schedules contained in subsection B of this section.

1. Demonstrate that the emissions from the source do not and will not cause or contribute to any of the significant ambient air concentrations in 9 VAC 5-60-180 being exceeded.

2. Demonstrate that the applicable significant ambient air concentration in 9 VAC 5-60-180 is inappropriate for the hazardous air pollutant in question by showing that the emissions from the affected facility produce no endangerment of human health.

3. Control the emissions from the affected facility to a level resulting in ambient air concentrations that are below the significant ambient air concentrations or resulting in such other ambient air concentrations acceptable to the board.

B. The owner shall notify the board of his choice under subsection A of this section within 45 days of notification by the department that his facility exceeds the significant ambient air concentration specified in 9 VAC 5-60-180. Within 45 days of notifying the board of the option under subsection A of this section, the owner shall submit a plan and schedule to the board for approval. If the owner fails to submit either his choice of an option as set out in subsection A or a plan and schedule to implement that option, the board shall require the owner, on a schedule set out by the board, to comply with subdivision A 3 of this section. All options shall be completed within a reasonable time: 30 days for subdivision A 1 of this section, 60 days for subdivision A 2 of this section, and 18 months for subdivision A 3 of this section. None of the times specified in this subsection include time needed for board approval. Reasonable extensions may be granted when deemed appropriate by the board.

C. Failure of the owner to accomplish any of the alternatives set forth in subsection A of this section in a manner acceptable to the board shall constitute a violation of 9 VAC 5-60-170.

### **9 VAC 5-60-220. Public participation.**

A. If the owner of an affected facility chooses the demonstration under 9 VAC 5-60-210 A 2, the provisions of this section shall apply.

1. Prior to the decision of the board on the acceptability of the demonstration, the demonstration shall be subject to a public comment period of at least 30 days.

2. The board shall notify the public of the opportunity for public comment on the information available for public inspection under the provisions of subdivision 3 of this subsection. The notification shall be made by advertisement in one newspaper of general circulation in

the affected air quality control region and, if available, one newspaper that circulates in the area where the affected facility is located. A copy of the notice shall be sent to the governing body of the locality where the affected facility is located and to the governing bodies of the localities where ambient air quality impacts from the affected facility exceed the significant ambient air concentration guidelines in 9 VAC 5-60-180. The notice shall include a brief description of the pollutants of concern and their possible health impacts, the demonstration, a statement listing the requirements in subdivisions 4 and 5 of this subsection, and the name and telephone number of a department staff person from whom detailed information on the demonstration and the pollutants may be obtained.

3. Information relevant to the demonstration, including (i) information produced by the owner showing that the emissions from the affected facility do not endanger human health and (ii) the preliminary review, analysis and tentative determination of the board, shall be available for public inspection during the entire comment period in at least one location in the affected air quality control region.

4. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to consider the source's demonstration under 9 VAC 5-60-210 A 2. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

a. The name, mailing address and telephone number of the requester;

b. The names and addresses of all persons for whom the requester is acting as a representative;

c. The reason why a hearing is requested; and

d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including an explanation of how and to what extent such interest would be directly and adversely affected by the demonstration in question.

5. The board shall review all timely requests for public hearing filed during the 30 days following the appearance of the public comment notice in the newspaper. Within 30 calendar days following the expiration of the public comment period the board shall grant a public hearing if it finds that one or both of the following apply:

a. There is significant public interest in the demonstration in question.

b. There are substantial, disputed issues relevant to the demonstration in question.

6. The board shall notify by mail the owner making the demonstration and each requester, at his last known

---

# Proposed Regulations

---

address, of the decision to convene or deny a public hearing. The notice shall contain a description of the procedures for the public hearing and for the final determination under this section.

7. If the board decides to hold a public hearing, the hearing shall be scheduled at a time between 30 and 60 days after mailing the notification required by subdivision 6 of this subsection. The public hearing shall be held in the affected air quality control region.

8. The procedures for notification to the public and availability of information used for the public comment period and provided in subdivisions 2 and 3 of this subsection shall also be followed for the public hearing.

B. In adopting amendments to this chapter to be effective (effective date), the board replaced the term "toxic" with the term "hazardous." In the interest of economy and efficiency, the board did not make the corresponding change at each place the term "toxic" occurs throughout the Regulations for the Control and Abatement of Air Pollution. However, it is the intent of the board to make that change in other parts of the regulations as the opportunity presents itself. Until such changes are made the term "toxic" shall be construed to mean "hazardous" throughout the Regulations for the Control and Abatement of Air Pollution.

## Article 4.

### Emission Standards for Hazardous Pollutants from New and Modified Sources (Rule 6-4).

#### **9 VAC 5-60-250. Applicability and designation of affected facility.**

A. Regardless of the provisions of 9 VAC 5-50-10 and, except as provided in subsections C, D, and E of this section, the affected facility to which the provisions of this article apply is each stationary source that emits or may emit any hazardous pollutant and that either (i) is subject to the new source review program or (ii) has a permit containing emission limits and other requirements pursuant to this article.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. This article shall not apply to the following:

1. A stationary source which has a potential to emit a hazardous pollutant with a TLV<sup>®</sup> at a level equal to or less than the exemption emission rate calculated using the exemption formulas set forth below for the applicable TLV<sup>®</sup>. If more than one exemption formula applies to a hazardous pollutant emitted by a source, the potential to emit for that pollutant shall be equal to or less than both applicable exemption formulas in order for the source to be exempted for that pollutant. The exemption formulas apply on an individual basis to each hazardous pollutant for which a TLV<sup>®</sup> has been established.

a. For hazardous pollutants with a TLV-C<sup>®</sup>, the following exemption formula applies, provided the

potential to emit does not exceed 22.8 pounds per hour:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-C}^{\text{®}} (\text{mg/m}^3) \times 0.033$$

b. For hazardous pollutants with both a TLV-STEL<sup>®</sup> and a TLV-TWA<sup>®</sup>, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-STEL}^{\text{®}} (\text{mg/m}^3) \times 0.033$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA}^{\text{®}} (\text{mg/m}^3) \times 0.145$$

c. For hazardous pollutants with only a TLV-TWA<sup>®</sup>, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-TWA}^{\text{®}} (\text{mg/m}^3) \times 0.066$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA}^{\text{®}} (\text{mg/m}^3) \times 0.145$$

2. A stationary source which has a potential to emit a hazardous pollutant without a TLV<sup>®</sup> if, upon request, the board determines to exempt that hazardous pollutant from the provisions of this article using available health effects information. The exemption determination shall be made by the board using information submitted by the owner in accordance with 9 VAC 5-60-290.

3. A stationary source subject to an emission standard or other requirement set forth in Article 2 (9 VAC 5-60-10 et seq.) of this part. If less than all of the stationary source is regulated by such an emission standard or other requirement, then only that part of the stationary source regulated by the emission standard or other requirement is exempted.

4. A stationary source in a source category which is regulated by an emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act and subject to the source category schedule for standards. If less than all of the stationary source is in a source category which is regulated by such an emission standard or other requirement, then only that part of the stationary source in the source category regulated by the emission standard or other requirement is exempted.

5. A stationary source in a source category for which the U.S. Environmental Protection Agency has made a formal determination that no regulations or other requirements need to be established pursuant to § 112 of the federal Clean Air Act and has published the determination in the Federal Register at 63 FR 7155, February 12, 1998.

6. A boiler, incinerator, or industrial furnace as defined in 9 VAC 20-60-10 and subject to 9 VAC 20 Chapter 60 (9

VAC 20-60-10 et seq.), provided it (i) meets the 99.99% destruction and removal efficiency standard required by 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.) and (ii) has received a permit or has qualified for interim status in accordance with 9 VAC 20-60-10 et seq. The board shall be furnished with an acceptable certification that such boiler, incinerator, or industrial furnace is in compliance with the standards of its permit or interim status and applicable provision of 9 VAC 20-60-10 et seq. Facilities which burn hazardous waste for energy recovery are not exempted from this article.

7. A generator or boiler which burns only natural gas, #2 fuel oil, #4 fuel oil, #6 fuel oil, propane, or kerosene.

D. Provisions of this article do not apply to any consumer product used in the same manner as normal consumer use, provided the use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers. This may include, but not be limited to, personal use items, janitorial cleaning supplies, and facility grounds maintenance products, such as fertilizers, pesticides, and paints for structural components.

E. With regard to the application of pesticides, the provisions of this article shall apply only to the air quality impact from emissions from application inside the premises of the following affected facilities:

1. Industrial and manufacturing operations, including warehouse and storage operations related to the operation of these facilities.
2. Warehouse and storage operations at transportation terminals.

F. No provision of this article shall limit the power of the board to apply the provisions of this article to any affected facility in order to prevent or remedy a condition that may cause or contribute to the endangerment of human health.

## 9 VAC 5-60-260. Definitions.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each toxic pollutant which the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such

pollutant. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination of them, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Hazardous pollutant" means any air pollutant listed in § 112(b) of the Act, as amended by 40 CFR 63.60, or any other air pollutant which the board determines, through adoption of regulation, to present a significant risk to public health. This term excludes asbestos, fine mineral fibers, radionuclides, and any glycol ether that does not have a TLV®.

"Pesticide" means the same as the definition given in § 3.1-249.27 of the Virginia Pesticide Control Act.

"Potential to emit" means an emission rate based on the maximum capacity of a stationary source to emit a hazardous pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a hazardous pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state or federally enforceable.

"Significant ambient air concentration" means the concentration of a hazardous pollutant in the ambient air that if exceeded may have the potential to injure human health.

"Source category schedule for standards" means the schedule for promulgating MACT standards issued pursuant to § 112(e) of the Act and published in the Federal Register at 63 FR 7155, February 12, 1998.

"Threshold limit value (TLV®)" means the maximum airborne concentration of a substance to which the ACGIH believes that nearly all workers may be repeatedly exposed day after day without adverse effects and which is published in the American Conference of Governmental Industrial Hygienists (ACGIH) Handbook (see 9 VAC 5-20-21). The TLV® is divided into three categories: TLV-Time-Weighted Average® (TLV-TWA®), TLV-Short-Term Exposure Limit® (TLV-STEL®), and TLV-Ceiling® (TLV-C®).

"TLV-TWA®" means the time-weighted average concentration for a normal eight-hour work day and a 40-hour work week, to which nearly all workers may be repeatedly exposed, day after day, without adverse effect (as defined in the ACGIH Handbook).

---

# Proposed Regulations

---

"TLV-STEL<sup>®</sup>" means the concentration to which workers may be exposed continuously for a short period of time without suffering from irritation, chronic or irreversible tissue damage, or narcosis of sufficient degree to increase the likelihood of accidental injury, impair self-rescue or materially reduce work efficiency. The TLV-STEL<sup>®</sup> supplements the TLV-TWA<sup>®</sup> where there are recognized acute effects from a substance whose toxic effects are primarily of a chronic nature.

"TLV-C<sup>®</sup>" means the concentration that should not be exceeded during any part of the working exposure.

## **9 VAC 5-60-270. Standard for hazardous pollutants.**

If a stationary source is not exempt under 9 VAC 5-60-250 C, D, or E, then the following standards shall be met:

1. Regardless of any provision of any other regulation of the board, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions of hazardous pollutants in such quantities as to cause, or contribute to, any significant ambient air concentration that may cause, or contribute to, the endangerment of human health.

2. The owner of new or modified sources shall employ best available control technology as may be approved by the board for the control of hazardous pollutants.

## **9 VAC 5-60-280. Significant ambient air concentration guidelines.**

For the purpose of case-by-case consideration between the board and the owner, significant ambient air concentrations are any of the following:

1. For pollutants with a TLV-C<sup>®</sup>, any one-hour concentration of a hazardous pollutant in excess of 1/40 of the TLV-C<sup>®</sup>.

2. For pollutants with both a TLV-STEL<sup>®</sup> and a TLV-TWA<sup>®</sup>, any one-hour concentration of a hazardous pollutant in excess of 1/40 of the TLV-STEL<sup>®</sup> and any annual concentration of a hazardous pollutant in excess of 1/500 of the TLV-TWA<sup>®</sup>.

3. For pollutants with only a TLV-TWA<sup>®</sup>, any annual concentration of a hazardous pollutant in excess of 1/500 of the TLV-TWA<sup>®</sup> and any one-hour concentration of a hazardous pollutant in excess of 1/20 of the TLV-TWA<sup>®</sup>.

4. Any concentration resulting from the emissions of a hazardous pollutant from an affected facility which the owner knows, or reasonably should be expected to know, may cause, or contribute to, the endangerment of human health.

5. Any concentration, other than those specified in subdivision 1, 2, 3, or 4 of this section, including those resulting from hazardous pollutants not having a TLV<sup>®</sup>, which the board determines to cause, to have the potential to cause, or to contribute to, the endangerment

of human health. This determination will be made by considering information by recognized authorities on the specific health effects of such hazardous pollutants.

## **9 VAC 5-60-290. Submittal of information.**

The owner of an affected facility shall upon the request of the board submit such information as may be needed to determine the applicability of, or compliance with, this article. The board may determine the schedule, manner and form for the submittal of the information.

## **9 VAC 5-60-300. Determination of ambient air concentrations.**

A. The owner shall, upon the request of the board, provide an assessment as to whether his facility emits, or may emit, any hazardous pollutant in such quantities as to cause, or contribute to, any concentration exceeding, or which may exceed, any significant ambient air concentration.

B. Ambient air concentrations shall be determined using air quality analysis techniques (modeling) based on emission rates equal to the facility's potential to emit for the applicable averaging time or any other method acceptable to the board.

## **9 VAC 5-60-310. Compliance.**

If the board has reason to believe that the emissions from an affected facility are, or may be, discharged in such quantities so as to cause, or contribute to, any ambient air concentration that (i) is in excess of any significant ambient air concentration specified in 9 VAC 5-60-280 or (ii) has the potential to cause or contribute to substantial and imminent endangerment of human health, a permit shall not be issued until the owner complies with one or more of the following:

1. Demonstrate that the emissions from the facility do not and will not cause or contribute to any of the significant ambient air concentrations in 9 VAC 5-60-280 being exceeded;

2. Demonstrate that the applicable significant ambient air concentration in 9 VAC 5-60-280 is inappropriate for the hazardous air pollutant in question by showing that the emissions from the affected facility produce no endangerment of human health; or

3. Control the emissions from the affected facility to a level resulting in ambient air concentrations that are below the significant ambient air concentrations or resulting in such other ambient air concentrations acceptable to the board.

## **9 VAC 5-60-320. Public participation.**

A. If the owner of an affected facility chooses the demonstration under subdivision 2 of 9 VAC 5-60-310, the provisions of this section shall apply.

1. Prior to the decision of the board on the acceptability of the demonstration, the demonstration shall be subject to a public comment period of at least 30 days.

2. The board shall notify the public of the opportunity for public comment on the information available for public inspection under the provisions of subdivision 3 of this section. The notification shall be made by advertisement in one newspaper of general circulation in the affected air quality control region and, if available, one newspaper that circulates in the area where the affected facility is located. A copy of the notice shall be sent to the governing body of the locality where the affected facility is located and to the governing bodies of the localities where ambient air quality impacts from the affected facility exceed the significant ambient air concentration guidelines in 9 VAC 5-60-280. The notice shall include a brief description of the pollutants of concern and their possible health impacts, the demonstration, a statement listing the requirements in subdivisions 4 and 5 of this section, and the name and telephone number of a department staff person from whom detailed information on the demonstration and the pollutants may be obtained.

3. Information relevant to the demonstration, including (i) information produced by the owner showing that the emissions from the affected facility do not endanger human health and (ii) the preliminary review, analysis and tentative determination of the board, shall be available for public inspection during the entire comment period in at least one location in the affected air quality control region.

4. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to consider the source's demonstration under subdivision 2 of 9 VAC 5-60-310. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

- a. The name, mailing address and telephone number of the requester;
- b. The names and addresses of all persons for whom the requester is acting as a representative;
- c. The reason why a hearing is requested; and
- d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including an explanation of how and to what extent such interest would be directly and adversely affected by the demonstration in question.

5. The board shall review all timely requests for public hearing filed during the 30 days following the appearance of the public comment notice in the newspaper. Within 30 calendar days following the expiration of the public comment period the board shall grant a public hearing if it finds that one or both of the following apply:

- a. There is significant public interest in the demonstration in question.

b. There are substantial, disputed issues relevant to the demonstration in question.

6. The board shall notify by mail the owner making the demonstration and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain a description of the procedures for the public hearing and for the final determination under this section.

7. If the board determines to hold a public hearing, the hearing shall be scheduled at a time between 30 and 60 days after mailing the notification required by subdivision 6 of this section. The public hearing shall be held in the affected air quality control region.

8. The procedures for notification to the public and availability of information used for the public comment period and provided in subdivisions 2 and 3 of this subsection shall also be followed for the public hearing.

B. In adopting amendments to this article to be effective (effective date), the board replaced the term "toxic" with the term "hazardous." In the interest of economy and efficiency, the board did not make the corresponding change at each place the term "toxic" occurs throughout the Regulations for the Control and Abatement of Air Pollution. However, it is the intent of the board to make that change in other parts of the regulations as the opportunity presents itself. Until such changes are made the term "toxic" shall be construed to mean "hazardous" in the Regulations for the Control and Abatement of Air Pollution.

VA.R. Doc. No. R97-534; Filed November 17, 1998, 10:08 a.m.

\*\*\*\*\*

**Title of Regulation: Regulations for the Control and Abatement of Air Pollution (Rev. J97). 9 VAC 5-80-10 et seq. Permits for Stationary Sources (adding 9 VAC 5-80-1400 through 9 VAC 5-80-1590).**

**Statutory Authority:** § 10.1-1308 of the Code of Virginia.

**Public Hearing Date:** January 20, 1999 - 9 a.m.

Public comments may be submitted until February 5, 1999.

(See Calendar of Events section for additional information)

**Basis:** Section 10.1-1308 of the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

**Purpose:** The purpose of the regulation is to control emissions of hazardous air pollutants (HAPs) from major sources and to protect public health and welfare by establishing the procedural and legal basis for the issuance of a new source permit for proposed new or reconstructed facilities that will (i) enable the agency to conduct a preconstruction review in order to determine compliance with

---

# Proposed Regulations

---

applicable control technology and other standards and (ii) provide a state and federally enforceable mechanism to implement permit program requirements. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending on the results of the preconstruction review. The regulation is being proposed to meet the requirements of § 112(g) of the federal Clean Air Act, and 40 CFR Part 63 Subpart B of federal regulations.

Substance: The major provisions of the proposal are summarized below:

1. The regulation was structured to encompass permitting for all potential major sources of HAPs in addition to those affected by § 112(g). Thus, a major source for the purposes of this rule may be a § 112(g) source, a § 112(i) source, or a 40 CFR Part 61 source. Most of the permits issued under this rule will be § 112(g) permits requiring a MACT determination.
2. Unlike other new source permitting regulations, this regulation applies only to constructed or reconstructed sources. It does not apply to modifications or relocations.
3. In order to be consistent with the board's existing permit regulations, the regulation was modeled on Chapter 80 rules and includes general permitting requirements such as public participation requirements.
4. The provisions of the rule concerning determination of case-by-case MACT apply only to § 112(g) sources.
5. The following general principles govern MACT determinations:
  - a. The MACT emission limitation may not be less stringent than the emission control achieved in practice by the best controlled similar source.
  - b. The MACT emission limitation must achieve the maximum degree of reduction in emissions of HAPs which can be achieved by using control technologies that can be identified from existing available information, taking into consideration costs and any non-air quality health and environmental impacts and energy requirements.
  - c. The applicant may recommend a specific design, equipment, work practice, or operational standard, or a combination thereof.
  - d. If EPA has either proposed a relevant emission standard or developed a presumptive MACT determination for the relevant source category, then the MACT requirements must consider such proposed or presumptive emission limitations and requirements.
6. A MACT determination is not necessary if the source can demonstrate to the board that the HAPs will be controlled by previously installed emission control equipment that represents best available control technology (BACT), lowest achievable emission rate (LAER), or the level of control currently achieved by other well-controlled similar sources.

7. Information to be included in the permit application is specified, including information needed by the board to determine MACT or other applicable emission limitations.

8. Compliance determination and verification by performance testing are specified.

9. Requirements for sources subject to a subsequently promulgated MACT standard or MACT requirements are explained.

10. Administrative procedures such as permit invalidation, rescission, revocation and enforcement; compliance with local zoning requirements; transfer of and changes to permits; administrative and minor permit amendments; significant amendment procedures; and reopening for cause are included.

Issues: The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the department are discussed below.

1. Public: The general public will benefit from this rule because it will control emissions of hazardous air pollutants, which are a source of serious health and welfare effects. The advantages to reducing HAPs include the reduction of disease incidence and damage to property. A limited segment of the public may experience an economic disadvantage where an affected source must install pollution control devices and thereby reduce profits or increase costs to customers; however, such controls are implemented based on economic feasibility, thus limiting the disadvantage.

Implementation of the regulation is also an advantage to industry in general, as the regulation is intended to act as an interim program for sources for which EPA has missed a regulatory deadline; such sources will benefit by being able to meet EPA requirements proactively rather than reactively.

2. Department: The department will experience benefits in the form of increased source information, which is useful for short- and long-term air quality planning. Some additional resources in terms of personnel and effort involved in permit review, preparation, and inspection may be expended, which would be a disadvantage.

### Department of Planning and Budget's Economic Impact

Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The

analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. This proposal implements new source review of major sources of hazardous air pollutants (HAPs) as required by the federal Clean Air Act.

Estimated economic impact. The Environmental Protection Agency (EPA) is required, under the CAA, to regulate HAPs in two stages. First, EPA must establish maximum achievable control technology standard (MACTs) for each of the 188 substances on the federal § 112 list. Some facilities may be exempted by EPA if the agency determines that those facilities present a minimal risk from HAP exposure. The MACT standard for existing sources is determined by the average performance the top 12% of existing sources. MACT for new sources is based on the best performing similar source currently in use. Thus, sources under new source review, must satisfy a more stringent technology standard than existing sources are required to meet. This standard is not sensitive to the level of risk posed by emissions from a source, only by the emissions technology in use at the time the determination is made by EPA. The first stage emission standards are based on the amount of HAPs released, not their concentration in the air.

The second phase of federal HAP regulation requires EPA to review each HAP emission standard for risk of health effects from exposure to HAPs. If the risk implicit in the MACT standard is greater than the level deemed acceptable in the CAA, then additional emission controls may be imposed.

These proposed rules provide that, if a federal MACT standard is set, then that standard will apply to the new facility. For sources not covered by a MACT standard, DEQ will establish a MACT based on the best performing similar facility. Since no federal MACT is established in this case, then, according to DEQ, the state ambient concentration standards will still apply. Thus, the establishment of a state MACT for a new facility not covered by a federal MACT should not result in any exposure levels above the state standard. If the facility is covered by a federal MACT, then the emission standards do not apply and ambient HAP concentrations could conceivably rise above that which would have been allowed were there no federal MACT standard in place.

DEQ staff have indicated that the circumstances where the existence of a federal MACT standard would lead to greater HAP emissions should be unusual, even rare.

The implementation of this proposal will probably decrease risk from exposure to HAPs due to the more stringent definition of MACT for new sources. It is not possible at this time to assess the change in the economic value of HAP exposure risk resulting from this regulatory change although it is expected that the total exposure risk will fall.

Compliance costs will be somewhat greater for new sources than for old sources. However, there is no good information on what these increases in compliance costs will be.

Given the lack of reliable scientific data on exposure risks and the lack of information on compliance costs, it is not possible, at this time, to estimate the magnitude of the net economic impact of this regulatory change on Virginia, although, based on comments of DEQ staff, it appears more likely than not that these changes will lead to significant cost savings with little or no net increase in risk to the public.

Businesses and entities affected. Because this regulation applies to future permit applications, it is not known how many entities will be subject to these rules. DEQ estimates that, in any given year, there may be from zero to ten applicants covered by these provisions.

Localities particularly affected. No localities in Virginia are expected to share disproportionately in the impact of this regulation.

Projected impact on employment. Since these rules apply to all states, they will probably not have any significant impact on employment in the state.

Effects on the use and value of private property. The sources covered by these rules may see some increase in compliance costs, but these should not be great enough to have a significant impact on property values.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget prepared an economic impact analysis for the proposal as required by § 9-6.14:7.1 G of the Administrative Process Act. The Department of Environmental Quality takes no issue with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The regulation concerns new source review for sources of hazardous air pollutants (HAPs) and applies to the construction or reconstruction of a major source of HAPs. Electric utility steam generating units and research and development activities are specifically exempted. The regulation encompasses permitting for all potential major sources of HAPs in addition to those affected by § 112(g) of the federal Clean Air Act. Thus, a major source for this rule may be a § 112(g) source, a § 112(i) source, or a 40 CFR Part 61 source.*

*The regulation addresses the following subjects: applicability; general requirements; permit application requirements; application information required; action on permit applications; public participation; standards and conditions for granting permits; application review and analysis; compliance determination and verification by performance testing; permit invalidation, rescission, revocation and enforcement; existence of permit no defense; compliance with local zoning requirements; transfer of and changes to permits; administrative and minor permit amendments; significant amendment procedures; reopening for cause; requirements for constructed or reconstructed major sources subject to a*

---

# Proposed Regulations

---

subsequently promulgated MACT standard or MACT requirements.

## PART II. PERMIT PROCEDURES.

### Article 7.

#### Permits for New and Reconstructed Major Sources of Hazardous Air Pollutants.

#### **9 VAC 5-80-1400. Applicability.**

A. The provisions of this article apply to any owner or other person who constructs or reconstructs a major source of hazardous air pollutants.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

D. No provision of this article shall be construed as exempting any stationary source, emissions unit, or affected source from the provisions of this chapter.

E. Unless specified otherwise, the provisions of this article are applicable to various sources as follows:

1. Provisions referring to "sources," or "new or reconstructed sources, or both" or "stationary sources" are applicable to the construction or reconstruction of all major sources of hazardous air pollutants.

2. Any emissions units, stationary sources, or air pollutants not subject to the provisions of this article may be subject to other provisions of the new source review program.

F. Unless a MACT standard is promulgated, the provisions of this article do not apply to (i) electric utility steam generating units, or (ii) research and development activities.

#### **9 VAC 5-80-1410. Definitions.**

A. For the purpose of this article and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this section, all terms not defined here shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Affected source" means the stationary source, the group of stationary sources, or the portion of a stationary source which is not regulated by a MACT standard.

"Affected states" are all states:

1. Whose air quality may be affected and that are contiguous to the Commonwealth; or

2. Whose air quality may be affected and that are within 50 miles of the major source for which a case-by-case MACT determination is made in accordance with this article.

"Available information" means, for purposes of identifying control technology options for the affected source, information contained in the following information sources as of the date of approval of the permit:

1. A relevant proposed regulation, including all supporting information.

2. Background information documents for a draft or proposed regulation.

3. Data and information available from the Control Technology Center developed pursuant to § 113 of the federal Clean Air Act.

4. Data and information contained in the Aerometric Information Retrieval System including information in the MACT database.

5. Any additional information that can be expeditiously provided by the administrator.

6. For the purpose of determinations by the board, any additional information provided by the applicant or others, and any additional information considered available by the board.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

"Begin actual reconstruction" means initiation of permanent physical on-site reconstruction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

"Best controlled similar source" means an affected source that (i) has comparable emissions and is structurally similar in design and capacity to other affected sources such that the affected sources could be controlled using the same control technology, and (ii) uses a control technology that achieves the lowest emission rate among all other similar sources in the United States.

"Case-by-case MACT determination" means a determination by the board, pursuant to the requirements of this article, which establishes a MACT emission limitation, MACT work practice standard, or other MACT requirements for an affected source subject to this article.

"Commenced" means, with respect to construction or reconstruction of a stationary source, that the owner has undertaken a continuous program of construction or reconstruction or that an owner has entered into a



contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

"Complete application" means that the application contains all the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construct a major source" means:

1. To fabricate, erect, or install a major source at any undeveloped site, or
2. To fabricate, erect, or install a major process or production unit at any site.

"Construction" means:

1. The fabrication, erection, or installation of a major source at any undeveloped site, or
2. The fabrication, erection, or installation of a major process or production unit at any site.

"Control technology" means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including, but not limited to, measures that:

1. Reduce the quantity of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;
2. Enclose systems or processes to eliminate emissions;
3. Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;
4. Are design, equipment, work practice, or operational standards (including requirements for operator training or certification); or
5. Are a combination of subdivisions 1 through 4 of this definition.

"Electric utility steam generating unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

"Emergency" means, in the context of 9 VAC 5-80-1580 C, a situation where immediate action on the part of a source is needed and where the timing of the action makes it impractical to meet the requirements of this article, such as sudden loss of power, fires, earthquakes, floods or similar occurrences.

"Emission standard" means an emission standard, limitation, prohibition, or other regulation promulgated in 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.).

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any hazardous air pollutant.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

1. Are permanent.
2. Contain a legal obligation for the owner to adhere to the terms and conditions.
3. Do not allow a relaxation of a requirement of the state implementation plan.
4. Are technically accurate and quantifiable.
5. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the emission standard) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with 9 VAC 5-80-1490 and other regulations of the board.
6. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"EPA" means the United States Environmental Protection Agency.

"Federal operating permit" means a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this part.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include but are not limited to the following:

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.
4. Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP).

---

## Proposed Regulations

---

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.

6. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

7. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

8. Individual consent agreements that EPA has legal authority to create.

"Fixed capital cost" means the capital needed to provide all the depreciable components of an existing source.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act as amended by 40 CFR 63.60.

"MACT standard" means (i) an emission standard; (ii) an alternative emission standard; or (iii) an alternative emission limitation promulgated in 40 CFR Part 63 that applies to the stationary source, the group of stationary sources, or the portion of a stationary source regulated by such standard or limitation. A MACT standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique (including prohibition of emissions) that the administrator establishes for new or existing sources to which such standard or limitation applies. Every MACT standard established pursuant to § 112 of the federal Clean Air Act includes subpart A of 40 CFR Part 63 and all applicable appendices of 40 CFR Part 63 or of other parts of Title 40 of the Code of Federal Regulations that are referenced in that standard.

"Major process or production unit" means any process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

"Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the board establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this definition.

"Maximum achievable control technology (MACT) emission limitation" means the emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions that the board, taking into consideration the cost of achieving such emission reduction and any nonair quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) and 173 (relating to permits in nonattainment areas) and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"Performance test" means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a MACT emission standard as specified in the performance test section of the MACT standard.

"Permit" means a document issued pursuant to this article containing all federally enforceable conditions necessary to enforce the application and operation of any maximum achievable control technology or other control technologies such that the MACT emission limitation is met.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state or federally enforceable. Fugitive emissions count in determining the potential to emit of a stationary source. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Presumptive MACT" means a preliminary MACT determination made by EPA, in consultation with states and other stakeholders, after data on a source category's emissions and controls have been collected and analyzed, but before the MACT standard has been promulgated.

"Process or production unit" means any collection of structures or equipment or both, that processes, assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

"Public comment period" means a time during which the public shall have the opportunity to comment on the permit application information (exclusive of confidential information), the preliminary review and analysis, and the preliminary decision of the board regarding the permit application.

"Reconstruct a major source" means to replace components at an existing major process or production unit whenever:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable new process or production unit; and
2. It is technically and economically feasible for the reconstructed major source to meet the applicable standard for new sources established in a permit.

"Reconstruction" means the replacement of components at an existing major process or production unit whenever:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable new process or production unit; and
2. It is technologically and economically feasible for the reconstructed process or production unit to meet the applicable standard for new sources established in a permit.

"Research and development activities" means activities conducted at a research or laboratory facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a de minimis manner.

"Secondary emissions" means emissions which occur or would occur as a result of the construction, reconstruction, or operation of a stationary source, but do not come from the stationary source itself. For the purpose of this article, secondary emissions must be specific, well-defined, and quantifiable; and must impact upon the same general areas as the stationary source which causes the secondary emissions. Secondary emissions include emissions from any off site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Similar source" means a stationary source or process that has comparable emissions and is structurally similar in design and capacity to a constructed or reconstructed major source such that the source could be controlled using the same control technology.

"State enforceable" means all limitations and conditions which are enforceable as a practical matter, including those requirements developed pursuant to 9 VAC 5-20-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant.

"Uncontrolled emission rate" means the emission rate from a source when operating at maximum capacity without air pollution control equipment. Air pollution control equipment is equipment that enables the source to conform to applicable air pollution control laws and regulations and that is not vital to its operation.

## **9 VAC 5-80-1420. General.**

A. No owner or other person shall begin actual construction or reconstruction of any major source of hazardous air pollutants without first obtaining from the board a permit to construct and operate or to reconstruct and operate such source.

B. The board may combine the requirements of and the permits for emissions units within a stationary source subject to the new source review program into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by any provision of the new source review program be combined into one application.

C. All provisions contained in the permit shall be federally enforceable upon the effective date of issuance of the permit.

D. Nothing in the regulations of the board shall be construed to prevent the board from granting permits for programs of construction or reconstruction in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

E. For permits issued to affected sources, the MACT emission limitation and requirements established shall be effective as required by 9 VAC 5-80-1450 I, consistent with the principles established in subsection F of this section, and supported by the information listed in 9 VAC 5-80-1440. The owner shall comply with the requirements in 9 VAC 5-80-1450 J and 9 VAC 5-80-1490, and with all applicable requirements in Subpart A of 40 CFR Part 63.

F. The following general principles shall govern preparation by the owner of each permit application or other application for affected sources requiring a case-by-case MACT determination concerning construction or reconstruction of a major source, and all subsequent review of and actions taken concerning such an application by the board:

1. The MACT emission limitation or MACT requirements recommended by the applicant and approved by the board shall not be less stringent than the emission control which is achieved in practice by the best controlled similar source, as determined by the board.

2. Based upon available information, the MACT emission limitation and control technology (including any requirements under subdivision 3 of this subsection) recommended by the applicant and approved by the board shall achieve the maximum degree of reduction in emissions of hazardous air pollutants which can be

---

# Proposed Regulations

---

achieved by utilizing those control technologies that can be identified from the available information, taking into consideration the costs of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements associated with the emission reduction.

3. The applicant may recommend a specific design, equipment, work practice, or operational standard, or a combination thereof, and the board may approve such a standard if the board specifically determines that it is not feasible to prescribe or enforce an emission limitation. The phrase "not feasible" means any situation in which the board determines that:

a. A hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with the Regulations for the Control and Abatement of Air Pollution.

b. The application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

4. If the administrator has either proposed a MACT emission standard or made a presumptive MACT determination for the source category which includes the constructed or reconstructed major source, the board shall consider the MACT emission limitations and requirements of the proposed standard or presumptive MACT determination in determining the MACT emission limitation applicable to the constructed or reconstructed major source.

G. For sources subject to this article, the provisions of 40 CFR 61.06, 40 CFR 61.07 and 40 CFR 61.08 shall be implemented through this article. Permits issued under this article shall be the administrative mechanism for issuing approvals of construction under the provisions of 40 CFR Part 61. In cases where there are differences between the provisions of this article and the provisions of 40 CFR Part 61, the more restrictive provisions shall apply.

H. For sources subject to this article, the provisions of 40 CFR 63.5 shall be implemented through this article. Permits issued under this article shall be the administrative mechanism for issuing approvals of construction or reconstruction under 40 CFR 63.5. In cases where there are differences between the provisions of this article and the provisions of 40 CFR 63.5, the more restrictive provisions shall apply.

I. The provisions of subsection F of this section shall not apply to new, major process or production units, provided the process or production unit satisfies the criteria in subdivisions 1 through 6 of this subsection:

1. All hazardous air pollutants emitted by the process or production unit that would otherwise be controlled under the requirements of this article will be controlled by emission control equipment which was previously

installed at the same site as the process or production unit;

2. a. The board has determined within a period of five years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT) or lowest achievable emission rate (LAER), determined in accordance with 9 VAC 5-50-280 (BACT) or 9 VAC 5-50-270 (LAER), for the category of pollutants which includes those hazardous air pollutants to be emitted by the process or production unit; or

b. The board determines that the control of hazardous air pollutant emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT or LAER determination);

3. The board determines that the percent control efficiency for emissions of hazardous air pollutants from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

4. The board has provided notice and an opportunity for public comment concerning its determination that criteria in subdivisions 1 through 3 of this subsection apply and concerning the continued adequacy of any prior BACT or LAER determination;

5. If any commenter has asserted that a prior BACT or LAER determination is no longer adequate, the board has determined that the level of control required by that prior determination remains adequate; and

6. Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the board are predicated will be construed by the board as applicable requirements under the federal operating permit program and either have been incorporated into any existing federal operating permit for the affected source or will be incorporated into such permit upon issuance.

## **9 VAC 5-80-1430. Applications.**

A. A single application is required identifying at a minimum each emissions unit subject to the provisions of this article. The application shall be submitted according to procedures approved by the board. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted.

B. A separate application is required for each major source.

C. For projects with phased development, a single application should be submitted covering the entire project.

D. Any application form, report, or compliance certification submitted to the board shall comply with the provisions of 9 VAC 5-20-230.

## **9 VAC 5-80-1440. Application information required.**

A. The board shall furnish application forms to applicants. Completion of these forms serves as initial registration of new and reconstructed sources.

B. Each application for a permit shall include such information as may be required by the board to determine compliance with the emission standards which are applicable. The information required shall include, but is not limited to, the following:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.
2. A brief description of the major source, including a description of the source's processes and products (by Standard Industrial Classification Code), to be constructed or reconstructed and identification of any listed source category or categories in which it is included.
3. All emissions of hazardous air pollutants.
  - a. A permit application shall describe all emissions of hazardous air pollutants emitted from any emissions unit to be covered by the permit.
  - b. Emissions shall be calculated as required in the permit application form or instructions.
  - c. Fugitive emissions shall be included in the permit application to the extent quantifiable.
4. The hazardous air pollutants emitted by the constructed or reconstructed major source and the estimated emission rate for each such hazardous air pollutant. Emissions rates shall be expressed in tons per year and in such other terms as are necessary to establish compliance consistent with the applicable standard reference test method.
5. The maximum and expected utilization of capacity of the constructed or reconstructed major source and the associated uncontrolled emission rates for that source.
6. The controlled emissions for the constructed or reconstructed major source in tons per year at expected and maximum utilization of capacity.
7. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.
8. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all hazardous air pollutants at the source.
9. Calculations on which the information in subdivisions 3 through 8 of this subsection is based. Any calculations

shall include sufficient detail to permit assessment of the validity of such calculations.

10. Any federally enforceable emission limitations applicable to the constructed or reconstructed major source.

11. The expected commencement date for the construction or reconstruction of the major source.

12. The expected completion date for construction or reconstruction of the major source.

13. The anticipated date of startup for the constructed or reconstructed major source.

14. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the stationary source, affected source, or emissions unit.

C. In each instance where an affected source would require additional control technology or a change in control technology to be in compliance with the MACT emission limitation established under this article, the application shall contain the following information:

1. Information described in subsection B of this section.
2. The control technology selected by the owner and compliance monitoring devices or activities that, if properly operated and maintained, will meet the MACT emission limitation or standard as determined according to the principles set forth in 9 VAC 5-80-1420 F.
3. A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in 9 VAC 5-80-1420 F.
4. The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer's name, address, telephone number, and relevant specifications and drawings, if requested by the board).
5. Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health and environmental impacts or energy requirements for the selected control technology.
6. Any other relevant information required pursuant to Subpart A of 40 CFR Part 63.

D. In each instance where the owner contends that an affected source will be in compliance, upon startup, with the MACT emission limitation established under this article without a change in control technology, the application shall contain:

1. Information described in subsections B and C of this section; and

---

# Proposed Regulations

---

2. *Documentation of the control technology in place.*

E. *The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.*

**9 VAC 5-80-1450. Action on permit application.**

A. *Within 45 days after receipt of an application, the board shall notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include: (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board shall notify the applicant of any deficiencies in such information. The date of receipt of a complete application for processing under subsection B of this section shall be the date on which the board received all required information and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met.*

B. *Processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required. Processing steps may include, but not be limited to:*

1. *Completion of the application review and analysis in accordance with 9 VAC 5-80-1480 and the preliminary decision of the board;*
2. *Completion of the emission limitation review (if any);*
3. *Completion of the public participation requirements in 9 VAC 5-80-1460; and*
4. *Completion of the final review and analysis and the final decision of the board.*

C. *At its discretion, the board may undertake the following steps prior to commencing with the public participation requirements of 9 VAC 5-80-1460:*

1. *The board shall initially approve the recommended emission limitation and other terms set forth in the application, or the board shall notify the owner in writing of its intent to disapprove the application, within 30 calendar days after the owner is notified in writing that the application is complete.*
2. *The owner may present, in writing, within 60 calendar days after receipt of notice of the board's intent to disapprove the application, additional information or arguments pertaining to, or amendments to, the application for consideration by the board before it decides whether to finally disapprove the application.*
3. *The board shall either initially approve or issue a final disapproval of the application within 90 days after it*

*notifies the owner of an intent to disapprove or within 30 days after the date additional information is received from the owner, whichever is earlier.*

D. *The board will normally take action on all applications after expiration of the public comment period (and consideration of comments from that), unless more information is needed. The board shall notify the applicant in writing of its final decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with 9 VAC 5-80-1490.*

E. *A final determination by the board to disapprove any application shall be in writing and shall specify the grounds on which the disapproval is based. If any application is finally disapproved, the owner may submit a subsequent application concerning construction or reconstruction of the same major source, provided that the subsequent application has been amended in response to the stated grounds for the prior disapproval.*

F. *The applicant may appeal the decision pursuant to 9 VAC 5 Chapter 170 (9 VAC 5-170-190 et seq.).*

G. *Within five days after notification to the applicant pursuant to subsection B of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9 VAC 5-80-1460 H 1.*

H. *The board shall send a copy of any final permit issued to an affected source to the administrator through the appropriate regional office and to all other state and local air pollution control agencies having jurisdiction in affected states. Within 60 days of the issuance of the final permit, the board shall provide a copy of such permit to the administrator, and shall provide a summary in a compatible electronic format for inclusion in the MACT database.*

I. *The effective date of a case-by-case MACT determination shall be the date the permit becomes final.*

J. *On and after the date of startup, a constructed or reconstructed major source which is subject to the requirements of this article shall be in compliance with all applicable requirements specified in the permit.*

**9 VAC 5-80-1460. Public participation.**

A. *No later than 15 days after receiving the initial determination notification required under 9 VAC 5-80-1450 A, the applicant for a permit for a major source of hazardous air pollutants shall notify the public of the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection C of this section.*

B. *The public notice required under this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The*

notice shall be approved by the board and shall include, but not be limited to, the following:

1. The source name, location, and type;
2. The applicable pollutants and the total quantity of each which the applicant estimates will be emitted, and a brief statement of the air quality impact of such pollutants;
3. The control technology proposed to be used at the time of the publication of the notice;
4. The date, time and place of the informational briefing; and
5. The name and telephone number of a contact person employed by the applicant who can answer questions about the proposed source.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board shall attend and provide information and answer questions on the permit application review process.

D. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. Prior to the decision of the board, all permit applications shall be subject to a public comment period of at least 30 days.

F. No sooner than 30 days after the start of the public comment period, a public hearing shall be held in accordance with this section for any application which has the potential for public interest concerning air quality issues as determined by the board on the basis of the following criteria:

1. Whether the project is opposed by any person;
2. Whether the project has resulted in adverse publicity;
3. Whether the project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and
4. Whether the project has generated adverse comment by a local official, governing body or advisory board.

G. When a public comment period and public hearing are required, the board shall notify the public by advertisement in at least one newspaper of general circulation in the area affected of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing.

1. Information on the permit application (exclusive of confidential information under 9 VAC 5-170-60), as well as the preliminary review and analysis and preliminary decision of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected area.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional EPA administrator.

3. Notices of public hearings published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

H. In order to facilitate the efficient issuance of permits under Articles 1 and 3 of this chapter, upon request of the applicant the board shall process the permit application under this article using public participation procedures meeting the requirements of this section and 9 VAC 5-80-270 or 9 VAC 5-80-670, as applicable.

**9 VAC 5-80-1470. Standards and conditions for granting permits.**

A. No permit shall be granted pursuant to this article unless it is shown to the satisfaction of the board that the source will be designed, built and equipped to operate without causing a violation of the applicable provisions of the regulations of the board and that the following standards have been met:

1. The source shall be designed, built and equipped to comply with applicable emission standards and other requirements prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.).

2. For affected sources, the source shall be designed, built and equipped to comply with the MACT emission limitation and other requirements prescribed in the permit.

3. For sources subject to permits issued in accordance with 9 VAC 5-80-1420 G, the source shall be designed, built, and equipped to comply with the applicable emission standard and other requirements prescribed in 40 CFR Part 61.

4. For sources subject to permits issued in accordance with 9 VAC 5-80-1420 H, the source shall be designed, built, and equipped to comply with the applicable MACT standard and other requirements prescribed in 40 CFR Part 63.

---

## Proposed Regulations

---

5. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board.

B. Permits granted pursuant to this article for affected sources shall:

1. Contain a MACT emission limitation (or a MACT work practice standard if the board determines it is not feasible to prescribe or enforce an emission limitation) to control the emissions of hazardous air pollutants which is determined by the board and conforms to the principles set forth in 9 VAC 5-80-1420 F.

2. Specify any notification, operation and maintenance, performance testing, monitoring, reporting and recordkeeping requirements.

3. Include the following:

a. In addition to the MACT emission limitation or MACT work practice standard established under this article, additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure federal enforceability of the MACT emission limitation.

b. Compliance certifications, testing, monitoring, reporting and recordkeeping requirements that are consistent with the requirements of 9 VAC 5-80-110 K.

c. Monitoring capable of demonstrating continuous compliance during the applicable reporting period. Such monitoring data shall be of sufficient quality to be used as a basis for enforcing all applicable requirements established under this article, including emission limitations.

d. A statement requiring the owner to comply with all applicable requirements contained in this article.

C. Permits granted pursuant to this article shall contain emission standards as necessary to implement the provisions of this article. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emission levels are enforceable as a practical matter:

1. Standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

2. In no case shall a standard result in emissions which would exceed the emissions rate based on the potential to emit of the emissions unit.

3. Standards shall only include limitations that are determined by the board to be achievable through application of production processes or available methods, systems, and techniques, including, but not limited to, any of the following: emissions control equipment, fuel cleaning or treatment, fuel combustion techniques, or substitution of less toxic or nontoxic materials.

4. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.

D. Permits issued under this article shall contain, but not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards.

2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:

a. Limit on fuel sulfur content.

b. Limit on production rates with time frames as appropriate to support the emission standards.

c. Limit on raw material usage rate.

d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

4. Specifications for air pollution control equipment installed or to be installed and the circumstances under which such equipment shall be operated.

5. Specifications for air pollution control equipment operating parameters, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, any of the following:

a. Pressure indicators and required pressure drop.

b. Temperature indicators and required temperature.

c. pH indicators and required pH.

d. Flow indicators and required flow.

6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.

7. Stack test requirements.

8. Reporting or recordkeeping requirements, or both.

9. Continuous emission or air quality monitoring requirements, or both.

10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

### **9 VAC 5-80-1480. Application review and analysis.**

A. No permit shall be granted pursuant to this article unless compliance with the standards in 9 VAC 5-80-1470 is demonstrated to the satisfaction of the board by a review and



analysis of the application performed on a source-by-source basis.

B. Applications for stationary sources of hazardous air pollutants shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable emission standards prescribed under 9 VAC 5-80-1470.

**9 VAC 5-80-1490. Compliance determination and verification by performance testing.**

A. An owner of a constructed or reconstructed major source shall comply with all requirements in the final permit issued pursuant to this article, including but not limited to any emission limitation or work practice standard, and any notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements.

B. An owner of a constructed or reconstructed major source which has obtained a permit shall be deemed to be in compliance with the Virginia Air Pollution Control Law only to the extent that the constructed or reconstructed major source is in compliance with all requirements set forth in the permit issued pursuant to this article. Any violation of such requirements by the owner or any other person shall be deemed by the board to be a violation of the prohibition on construction or reconstruction in this article for whatever period the owner is determined to be in violation of such requirements, and shall subject the owner to appropriate enforcement action under the Virginia Air Pollution Control Law.

C. Compliance with emission standards shall be determined in accordance with the provisions of 9 VAC 5-60-20 and shall be verified by emission tests in accordance with the provisions of 9 VAC 5-60-30.

D. Testing required by this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the new or reconstructed source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

E. For sources subject to the provisions of 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.), the requirements of subsections C and D of this section shall be met in all cases where specified in the emission standard listed under 9 VAC 5-60-70 or 9 VAC 5-60-100.

F. For sources other than those specified in subsection E of this section, the requirements of subsections C and D of this section shall be met unless the board:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
2. Approves the use of an equivalent method;
3. Approves the use of an alternative method, the results of which the board has determined to be

adequate for indicating whether a specific source is in compliance;

4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or reconstructed source to perform in compliance with applicable standards; or

5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

G. The provisions for the granting of waivers under subsection F of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the board to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.

**9 VAC 5-80-1500. Permit invalidation, rescission, revocation and enforcement.**

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction or reconstruction is not commenced within the latest of the following time frames:

1. Eighteen months from the date the permit is granted;
2. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this article) from any governmental entity; or
3. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this article).

B. A permit granted pursuant to this article shall become invalid if a program of construction or reconstruction is discontinued for a period of 18 months or more, or if a program of construction or reconstruction is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

C. The board may extend the periods prescribed in subsections A and B of this section, by no more than 12 months, upon a satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted without being subject to the requirements of 9 VAC 5-80-1460.

D. Any owner who constructs or operates a new or reconstructed source not in accordance with the terms and conditions of any permit to construct or operate, or any

---

# Proposed Regulations

---

owner of a new or reconstructed source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations.

F. The board may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments to it;
2. Fails to comply with the terms or conditions of the permit;
3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;
4. Fails to comply with the applicable provisions of this article.

G. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection F of this section or for any other violations of the regulations of the board.

H. The permittee shall comply with all terms and conditions of the permit. A permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and may be grounds for (i) enforcement action or (ii) termination or revocation.

I. Violation of the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in 9 VAC 5 Chapter 170, Part V (9 VAC 5-170-120 et seq.) and the Virginia Air Pollution Control Law.

J. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit, or to render a permit invalid.

K. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a permit is invalid or revoked prior to any final decision rendered under subsection J of this section.

L. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a permit is rescinded because all of the statutory or regulatory requirements (i) upon which the permit is based or (ii) that necessitated issuance of the permit are no longer applicable.

## **9 VAC 5-80-1510. Existence of permit no defense.**

The existence of a permit under this article shall not constitute defense to a violation of the Virginia Air Pollution Control Law or the regulations of the board and shall not relieve any owner of the responsibility to comply with any

applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

## **9 VAC 5-80-1520. Compliance with local zoning requirements.**

No provision of this part or any permit issued thereunder shall relieve any owner from the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located.

## **9 VAC 5-80-1530. Transfer of permits.**

A. No persons shall transfer a permit from one location to another or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

## **9 VAC 5-80-1540. Changes to permits.**

A. The general requirements for making changes to permits are as follows:

1. Changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9 VAC 5-80-1550 through 9 VAC 5-80-1580 of this article.
2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.
3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9 VAC 5-80-50 et seq.) of this part shall be made as specified in Article 1 (9 VAC 5-80-50 et seq.) of this part.
4. This section shall not be applicable to general permits.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit revisions can be found in 9 VAC 5-80-1550 through 9 VAC 5-80-1570.
2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-1580.

**9 VAC 5-80-1550. Administrative permit amendments.**

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.
2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.
3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9 VAC 5-80-1420 have been fulfilled.
4. The combining of permits under the new source review program as provided in 9 VAC 5-80-1420 B.

B. The administrative permit amendment procedures are as follows:

1. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.
2. The board shall incorporate the changes without providing notice to the public under 9 VAC 5-80-1460. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.
3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

**9 VAC 5-80-1560. Minor permit amendments.**

A. Minor permit amendment procedures shall be used only for those permit amendments that:

1. Do not violate any applicable requirement;
2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;
3. Do not require or change a case-by-case determination of an emission limitation or other standard;
4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding

underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

- a. An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act; and
- b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not modifications under the new source review program; and

6. Are not required to be processed as a significant amendment under 9 VAC 5-80-1570; or as an administrative permit amendment under 9 VAC 5-80-1550.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program. Minor permit amendment procedures may also be used to require more frequent monitoring or reporting by the permittee.

C. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

D. A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.
2. A request that such procedures be used.

E. The public participation requirements of 9 VAC 5-80-1460 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board shall do one of the following:

1. Issue the permit amendment as proposed.
2. Deny the permit amendment request.
3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follow:

---

# Proposed Regulations

---

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions that the owner seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions that the owner seeks to modify may be enforced against the owner.

## **9 VAC 5-80-1570. Significant amendment procedures.**

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9 VAC 5-80-1560 or as administrative amendments under 9 VAC 5-80-1550.

2. Significant amendment procedures shall be used for those permit amendments that:

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act.

(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The

applicant may, at the applicant's discretion, include a suggested draft permit amendment.

C. The provisions of 9 VAC 5-80-1460 shall apply to requests made under this section.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

## **9 VAC 5-80-1580. Reopening for cause.**

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emission units covered by the permit after a permit is issued but prior to commencement of construction.

2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The board determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the conditions of the permit are not sufficient to meet all of the standards and requirements contained in this article.

4. A new emission standard prescribed under Article 1 (9 VAC 5-60-60 et seq.) of Part II of 9 VAC 5 Chapter 60, becomes applicable after a permit is issued but prior to initial startup.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

## **9 VAC 5-80-1590. Requirements for constructed or reconstructed major sources subject to a subsequently promulgated MACT standard or MACT requirements.**

A. If the administrator promulgates a MACT standard under § 112(d) or § 112(h) of the federal Clean Air Act that is applicable to a stationary source, group of stationary sources, or portion of a stationary source which would be deemed to be a constructed or reconstructed major source under this article before the date the owner has obtained a final and legally effective permit pursuant to this article, the permit issued pursuant to this article shall contain the promulgated standard rather than any case-by-case MACT determination, and the owner shall comply with the

promulgated standard by the compliance date in the promulgated standard.

B. If the administrator promulgates a MACT standard under § 112(d) or § 112(h) of the federal Clean Air Act that is applicable to a stationary source, group of stationary sources, or portion of a stationary source which was deemed to be a constructed or reconstructed major source under this article and has been subject to a prior case-by-case MACT determination pursuant to this article, and the owner obtained a final and legally effective case-by-case MACT determination prior to the promulgation date of the MACT standard, the board shall (if the initial federal operating permit has not yet been issued) amend the permit issued pursuant to this article in accordance with the reopening procedures of 9 VAC 5-80-1580 to incorporate the emission standard, or shall (if the initial federal operating permit has been issued) revise the federal operating permit according to the reopening procedures in 9 VAC 5-80-240 to incorporate the MACT standard.

1. The MACT standard established pursuant to § 112(d) or § 112(h) of the federal Clean Air Act may specify a compliance date for those sources which have obtained a final and legally effective case-by-case MACT determination under this article. In that event, the board shall reopen the source's federal operating permit in accordance with the procedures in 9 VAC 5-80-240 to incorporate the applicable compliance date.

2. If no compliance date is specified in the MACT standard established pursuant to § 112(d) or § 112(h) of the federal Clean Air Act for those sources which have obtained a final and legally effective case-by-case MACT determination under this article, the board shall establish a compliance date that assures the owner will comply with a promulgated MACT standard as expeditiously as practicable, but no longer than eight years after the standard is promulgated, and shall reopen the source's federal operating permit in accordance with procedures in 9 VAC 5-80-240 to incorporate that compliance date.

C. Notwithstanding the requirements of subsections A and B of this section, if the administrator promulgates a MACT standard under § 112(d) or § 112(h) of the federal Clean Air Act that is applicable to a stationary source, group of stationary sources, or portion of a stationary source which was deemed to be a constructed or reconstructed major source under this article and which is the subject of a prior case-by-case MACT determination pursuant to this article, and the level of control required by the MACT standard issued under § 112(d) or § 112(h) is less stringent than the level of control required by any emission limitation or standard in the prior case-by-case MACT determination, the board is not required to incorporate any less stringent terms of the promulgated standard in the source's federal operating permit and may, in its discretion, consider any more stringent provisions of the prior case-by-case MACT determination to

be applicable legal requirements when issuing or revising the federal operating permit.

VA.R. Doc. No. R97-556; Filed November 17, 1998, 10:11 a.m.



---

# FINAL REGULATIONS

---

For information concerning Final Regulations, see Information Page.

---

## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

---

## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### DEPARTMENT OF MINES, MINERALS AND ENERGY

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Mines, Minerals and Energy will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 4 VAC 25-130-10 et seq. **Coal Surface Mining Reclamation Regulations (amending 4 VAC 25-130-700.5, 4 VAC 25-130-779.25, 4 VAC 25-130-780.23, 4 VAC 25-130-780.25, 4 VAC 25-130-780.35, 4 VAC 25-130-783.25, 4 VAC 25-130-784.15, 4 VAC 25-130-784.16, 4 VAC 25-130-784.23, 4 VAC 25-130-800.40, 4 VAC 25-130-816.46, 4 VAC 25-130-816.49, 4 VAC 25-130-816.74, 4 VAC 25-130-816.81, 4 VAC 25-130-816.89, 4 VAC 25-130-816.104, 4 VAC 25-130-816.105, 4 VAC 25-130-817.46, 4 VAC 25-130-817.49, 4 VAC 25-130-817.74, 4 VAC 25-130-817.81, 4 VAC 25-130-817.89, 4 VAC 25-130-840.11, 4 VAC 25-130-843.14, 4 VAC 25-130-845.17, 4 VAC 25-130-845.18, 4 VAC 25-130-845.19, 4 VAC 25-130-846.17; repealing 4 VAC 25-130-779.22).**

**Statutory Authority:** §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

**Effective Date:** January 6, 1999.

#### Summary:

The amendments to this regulation incorporate changes made to the federal Office of Surface Mining regulations. These amendments make the state regulation consistent with the federal regulation. The changes are as follows:

4 VAC 25-130-700.5, the definitions of "other treatment facilities" and "previously mined areas" are amended to be substantively identical to 30 CFR 701.5;

4 VAC 25-130-779.22 is deleted to be substantively identical to the federal provision deleted from 30 CFR 779.22;

4 VAC 25-130-779.25 (k) is deleted and the subsection's numbering system is amended to be consistent with the federal provision deleted from 30 CFR 779.25(a)(11);

4 VAC 25-130-780.23, existing language is replaced to be substantively identical to 30 CFR 780.23;

4 VAC 25-130-780.25, subsection (a)(2) is added to be consistent with 30 CFR 780.25(a)(2);

4 VAC 25-130-780.35 (b) is amended to be substantively identical to 30 CFR 780.35(b);

4 VAC 25-130-783.25 is amended by deleting subsection (k) concerning slope measurements and revising the remaining subsection numbering system to be substantively identical to 30 CFR 783.25;

4 VAC 25-130-784.15, language is replaced to be substantively identical to 30 CFR 784.15;

4 VAC 25-130-784.16 (a), (b), (c), and (f) regarding requirements for siltation structures and impoundments are amended to be substantively identical to 30 CFR 784.16;

4 VAC 25-130-784.23 (c), relating to designs of coal storage, cleaning, and loading areas by professional engineers or geologists, is amended to be substantively identical to 30 CFR 784.23;

4 VAC 25-130-800.40 (a)(3) is added to require a notarized statement of completeness of reclamation when applying for a performance bond release to make the section identical to 30 CFR 800.40(a)(3);

4 VAC 25-130-816.46 and 4 VAC 25-130-817.46 (a)(2), (b)(3), (b)(5), and (c)(2) are amended relating to siltation structures to be substantively identical to 30 CFR 816.46 and 30 CFR 817.46;

4 VAC 25-130-816.49 and 4 VAC 25-130-817.49, relating to safety factors for impoundments on coal mines, are being amended to be substantively identical to 30 CFR 816.49 and 30 CFR 817.49;

4 VAC 25-130-816.74 and 4 VAC 25-130-817.74 are amended to conform requirements for disposal of excess spoil on preexisting benches with requirements for backfilling and grading requirements found in 4 VAC 25-130-816.102 and 4 VAC 25-130-817.102. The amended sections are substantively identical to 30 CFR 816.74 and 30 CFR 817.74;

4 VAC 25-130-816.81 (a) and 4 VAC 25-130-817.81 (a) are amended regarding hauling and conveying coal mine waste and disposal of coal mine waste in mine workings or excavations. Subsections (c)(3) relating to thickness and compaction of fills are deleted. With these changes, the sections are substantively identical to 30 CFR 816.81 and 30 CFR 817.81;

4 VAC 25-130-816.89 (d) and 4 VAC 25-130-817.89 (d) are deleted regarding handling of waste defined as hazardous under § 3001 of the Resource Conservation and Recovery Act (RCRA). This makes the section consistent with 30 CFR 816.89 and 30 CFR 817.89;

4 VAC 25-130-816.104 (a) is amended to address reclamation where existing spoil and waste rock is insufficient to reclaim the area to approximate original contour, making this section substantively identical to 30 CFR 816.104;

4 VAC 25-130-816.105 (a) is amended to address reclamation where more than sufficient existing spoil and waste rock are available to reclaim the area to approximate original contour. This makes the regulation substantively identical to 30 CFR 816.105;

4 VAC 25-130-840.11 (f), (g), and (h) are amended relating to inspection frequencies on inactive and abandoned surface coal mines to be consistent with 30 CFR 840.11;

4 VAC 25-130-843.12 is amended to provide that service of notices of violation, cessation orders, or show cause orders are to be made consistent with the Rules of the Supreme Court of Virginia. The state rules are consistent with the Federal Rules of Civil Procedure cited in the federal Office of Surface Mining regulations at 30 CFR 840.13 and 30 CFR 840.14;

4 VAC 25-130-845.17 is amended to provide that service of summons and complaints are to be made consistent with the Rules of the Supreme Court of Virginia. The state rules are consistent with the Federal Rules of Civil Procedure cited in the federal Office of Surface Mining regulations at 30 CFR 840.13 and 30 CFR 840.17;

4 VAC 25-130-845.18 is amended relating to time frames for requesting and holding assessment conferences to be substantively identical to 30 CFR 845.18;

4 VAC 25-130-845.19 is amended relating to time frames for contesting a fact of a violation or a proposed penalty. This makes the regulation substantively identical to 30 CFR 845.19; and

4 VAC 25-130-846.17 is amended to provide that service on an individual to be assessed an individual civil penalty is to be made consistent with the Rules of the Supreme Court of Virginia. The state rules are consistent with the Federal Rules of Civil Procedure cited in the federal Office of Surface Mining regulations at 30 CFR 846.16 and 30 CFR 846.17.

**Agency Contact:** Copies of the regulation may be obtained from Lola Flanary or Cindy Ashley, Department of Mines, Minerals and Energy, Client Assistance Center, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8233 or (540) 523-8235.

## 4 VAC 25-130-700.5. Definitions.

As used throughout this chapter, the following terms have the specified meanings except where otherwise indicated.

*"Abatement plan"* means an individual technique or combination of techniques, the implementation of which is designed to result in reduction of the baseline pollution load. Abatement techniques include but are not limited to: addition of alkaline material, special plans for managing toxic and acid forming material, regrading, revegetation, and daylighting.

*"Acid drainage"* means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mining and reclamation operation or from an area affected by surface coal mining and reclamation operations.

*"Acid-forming materials"* means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acid that may create acid drainage or leachate.

*"Act"* means the Virginia Coal Surface Mining Control and Reclamation Act of 1979 as amended (Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia).

*"Actual improvement"* means the reduction of the baseline pollution load resulting from the implementation of the approved abatement plan: except that a reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement.

*"Adjacent area"* means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

*"Administratively complete application"* means an application for permit approval, or approval for coal exploration where required, which the division determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

*"Adverse physical impact"* means, with respect to a highwall created or impacted by remining, conditions such as sloughing of material, subsidence, instability, or increased erosion of highwalls, which occur or can reasonably be expected to occur as a result of remining and which pose threats to property, public health, safety, or the environment.

*"Affected area"* means any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands, the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations,

---

# Final Regulations

---

except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road is a public road.

*"Agricultural use"* means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

*"Anthracite"* means coal classified as anthracite in ASTM Standard D 388-77. Coal classifications are published by the American Society of Testing and Materials under the title, "Standard Specification for Classification of Coals by Rank," ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. This publication is hereby incorporated by reference.

*"Applicant"* means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from the division to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

*"Application"* means the documents and other information filed with the division under this chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

*"Approximate original contour"* means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the division has determined that they comply with 4 VAC 25-130-816.49, 4 VAC 25-130-816.56, and 4 VAC 25-130-816.133 or 4 VAC 25-130-817.49, 4 VAC 25-130-817.56, and 4 VAC 25-130-817.133.

*"Aquifer"* means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

*"Auger mining"* means a method of mining coal at a cliff or highwall by drilling or cutting holes into an exposed coal seam from the highwall and transporting the coal along the auger bit to the surface.

*"Authorized officer"* means any person authorized to take official action on behalf of a federal agency that has administrative jurisdiction over federal lands.

*"Baseline pollution load"* means the characterization of the pollution material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter, including seasonal variations and variations in response to precipitation events. The division will establish in each authorization the specific parameters it deems relevant for the baseline pollution load.

*"Best professional judgment"* means the highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the division under §§ 301 and 402 of the federal Water Pollution Control Act (33 USC §§ 1311 and 1342).

*"Best technology"* means measures and practices which are designed to abate or ameliorate to the maximum extent possible pollutional discharges from or on the pollution abatement area. These measures include engineering, geochemical or other applicable practices.

*"Best technology currently available"* means equipment, devices, systems, methods, or techniques which will:

(a) Prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contribution of suspended solids in excess of requirements set by the applicable state or federal laws;

(b) Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, terms, methods, or techniques which are currently available anywhere as determined by the division even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Parts 816 and 817 of this chapter. Within the constraints of the permanent program, the division shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by the Act and this chapter.

*"Cemetery"* means any area of land where human bodies are interred.

*"Certification"* when used in regards to construction certifications by qualified registered professional engineers, is not considered to be a warranty or guarantee.

*"Coal"* means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of "anthracite."



"Coal exploration" means the field gathering of:

- (a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or
- (b) The gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this chapter.

"Coal lease" means a federal coal lease or license issued by the Bureau of Land Management pursuant to the Mineral Leasing Act and the federal Acquired Lands Leasing Act of 1947 (30 USC § 351 et seq.).

"Coal mine waste" means coal processing waste and underground development waste.

"Coal mining operation" means, for the purposes of Part 705 of this chapter - Financial Interests Of State Employees, the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

"Coal preparation" or "coal processing" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

"Coal processing waste" means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

"Cognovit note" means an extraordinary note which authorizes an attorney to confess judgement against the person or persons signing it. It is written authority of a debtor and a direction by him for entry of a judgement against him if the obligation set forth in the note is not paid when due. Such judgement may be taken by any person holding the note, which cuts off every defense which makers of the note may otherwise have and it likewise cuts off all rights of appeal from any judgement taken on it. The note shall, at a minimum:

- (a) Contain the date of execution.
- (b) Be payable to the "Treasurer of Virginia."
- (c) Be due and payable in the event of bond forfeiture of the permit.
- (d) Be payable in a sum certain of money.
- (e) Be signed by the makers.

"Collateral bond" means an indemnity agreement in a sum certain executed by the permittee and deposited with the division supported by one or more of the following:

- (a) The deposit of cash in one or more federally-insured accounts, payable only to the division upon demand;
- (b) Negotiable bonds of the United States, the Commonwealth of Virginia, or a political subdivision thereof, endorsed to the order of, and placed in the possession of the division; the bond will only be acceptable if the issue is rated "A" or better by Moody's Investor Service, Inc., or Standard and Poor's, Inc.;
- (c) Certificates of deposit issued by Virginia banks payable only to the division and placed in its possession. No security in default as to principal or interest shall be acceptable as collateral.

"Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and accurate application" means an application for permit approval or approval for coal exploration where required which the division determines to contain all information required under the Act and this chapter.

"Contamination" means, in reference to ground water or surface water supplies receiving ground water, any impairment of water quality which makes the water unsuitable for a specific use.

"Cooperative agreement" means a cooperative agreement entered into in accordance with § 523(c) of the federal Act and 30 CFR 745.

"Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and ground water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

- (a) The proposed operation;
- (b) All existing operations;

---

# Final Regulations

---

(c) Any operation for which a permit application has been submitted to the division; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

*"Department"* means the Department of Mines, Minerals and Energy (DMME) of Virginia.

*"Diminution"* means, in reference to ground or surface water supplies receiving ground water, any impairment of water quantity which makes the water unsuitable for a specific use.

*"Direct financial interest"* means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

*"Director"* means the Director of the Department of Mines, Minerals, and Energy or his representative.

*"Disturbed area"* means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or non-coal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by Subchapter VJ is released.

*"Diversion"* means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

*"Division"* means the Division of Mined Land Reclamation of the Department of Mines, Minerals, and Energy.

~~*"Drinking, domestic or residential water supply"* means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included, except to the extent the water supply is for direct human consumption or human sanitation or domestic use.~~

*"Downslope"* means the land surface between the projected outcrop of the lowest coal bed being mined along each highwall and a valley floor.

~~*"Drinking, domestic or residential water supply"* means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included, except to the extent the water supply is for direct human consumption or human sanitation or domestic use.~~

*"Embankment"* means an artificial deposit of material that is raised above the natural surface of the land and used to

contain, divert, or store water, support roads or railways, or for other similar purposes.

*"Employee"* means (a) any person employed by the department or other state or local government agency who performs any function or duty under the Act, and (b) consultants who perform any function or duty under the Act, if they perform decision-making functions for the department under the authority of the Act or regulations promulgated under the Act.

*"Ephemeral stream"* means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

*"Escrow account"* means an account in a federally-insured financial institution.

*"Excess spoil"* means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with 4 VAC 25-130-816.102(d) and 4 VAC 25-130-817.102(d) in nonsteep slope areas shall not be considered excess spoil.

*"Existing structure"* means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of the state program or a federal land program, whichever occurs first.

*"Extraction of coal as an incidental part"* means for the purposes of Part 707 of this chapter, the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of Part 707, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and this chapter.

*"Federal act"* means the federal Surface Mining Control and Reclamation Act of 1977, as amended (Pub. L. 95-87).

*"Federal land management agency"* means a federal agency having administrative jurisdiction over the surface of federal lands that are subject to this chapter.

*"Federal lands"* means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

*"Federal lands program"* means a program established by the secretary pursuant to § 523 of the federal Act to regulate surface coal mining and reclamation operations on federal lands.

*"Federal lease bond"* means the bond or equivalent security required by 43 CFR 3400 to assure compliance with the terms and conditions of a federal coal lease.

*"Federal lessee protection bond"* means a bond payable to the United States or the state, whichever is applicable, for use and benefit of a permittee or lessee of the surface lands to secure payment of any damages to crops or tangible improvements on federal lands, pursuant to § 715 of the federal Act.

*"Federal program"* means a program established by the secretary pursuant to § 504 of the federal Act to regulate coal exploration and surface coal mining and reclamation operations on nonfederal and non-Indian lands within the state in accordance with the federal act and 30 CFR Chapter VII.

*"First water producing zone"* means the first water zone encountered which can be monitored in a manner which indicates the effects of a surface mining operation on usable ground water.

*"Fragile lands"* means areas containing natural, ecologic, scientific or aesthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and aesthetic features and areas of recreational value due to high environmental quality.

*"Fugitive dust"* means that particulate matter which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed. Fugitive dust does not include particulate matter emitted from a duct or stack.

*"Fund"* as used in Subchapter VR means the Abandoned Mine Reclamation Fund established pursuant to § 45.1-261 of the Act.

*"General area"* means, with respect to hydrology, the topographic and ground water basin surrounding a permit area and adjacent areas to include one or more watersheds containing perennial streams or ground water zones which possess useable and/or managed zones or flows, to allow an assessment of the probable cumulative impacts on the hydrologic regime.

*"Government-financed construction"* means construction funded 50% or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds

obtained through industrial revenue bonds or their equivalent, or in-kind payments.

*"Government financing agency"* means any federal, state, regional, county, city or town unit of government, or a department, bureau, agency or office of a governmental unit or any combination of two or more governmental units or agencies, which, directly or through another unit of government, finances construction.

*"Gravity discharge"* means, with respect to underground coal mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

*"Ground cover"* means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of ground.

*"Ground water"* means subterranean water which exists within a totally saturated zone, stratum or group of strata.

*"Growing season"* means the period of year when climatic conditions are favorable for plant growth, common to a place or area. The period between April 15 and October 15 is the normal growing season.

*"Half-shrub"* means a perennial plant with a woody base whose annually produced stems die back each year.

*"Head-of-hollow fill"* means a fill structure consisting of any material, except organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill, draining into the fill area.

*"Higher or better uses"* means postmining land uses that have a higher value or benefit, either economic or noneconomic, to the landowner or the community than the remaining land uses.

*"Highwall"* means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

*"Highwall remnant"* means that portion of highwall that remains after backfilling and grading of a remaining permit area.

*"Historically used for cropland"* means (1) lands that have been used for cropland for any five years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations; (2) lands that the division determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly

---

# Final Regulations

---

cropland but falls outside the specific five-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (3) lands that would likely have been used as cropland for any five out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

*"Historic lands"* means areas containing historic, cultural, or scientific resources. Examples of historic lands include archaeological sites, properties listed on or eligible for listing on the State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

*"Hydrologic balance"* means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

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

*"Imminent danger to the health and safety of the public"* means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

*"Impounding structure"* means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

*"Impoundments"* mean all water, sediment, slurry or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

*"Indemnity agreement"* means an agreement between two persons in which one person agrees to pay the other person for a loss or damage. The persons involved can be individual people, or groups of people, or legal organizations, such as partnerships, corporations or government agencies, or any combination of these.

*"Indirect financial interest"* means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including

interests held by the employee's spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

*"In situ processes"* means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

*"Intermittent stream"* means:

- (a) A stream or section of a stream that drains a watershed of at least one square mile, or
- (b) A stream or section of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

*"Irreparable damage to the environment"* means any damage to the environment, in violation of the Act, or this chapter, that cannot be corrected by the permittee.

~~*"Lands eligible for re-mining"* means those lands that would otherwise be eligible for expenditures under § 404 or under § 402(g)(4) of the federal act.~~

*"Land use"* means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal use occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the division.

- (a) "Cropland." Land used for production of crops which can be grown for harvest alone or in a rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.
- (b) "Pastureland" or land occasionally cut for hay. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.
- (c) "Grazingland." Lands used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.
- (d) "Forestry." Land used or managed for long-term production of wood, wood fiber, or wood derived products.
- (e) "Residential." Land used for single and/or multiple family housing, mobile home parks, or other residential lodgings.

(f) "Industrial/Commercial." Land used for:

(1) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(g) "Recreation." Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, amusement areas, as well as undeveloped areas for recreation such as hiking and canoeing.

(h) "Fish and wildlife habitat." Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(i) "Developed water resources." Land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) "Undeveloped land or no current use or land management." Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

*"Lands eligible for re-mining" means those lands that would otherwise be eligible for expenditures under § 404 or under § 402(g)(4) of the federal act.*

*"Leachate" means water percolating from a surface coal mining operation which contains dissolved and suspended matter.*

*"Leased federal coal" means coal leased by the United States pursuant to 43 CFR Part 3400, except mineral interests in coal on Indian lands.*

*"Lease terms, conditions and stipulations" means all of the standard provisions of a federal coal lease, including provisions relating to lease duration, fees, rentals, royalties, lease bond, production and recordkeeping requirements, and lessee rights of assignment, extension, renewal, termination and expiration, and site-specific requirements included in federal coal leases in addition to other terms and conditions which relate to protection of the environment and of human, natural and mineral resources.*

*"Material damage" in the context of 4 VAC 25-130-784.20 and 4 VAC 25-130-817.121 means:*

(a) Any functional impairment of surface lands, features, structures, or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance, or utility of any structure or facility from its presubsidence condition.

*"Mineral Leasing Act" or "MLA" means the Mineral Leasing Act of 1920, as amended, 30 USC § 181 et seq.*

*"Mining plan" means the plan, for mining leased federal coal, required by the Mineral Leasing Act.*

*"Mining supervisor" means the Area Mining Supervisor, Conservation Division, U.S. Geological Survey, or District Mining Supervisor or other subordinate acting under their direction.*

*"Moist bulk density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105°C.*

*"MSHA" means the United States Mine Safety and Health Administration.*

*"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, and provide micro-climatic conditions suitable for germination and growth.*

*"Natural hazard lands" means geographic areas in which natural conditions exist which pose or as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, severe wind or soil erosion, frequent flooding, and areas of unstable geology.*

*"Net worth" means total assets less total liabilities. Total liabilities include, but are not limited to, funds pledged or otherwise obligated to the Commonwealth of Virginia, or to any other person at any time during the permit term. Total liabilities also include, but are not limited to, contingent liabilities that might materially affect the Commonwealth's ability to collect the amount of bond required in the event of bond forfeiture.*

*"Noncommercial building" means any building other than an occupied residential dwelling that at the time subsidence occurs is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in this section. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.*

*"Noxious plants" means living plants which are declared to be noxious weeds or noxious plants pursuant to the Virginia Noxious Weed Law, Chapter 17.2 (§ 3.1-296.11 et seq.) of Title 3.1 of the Code of Virginia.*

*"Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.*

*"Occupied residential dwelling and structures related thereto" means, for purposes of 4 VAC 25-130-784.20 and 4 VAC 25-130-817.121, any building or other structures that,*

---

# Final Regulations

---

at the time the subsidence occurs, is used either temporarily, occasionally, seasonally or permanently for human habitation. This term also includes any building, structure, or facility installed on, above or below, or a combination thereof, the land surface if that building structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agriculture, industrial, retail or other commercial purposes is excluded.

"Office" or "OSM" means the Office of Surface Mining Reclamation and Enforcement established under Title II of the federal Act.

"Operator" means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

"Other treatment facilities" means any facilities for chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and that are utilized:

(a) to prevent additional contribution of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(b) to comply with all applicable state and federal water quality laws and regulations.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Owned or controlled" and "owns or controls" mean any one or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

(a) (i) Being a permittee of a surface coal mining operation; (ii) Based on instrument of ownership or voting securities, owning of record in excess of 50% of an entity; or (iii) Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

- (1) Being an officer or director of an entity;
- (2) Being the operator of a surface coal mining operation;
- (3) Having the ability to commit the financial or real property assets or working resources of an entity;
- (4) Being a general partner in a partnership;
- (5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50% of the entity; or
- (6) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

"Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

"Performance bond" means a surety bond, collateral bond, or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, this chapter, and the requirements of the permit and reclamation plan.

"Performing any function or duty under this Act" means decision or action, which if performed or not performed by an employee, affects the programs under the Act.

"Permanent diversion" means a diversion which is approved by the division and, if required, by other state and federal agencies for retention as part of the postmining land use.

"Permanent impoundment" means an impoundment which is approved by the division and, if required, by other state and federal agencies for retention as part of the postmining land use.

"Permit" means a permit to conduct surface coal mining and reclamation operations issued by the division pursuant to the Act and this chapter or by the secretary pursuant to a federal program. For the purposes of the federal lands program, permit means a permit issued by the division under a cooperative agreement or by the OSM where there is no cooperative agreement.

"Permit application package" means a proposal to conduct surface coal mining and reclamation operations on federal lands, including an application for a permit, permit revision or permit renewal, all the information required by the federal Act, 30 CFR Subchapter D, the Act and this chapter, any applicable cooperative agreement and all other applicable laws and regulations including, with respect to leased federal coal, the Mineral Leasing Act and its implementing regulations.

*"Permit area"* means the area of land indicated on the approved map submitted by the permittee with his application, required to be covered by the permittee's performance bond under Subchapter VJ and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit. The permit area shall include all disturbed areas except that areas adequately bonded under another permit issued pursuant to this chapter may be excluded from the permit area.

*"Permittee"* means a person holding or required by the Act or this chapter to hold a permit to conduct coal exploration (more than 250 tons) or surface coal mining and reclamation operations issued (a) by the division, (b) by the director of the OSM pursuant to a federal lands program, or (c) by the OSM and the division, where a cooperative agreement pursuant to § 45.1-230 B of the Act has been executed.

*"Person"* means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agent, unit, or instrumentality of federal, state or local government including any publicly owned utility or publicly owned corporation of federal, state or local government.

*"Person having an interest which is or may be adversely affected"* or *"person with a valid legal interest"* shall include any person:

(a) Who uses any resources of economic, recreational, aesthetic, or environmental value that is, or may be, in fact adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the division; or

(b) Whose property is, or may be, in fact adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the division.

The term "adversely affected" is further defined as meaning perceptibly harmed. "Aesthetics" means the consideration of that which is widely regarded to be a visibly beautiful element of a community or area.

*"Piezometer"* means a vertical pipe that is established in material, which is closed at the bottom, perforated from the upper limits of the material to the lower limits of the material, and which permits static water level measurements and water sampling.

*"Pollution abatement area"* means the part of the permit area which is causing or contributing to the baseline pollution load, which shall include adjacent and nearby areas that must be affected to bring about significant improvement of the baseline pollution load, and which may include the immediate location of the discharges.

*"Pool Bond fund"* means the Coal Surface Mining Reclamation Fund established pursuant to § 45.1-270.1 of the Act.

*"Precipitation event"* means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. "Precipitation event" also includes that quantity of water coming from snow cover as snow melt in a limited period of time.

*"Previously mined area"* means land ~~disturbed or affected by surface coal mining operations prior to the effective date of the federal Act for that land August 3, 1977, that was has not been reclaimed in accordance with the requirements to the standards of this chapter.~~

*"Prime farmland"* means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (Federal Register Vol. 4, No. 21) and which have historically been used for cropland.

*"Principal shareholder"* means any person who is the record or beneficial owner of 10 % or more of any class of voting stock in a corporation.

*"Professional geologist"* means a person who is certified pursuant to Chapter 14 (§ 54.1-1400 et seq.) of Title 54.1 of the Code of Virginia.

*"Prohibited financial interest"* means any direct or indirect financial interest in any coal mining operation.

*"Property to be mined"* means both the surface property and mineral property within the permit area and the area covered by underground workings.

*"Public building"* means any structure that is owned or leased, and principally used, by a governmental agency for public business or meetings.

*"Public office"* means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

*"Public park"* means an area or portion of an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

*"Public road"* means a road (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) which is maintained with public funds, and is constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) for which there is substantial (more than incidental) public use.

*"Publicly-owned park"* means a public park that is owned by a federal, state or local governmental entity.

*"Qualified laboratory"* means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core samplings under the Small Operator Assistance Program (4 VAC 25-130-795.1 et seq.) and which meets the standards of 4 VAC 25-130-795.10.

---

# Final Regulations

---

"Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions taken to restore mined land as required by this chapter to a postmining land use approved by the division.

"Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year, 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years.

"Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the division. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

"Regulatory program" means the Virginia Coal Surface Mining Control and Reclamation program (Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia) and rules and regulations approved by the secretary.

"Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

"Renewable resource lands" means areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

"Replacement of water supply" means, with respect to protected water supplies contaminated, diminished or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

"Secretary" means the Secretary of the Interior or the secretary's representative.

"Sedimentation pond" means an impoundment used to remove solids or other pollutants from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Self-bond" as provided by Part 801 of this chapter means:

(a) For an underground mining operation, a cognovit note in a sum certain payable on demand to the Treasurer of Virginia, executed by the applicant and by each individual and business organization capable of influencing or controlling the investment or financial practices of the applicant by virtue of this authority as an officer or ownership of all or a significant part of the applicant, and supported by a certification that the applicant participating in the Pool Bond Fund has a net worth, total assets minus total liabilities equivalent to \$1 million. Such certification shall be by an independent certified public accountant in the form of an unqualified opinion.

(b) For a surface mining operation or associated facility, an indemnity agreement in a sum certain payable on demand to the Treasurer of Virginia, executed by the applicant and by each individual and business organization capable of influencing or controlling the investment or financial practices of the applicant by virtue of this authority as an officer or ownership of all or a significant part of the applicant.



"*Significant forest cover*" means an existing plant community consisting predominantly of trees and other woody vegetation.

"*Significant, imminent environmental harm to land, air, or water resources*" means:

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plants and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which:

(1) Is causing such harm; or

(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under § 45.1-245 B of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately repairable.

"*Significant recreational, timber, economic, or other values incompatible with surface coal mining operations*" means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include:

(a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) Timber management and silviculture;

(c) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

(d) Scenic, historic, archaeological, esthetic, fish, wildlife, plants or cultural interests.

"*Siltation structure*" means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

"*Slope*" means average inclination of a surface, measured from its horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percentage or in degrees.

"*Soil horizons*" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon

is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties;

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

(d) "C horizon." The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"*Soil survey*" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 4 VAC 25-130-785.17(c)(1).

"*Spoil*" means overburden that has been removed during surface coal mining operations.

"*Stabilize*" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"*Steep slope*" means any slope of more than 20 degrees or such lesser slope as may be designated by the division after consideration of soil, climate, and other characteristics of a region or the state.

"*Substantial legal and financial commitments in a surface coal mining operation*" means significant investments, prior to January 4, 1977, have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

"*Substantially disturb*" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"*Successor in interest*" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"*Surface coal mining and reclamation operations*" means surface coal mining operations and all activities necessary or

---

# Final Regulations

---

incidental to the reclamation of such operations. This term includes the term "surface coal mining operations."

"*Surface coal mining operations*" means:

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of § 45.1-243 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16 2/3% of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to § 45.1-233 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) The areas upon which the activities described in paragraph (a) of this definition occur or where such activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"*Surface coal mining operations which exist on the date of enactment*" means all surface coal mining operations which were being conducted on August 3, 1977.

"*Surface mining activities*" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"*Surface operations and impacts incident to an underground coal mine*" means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in § 45.1-229 L of the Act.

"*Surety bond*" means an indemnity agreement in a sum certain payable to the Commonwealth of Virginia, Director - Division of Mined Land Reclamation, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in Virginia.

"*Suspended solids*" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR Part 136).

"*Temporary diversion*" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the division to remain after reclamation as part of the approved postmining land use.

"*Temporary impoundment*" means an impoundment used during surface coal mining and reclamation operations, but not approved by the division to remain as part of the approved postmining land use.

"*Ton*" means 2000 pounds avoirdupois (.90718 metric ton).

"*Topsoil*" means the A and E soil horizon layers of the four master soil horizons.

"*Toxic-forming materials*" means earth materials, or wastes which, if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

"*Toxic mine drainage*" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair plant and animal life commonly present in the area that might be exposed to it.

"*Transfer, assignment, or sale of permit rights*" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the division.

"*Unanticipated event or condition*," as used in 4 VAC 25-130-773.15 means an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining that was not contemplated by the applicable permit.

"*Underground development waste*" means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

"Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of wastes, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operations, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act or this chapter due to indifference, lack of diligence, or lack of reasonable care, or failure to abate any violation of such permit, the Act, or this chapter due to indifference, lack of diligence, or lack of reasonable care.

"Usable ground water" or "ground water in use" means all ground water which is reasonably able to be used.

"Valid existing rights" means:

(a) Except for haulroads, that a person possesses a valid existing right for an area protected under § 45.1-252 D of the Act on August 3, 1977, if the application of any of the prohibitions contained in that section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to compensation under the Fifth and Fourteenth Amendments to the United States Constitution;

(b) For haulroads,

(1) A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977, or

(2) Any other road in existence as of August 3, 1977;

(c) A person possesses valid existing rights if the person proposing to conduct surface coal mining operations can demonstrate that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation which existed on August 3, 1977. A determination that coal is "needed for" will be based upon a finding that the extension of mining is essential to make the surface coal mining operation as a whole economically viable;

(d) Where an area comes under the protection of § 45.1-252 D of the Act after August 3, 1977, valid existing rights shall be found if:

(1) On the date the protection comes into existence, a validly authorized surface coal mining operation exists on that area; or

(2) The prohibition caused by § 45.1-252 D of the Act, if applied to the property interest that exists on the date the protection comes into existence, would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution.

(e) Interpretation of the terms of the document relied upon to establish the rights to which the standard of paragraphs (a) and (d) of this definition applies shall be based either upon applicable Virginia statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable state law exists, upon the usage and custom at the time and place it came into existence.

"Valley fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

"Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

"Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

"Willful violation" means an act or omission which violates the Act, this chapter, or any permit condition required by the Act, or this chapter, committed by a person who intends the result which actually occurs.

#### **4 VAC 25-130-779.22. Land-use information. (Repealed.)**

~~(a) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including--~~

~~(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described.~~

~~(2) A narrative of land capability and productivity, which analyzes the land use description under Paragraph (a) of this section in conjunction with other environmental resources information required under this Part. The narrative shall provide analysis of:~~

~~(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and~~

~~(ii) The productivity of the proposed permit area before mining, expressed as average yield of food,~~

---

# Final Regulations

---

~~fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U. S. Department of Agriculture or appropriate State natural resources or agricultural agencies specified by the division.~~

~~(b) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:~~

- ~~(1) The type of mining method used;~~
- ~~(2) The coal seams or other mineral strata mined;~~
- ~~(3) The extent of coal or other minerals removed;~~
- ~~(4) The approximate dates of past mining; and~~
- ~~(5) The uses of the land preceding mining.~~

~~(c) The application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed permit and adjacent area.~~

#### **4 VAC 25-130-779.25. Cross sections, maps and plans.**

~~(a) The application shall include cross-sections, maps, and plans showing-~~

- ~~(a) (1) Elevations and locations of test borings and core samplings;~~
- ~~(b) (2) Elevations and locations of monitoring stations used to gather data for water quality and quantity and fish and wildlife in preparation of the application;~~
- ~~(c) (3) Nature, depth, and thickness of the coal seam to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;~~
- ~~(d) (4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;~~
- ~~(e) (5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent area;~~
- ~~(f) (6) Location and extent of subsurface water, if encountered, within the proposed permit and adjacent area;~~
- ~~(g) (7) Location of surface water bodies, such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;~~
- ~~(h) (8) Location and extent of existing or previously surface-mined areas within the proposed permit area;~~
- ~~(i) (9) Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment facilities within the proposed permit area; and~~

~~(j) (10) Location and depth, if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area; .~~

~~(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:~~

- ~~(1) Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations specified by the division.~~
- ~~(2) Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances or any other distance determined by the division to be representative of the premining configuration of the land.~~
- ~~(3) Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.~~

~~(l) (b) Maps, plans, and cross sections included in a permit application which are required by this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer or certified professional geologist with assistance from experts in related fields, such as land surveying and landscape architecture and shall be updated as required by the division.~~

#### **4 VAC 25-130-780.23. Reclamation plan; postmining land use information.**

~~(a) Each plan shall contain a description of the proposed use, following reclamation of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain--~~

- ~~(1) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;~~
- ~~(2) Where range or grazing is the proposed postmining use, the detailed management plans to be implemented;~~
- ~~(3) Where a land use different from the premining land use is proposed, all criteria needed for approval of the alternative use under 4 VAC 25-130-816.133; and~~
- ~~(4) The consideration which has been given to making all the proposed surface mining activities consistent with surface owner plans and applicable State and local land use plans and programs.~~

~~(b) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the State and local government agencies~~

which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(a) The plan shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area; including:

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described to the extent such information is available. In the case of previously mined land, the use of the land prior to any mining shall also be described to the extent such information is available.

(2) A narrative of land capability and productivity which analyzes the land use description under paragraph (a) of this section in conjunction with other environmental resources information. The narrative shall provide analyses of:

(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the proposed permit area; and

(ii) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.

(b) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use of existing land use policies and plans. This description shall explain:

(1) How the proposed post mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(2) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under 4 VAC 25-130-816.33; and

(3) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs.

(c) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed

permit area and the state and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

#### **4 VAC 25-130-780.25. Reclamation plan; ponds siltation structures, impoundments, banks, dams, and embankments.**

(a) General. Each application shall include a general plan and a detailed design plan for each proposed ~~sedimentation pond~~ siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall-

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or by a certified professional geologist with assistance from experts in related fields, such as land surveying and landscape architecture;

(ii) Contain a description, map, and cross section of the structure and its location;

(iii) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(iv) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

(v) Contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the division. The division shall have approved, in writing, the detailed design plan for the structure before construction of the structure begins.

(2) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60), Oct. 1985). "Earth Dams and Reservoirs." Technical Release No. 60 (TR-60) shall comply with the requirements of this section for structures that meet or exceed the size of other criteria of the Mine Safety and Health Administration. The technical release is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. PB 87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, D.C. or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C. Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), shall--

---

# Final Regulations

---

- (i) *Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields, such as geology, land surveying, and landscape architecture;*
- (ii) *Include any geotechnical investigation, design, and construction requirements for the structure;*
- (iii) *Describe the operation and maintenance requirements for each structure; and*
- (iv) *Describe the timetable and plans to remove each structure, if appropriate.*

(3) Each detailed design plan for a ~~structure that does not meet the size or other criteria of 30 CFR 77.216(a)~~ structures not included in paragraph (a)(2) of this section shall--

- (i) *Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or registered land surveyor except that all coal processing waste dams and embankments covered by 4 VAC 25-130-816.81 through 4 VAC 25-130-816.84 shall be certified by a qualified registered professional engineer;*
- (ii) *Include any design and construction requirements for the structure, including any required geotechnical information;*
- (iii) *Describe the operation and maintenance requirements for each structure; and*
- (iv) *Describe the timetable and plans to remove each structure, if appropriate.*

(b) ~~Sedimentation ponds Siltation structures. Sedimentation ponds, whether temporary or permanent, Siltation structures shall be designed in compliance with the requirements of 4 VAC 25-130-816.46. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 4 VAC 25-130-816.49. Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.~~

(c) Permanent and temporary impoundments.

- (1) Permanent and temporary impoundments shall be designed to comply with the requirements of 4 VAC 25-130-816.49.
- (2) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 30 CFR 77.216-1 and 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the division as part of the permit application in accordance with paragraph (a) of this section.
- (3) *For impoundments not included in paragraph (a)(2) of this section, the division may establish engineering*

*design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static factor of 1.3 specified in 4 VAC 25-130-816.49(a)(4)(ii) of this chapter.*

(d) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 4 VAC 25-130-816.81 through 4 VAC 25-130-816.84.

(e) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 4 VAC 25-130-816.81 through 4 VAC 25-130-816.84. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods, in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mud flows, rock debris falls, or other landslides into the dam, embankment, or impounded material.

(f) ~~If the structure is 20 feet or higher or impounds more than 20 acre-feet meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR 77.216(a), each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.~~

#### **4 VAC 25-130-780.35. Disposal of excess spoil.**

(a) Each application shall contain descriptions, including appropriate maps and cross section drawings of the proposed disposal site and design of the spoil disposal structures according to 4 VAC 25-130-816.71 through 4 VAC 25-130-816.75. These plans shall describe the

geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the site and structures.

(b) *Except for the disposal of excess spoil on preexisting benches*, each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

- (1) The character of bedrock and any adverse geologic conditions in the disposal area;
- (2) A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site;
- (3) A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;
- (4) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and
- (5) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(c) If, under 4 VAC 25-130-816.71(d), rocktoe buttresses or key-way cuts are required, the application shall include the following:

- (1) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and
- (2) Engineering specifications utilized to design the rocktoe buttress or key-way cuts which shall be determined in accordance with paragraph (b)(5) of this section.

#### **4 VAC 25-130-783.25. Cross sections, maps and plans.**

(a) The application shall include cross sections, maps, and plans showing--

- ~~(a)~~ (1) Elevations and locations of test borings and core samplings;
- ~~(b)~~ (2) Elevations and locations of monitoring stations used to gather data for water quality and quantity and fish and wildlife in preparation of the application;
- ~~(c)~~ (3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;
- ~~(d)~~ (4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

~~(e)~~ (5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent area;

~~(f)~~ (6) Location and extent of subsurface water, if encountered, within the proposed permit and adjacent area, including, but not limited to horizontal and vertical distribution of aquifers, and portrayal of seasonal differences of head in different aquifers on cross sections and contour maps;

~~(g)~~ (7) Location of surface water bodies, such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;

~~(h)~~ (8) Location and extent of existing or previously surface-mined areas within the proposed permit area;

~~(i)~~ (9) Location and dimensions of existing areas of spoil, waste, coal development waste and non-coal waste disposal, dams, embankments, other impoundments, and water treatment facilities within the proposed permit area;

~~(j)~~ (10) Location and depth, if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

~~(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:~~

~~(1) Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations specified by the division.~~

~~(2) Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances or any other distance determined by the division to be representative of the premining configuration of the land.~~

~~(3) Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.~~

~~(4) (b) Maps, plans, and cross sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer or certified professional geologist, with assistance from experts in related fields, such as land surveying and landscape architecture and shall be updated as required by the division.~~

#### **4 VAC 25-130-784.15. Reclamation plan; postmining land use information.**

~~(a) Each plan shall contain a description of the proposed use, following reclamation of the land to be affected within~~

---

# Final Regulations

---

~~the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain—~~

~~(1) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;~~

~~(2) Where a land use different from the premining land use is proposed, all criteria needed for approval of the alternative use under 4 VAC 25-130-817.133; and~~

~~(3) The consideration which has been given to making all the proposed underground mining activities consistent with surface owner plans and applicable State and local land use plans and programs.~~

~~(4) The requirements of Paragraph (a)(2) may be met by requesting approval through the permit revision procedures of 4 VAC 25-130-774.13 rather than requesting such approval in the original permit application. The original permit application, however, must demonstrate that the land will be returned to its premining land use capability as required by 4 VAC 25-130-817.133(a). An application for a permit revision of this type, (i) must be submitted in accordance with the filing deadlines of 4 VAC 25-130-774.13, (ii) shall constitute a significant alteration from the mining operations contemplated by the original permit, and (iii) shall be subject to the requirements of Parts 773 and 775.~~

~~(b) The description shall be accompanied by a copy of the comments concerning the proposed use from any person having a recorded ownership interest in the surface areas to be affected by surface operations or facilities within the proposed permit area and the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.~~

~~(a) The plan shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area; including:~~

~~(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed with five years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described to the extent such information is available.~~

~~(2) A narrative of land capability and productivity, which analyzes the land use description under paragraph (a) of this section in conjunction with other environmental resources information. The narrative shall provide analyses of:~~

~~(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative~~

~~cover, and the hydrology of the proposed permit area; and~~

~~(ii) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.~~

~~(b) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use of existing land use policies and plans. This description shall explain:~~

~~(1) How the proposed post mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;~~

~~(2) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under 4 VAC 25-130-816.133; and~~

~~(3) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs.~~

~~(c) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.~~

## **4 VAC 25-130-784.16. Reclamation plan; ponds siltation structures, impoundments, banks, dams, and embankments.**

(a) General. Each application shall include a general plan and a detailed design plan for each proposed ~~sedimentation~~ pond siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall—

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or by a certified professional geologist with assistance from experts in related fields, such as land surveying and landscape architecture;

(ii) Contain a description, map, and cross section of the structure and its location;

---



(iii) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(iv) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from any past underground mining operations; and

(v) Contain a certification statement which includes a schedule of the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the division. The division shall have approved, in writing, the detailed design plan for the structure before construction of the structure begins.

(2) *Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60), Oct. 1985). "Earth Dams and Reservoirs." Technical Release No. 60 (TR-60) shall comply with the requirements of this section for structures that meet or exceed the size of other criteria of the Mine Safety and Health Administration. The technical release is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. PB 87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, D.C. or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C. Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), shall--*

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields, such as geology, land surveying, and landscape architecture;

(ii) Include any geotechnical investigation, design, and construction requirements for the structure;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) structures not included in paragraph (a)(2) of this section shall--

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or registered land surveyor except that all coal processing waste dams and embankments

covered by 4 VAC 25-130-817.81 through 4 VAC 25-130-817.84 shall be certified by a qualified registered professional engineer;

(ii) Include any design and construction requirements for the structure, including any required geotechnical information;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(b) ~~Sedimentation ponds~~ *Siltation structures.* (4) ~~Sedimentation ponds, whether temporary or permanent, Siltation structures shall be designed in compliance with the requirements of 4 VAC 25-130-817.46. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 4 VAC 25-130-817.49.~~

~~(2) Each plan shall, at a minimum comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.~~

(c) Permanent and temporary impoundments.

(1) Permanent and temporary impoundments shall be designed to comply with the requirements of 4 VAC 25-130-817.49.

(2) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 30 CFR 77.216-1 and 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the division as part of the permit application in accordance with paragraph (a) of this section.

(3) *For impoundments not included in paragraph (a)(2) of this section the division may establish engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in 4 VAC 25-130-817.49(a)(4)(ii).*

(d) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 4 VAC 25-130-817.81 through 4 VAC 25-130-817.84.

(e) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 4 VAC 25-130-817.81 through 4 VAC 25-130-817.84. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be

---

# Final Regulations

---

planned and supervised by an engineer or engineering geologist, according to the following:

- (1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.
- (2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.
- (3) All springs, seepage, and ground water flow observed or anticipated during wet periods, in the area of the proposed dam or embankment shall be identified on each plan.
- (4) Consideration shall be given to the possibility of mud flows, rock debris, falls, or other landslides into the dam, embankment, or impounded material.
- (f) ~~If the structure is 20 feet or higher or impounds more than 20 acre-feet meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR 77.216(a),~~ each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

#### **4 VAC 25-130-784.23. Operation plan; maps and plans.**

Each application shall contain maps and plans as follows:

- (a) The maps, plans and cross sections shall show the land proposed to be affected throughout the operation, the underground mining activities to be conducted, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under 4 VAC 25-130-783.24 and 4 VAC 25-130-783.25.
- (b) The following shall be shown for the proposed permit area:
  - (1) Buildings, utility corridors and facilities to be used;
  - (2) The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
  - (3) Each area of land for which a performance bond or other equivalent guarantee will be posted under Subchapter VJ;
  - (4) Each coal storage, cleaning and loading area;
  - (5) Each topsoil, spoil, coal preparation waste, underground development waste, and non-coal waste storage area;

- (6) Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
- (7) Each source of waste and each waste disposal facility relating to coal processing or pollution control;
- (8) Each facility to be used to protect and enhance fish and wildlife and related environmental values;
- (9) Each explosive storage and handling facility;
- (10) Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with 4 VAC 25-130-784.16 and disposal areas for underground development waste and excess spoil, in accordance with 4 VAC 25-130-784.19-;
- (11) Each profile, at cross sections specified by the division, of the anticipated final surface configuration to be achieved for the affected areas;
- (12) Location of each water and subsidence monitoring point; and
- (13) Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Maps, plans, and cross sections required under paragraph (b) (4), (5), (6), (10), and (11) of this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, or certified professional geologist, with assistance from experts in related fields, such as land surveying and landscape architecture, except that--

- (1) Maps, plans, and cross sections for sedimentation ponds may only be prepared by a qualified registered professional engineer and;
- (2) Excess spoil and underground development waste facilities maps, plans, and cross sections may only be prepared by a qualified registered professional engineer.

#### **4 VAC 25-130-800.40. Requirements to release performance bonds.**

- (a) Bond release application.
  - (1) The permittee may file an application with the division for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the division in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be identified in the mining and reclamation plan required in Subchapter VG.
  - (2) Within 30 days after an application for bond release has been filed with the division, the permittee shall submit proof of publication of the advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and

shall contain the applicant's name, the permit number, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the permittee's approved reclamation plan, and the name and address of the division to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to 4 VAC 25-130-800.40(f) and (h). In addition, as part of any bond release application, the permittee shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

*(3) The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.*

(b) Inspection by the division.

(1) Upon receipt of the bond release application, the division shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the division in making the bond release inspection. The division may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in the bond release, for the purpose of gathering information relevant to the proceeding.

(2) Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to paragraph (f) of this section, or, within 30 days after a public hearing has been held pursuant to paragraph (f) of this section, the division shall notify in writing the permittee, the surety or other persons with an interest in the bond collateral who have requested notification under 4 VAC 25-130-800.21(c), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

(c) The division may release all or part of the bond for the entire permit area or a portion of the permit area if the

division is satisfied that all reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II and III:

(1) At the completion of Phase I, after the permittee completes the backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60% of the bond or collateral for the applicable area.

(2) At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the division shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for permittee responsibility in § 45.1-241 of the Act for reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by § 45.1-242 of the Act and by Subchapter VK or until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to § 45.1-238(D) of the Act and Part 823. Where a silt dam is to be retained as a permanent impoundment pursuant to Subchapter VK, the Phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the permittee or the landowner have been made with the division.

(3) At the completion of Phase III, after the permittee has successfully completed all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for permittee responsibility in 4 VAC 25-130-816.116 or 4 VAC 25-130-817.116. However, no bond shall be fully released under provisions of this section until reclamation requirements of the Act and the permit are fully met.

(d) If the division disapproves the application for release of the bond or portion thereof, the division shall notify the permittee, the surety, and any person with an interest in collateral as provided for in 4 VAC 25-130-800.21(c), in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(e) When any application for total or partial bond release is filed with the division, the division shall notify the town, city or other municipality nearest the operation and the county in

---

# Final Regulations

---

which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the division within 30 days after the last publication of the notice required by 4 VAC 25-130-800.40(a)(2). If written objections are filed and a hearing is requested, the division shall inform all the interested parties of the time and place of the hearing, and shall hold a public hearing within 30 days after receipt of the request for the hearing. The date, time and location of the public hearing shall be advertised by the division in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing shall be held in the locality of the surface coal mining operation from which bond release is sought, at the location of the division office, or at the State Capital, at the option of the objector. The decision of the Hearing Officer shall be made within 30 days from the close of the hearing.

(g) For the purpose of the hearing under paragraph (f) of this section, the division shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the division.

(h) Without prejudice to the right of an objector or the applicant, the division may hold an informal conference as provided in § 45.1-239 of the Act to resolve such written objections. The division shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The division shall also furnish all parties of the informal conference with a written finding of the division based on the informal conference, and the reasons for said finding.

#### **4 VAC 25-130-816.46. Hydrologic balance; siltation structures.**

(a) For the purposes of this section only, "disturbed area" shall not include those areas-

(i) In which the only surface mining activities include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with this Part; and

(ii) For which the upstream area is not otherwise disturbed by the ~~permittee~~ operator.

(b) General requirements.

(1) Additional contributions of sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in paragraph (b)(5) or (e) of this section.

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan. ~~The certification of completion shall be provided to the division within 30 days after completion of construction of the structure.~~

(4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with 4 VAC 25-130-816.49.

(5) Siltation structures shall be maintained until removal is authorized by the division and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than two ~~growing seasons~~ years after the last augmented seeding.

(6) When a siltation structure is removed, any embankment material and all accumulated sediment shall be placed in designated disposal areas, and the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and 4 VAC 25-130-816.111 through 4 VAC 25-130-816.116. Sedimentation ponds approved by the division for retention as permanent impoundments may be exempted from this requirement.

(c) Sedimentation ponds.

(1) When used, sedimentation ponds shall-

(i) Be used individually or in series;

(ii) Be located as near as possible to the disturbed area and out of perennial streams unless such location is approved by the division; and

(iii) Be designed, constructed, and maintained to-

~~(A)~~ (A) Provide adequate sediment storage volume and provide adequate detention time to allow the effluent from the ponds to meet state and federal effluent limitations;

~~(B)~~ (B) Have a minimum volume of 0.125 acre-feet per acre of disturbed area draining to it, of which 0.075 acre-feet per acre disturbed shall be sediment storage volume and the remainder shall be detention storage volume;

~~(C)~~ (C) Treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is

approved by the division based on terrain, climate, other site-specific conditions and on a demonstration by the permittee that the effluent limitations of 4 VAC 25-130-816.42 will be met;

~~(d) (D)~~ Provide a nonclogging dewatering device adequate to maintain the detention time required under paragraph (c)(1)(iii)(A) and (B) of this section;

~~(e) (E)~~ Minimize, to the extent possible, short circuiting;

~~(f) (F)~~ Provide periodic sediment removal sufficient to maintain adequate volume for the design event. The elevation corresponding to the sediment storage volume shall be determined and a bench mark set in the field from which this elevation can readily be established. Sediment shall be removed when its accumulation reaches the cleanout level or more frequently if the operation of the structure is impaired. Sediment removed shall be placed only in disposal areas identified and approved in the reclamation plan;

~~(g) (G)~~ Ensure against excessive settlement;

~~(h) (H)~~ Be free of sod, large roots, frozen soil, and acid or toxic-forming coal-processing waste; and

~~(i) (I)~~ Be compacted properly.

(2) Spillways. A sedimentation pond shall include either a combination of principal and emergency spillways or a single spillway configured as specified in Paragraph ~~(c)(2)(i)~~ of this section, designed and constructed to safely pass the applicable design precipitation event specified in Paragraph ~~(c)(2)(ii)~~ of this section, except as set forth in Paragraph ~~(c)(2)(iii)~~ of this section 4 VAC 25-130-816.49(a)(9).

~~(i) (A)~~ The division may approve a single open-channel spillway that is:

~~(1)~~ Of nonerodible construction and designed to carry sustained flows; or

~~(2)~~ Earth or grass lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

~~(b)~~ Temporary ponds that do not meet the size or other criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage, may use a single spillway of the pipe and riser design if the riser is no less than 15 inches in diameter, the barrel is no less than 12 inches in diameter, and a properly designed anti-vortex device and trash rack are securely installed on top of the riser.

~~(ii)~~ Except as specified in Paragraph ~~(c)(2)(iii)~~ of this section, the required design precipitation event for a sedimentation pond meeting the spillway requirements of Paragraph ~~(c)(2)~~ of this section is:

~~(a)~~ For a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), a 100-year

~~6-hour event, or greater event as specified by the division.~~

~~(b)~~ For a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), a 25-year 6-hour event, or greater event as specified by the division.

~~(iii)~~ In lieu of meeting the requirements in Paragraph ~~(c)(2)(i)~~ of this section, the division may approve a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with 4 VAC 25-130-780.25(a) that the sedimentation pond will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such a sedimentation pond shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

~~(a)~~ In the case of a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the division; or

~~(b)~~ In the case of a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the division.

(d) Other treatment facilities.

(1) Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the division based on terrain, climate, other site-specific conditions and a demonstration by the permittee that the effluent limitations of 4 VAC 25-130-816.42 will be met.

(2) Other treatment facilities shall be designed in accordance with the applicable requirements of paragraph (c) of this section.

(e) Exemptions. Exemptions to the requirements of this section may be granted if-

(1) The disturbed drainage area within the total disturbed area is small; and

(2) The permittee demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed area to meet the effluent limitations under 4 VAC 25-130-816.42 and the applicable state and federal water quality standards for the receiving waters.

---

# Final Regulations

---

## 4 VAC 25-130-816.49. Impoundments.

(a) General requirements. The requirements of this subsection apply to both temporary and permanent impoundments.

(1) *Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs", shall comply with the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. PB87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, D.C., or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C.*

~~(4)~~ (2) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this section.

~~(2)~~ (3) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this Part using current, prudent engineering practices, and any other criteria established by the division. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

~~(3)~~ (4) Stability.

(i) An impoundment meeting the *Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a)* ~~or located where failure would be expected to cause loss of life or serious property damage~~ shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments ~~not meeting the size or other criteria of 30 CFR 77.216(a) included in paragraph (a)(4)(i) of this section, except for a coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage~~ shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions. In lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3, earth embankments whose top widths are no less than 10 feet and whose embankment slopes are 2h:1v or flatter may be used provided that the permittee documents that a minimum static safety factor of 1.3 can be met using the graphical solution methods outlined in the "Bureau

of Mines Report of Investigations/1981, RI 8564, Factor of Safety Charts for Estimating the Stability of Saturated and Unsaturated Tailings Pond Embankments, United States Department of Interior."

~~(4)~~ (5) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum freeboard shall be one foot. *Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.*

~~(5)~~ (6) Foundation.

(i) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the *Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a)*, foundation investigations, as well as any necessary laboratory testing of foundation material shall be performed to determine the design requirements for foundation stability.

(ii) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability and minimize seepage. The pool area shall be cleared of all brush and trees unless the requirement is waived by the division.

(iii) The most impervious material available shall be used in the cutoff trench and center portion of the dam. If sandy or gravelly material is encountered, it shall be placed in the outer shell, preferably in the downstream portion of the dam.

~~(6)~~ (7) Slope protection. Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

~~(7)~~ (8) Vegetation. Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be ripped or otherwise stabilized in accordance with accepted design practices.

~~(8)~~ (9) Spillways. An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in subdivision (a)~~(8)~~(9)(i) of this section, designed and constructed to safely pass the applicable design precipitation event specified in subdivision (a)~~(8)~~(9)(ii) of this section, except as set forth in subdivision (c)(2) of this section.

(i) (A) The division may approve a single open-channel spillway that is:

(1) Of nonerodible construction and designed to carry sustained flows; or

(2) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) Temporary ponds that do not meet the size or other criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage, may use a single spillway of the pipe and riser design if the riser is no less than 15 inches in diameter, the barrel is no less than 12 inches in diameter, and a properly designed anti-vortex device and trash rack are securely installed on top of the riser.

(ii) Except as specified in subdivision (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of subdivision (a)(9) (9) of this section is:

(A) For an impoundment meeting the SCS Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 or greater event as specified by the division.

~~(a)~~ (B) For an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year six-hour event, or greater event as specified by the division.

~~(b)~~ (C) For an impoundment ~~not meeting the size or other criteria of 30 CFR 77.216(a)~~ included in paragraph (a)(9)(ii)(A) and (B) of this section, a 25-year six-hour event, or greater event as specified by the division.

~~(9)~~ (10) Inspections. A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in subdivision (a)(9)(10)(i) of this section. The professional engineer or specialist shall be experienced in the construction of impoundments.

(i) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(ii) The qualified registered professional engineer shall, within two weeks after each inspection required in subdivision (a)(9)(10) (i) of this section, provide to the division a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. Construction certified in previous reports need not be recertified after each annual inspection. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded

waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

(iii) A copy of the report shall be retained at or near the minesite.

~~(10)~~ (11) Examinations. Impoundments ~~subject to meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216~~ must be examined in accordance with 30 CFR 77.216-3. ~~Other~~ Impoundments ~~not meeting the Class B or C criteria for dams in TR-60, or subject to 30 CFR 77.216~~ shall be examined at least quarterly. ~~by~~ A qualified person designated by the ~~permittee~~ operator shall examine impoundments for appearance of structural weakness and other hazardous conditions. ~~A written record of each examination shall be retained at or near the minesite.~~

~~(11)~~ (12) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the permittee shall promptly inform the division of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the division shall be notified immediately. Notification shall be by the fastest available means and followed in writing. The division shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments. A permanent impoundment of water may be created, if authorized by the division in the approved permit based upon the following demonstration:

(1) The size and configuration of such impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

(c) Temporary impoundments.

---

# Final Regulations

---

(1) The division may authorize the construction of temporary impoundments as part of a surface coal mining operation.

(2) In lieu of meeting the requirements in subdivision (a)(8)(9)(i) of this section, the division may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with 4 VAC 25-130-780.25(a) that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

~~(a) In the case of an impoundment meeting (i) Impoundments meeting the SCS Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a), it is shall be designed to control the precipitation of the probable maximum precipitation of a six-hour event, or greater event as specified by the division; or~~

~~(b) In the case of an impoundment not meeting the size or other criteria of 30 CFR 77.216(a), it is (ii) Impoundments not included in paragraph (c)(2)(i) of this section shall be designed to control the precipitation of a 100-year six-hour event, or greater event as specified by the division.~~

#### **4 VAC 25-130-816.74. Disposal of excess spoil; preexisting benches.**

(a) The division may approve the disposal of excess spoil through placement on preexisting benches, ~~provided that all if the affected portion of the preexisting bench is permitted and the standards set forth in 4 VAC 25-130-816.71(a), (b)(1), (d) through (i) 4 VAC 25-130-816.102(c), (e) through (h) and (j), and the requirements of this section are met.~~

~~(b) Excess spoil and all appurtenant structures shall be placed only on the solid portion of the preexisting bench. All vegetation and organic materials shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil. Any available topsoil on the bench shall be removed, stored, and distributed in accordance with 4 VAC 25-130-816.22. Substitute or supplemental materials may be used in accordance with 4 VAC 25-130-816.22(b).~~

~~(c) The fill shall be designed, and constructed using current, prudent engineering practices, to attain a long-term static safety factor of 1.3 for all portions of the fill. The design will be certified by a registered professional engineer. The spoil shall be placed on the solid portion of the bench in a controlled manner and concurrently compacted as necessary to attain a long term static safety factor of 1.3 for all portions of the fill. Any spoil deposited on any fill portion of the bench will be treated as excess spoil fill under 4 VAC 25-130-816.71.~~

(d) The preexisting bench shall be backfilled and graded to-

(1) Achieve the most moderate slope possible which does not exceed the angle of repose; ~~and~~

(2) Eliminate the highwall to the maximum extent technically practical; ;

(3) *Minimize erosion and water pollution both on and off the site; and*

(4) *If the disposal area contains springs, natural, or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.*

~~(e) All disturbed areas, including diversion channels that are not ripped or otherwise protected, shall be revegetated upon completion of construction.~~

~~(f) Permanent impoundments may not be constructed on preexisting benches backfilled with excess spoil under this regulation.~~

~~(g) Final configuration of the backfill must be compatible with the natural drainage patterns and the surrounding area, and support the approved postmining land use.~~

~~(e) (h) Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the division provided that-~~

(1) The gravity transport courses are determined on a site specific basis by the permittee as part of the permit application and approved by the division to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;

(2) All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;

(3) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm;



(4) Excess spoil shall not be allowed on the downslope below the upper bench except on designed gravity transport courses properly prepared according to 4 VAC 25-130-816.22. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport course between the two benches and each transport course shall be reclaimed in accordance with the requirements of this Part.

#### 4 VAC 25-130-816.81. Coal mine waste; general requirements.

(a) General. All coal mine waste *disposed of in an area other than the mine workings or excavations* shall be ~~transported and~~ placed in new or existing disposal areas within a permit area, which are approved by the division for this purpose. Coal mine waste shall be *hauled or conveyed and placed for final placement* in a controlled manner to-

- (1) Minimize adverse effects of leachate and surface-water runoff on surface and ground water quality and quantity;
- (2) Ensure mass stability and prevent mass movement during and after construction;
- (3) Ensure that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use;
- (4) Not create a public hazard; and
- (5) Prevent combustion.

(b) Waste from other areas. Coal mine waste material from activities located outside a permit area may be disposed of in the permit area only if approved by the division. Approval shall be based upon a showing that such disposal will be in accordance with the standards of this section.

(c) Design certification.

- (1) The disposal facility shall be designed using current prudent engineering practices and any criteria established by the division as necessary to achieve the standards of this Part. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.
- (2) The disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction.
- ~~(3) The coal mine waste shall be spread in layers no more than 24 inches in thickness and compacted to attain 90 percent of the maximum dry density to prevent spontaneous combustion and to provide the strength required for stability of the disposal facility, except that the division may approve construction of the facility in compacted layers exceeding 24 inches in thickness or with other maximum dry densities where engineering~~

~~data substantiates that a minimum safety factor of 1.5 will be attained.~~

(d) Foundation. Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

(e) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the division shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the division shall be notified immediately. Notification shall be by the fastest available means and followed in writing. The division shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(f) Underground disposal. Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the division and MSHA under 4 VAC 25-130-784.25.

#### 4 VAC 25-130-816.89. Disposal of noncoal mine wastes.

(a) Noncoal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b) Final disposal of noncoal mine wastes shall be in a designated disposal site in the permit area or a state-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of ~~2~~ two feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with 4 VAC 25-130-816.111 through 4 VAC 25-130-816.116. Operation of the disposal site shall be conducted in accordance with all local, state and federal requirements.

(c) At no time shall any noncoal mine waste be deposited in a refuse pile or impounding structure, nor shall a noncoal mine waste disposal site be located within ~~8~~ eight feet of any coal outcrop or coal storage area.

~~(d) Notwithstanding any other provision in this chapter, any noncoal mine waste defined as "hazardous" under section 3001 of the Resource Conservation and Recovery~~

---

# Final Regulations

---

~~Act (RCRA) (Pub. L. 94-580, as amended) and 40 CFR 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.~~

#### **4 VAC 25-130-816.104. Backfilling and grading; thin overburden.**

~~In surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit and where the thickness of the coal deposit relative to the thickness of the overburden is large and where the permittee demonstrates that the spoil and other waste materials available from the entire permit area are insufficient, giving due consideration to volumetric expansion, to restore the disturbed area to its approximate original contour, the permittee shall, at a minimum--~~

*(a) Thin overburden exists when spoil and other waste materials available from the entire permit area is insufficient to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:*

*(1) Closely resemble the surface configuration of the land prior to mining; or*

*(2) Blend into and complement the drainage pattern of the surrounding terrain.*

*(b) Where thin overburden occurs within the permit area, the permittee at a minimum shall:*

~~(a) (1) Use all available spoil and other waste materials available from the entire permit area to attain the lowest practicable grade, but not more than the angle of repose; and~~

~~(b) (2) Meet the requirements of 4 VAC 25-130-816.102(a)(2) through (j).~~

#### **4 VAC 25-130-816.105. Backfilling and grading; thick overburden.**

~~In surface coal mining where the thickness of the overburden is large relative to the thickness of the coal deposit and where the permittee demonstrates that the volume of the spoil and other waste materials is more than sufficient to restore the disturbed area to its approximate original contour, the permittee shall, at a minimum, after restoring to the approximate original contour--~~

*(a) Thin overburden exists when spoil and other waste materials available from the entire permit area is insufficient to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfill and grading the surface configuration of the reclaimed area would not:*

*(1) Closely resemble the surface configuration of the land prior to mining; or*

*(2) Blend into and complement the drainage pattern of the surrounding terrain.*

*(b) Where thin overburden occurs within the permit area, the permittee at a minimum shall:*

~~(a) Use (1) Restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose;~~

~~(b) (2) Meet the requirements of 4 VAC 25-130-816.102(a)(2) through (j); and~~

~~(c) (3) Dispose of any excess spoil in accordance with 4 VAC 25-130-816.71 through 4 VAC 25-130-816.75.~~

#### **4 VAC 25-130-817.46. Hydrologic balance; siltation structures.**

*(a) For the purposes of this section only: "disturbed area" shall not include those areas-*

~~(i) (1) In which the only underground mining activities include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with this Part; and~~

~~(ii) (2) For which the upstream area is not otherwise disturbed by the permittee operator.~~

*(b) General requirements.*

*(1) Additional contributions of suspended solids and sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.*

*(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in paragraph (b)(5) or (e) of this section.*

*(3) Siltation structures for an area shall be constructed before beginning any underground mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan. The certification of completion shall be provided to the division within 30 days after completion of construction of the structure.*

*(4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with 4 VAC 25-130-817.49.*

*(5) Siltation structures shall be maintained until removal is authorized by the division and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than two growing seasons years after the last augmented seeding.*

*(6) When the siltation structure is removed, any embankment material and all accumulated sediment*

shall be placed in designated disposal areas, and the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and 4 VAC 25-130-817.111 through 4 VAC 25-130-817.116. Sedimentation ponds approved by the division for retention as permanent impoundments may be exempted from this requirement.

(7) Any point source discharge of water from underground workings to surface waters which does not meet the effluent limitations of 4 VAC 25-130-817.42 shall be passed through a siltation structure before leaving the permit area.

(c) Sedimentation ponds.

(1) Sedimentation ponds, when used, shall-

- (i) Be used individually or in series;
- (ii) Be located as near as possible to the disturbed area and out of perennial streams unless such location is approved by the division; and
- (iii) Be designed, constructed, and maintained to-

~~(a)~~ (A) Provide adequate sediment storage volume and provide adequate detention time to allow the effluent from the ponds to meet state and federal effluent limitations;

~~(b)~~ (B) Have a minimum volume of 0.125 acre-feet per acre of disturbed area draining to it, of which 0.075 acre-feet per acre disturbed shall be sediment storage volume and the remainder shall be detention storage volume;

~~(c)~~ (C) Treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the division based on terrain, climate, other site specific conditions and on a demonstration by the permittee that the effluent limitations of 4 VAC 25-130-817.42 will be met;

~~(d)~~ (D) Provide a nonclogging dewatering device adequate to maintain the detention time required under paragraph (c)(1)(iii)(A) and (B) of this section;

~~(e)~~ (E) Minimize, to the extent possible, short circuiting;

~~(f)~~ (F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event. The elevation corresponding to the sediment storage volume shall be determined and a bench mark set in the field from which this elevation can readily be established. Sediment shall be removed when its accumulation reaches the cleanout level or more frequently if the operation of the structure is impaired. Sediment removed shall be placed only in disposal areas identified and approved in the reclamation plan;

~~(g)~~ (G) Ensure against excessive settlement;

~~(h)~~ (H) Be free of sod, large roots, frozen soil, and acid- or toxic-forming coal-processing waste; and

~~(i)~~ (I) Be compacted properly.

(2) Spillways. A sedimentation pond shall include either a combination of principal and emergency spillways or a single spillway configured as specified in Paragraph ~~(c)(2)(i) of this section, designed and constructed to safely pass the applicable design precipitation event specified in Paragraph (c)(2)(ii) of this section, except as set forth in Paragraph (c)(2)(iii) of this section~~ 4 VAC 25-130-817.49(a)(9).

~~(i)~~ (A) The division may approve a single open-channel spillway that is:

~~(1)~~ Of nonerodible construction and designed to carry sustained flows; or

~~(2)~~ Earth or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

~~(b)~~ Temporary ponds that do not meet the size or other criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage, may use a single spillway of the pipe and riser design if the riser is no less than 15 inches in diameter, the barrel is no less than 12 inches in diameter, and a properly designed anti-vortex device and trash rack are securely installed on top of the riser.

~~(ii)~~ Except as specified in Paragraph (c)(2)(iii) of this section, the required design precipitation event for a sedimentation pond meeting the spillway requirements of Paragraph (c)(2) of this section is:

~~(a)~~ For a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the division.

~~(b)~~ For a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), a 25-year 6-hour event, or greater event as specified by the division.

~~(iii)~~ In lieu of meeting the requirements in Paragraph (c)(2)(i) of this section, the division may approve a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with 4 VAC 25-130-784.16(a) that the sedimentation pond will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices.

---

# Final Regulations

---

~~Such a sedimentation pond shall be located where failure would not be expected to cause loss of life or serious property damage, except where:~~

~~(a) In the case of a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the division.~~

~~(b) In the case of a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the division.~~

(d) Other treatment facilities.

(1) Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the division based on terrain, climate, other site-specific conditions and a demonstration by the permittee that the effluent limitations of 4 VAC 25-130-817.42 will be met.

(2) Other treatment facilities shall be designed in accordance with the applicable requirements of paragraph (c) of this section.

(e) Exemptions. Exemptions to the requirements of this section may be granted if -

(1) The disturbed drainage area within the total disturbed area is small; and

(2) The permittee demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed area to meet the effluent limitations under 4 VAC 25-130-817.42 and the applicable state and federal water quality standards for the receiving waters.

#### 4 VAC 25-130-817.49. Impoundments.

(a) General requirements. The requirements of this subsection apply to both temporary and permanent impoundments.

*(1) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs", 1985 shall comply with "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. PB87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, D.C.*

*or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington D.C.*

(2) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this section.

~~(2)~~ (3) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this Part using current, prudent engineering practices and any other criteria established by the division. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

~~(3)~~ (4) Stability.

(i) An impoundment meeting *the SCS Class B or C criteria for dams in TR-60*, or the size or other criteria of 30 CFR 77.216(a) ~~or located where failure would be expected to cause loss of life or serious property damage~~ shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(ii) Impoundments not ~~meeting the size or other criteria of 30 CFR 77.216(a)~~ *included in paragraph (a)(4)(i) of this section*, except for a coal mine waste impounding structure, ~~and located where failure would not be expected to cause loss of life or serious property damage~~ shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions. In lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3, earth embankments whose top widths are no less than 10 feet and whose embankment slopes are 2h:1v or flatter may be used provided that the permittee documents that a minimum static safety factor of 1.3 can be met using the graphical solution methods outlined in the "Bureau of Mines Report of Investigations/1981, RI 8564, Factor of Safety Charts for Estimating the Stability of Saturated and Unsaturated Tailings Pond Embankments, United States Department of Interior".

~~(4)~~ (5) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum freeboard shall be one foot. *Impoundments meeting the SCS Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.*

~~(5)~~ (6) Foundation.

(i) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting *the SCS Class B or C criteria for dams in TR-60*, or

the size or other criteria of 30 CFR 77.216(a), foundation investigations, as well as any necessary laboratory testing of foundation material shall be performed to determine the design requirements for foundation stability.

(ii) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability and minimize seepage. The pool area shall be cleared of all brush and trees unless the requirement is waived by the division.

(iii) The most impervious material available shall be used in the cutoff trench and center portion of the dam. If sandy or gravelly material is encountered, it shall be placed in the outer shell, preferably in the downstream portion of the dam.

~~(6)~~ (7) Slope protection. Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

~~(7)~~ (8) Vegetation. Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

~~(8)~~ (9) Spillways. An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in subdivision (a)~~(8)~~(9) (i) of this section, designed and constructed to safely pass the applicable design precipitation event specified in subdivision (a)~~(8)~~(9)(ii) of this section, except as set forth in subdivision (c)(2) of this section.

(i) (A) The division may approve a single open-channel spillway that is:

- (1) Of nonerodible construction and designed to carry sustained flows; or
- (2) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

~~(b)~~ (B) Temporary ponds that do not meet the size or other criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage, may use a single spillway of the pipe and riser design if the riser is no less than 15 inches in diameter, the barrel is no less than 12 inches in diameter, and a properly designed anti-vortex device and trash rack are securely installed on top of the riser.

(ii) Except as specified in subdivision (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of subdivision (a)~~(8)~~ (9) of this section is:

(A) For an impoundment meeting the SCS Class B or C criteria for dams in TR-60, the

*emergency spillway hydrologic criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 or greater event as specified by the division.*

~~(a)~~ (B) For an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year six-hour event, or greater event as specified by the division.

~~(b)~~ (C) For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a) included in paragraph (a)~~(9)~~(ii)(A) and (B) of this section, a 25-year six-hour event, or greater event as specified by the division.

~~(9)~~ (10) Inspections. A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in subdivision (a)~~(9)~~(10)(i) of this section. The professional engineer or specialist shall be experienced in the construction of impoundments.

(i) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(ii) The qualified registered professional engineer shall, within two weeks after each inspection required in subdivision (a)~~(9)~~(10)(i) of this section, provide to the division, a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. Construction certified in previous reports need not be recertified after each annual inspection. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

(iii) A copy of the report shall be retained at or near the minesite.

~~(10)~~ (11) Examinations. Impoundments ~~subject to meeting the SCS Class B or C criteria for dams in TR-60, or the size of other criteria of 30 CFR 77.216~~ must be examined in accordance with 30 CFR 77.216-3. ~~Other~~ Impoundments *not meeting the SCS Class B or C criteria for dams in TR-60, or subject to 30 CFR 77.216* shall be examined at least quarterly. ~~by~~ A qualified person designated by the ~~permittee operator shall examine impoundments~~ for appearance of structural weakness and other hazardous conditions. ~~A written record of each examination shall be retained at or near the minesite.~~

~~(11)~~ (12) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the

---

# Final Regulations

---

permittee shall promptly inform the division of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the division shall be notified immediately. Notification shall be by the fastest available means and followed in writing. The division shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments. A permanent impoundment of water may be created, if authorized by the division in the approved permit based upon the following demonstration:

- (1) The size and configuration of such impoundment will be adequate for its intended purposes.
- (2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.
- (3) The water level will be sufficiently stable and be capable of supporting the intended use.
- (4) Final grading will provide for adequate safety and access for proposed water users.
- (5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.
- (6) The impoundment will be suitable for the approved postmining land use.

(c) Temporary impoundments.

- (1) The division may authorize the construction of temporary impoundments as part of underground mining activities.
- (2) In lieu of meeting the requirements in subdivision (a)(8)(9)(i) of this section, the division may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with 4 VAC 25-130-784.16(a) that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(i) ~~In the case of an impoundment meeting Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), it is~~ shall be designed to control the

precipitation of the probable maximum precipitation of a six-hour event, or greater event as specified by the division; or

(ii) ~~In the case of an impoundment not meeting the size or other criteria of 30 CFR 77.216(a), it is Impoundments included in paragraph (c)(2)(i) of this section shall be~~ designed to control the precipitation of a 100-year six-hour event, or greater event as specified by the division.

#### 4 VAC 25-130-817.74. Disposal of excess spoil; preexisting benches.

(a) The division may approve the disposal of excess spoil through placement on preexisting benches, ~~provided that all if the affected portion of the preexisting bench is permitted and the standards set forth in 4 VAC 25-130-817.71(a), (b)(1), (d) 4 VAC 25-130-817.102(c), (e) through (i) (h) and (j) and the requirements of this section are met.~~

(b) ~~Excess spoil and all appurtenant structures shall be placed only on the solid portion of the preexisting bench.~~ All vegetation and organic materials shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil. Any available topsoil on the bench shall be removed, stored, and redistributed in accordance with 4 VAC 25-130-817.22. Substitute or supplemental materials may be used in accordance with 4 VAC 25-130-817.22(b).

(c) The fill shall be designed, ~~and constructed~~ using current, prudent engineering practices, ~~to attain a long-term static safety factor of 1.3 for all portions of the fill.~~ *The design will be certified by a registered professional engineer. The spoil shall be placed on the solid portion of the bench in a controlled manner and concurrently compacted as necessary to attain a long-term safety factor of 1.3 for all portions of the fill. Any spoil deposited on any fill portion of the bench will be treated as excess spoil fill under 4 VAC 25-130-817.71.*

(d) The preexisting bench shall be backfilled and graded to-

- (1) Achieve the most moderate slope possible which does not exceed the angle of repose; ~~and~~
- (2) Eliminate the highwall to the maximum extent technically practical; ;
- (3) *Minimize erosion and water pollution both on and off the site; and*
- (4) *If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.*

(e) *All disturbed areas, including diversion channels that are not rippedraped or otherwise protected, shall be revegetated upon completion of construction.*

(f) *Permanent impoundments may not be constructed on preexisting benches backfilled with excess spoil under this regulation.*

(g) *Final configuration of the backfill must be compatible with the natural drainage patterns and the surrounding area, and support the approved postmining land use.*

~~(e)~~ (h) Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the division provided that-

(1) The gravity transport courses are determined on a site specific basis by the permittee as part of the permit application and approved by the division to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;

(2) All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;

(3) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm;

(4) Excess spoil shall not be allowed on the downslope below the upper bench except on designated gravity transport courses properly prepared according to 4 VAC 25-130-817.22. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport course between the two benches and each transport course shall be reclaimed in accordance with the requirements of this Part.

#### **4 VAC 25-130-817.81. Coal mine waste; general requirements.**

(a) General. All coal mine waste *disposed of in an area other than the mine workings or excavations* shall be ~~transported and~~ placed in new or existing disposal areas within a permit area, which are approved by the division for this purpose. Coal mine waste shall be *hauled or conveyed and placed for final placement* in a controlled manner to--

(1) Minimize adverse effects of leachate and surface-water runoff on surface and ground water quality and quantity;

(2) Ensure mass stability and prevent mass movement during and after construction;

(3) Ensure that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use;

(4) Not create a public hazard; and

(5) Prevent combustion.

(b) Waste from other areas. Coal mine waste materials from activities located outside a permit area may be disposed of in the permit area only if approved by the division. Approval shall be based upon a showing that such disposal will be in accordance with the standards of this section.

(c) Design certification.

(1) The disposal facility shall be designed using current, prudent engineering practices and any criteria established by the division as necessary to achieve the standards of this Part. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

(2) The disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction.

~~(3) The coal mine waste shall be spread in layers no more than 24 inches in thickness and compacted to attain 90 percent of the maximum dry density to prevent spontaneous combustion and to provide the strength required for stability of the disposal facility, except that the division may approve construction of the facility in compacted layers exceeding 24 inches in thickness or with other maximum dry densities where engineering data substantiates that a minimum safety factor of 1.5 will be attained.~~

(d) Foundation. Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

(e) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the division shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the division shall be notified immediately. Notification shall be by the fastest available means and followed in writing. The division shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

---

# Final Regulations

---

(f) Underground disposal. Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the division and MSHA under 4 VAC 25-130-784.25.

#### 4 VAC 25-130-817.89. Disposal of noncoal mine wastes.

(a) Noncoal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b) Final disposal of noncoal mine wastes shall be in a designated disposal site in the permit area or a state-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with 4 VAC 25-130-817.111 through 4 VAC 25-130-817.116. Operation of the disposal site shall be conducted in accordance with all local, state, and federal requirements.

(c) At no time shall any noncoal mine waste be deposited in a refuse pile or impounding structure, nor shall a noncoal mine waste disposal site be located within 8 feet of any coal outcrop or coal storage area.

~~(d) Notwithstanding any other provision in this chapter, any noncoal mine waste defined as "hazardous" under section 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580, as amended) and 40 CFR 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.~~

#### 4 VAC 25-130-840.11. Inspections by the division.

(a) The division shall conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation under its jurisdiction, and shall conduct such partial inspections of each inactive surface coal mining and reclamation operation under its jurisdiction as are necessary to ensure effective enforcement of the Act and this chapter. A partial inspection is an on-site or aerial review of a permittee's compliance with some of the permit conditions and requirements imposed under the Act and this chapter.

(b) The division shall conduct an average of at least one complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a permittee's compliance with all permit conditions and

requirements imposed under the Act and this chapter, within the entire area disturbed or affected by the surface coal mining and reclamation operations.

(c) The division shall conduct such inspections of coal explorations as are necessary to ensure compliance with the Act and this chapter.

(d) (1) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(2) Any potential violation observed during an aerial inspection shall be investigated on site within three days; provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under § 45.1-245 of the Act shall be investigated on site immediately, and provided further, that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of paragraphs (a) and (b) of this section.

(e) The inspections required under paragraphs (a), (b), (c) and (d) of this section shall:

(1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the Act and this chapter.

(f) For the purposes of this section, an inactive surface coal mining and reclamation operation is one for which:

(1) The division has secured from the permittee the written notice provided for under 4 VAC 25-130-816.131(b) or 4 VAC 25-130-817.131(b); or

(2) Reclamation ~~Phase II as defined has been completed to the level established in 4 VAC 25-130-800.40 has been completed as Phase II.~~

(g) Abandoned site means a surface coal mining and reclamation operation for which the division has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The division has issued at least one notice of violation or the interim program equivalent, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or



(ii) The notice was served and has progressed to a failure-to-abate cessation order or the interim program equivalent;

(3) The division:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) Is taking action pursuant to §§ 45.1-245(C), 45.1-245(E), 45.1-246(E), or § 45.1-246(F) of the Act to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted or bonded:

(i) The permit has *either* expired or been revoked, or permit revocation proceedings have been initiated and are being pursued diligently; and

(ii) The division has initiated and is diligently pursuing forfeiture of, or has forfeited, the *any available* performance bond.

(h) ~~(4)~~ In lieu of the inspection frequency established in paragraphs (a) and (b) of this section, the division shall inspect each abandoned site ~~as necessary to monitor for changes of environmental conditions or operational status at the site on a set frequency commensurate with the public health and safety and environmental consideration present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.~~

~~(2) Before ceasing to perform inspections at the frequency required by paragraphs (a) and (b) of this section at an abandoned site, the division shall:~~

~~(i) Evaluate the environmental conditions and operational status of the site; and~~

~~(ii) Document in writing the inspection frequency necessary to comply with paragraph (h)(1) of this section, and the reasons for selecting that frequency.~~

(1) In selecting an alternate inspection frequency authorized under the paragraph above, the division shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (h)(2) of this section. Following the inspection and public notice, the division shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(i) How the site meets each of the criteria under the definition of an abandoned site under paragraph (g) of

this section and thereby qualifies for a reduction in inspection frequency;

(ii) Whether, and to what extent, there exists on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources.

(iii) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(iv) The degree to which erosion and sediment control is present and functioning;

(v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

(vii) Based on a review of the complete and partial inspection report record for the site during at least two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under paragraph (h)(1) of this section shall be provided as follows:

(i) The division shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned mine site providing the public with a 30-day period in which to submit written comments.

(ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

#### **4 VAC 25-130-843.14. Service of notices of violation, cessation orders, and show cause orders.**

(a) A notice of violation, cessation order, or show cause order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

---

# Final Regulations

---

(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or his designated agent, *or by any means consistent with the rules of the Supreme Court of Virginia governing service of a summons and complaint.* Service shall be complete upon tender of the notice or order or of the *certified* mail and shall not be deemed incomplete because of refusal to accept.

(b) The permittee may designate, in writing to the division, the person who may accept service of any notice or order.

(c) The division may furnish copies of notices and orders to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area, such as the surface and mineral owner, corporate officer of the permittee or entity conducting coal exploration, or the bonding company.

#### **4 VAC 25-130-845.17. Procedures for assessment of civil penalties.**

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the division and to the inspector who issued the notice of violation or cessation order. The division shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The division shall serve a copy of the proposed assessment and the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, *or by any means consistent with the Rules of the Supreme Court of Virginia governing service of a summons or complaint,* within 30 days of the issuance of the notice or order.

(1) If the mail is tendered at the address of that person set forth in the sign required under 4 VAC 25-130-816.11 or 4 VAC 25-130-817.11, or at any address at which that person is in fact located, and the person refuses to accept delivery of or to collect such ~~mail~~ *documents*, the requirements of this paragraph shall be deemed to have been complied with upon such tender. It is the permittee's responsibility to ensure the division has his current address.

(2) *Failure by the division to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the*

*person against whom the proposed penalty has been assessed—*

(i) Proves actual prejudice as a result of the delay; and

(ii) Makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review.

(c) Unless a conference has been requested, the division shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The division shall serve a copy of any such reassessment in the manner provided in paragraph (b), within 30 days after the date the violation is abated.

#### **4 VAC 25-130-845.18. Procedures for assessment conference.**

(a) The division shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom notice or order was issued, if the request is received within ~~45~~ 30 days from the date the proposed assessment or reassessment is served.

(b) (1) The division shall assign a conference officer to hold the assessment conference. The assessment conference shall be conducted as an informal proceeding in accordance with § 9-6.14:11 of the Code of Virginia. The assessment conference shall be held within 60 days from the date ~~of issuance of the proposed assessment~~ *the conference request is received* or the end of the abatement period, whichever is later. *Provided that a failure by the division to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.*

(2) The division shall post notice of the time and place of the conference at the division's office in Big Stone Gap ~~and the Courthouse of the County in which or field office located closest to the mine is located~~ at least five days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall ~~affirm, raise, lower, or vacate the penalty.~~ *either:*

(i) *Settle the issue, in which case a settlement agreement shall be prepared and signed by the division and by the person assessed; or*

(ii) *Affirm, raise, lower, or vacate the penalty.*

(4) An increase or reduction of a proposed civil penalty assessment of more than 25% and more than \$500 shall not be final and binding on the division, until approved by the director or his designee.

(c) The division shall promptly serve the person assessed with a notice of the conference decision in the manner provided in 4 VAC 25-130-845.17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d) (1) *If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.*

(2) *If full payment of the amount specified in the settlement agreement is not received by the division within 30 days after that date of signing, the division may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) with 30 days from the date of the rescission.*

(e) The conference officer may terminate the conference if it is determined that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At any formal review proceedings under §§ 45.1-245C, 45.1-246 and 45.1-249 of the Act, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

#### **4 VAC 25-130-845.19. Request for hearing.**

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the division (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 45 30 days from the date of service of the assessment conference decision, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under 4 VAC 25-130-843.16.

(b) The division shall transfer all funds submitted under paragraph (a) to the State Treasurer's Office which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in 4 VAC 25-130-845.20.

(c) The hearing requested pursuant to a petition filed under subsection (a) of this section shall be conducted as a formal hearing in accordance with the provisions of § 9-6.14:12 of the Code of Virginia. The hearing officer shall cause an accurate verbatim record of the hearing to be made. The division may charge the reasonable cost of preparing such record to any party to the hearing who requests a copy of the record.

#### **4 VAC 25-130-846.17. Assessment of an individual civil penalty.**

(a) Notice. The division shall serve, by certified mail, each individual to be assessed a penalty under this Part a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(b) Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the director 30 days after service upon the individual, unless:

(1) The individual submits a written request for formal review of the penalty to the division within 30 days of service of the notice of proposed individual civil penalty assessment; or

(2) The division and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty to a schedule or plan for the abatement or correction of the violation, failure or refusal.

~~(3) Service of the notice of proposed individual civil penalty shall be complete upon tender of the notice at the address of that individual, the corporate permittee or at any address at which that person is in fact located; and shall not be deemed incomplete because of refusal to accept.~~

(c) *Service. For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the Rules of the Supreme Court of Virginia governing service of a summons and complaint. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.*



## COMMONWEALTH of VIRGINIA

### VIRGINIA CODE COMMISSION

General Assembly Building

JANE D. CHAFFIN  
REGISTRAR OF REGULATIONS

910 CAPITOL STREET  
RICHMOND, VIRGINIA 23219  
(804) 786-3591  
FAX (804) 692-0625

November 19, 1998

Mr. O. Gene Dishner, Director  
Department of Mines, Minerals and Energy  
Ninth Street Office Building, 8<sup>th</sup> Floor  
202 North Ninth Street  
Richmond, Virginia 23219-3402

Dear Mr. Dishner:

This office has received the amendments to 4 VAC 25-130-10 et seq., Coal Surface Mining Reclamation Regulations, filed by the Department of Mines, Minerals and Energy on November 12, 1998.

As required by § 9-6.14:4.1 C 4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Jane D. Chaffin".

Jane D. Chaffin  
Registrar of Regulations

coderegs/register/corr/fedexmpt.doc

VA.R. Doc. No. R99-57; Filed November 12, 1998, 5 p.m.

---

## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-430-10 et seq. Roanoke River Basin Water Quality Management Plan (amending 9 VAC 25-430-20, 9 VAC 25-430-30, 9 VAC 25-430-40 and 9 VAC 25-430-60).**

Statutory Authority: §§ 62.1-44.15(10) and 62.1-44.15(13) of the Code of Virginia.

Effective Date: January 6, 1999.

Summary:

*The amendments to the Roanoke River Basin Water Quality Management Plan (WQMP) increase the wasteload allocations in the WQMP for the Burlington Industries - Clarksville discharge and the Town of Boydton Municipal Sewage Treatment Plant (STP) discharge based on the results of mathematical modeling of water quality in the receiving water bodies. The amendments also specify an individual wasteload allocation for the Town of Clarksville Municipal STP because the town's wasteload allocation is currently combined with the Burlington Industries - Clarksville wasteload allocation.*

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

Agency Contact: Copies of the regulation may be obtained from John van Soestbergen, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5043.

#### **9 VAC 25-430-20. State water quality goals.**

A. Present policy and existing situation. The overall water quality goal of the state is to insure that surface and groundwaters are maintained at the highest possible levels that are economically feasible. The SWCB carries out this policy by instituting programs that upgrade the quality levels of waters in which the water quality standards are violated, and that maintain existing levels where the quality is higher than the minimum standards.<sup>6</sup> At least once each three-year period, the SWCB conducts public hearings for the purpose of receiving comments on applicable water quality standards and, as appropriate, modifying and adopting revised standards.<sup>7</sup> When applied to the Roanoke River Basin, these goals call for water quality in the streams and reservoirs which is adequate for public water supplies, for recreational activities, and for the protection and propagation of fish and aquatic life.<sup>8</sup>

State adopted water quality goals can be met by regulating and controlling the quantities of pollutants discharged into surface and groundwaters. The National Pollutant Discharge Elimination System (NPDES) provides a procedure which

regulates quantities of pollutants, including materials toxic to fish and aquatic life, being discharged from municipal sewerage and industrial wastewater outfalls, i.e., quantities of point source pollutants. These limits of pollutant levels and resulting wastewater treatment requirements may be modified periodically as required by federal or state statute.<sup>9</sup>

B. Mathematical analysis of the basin. Analysis of a basin such as the Roanoke for required waste treatment levels is best accomplished by subdividing it into a series of segments, determined on the basis of water quality and hydrologic characteristics. These segments are classified as either effluent limitation or water quality, according to the degree of treatment necessary for attainment of established water quality goals.<sup>10</sup> Effluent limitation segments are those in which the water quality goals will be met after municipal facilities have "secondary treatment" level capabilities, and industrial facilities have "best practicable technology" (BPT) in their treatment plants. Water quality segments are those requiring treatment levels higher than the foregoing levels in order to meet the standards.<sup>11</sup> In the consultant's report, segments were classified "Effluent" if streams receive only minor discharges, have no known water quality problems, and along which no population or industrial growth is anticipated. BPT will be sufficient to comply with state and EPA regulations. BPT is a technical term defined in P.L. 92-500 and generally defines national minimum level of treatment for various industries. Segments with existing or anticipated water quality problems were classified "effluent limitation." BPT will be sufficient to correct these problems in the near future, although rapid growth may require a higher degree of treatment at a later date.

The exact treatment levels required of each discharger in a water quality segment are determined using a wasteload allocation system. This allocation is based on biological, chemical and hydrologic characteristics of the stream segment, and on the economic aspects of the segment watershed area.

Presented in Table 1 are the segment classifications for the waters of the Roanoke basin. Since the classification system is functionally dependent upon waste flows, levels of treatment, and growth, it follows that some streams will be reclassified in the future as conditions change. It should be pointed out that implementation of the goals of BAT by 1983 and zero discharge by 1985 could completely change the classification system. Secondary treatment, BPT and stream assimilation capacities were used as the foundation for the formulation of ~~waste load~~ *wasteload* allocations. Based on these requirements, total loadings with respect to the major constituents (BOD<sub>5</sub>, suspended solids, nitrogen, and phosphorus) were generated for each existing and potential discharger depending upon the treatment levels which were deemed necessary to meet water quality standards. In segments with two or more dischargers three methodologies were examined. The equal treatment method was used in this river basin plan for areas with existing and future multiple dischargers.

# Final Regulations

1. Equal treatment: all dischargers provide equal treatment, i.e., the same removal efficiency of 90% or better for BOD<sub>5</sub> and suspended solids.
2. Equal effluent: all dischargers provide the same effluent concentrations, i.e., 30 mg/l or less for BOD<sub>5</sub> and suspended solids.
3. Population equivalent: industrial waste and other dischargers converted to population equivalent, i.e., 240 mg/l of BOD<sub>5</sub> and suspended solids for raw waste concentrations.

Presented in Tables 2 and 3 are the ~~waste-load~~ *wasteload* allocations for significant dischargers in the basin. Although BOD<sub>5</sub> is the only constituent for which allocations are established, other major components are presented as suggested NPDES permit numbers in the consultant's report.

It must be stressed that these numbers represent only a preliminary evaluation based on limited data and should be further investigated with detailed field data especially in areas where higher than secondary levels of treatment have been suggested.

For the Roanoke River Basin, the segments were analyzed using the TVA flat water equation corrected for stream slope.<sup>12</sup> This mathematical formula yields the number of pounds per day of five-day biochemical oxygen demand (BOD<sub>5</sub>) which can be discharged. The TVA flat water equation was utilized for stream water quality analysis and for allowable amounts of wastewater discharges in this basin. This formula was selected because its parameters require less extensive field data than do other equations, such as Streeter-Phelps. Given the comparatively limited amounts of data for much of the Roanoke Basin area, the use of the TVA equation presently appears to be the most expeditious approach for stream water quality analysis. As more data becomes available, alternative methods of analysis can be considered, and in future updates of this plan, the appropriate action items can be amended to reflect use of these other equations and methods of analysis. Depending on the scope of either the data collection efforts or the analysis, such alternative analyses can be applied either to the entire basin or to specific portions of it. Further discussion on the TVA equation and its capabilities and limitations are found on page 944 through 949 of the Volume V-A report and a discussion of wasteload allocations for the basin is given on page 210.

C. Board actions to meet water quality goals. The following board actions will be taken:

1. Adopt the segment classifications given in the basin planning report to amend those given in the State Continuing Planning Process 1973-74;<sup>13,14</sup> and
2. Utilize the TVA flat water equation to determine the total assimilation capacity of each stream segment, and assure that these assimilation capacities are not

exceeded by discharge levels allowed under the NPDES Program; and

3. Direct [ *that* ] the mathematical analyses of the water quality segments in this basin be continued as additional data becomes available.

<sup>6</sup> Commonwealth of Virginia, State Water Control Law, § 62.1-44.2; § 62.1-44.36.

<sup>7</sup> P.L. 92-500, Section 303(c).

<sup>8</sup> SWCB, Water Quality Standards §§ 1.01, 1.03 through 1.06, 2.01, 2.02, 4.02, 4.03 (9 VAC 25-260-5 *et seq.*).

<sup>9</sup> P.L. 92-500, Section 402.

<sup>10</sup> Hayes, Seay, Mattern & Mattern, Roanoke River Basin Comprehensive Water Resources Plan, Volume V-A, pp. 183-227; 944-1130.

<sup>11</sup> P.L. 92-500, Sections 301 and 302.

<sup>12</sup> Hayes, Seay, Mattern & Mattern, Roanoke River Basin Comprehensive Water Resources Plan, Volume V-A, pp. 945-949.

<sup>13</sup> *Ibid*, pp. 204-209.

<sup>14</sup> SWCB, 1973-74 Continuing Water Quality Planning Process, pp. 1-8.

TABLE 1.  
STREAM SEGMENT CLASSIFICATION  
ROANOKE RIVER BASIN WATER QUALITY  
MANAGEMENT PLAN.

Classification	Segment Description
WQMA IV E	All tributaries to the Roanoke River not previously classified in this WQMA.
WQMA V E	Roanoke River and all tributaries in this WQMA.
WQMA VI WQ EL E	Ash Camp Creek. Twittys Creek. Roanoke Creek to include all tributaries not previously classified in this WQMA.
WQMA VII WQ EL WQ WQ WQ E E E	Banister River from confluence of Polecat Creek to confluences of Dan and Banister Rivers (river only). Dan River from confluence of Miry Creek to backwaters of Kerr Reservoir (river only). Kerr Reservoir. Little Bluestone Creek. Butcher Creek. Flat Creek. All tributaries to Kerr Reservoir, Dan River and Banister River not previously classified in this WQMA. Roanoke River from confluence of Clover Creek to headwaters of Kerr Reservoir. All tributaries to the Roanoke River in this WQMA not previously classified.

<p><b>WQMA VIII</b> E Hyco River from the NC-VA state line to its confluence with the Dan River to include all tributaries.</p> <p><b>WQMA IX</b> E Banister River through this WQMA. EL Georges Creek. EL Cherrystone Creek. E All tributaries to Banister River not previously classified in this WQMA.</p> <p><b>WQMA X</b> E Dan River from the NC-VA state line to one mile above the confluence of Sandy River (river only). E Sandy River to include all tributaries. WQ Dan River from one mile above confluence of Sandy River to NC-VA line. E Dan River from NC-VA line to confluence of Miry Creek. E All tributaries to the Dan River in Virginia not previously classified in this WQMA.</p>	<p><b>WQMA XII</b> E Smith River from its headwaters to Philpott Dam. WQ Smith River from Philpott Dam to the NC-VA state line. EL Marrowbone Creek. EL Leatherwood Creek. E All tributaries to the Smith River not previously classified in this WQMA.</p> <p><b>WQMA XIII</b> E North Mayo River from its headwaters to the NC-VA state line to include all tributaries.</p> <p><b>WQMA XIV</b> E Headwaters South Mayo River to confluence of North Fork South Mayo River. EL South Mayo River from confluence with North Fork to NC-VA line. E All tributaries of the South Mayo River not previously classified in this WQMA.</p> <p><b>WQMA XV</b> E All streams in this WQMA.</p> <p style="text-align: right;">Source: Hayes, Seay, Mattern &amp; Mattern</p>
--	---

**TABLE 2.**  
**WASTELOAD ALLOCATIONS FOR SIGNIFICANT DISCHARGES FOR SELECTED ALTERNATIVE ROANOKE RIVER BASIN WATER QUALITY MANAGEMENT PLAN.**

Water Quality Management Area (WQMA)	Study Area Name	Discharger	Stream Name	Segment Classification	303(e) Wasteload Allocation BOD <sub>5</sub> lbs/day
WQMA IV	Appomattox	Appomattox STP	Falling R.	EL	100.00
WQMA IV	Brookneal	Brookneal STP and Burlington Ind. - Brookneal	Roanoke R.	EL	1381.20
WQMA IV	Rustburg	Rustburg STP	Molleys Cr.	WQ	17.94
WQMA VI	Drakes Branch	Drakes Branch and Burlington Ind. - Drakes Branch	Twittys Cr.	EL	27.82
WQMA VI	Keysville	Keysville and Virginia Crafts	Ash Camp Cr.	WQ	48.00 <sup>1</sup>
WQMA VII	Clarksville - Chase City - Boydton	Chase City Regional STP	Little Blue Stone Cr.	WQ	32.52
		Boydton	Coleman Cr.	EL	N/A <sup>1</sup>
		Clarksville STP	Kerr Reservoir	WQ	131.00
WQMA VII	South Boston - Halifax - Scottsburg - Clover	Burlington Industries - Clarksville	Kerr Reservoir	WQ	1793.00
		South Boston STP	Dan R.	WQ	1854.00

# Final Regulations

		<i>Halifax STP, Halifax Cotton Mills, Burlington Ind. - Halifax and Scottsburg STP</i>	<i>Banister R.</i>	WQ	584.84
		<i>Clover</i>	<i>Clover Cr.</i>	EL	8.76
WQMA VII	<i>South Hill - Lacrosse - Brodnax</i>	<i>South Hill, Lacrosse and Brodnax</i>	<i>Flat Cr.</i>	WQ	N/A <sup>1</sup>
WQMA VII	<i>Virgilina</i>	<i>Virgilina</i>	<i>X-Trib. to Wolfpit Run</i>	EL	13.00
WQMA IX	<i>Chatham - Gretna</i>	<i>Chatham</i>	<i>Cherrystone Cr.</i>	EL	125.22
		<i>Gretna</i>	<i>Georges Cr.</i>	EL	100.00
WQMA X	<i>Dan River</i>	<i>Danville and U.S. Gypsum</i>	<i>Dan R.</i>	WQ	4407.00
		<i>Dan River, Inc.</i>	<i>WILL DISCHARGE PROCESS WATER TO THE CITY OF DANVILLE STP</i>		
WQMA XII	<i>Smith R.</i>	<i>Henry County PSA-Upper Smith R. STP</i>	<i>Smith R.</i>	WQ	567.00
		<i>Collinsville STP</i>	<i>CONNECTED TO UPPER SMITH R. STP</i>		
		<i>Fieldcrest Mills</i>	<i>CONNECTED TO UPPER SMITH R. STP</i>		
		<i>E. I. duPont</i>	<i>Smith R.</i>	WQ	503.00
		<i>Martinsville STP</i>	<i>Smith R.</i>	WQ	1500.00
		<i>Henry County PSA-Lower Smith R. STP</i>	<i>Smith R.</i>	WQ	567.00
WQMA XIV	<i>Stuart - Patrick Springs</i>	<i>Stuart STP</i>	<i>S. Mayo R.</i>	EL	141.90
		<i>United Elastic Patrick Springs</i>	<i>S. Mayo R.</i>	EL	8.38
WQMA XIV	NONE	<i>United Elastic Woolwine</i>	<i>Smith R.</i>	EL	192.00

NOTES:

<sup>1</sup> See Table 3.

TABLE 3.  
WASTELOAD ALLOCATIONS FOR DISCHARGERS WITH TIERED PERMITS  
ROANOKE RIVER BASIN WATER QUALITY MANAGEMENT PLAN.

Water Quality Management Area (WQMA)	Study Area Name	Discharger	Months	Flow (mgd)	Effluent D.O. [ (mg/l) ]	CBOD <sub>5</sub> (lbs/day)	BOD <sub>5</sub> (mg/l)	Ammonia (mg/l)	Total Kjeldahl Nitrogen (mg/l)
WQMA VI	Keysville	Keysville	Jan.- Feb.	0.250	3.0		23.0	10.0	
			Mar.- Nov.	0.250	3.0		23.0	2.0	
			Dec.	0.250	3.0		23.0	10.0	
WQMA VII	South Hill-Lacrosse-Brodnax	South Hill	Jan.- Feb.	1.000	6.5	250.00	30.0	20.0	
			March	1.000	6.5	250.00	30.0	5.0	
			Apr.- May	1.000	6.5	83.00	10.0	1.0	



			June- Sept.	1.000	6.5	75.00	9.0	1.0	
			Oct.	1.000	6.5	83.00	10.0	1.0	
			Nov.	1.000	6.5	142.00	17.0	5.0	
			Dec.	1.000	6.5	250.00	30.0	20.0	
WQMA VII	Clarksville- Chase City- Boydton	Boydton	May- Nov.	0.360	5.0	39.1	13.0 <sup>1</sup>		3.0
			Dec.- Apr.	0.360	5.0	75.1	25.0 <sup>1</sup>		

NOTES:

<sup>1</sup> CBOD<sub>5</sub> (CBOD<sub>5</sub>/BOD<sub>5</sub>=25/30).

**9 VAC 25-430-30. Municipal and industrial wastes.**

A. Regional service areas. Regional sewerage service areas identified in this basin are shown on Plate 1, and the corresponding sewerage system and treatment works data are presented in Table 4.<sup>15</sup> The Greater Roanoke Metropolitan Area is one of these service areas, and is also included in an areawide water quality management plan as authorized by Section 208 of P.L. 92-500. This "208" Plan provides a further detailed water quality management strategy for this basin's headwaters area.<sup>16</sup>

Of the 22 study areas identified, 11 are to have secondary treatment plants, and eight others are to have treatment levels higher than secondary. For the remaining three areas, nonconventional treatment methods, such as land disposal, are recommended.

B. Wastewater treatment plants. Industrial and municipal wastewater discharge locations in the basin watershed area are given in Table 5 and are shown on Plate 2.<sup>17</sup> Raw water sources are also shown on Plate 2. Table 5 indicates if these individual discharges are in one of the regional service areas listed in Table 4, and whether it is to be connected to a regional service area facility. The ~~waste-load~~ *waste/load* allocation process described in the preceding section takes into account these isolated dischargers as well as those located in the regional service areas.

Section 201 of P.L. 92-500 authorizes grants for construction of municipal sewage treatment works and associated sewage interceptor facilities. This grant program consists of three steps. Step I is the planning and feasibility phase, Step II is the design phase and Step III is the actual construction of the facility. The status of the facilities grant as of May 1976 for facilities within the sewerage service area is given in Table 4 and for facilities outside the sewerage service area in Table 5.

Grants for sewerage systems and treatment works that have not been considered in any grant program of any fiscal year through 1976 are to be considered for Step I grants in fiscal year 1977. Table 6 shows the sewerage system and treatment works projects which are expected to be constructed within the Roanoke River Basin in fiscal year 1977 based on the statewide priority points.

C. Policies for point source discharges. Population and industrial output of many of the sewerage service areas are expected to grow, giving rise to needs for increased capacity for waste treatment, either by traditional methods or by such alternatives as waste recycling or waste source control. In 1971, the SWCB established the following policy regarding allowable wastewater flow and discharge:

1. When the average flow influent to a sewage treatment works for any consecutive three-month period reaches 80% of the SWCB approved design capacity, the owner shall submit to the board, within 90 days, an analysis of projected loadings, and shall submit proposed plans for increasing the treatment works capacity, including proposed methods of financing, unless the owner can demonstrate, in writing to the satisfaction of the board or its staff, that an increase in treatment capacity is not required at that time.
2. When the average flow influent to a sewage treatment works for any consecutive three-month period reaches 95% of the SWCB approved design capacity, the jurisdictions using this plant shall terminate the issuance of permits which allow start of construction of projects in the affected area, and shall submit a plant expansion program to the board for its review and approval before granting any additional such permits.<sup>18</sup>

D. Board actions for point source discharges. The following board actions will be taken:

1. Issue discharge permits consistent with projected area growth and development plans;
2. Continue the waste treatment facility construction grants program to achieve or maintain the required wastewater treatment levels;
3. Issue and enforce discharge certificates to those communities, industrial firms, and institutions isolated from the designated sewerage system service areas or not connecting to any central facility, or both;
4. Require, whenever practicable, owners that generate future wastewater loads within the service areas to discharge to the appropriate sewerage service area;
5. Issue state certificates for proposed zero discharge systems; and

---

## Final Regulations

---

6. Consider and evaluate cost effective nonconventional proposals for service and wastewater treatment.<sup>19</sup>

<sup>15</sup> Hayes, Seay, Mattern & Mattern, Roanoke River Basin Comprehensive Water Resources Plan, Volume V-A, pp. 8-45; 331-814.

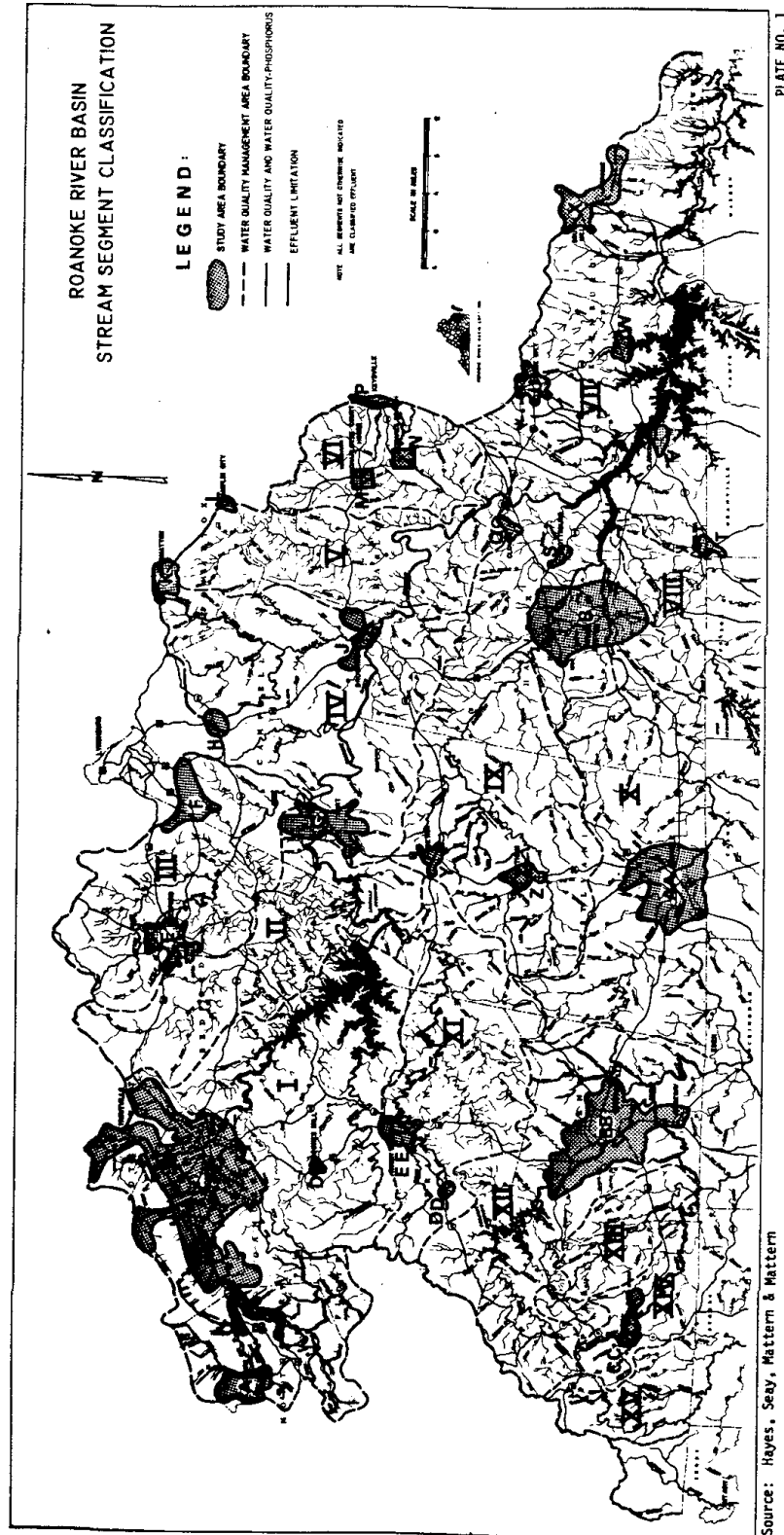
<sup>16</sup> Moore, Gardner & Associates, 208 Areawide Wastewater Management Plan, Summary Report, pp. 6-2 through 6-20; Appendix 5, pp. 1-34.

<sup>17</sup> Hayes, Seay, Mattern & Mattern, Roanoke River Basin Comprehensive Water Resources Plan, Volume V-A, pp. 4-8; 47-84; 197-112; 1131-1172.

<sup>18</sup> Commonwealth of Virginia, State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), Policy for Sewage Treatment Plant Loadings, adopted May 12, 1971, effective June 23, 1971.

<sup>19</sup> Hayes, Seay, Mattern & Mattern, Roanoke River Basin Comprehensive Water Resources Plan, Volume V-A, Rustburg Study Area, p. 26, Virgilina Study Area, pp. 32-33; Pamplin City Study Area, p. 28.

PLATE 1.  
ROANOKE RIVER BASIN  
STREAM SEGMENT CLASSIFICATION.



# Final Regulations

TABLE 4.  
SEWERAGE SERVICE AREAS.

NPDES Limits<sup>3</sup>

SSA <sup>1</sup>	Municipality	Receiving Stream Classification <sup>2</sup>	Flow (mgd)	BOD <sub>5</sub> (lbs/day)	SS (lbs/day)	Status of Applicable <sup>4</sup> Section 201 Programs May 1976
K	Appomattox	EL	0.170	42.55	42.55	
		EL	0.054	*9.48/ 13.45	27.12	
BB	Bassett		Not Applicable <sup>5</sup>			To be served by Henry County Regional Plant
X	Brodnax		Not applicable <sup>5</sup>			To be served by South Hill
J	Brookneal	EL	0.078	31	31	No grant application yet submitted
		EL	0.082	33	33	
M	Charlotte C.H.		Required permit to be issued <sup>6</sup>			Continue use of existing community septic tank system; to be rated for grant in Fiscal Year 1977
U	Chase City	WQ	0.1	*30/50	*30/50	No grant application yet submitted
		WQ	0.28	112	112	
Z	Chatham	EL	0.45	113	113	
V	Clarksville	WQ	0.35	380	292	No grant application yet submitted
Q	Clover		0.35	8.76	8.76	
BB	Collinsville		Not applicable <sup>5</sup>			STP to be abandoned and area served by Henry County Regional Plant
AA	Danville (2 plants)	WQ	24.0	4203	4203	Construction completed in Spring 1976
		WQ	15.0	2127	3735	
N	Drakes Branch	EL	0.0575	75	58	Step I to be submitted Fiscal Year 1976
BB	Fieldale		Not Applicable <sup>5</sup>			To be served by Henry County Regional Plant
Y	Gretna	EL	0.230	58	58	
R	Halifax	WQ	0.300	75	75	
BB	Henry County PSA	WQ	4.0	564	1001	
	Upper Smith R. STP					
Not Shown	Henry County PSA	WQ	4.0	567	1001	
	Lower Smith R. STP					
P	Keysville	WQ	0.25	**	62	
X	LaCrosse	WQ	0.072	29	29	To be served by South Hill
		WQ	0.04	16	16	
BB	Martinsville	EL	8.0	1500	2002	

G	Motley		Not applicable <sup>5</sup>			Continue use of individual septic tanks
L	Pamplin City		Not applicable <sup>5</sup>			No grant application yet submitted
CC	Patrick Springs		Not applicable <sup>5</sup>			Continue use of individual septic tanks
H	Rustburg	WQ	0.156	62	62	Step III submitted; construction to begin Summer 1976
S	Scottsburg		Not applicable <sup>5</sup>			To be served by South Boston; Step I for connection to be submitted Fiscal Year 1976
R	South Boston	EL	1.3	1410	1410	Construction completed in December 1976
X	South Hill	E	1.00	**	251.33	
BB	Stanleytown					To be served by Henry County Regional Plant
CC	Stuart		Required Permit to be issued <sup>6</sup>			Construction completed March 1976
			0.30	130	47.5	
F	Timberlake		Not applicable <sup>5</sup>			To be served by Lynchburg in James River Basin
T	Virgilina		Not applicable <sup>5</sup>			No grant application yet submitted

**NOTES:**

<sup>1</sup> Sewerage Service Areas (SSA) shown on Plate 1.

<sup>2</sup> Effluent Limiting (EL) or Water Quality (WQ).

<sup>3</sup> For existing sewage treatment facility.

<sup>4</sup> For new sewage treatment facility.

<sup>5</sup> No existing or future sewage treatment plan planned, wastes to be transferred to other sewerage service areas.

<sup>6</sup> No exiting discharge but new sewage treatment plan is under construction or planned.

\* Seasonal NPDES allowable loading: April to September/October to March.

\*\* See Table 3 in 9 VAC 25-430-20.

Source: Hayes, Seay, Mattern & Mattern

TABLE 5.  
WASTEWATER POINT DISCHARGERS.

Waste Source Number	Wastewater Point Discharger
<b>APPOMATTOX COUNTY</b>	
240 *#@	Appomattox Country Club
241	Town of Appomattox
242 *	Maude's Restaurant
<b>CAMPBELL COUNTY</b>	
231 *#@	Yellow Branch Elementary School
232 *	Rustburg High School
233 *	Rustburg Sanitation
234 *#	Field Unit #9
235 *#@	William Camp High School
236	Town of Brookneal #1
237	Town of Brookneal #2
238 *	Universal Electric

239 #	Burlington Industries
<b>CHARLOTTE COUNTY</b>	
243 *#@	J. H. Jefferess Elementary School
244 *#@	Phenix Elementary School
245 *#@	Bacon District Elementary School
246 *#@	Reynolds Laundry
247 *#@	Phenix Car Wash
248 *#@	Kyanite Mining
249 *	Randolph Henry High School
250 *	Central Elementary School
251 *	Central Junior High School
252 *	Charlotte City Sewage
253 *#@	Virginia Crafts
254	Town of Keysville
255 #	Burlington Industries
256 *	Town of Drakes Branch
257 *#@	Spaulding Box Factory
258 *#@	Cardinal Homes

---

# Final Regulations

---

## MECKLENBURG COUNTY

292 \*#@ Kieffer Yancey's Restaurant  
293 \*#@ Newton's Trailer Park  
294 \*#@ Little Buffalo Exxon  
295 \* Lighthouse Motel  
296 Town of Clarksville  
297 \*# Burlington Industries (Clarksville)  
298 # Burlington Industries (Clarksville)  
299 \*#@ Marifield Apartment & Trailer Park  
300 \*#@ Hopkins Car Wash  
301 \*#@ Occoneechee State Park  
302 \*@# Bluestone Junior High School  
303 \*#@ Bluestone Senior High School  
304 Town of Chase City  
306 \* Virginia Home, Inc.  
307 Town of Boydton  
308 \*#@ Correction Field Unit #4  
309 \*#@ Buckhorn Primary School  
310 \*#@ South Hill Motel & Restaurant  
316 Town of South Hill  
318 \*#@ LaCrosse Primary School  
320 \*#@ Parker Oil Company

## HALIFAX COUNTY

260 \*#@ Mac's Washer  
261 \*#@ Sydnor Junior Elementary School  
262 \*#@ Meadville Elementary School  
263 \*#@ Clay's Mill Elementary School  
264 \*#@ Southern Mobile Homes  
265 \*#@ Scottsburg Elementary School  
266 \*#@ Carson Anderson Car Wash  
267 \* Lakewood Trailer Park  
268 \* Crabtree Trailer Park  
269 Vulcan Materials  
270 \* South Boston Speedway  
271 \* J. P. Stevens  
272 City of South Boston  
273 \* Oak Hill Subdivision  
274 \* Fordland  
275 \* Highland Hills Subdivision  
276 \* Love Shop Mobile Home  
277 \* C. D. Ragland Car Wash  
278 \*# Burlington Industries  
279 # Burlington Industries  
280 Town of Halifax  
281 \* Sinai Elementary School  
282 \* Hightower Trailer Court  
283 # Halifax Cotton Mill  
284 \*#@ Birchland Park Laundry & Store  
285 \*#@ Tucker's Trailer Court  
286 \* Hillcrest Motel  
287 \* Banner Warehouse  
288 \*#@ Chester Springs Elementary School  
289 \*#@ S. of Dan Elementary School  
290 \*#@ Chester Springs Academy  
291 \* Virgilina Elementary School

## HENRY COUNTY

116 \*#@ State Road Camp #28

117 \*#@ J. D. Rea Laundry  
118 \*@ Spencer Court Subdivision  
119 \*@ G. W. Carver High School  
120 \*@ Carver Estates  
121 \* Greenbrier  
122 \*#@ Plasters Trailer Court  
123 \* Ridgeway Elementary School  
124 \* Drewry Mason High School  
125 \* Ridgeway Trailer Park  
126 \* Henry County Plywood  
127 \*@ Penn's Trailer Park  
128 \* Cravely Furniture  
129 \* Countryside Trailer Park  
130 \* Ponderosa Trailer Park  
131 City of Martinsville  
132 \* Town House Motel  
133 \* Eastwood Subdivision  
134 # Bassett Walker Knitting Company

## PITTSYLVANIA COUNTY

183 \*#@ Tunstall High School  
184 \*#@ Carriage Hill Trailer Court

## PITTSYLVANIA COUNTY

185 \*#@ City View Forest Park  
186 \*#@ Faith Home Inc.  
187 \* Westover Mobile Homes  
188 \*#@ C & W Mobile Home Court  
189 Dan River Mills  
191 City of Danville  
192 # U. S. Gypsum Company  
193 Lorillard, Inc.  
194 Goodyear Tire & Rubber Company  
195 Cornings Glass Works  
196 \*#@ Lakewood Exxon Truck  
197 \* Baptist Tabernacle  
198 \*#@ Danville Airport  
199 \*#@ Hughes Memorial Home  
200 \*#@ Dan River High School  
201 \*# Chatham High School  
202 Town of Chatham  
203 \*#@ Field Unit #15  
204 \*#@ Union Hall Elementary School  
205 \*#@ Star Paper Tube  
206 \*#@ Southern Railway Diesel Shop  
207 \*#@ [ Smigh Smith ] Douglas Fertilizer  
208 \*#@ Whitehead Trailer Park  
209 Town of Gretna  
210 \*#@ Mr. Airy Elementary School  
211 \* Betterton Car Wash  
212 \*#@ Vulcan Materials  
213 \* Zimmerman's Laundry  
214 \* Dibrell Brothers  
215 \*#@ Alderson's Trailer Court  
216 \*#@ Dodson's Trailer Park  
217 \* Smith Mountain Lake Picnic  
218 # Klopman Mills  
219 # Freeman Chemicals  
219-A Dibrell Brothers  
219-B Disston Tool Company

**PATRICK COUNTY**

104 \*#@ Joe Alkins  
 105 \*@ United Elastic  
 106 \*#@ Groundhog Mountain, Inc.  
 108 Town of Stuart  
 109 \* Patrick City High School  
 110 \* United Elastic Company  
 111 \* Patrick Memorial Hospital  
 112 United Elastic  
 113 \* East Hampton Rub. Thr.  
 114 \* Carnation  
 115 \* [ ~~Pannill~~ Panill ] Knitting  
 135-7 # E. I. duPont  
 138 \* Holiday Inn  
 140 \* Virginia Carolina Truck  
 141 Henry County PSA

**HENRY COUNTY**

142 Fieldcrest Mills  
 143 \* Riverside Shopping Center  
 144 \* Martin Processing  
 145 \* Stanley Furniture  
 146 \* Travel Lodge  
 147 \* Bassett High School  
 148 \* J. D. Bassett #1  
 149 \* J. D. Bassett #2  
 150 \* Bassett Chair Company  
 151 \* Bassett Furniture Plant  
 152 \* Bassett Office Building  
 153 \* Bassett Superior Line & Table Plant  
 154 \* Bassett Mirror  
 155 \* Bassett Stanleytown

156 \*#@ Stone Hollow Subdivision  
 157 \* Lakeview Trailer Park  
 158 \*@ Fairways Acres  
 159 \*@ Patrick Henry Land Investment Corp.  
 161 \*#@ Moran's Trailer Court  
 162 \*#@ Longview Trailer Park  
 163 \*#@ Green Acres Trailer Park  
 164 \*#@ Beechwood  
 165 \* People Car Wash  
 166 \* Piedmont Car Wash  
 167 \*#@ Moose Lodge  
 168 \*#@ Atkins Construction Co. Sub.  
 169 \* Reed Water Company  
 170 \* Winns Laundry  
 171 \* Patrick Henry Country Club  
 172 \*#@ Serwood Manor Apartments  
 173 \* Martinsville Water Plant  
 174 \* Laurel Park  
 176 \*#@ Camp Branch Hills  
 178 \*#@ Pasadena Knoll Subdivision  
 179 \*#@ Pigg City, Inc.  
 180 \*#@ Mt. Olivet School  
 181 \*#@ Leatherwood Elementary School  
 182 \*#@ Campbell Elementary School

**NOTES:**

\* Minor dischargers (less than 50,000 gallons per day).

# No provision to tie into sewerage service area.

@ Not inside sewerage service area boundaries.

Source: Virginia State Water Control Board

PLATE 2.  
ROANOKE RIVER BASIN.  
POINT DISCHARGE AND WATER WITHDRAWAL LOCATIONS  
SOLID WASTE DISPOSAL SITES.

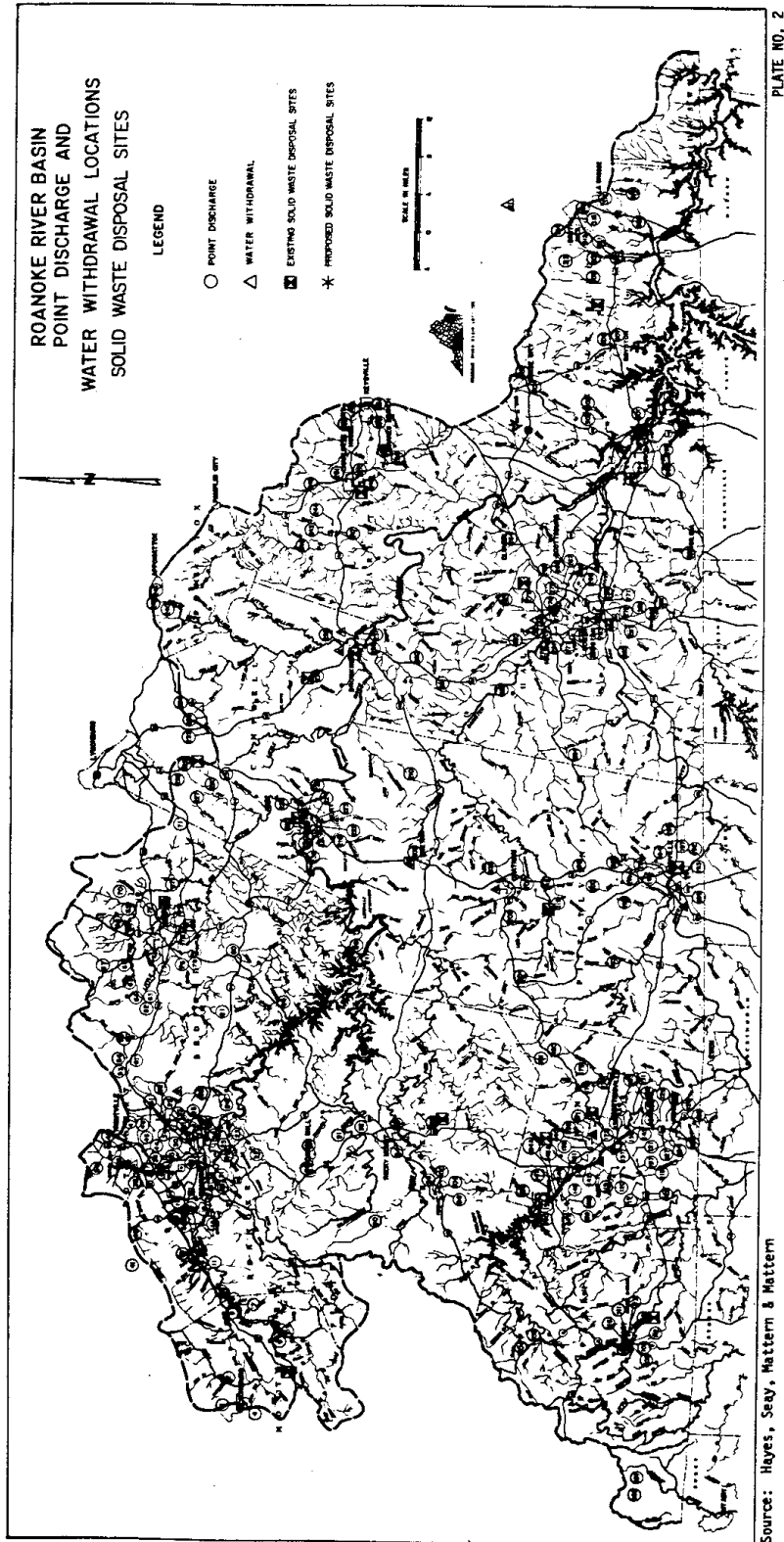




TABLE 6.  
FISCAL YEAR 1977 CONSTRUCTION GRANT PRIORITIES.

Project	*Population Served	Statewide Priority Points	Remarks
Brodnax	750	2.69	Served by South Hill Regional STP not currently financed
Brookneal, Town of Sewage Treatment Plant w/Collection System	1,282	4.60	
Charlotte Court House	350	2.69	Present considerations in Keysville-Drakes Branch, Step I borderline health hazard
Clover	406	2.00	
Danville, City of Infiltration/Inflow Evaluation and Correction	71,541	4.30	Extensive Infiltration/Inflow Problems
Gretna, Town of Upgrade Treatment	1,390	11.30	
Pamplin, Town of Sewage Treatment Plant w/Collection System	286	2.00	
Ridgeway, Town of Interceptor and Collector	2,836	2.69	
Virgilina	320	2.00	
Volens	200	2.00	

NOTE:

\*Based on 1980 population projection.

Source: State Water Control Board

**9 VAC 25-430-40. Nonpoint pollutant sources.**

A. Basin conditions. Nonpoint pollutants are those which originate from a dispersed area, rather than from a single waste treatment facility which discharges its effluent through a pipe, ditch, or other such conduit into state waters. Sources of nonpoint pollutants include stormwater run-off, washing or leaching away such material as sediment from urban areas, pesticides and fertilizers from agricultural areas, tailings from mining and quarrying areas, and excavation spoils from construction areas.

A stormwater run-off sampling study was conducted by the consulting firm near the Rocky Mount and Martinsville area. The object of this study was to add to available data on the contribution to pollutant loadings from nonpoint sources during dry and wet weather periods. These results indicated that various loadings were generated from different land uses. Consequently, a set of rating factors was created to rank the relative contribution of nonpoint pollutants from forest, urban, agriculture, cattle pasture and vacant land.<sup>20</sup>

B. Methods to curtail nonpoint pollutants. Pollutants attributed to nonpoint sources occur in Smith Mountain Lake and Kerr Reservoir, due to leaching of biological nutrients from the watershed area, and from drainage of septic tanks which service the numerous cottages and homes in the littoral zone of these impoundments. Community development plans which control the continued lakeside development, and which address domestic waste treatment problems and control use of agricultural chemicals presently appear to be the most expeditious method for dealing with this problem.

By controlling land development on steep slopes and other areas susceptible to erosion, pollutants associated with sediments can be curbed. Plate 3 shows the general slope characteristics of the Roanoke River basin. Soil erosion and resultant pollutant by suspended solids in the surface watercourses can be curtailed by instituting and enforcing policies regulating development on steep slopes and other lands susceptible to erosion.<sup>21</sup>

Solid wastes, which include residual sludges from wastewater treatment plants, can leach into surface and groundwaters as well as give rise to aesthetic problems. Plate 2 shows the locations of existing and proposed solid waste disposal sites. Generally, the consultant's report recommends continued use of sanitary landfills, with provisions to assure that these sites do not give rise to water quality problems. Alternatives that may be considered as future development takes place, particularly in the more densely populated areas such as Roanoke, are incineration and recycling, including use of digested sewage sludge as fertilizer or soil conditioner.<sup>22</sup>

The consultant's report discusses water quality degradation from rain water washing or residues such as oil in urban areas. A pilot field study in the Martinsville area indicated that the principal pollutants contributed from urban stormwater run-off were oxygen demanding substances, i.e., those with high Biochemical Oxygen Demand (BOD<sub>5</sub>), and to substances which contain biological nutrients, e.g., nitrogen and phosphorus. The recommendations of this study were to address control of stormwater that is generated in the initial portion of a storm.<sup>23</sup>

---

# Final Regulations

---

C. Board actions to control nonpoint pollutant sources in the Roanoke area are:

1. To encourage housekeeping programs by construction firms and operators to prevent spoils from being washed into watercourses;
2. To encourage planning officials to institute rational programs for lakeside development;<sup>24,25</sup>
3. To encourage communities to adopt and enforce steep-slope ordinances;
4. To encourage local governments to develop coordinated comprehensive solid waste disposal programs and policies;
5. To review and inspect stream related highway projects in accordance with the Memorandum of Understanding now under development with the Department of Transportation;
6. To provide field assistance to the Soil and Water Conservation Commission in the matter of sediment and erosion problems in accordance with the Memorandum of Understanding being developed between that agency and the Water Control Board;
7. To provide assistance to the Department of Agriculture and Consumer Services in matters relating to pesticides. In accordance with the board's long range planning goals assistance will be provided to the department in the areas of pesticide application and storage, handling and formulation;
8. To provide field assistance to the Department of Forestry in matters relating to silviculture activities;
9. To provide necessary and active assistance to EPA for the implementation of the Spill Prevention Control and Counter-Measures (SPCC) Program;<sup>26</sup>
10. To utilize Regulation 5 of the Water Control Board for controlling pollution from vessels;<sup>27</sup>
11. To assure that domestic waste collected from vessels at marina pump-out facilities is treated by an approved method; and
12. To develop and implement water quality standards for sediment.

<sup>26</sup> 38 FR 34264-24170.

<sup>27</sup> Commonwealth of Virginia, State Water Control Law, § 62.1-44.33 of the Code of Virginia.

<sup>20</sup> Hayes, Seay, Mattern & Mattern, Roanoke River Basin Comprehensive Water Resources Plan, Volume V-A, pp. 159-162, 228-247, 845-922.

<sup>21</sup> Hayes, Seay, Mattern & Mattern, Roanoke River Basin Comprehensive Water Resources Plan, Volume V-A, pp. 163-196, 228-247, 845-922.

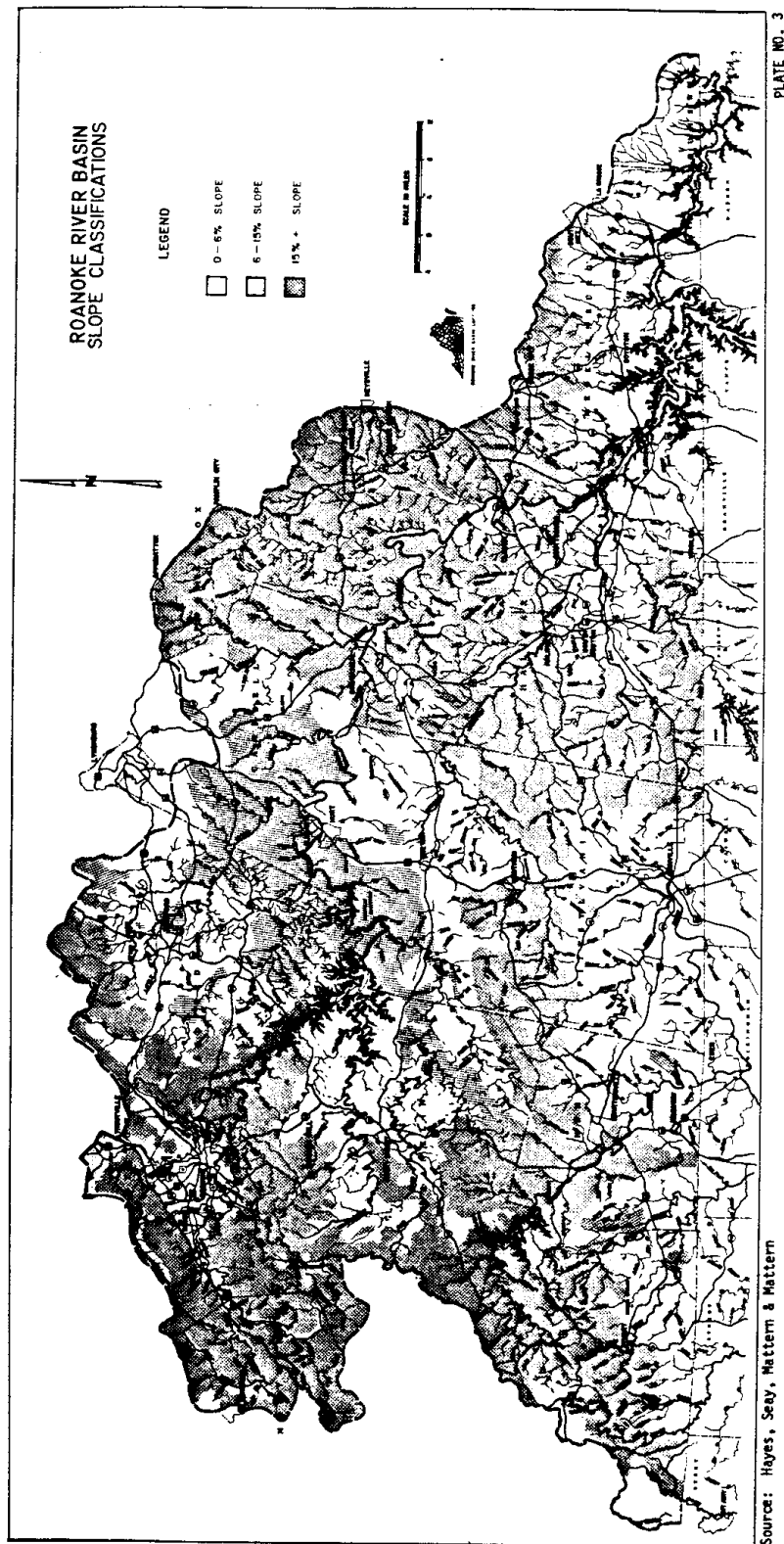
<sup>22</sup> *Ibid*, p. 634

<sup>23</sup> *Ibid*, pp. 921-992.

<sup>24</sup> Commonwealth of Virginia, Water Resources Policy, Section 3.2-4; 3.3-1, 2, and 3; 3.4-3 and 6; 3.5-4.

<sup>25</sup> Commonwealth of Virginia, State Water Control Law (§§ 62.1-44.2 et seq. of the Code of Virginia).

PLATE 3.  
ROANOKE RIVER BASIN  
SLOPE CLASSIFICATIONS.



---

# Final Regulations

---

## 9 VAC 25-430-60. Amendments to the plan.

The following amendment was adopted by the board by Letter Ballot No. 4418 on July 31, 1978:

Town of Appomattox: The plan's recommendation was amended to reflect the findings of a detailed stream analysis of Falling River. The modified Streeter-Phelps model, utilizing actual field data, resulted in a ~~waste-load~~ *wasteload* allocation of 100 lbs/day BOD<sub>5</sub> as opposed to the originally recommended 56 lbs/day for the EL segment. A treatment efficiency of 90% and an effluent dissolved oxygen content of 7 mg/l would be required for the 0.500 MGD designed facility.

The following amendments were adopted by the board at its September 25, 1979, meeting:

Town of Chatham: The plan's recommended alternative was amended to reflect the findings of a detailed stream analysis of Cherrystone Creek. The TVA model, utilizing actual field data, yielded a ~~waste-load~~ *wasteload* allocation of 125 lbs/day BOD<sub>5</sub> as opposed to the originally recommended 71 lbs/day for the EL segment. A treatment efficiency of 87.5% and an effluent dissolved oxygen content of 7 mg/l would be required for the 0.54 MGD designed facility.

Town of Gretna: The plan's recommended alternative was amended to reflect the findings of a detailed stream analysis of Georges Creek. The TVA model, utilizing actual field data, resulted in a ~~waste-load~~ *wasteload* allocation of 100 lb/day BOD<sub>5</sub> as opposed to the originally recommended 41 lbs/day for the EL segment. A treatment efficiency of 87.5% and an effluent dissolved oxygen content of 5 mg/l would be required for the 0.38 MGD designed facility.

The following amendments were adopted by the board at its December 6, 1982, meeting:

~~Town of Boydton: The plan recommended that the town be served by a 0.200 MGD facility located on Coleman Creek. The plan was amended to reflect the findings of a detailed stream analysis of the creek. A Streeter-Phelps model, utilizing actual field data from the EL segment, yielded effluent limitations for a tiered permit shown in Table 3. An effluent dissolved oxygen content of 6.5 mg/l would be required for the 0.145 MGD designed facility.~~

Town of Clover: The plan recommended that the town be served by the City of South Boston STP. The town's engineers determined that a treatment plant located on Clover Creek to be the most cost effective treatment system. A Streeter-Phelps model, utilizing actual field data from the EL segment, resulted in a ~~waste-load~~ *wasteload* allocation of 8.80 lbs/day BOD<sub>5</sub>. A treatment efficiency of 87.5% and an effluent dissolved oxygen content of 5 mg/l would be required for the 0.035 MGD designed facility.

Town of Halifax: The plan recommended that the town be served by the City of South Boston STP. The 201 Facility Plan for the town found the most cost effective alternative was to construct a wastewater treatment facility located at the confluence of Toots Creek and the Banister River. The plan's recommended alternative was amended to reflect the findings of a detailed stream analysis of the Banister. The TVA model, utilizing actual field data for design capacity of 0.300 MGD. The plan was amended to reflect the WQ segment, yielded a ~~waste-load~~ *wasteload* allocation of 75.1 lbs/day BOD<sub>5</sub>. A treatment efficiency of 87.5% and an effluent dissolved oxygen content of 3 mg/l would be required for the 0.300 MGD designed facility.

Town of Keysville: The plan recommended that the town be served by a facility located on Ash Camp Creek, a WQ segment, with the findings of a detailed stream analysis of the creek. A Streeter-Phelps model, utilizing actual field data, yielded effluent limitations for a tiered permit shown in Tables 2 and 3 *in 9 VAC 25-430-20*. An effluent dissolved oxygen content of 5 mg/l would be required for the 0.250 MGD designed facility.

The Town of South Hill: The plan recommended that the town be served by a facility located on Flat Creek, a WQ segment, with a design capacity of 1.600 MGD. The plan was amended to reflect the findings of a detailed stream analysis of the creek. A Streeter-Phelps model utilizing actual field data, yielded the effluent limitations for a tiered permit shown in Table 3 *in 9 VAC 25-430-20*. An effluent dissolved oxygen content of 6.5 mg/l would be required for the 1.000 MGD designed facility.

The following amendment was adopted by the board at its September 22, 1986, meeting:

Smith River: The 1982 amended plan established a BOD<sub>5</sub> ~~waste-load~~ *wasteload* allocation of 1,637 lbs/day for the upper Smith River segment and 1,500 lbs/day for the lower segment. The Smith River from Philpott Dam to the VA-NC state line was reclassified as WQ. An instream monitoring program was also required.

Since 1982 certain growth patterns in southern Henry County necessitated further study. Martinsville City and Henry County conducted a monitoring program utilizing 205(j) funding from the SWCB. As a result of this effort a revision to the BOD<sub>5</sub> ~~waste-load~~ *wasteload* allocations was made with a reduction in the upper Smith River segment to 1,070 lbs/day and an increase in the lower segment to 2,067 lbs/day (see Table 2 *in 9 VAC 25-430-20*). The following provisions were also part of the 1986 amendment:

- Construct a new 4 MGD waste treatment facility to be located near Ridgeway, Virginia, with discharge to the Smith River and institute an instream monitoring program.

- Construct a new wastewater diversion facility to carry wastewater from the City of Martinsville to the newly

constructed Henry County Public Service Authority facility near Ridgeway (Lower Smith River STP).

- Retain the existing Henry County Public Service Authority facility at Koehler at 4.0 MGD.

- Construct a new wastewater diversion facility to carry wastewater from the City of Martinsville to the existing authority facility at Koehler.

- Retain the existing Martinsville STP with future expansion to 8.0 MGD.

The amendment noted that the establishment of an instream monitoring program was particularly important due to the lack of a verified water quality model. Data generated from the monitoring program could be used in the verification of a water quality model at a later date.

The following amendments were adopted by the board at its [ ~~date to be filled in~~ October 1, 1998 ] meeting:

*Burlington Industries-Clarksville:* The plan's recommendation was amended to reflect the findings of a detailed analysis of Kerr Reservoir. A EUTRO-5 model, utilizing actual field data, yielded wasteload allocations shown in Table 2 in 9 VAC 25-430-20.

*Town of Clarksville:* The plan's recommendation was amended to reflect the findings of a detailed analysis of Kerr Reservoir. A EUTRO-5 model, utilizing actual field data, yielded wasteload allocations shown in Table 2 in 9 VAC 25-430-20.

*Town of Boydton:* The plan recommended that the town be served by a 0.200 MGD facility located on Coleman Creek. The plan was amended December 6, 1982, to reflect the findings of a detailed stream analysis of the creek. A Streeter-Phelps model, utilizing actual field data from the EL segment, yielded effluent limitations for a tiered permit for the 0.145 MGD designed facility. The Streeter-Phelps model used for the analysis leading to the December 6, 1982, plan amendment was updated in 1997 to reflect an increased flow of 0.360 MGD. The revised model yielded the effluent limitations for a tiered permit shown in Table 3 in 9 VAC 25-430-20.

TABLE 1.  
STREAM SEGMENT CLASSIFICATION  
ROANOKE RIVER BASIN WATER QUALITY  
MANAGEMENT PLAN.

Classification	Segment Description
WQMA-IV	
EL	Roanoke River through this WQMA.
E	Seneca River to include all tributaries.
WQ	Molley Creek.
EL	North Fork Falling River to the confluence with Falling River (River only).
E	Falling River to include all tributaries not previously classified.
E	All tributaries to the Roanoke River not previously classified in this WQMA.

WQMA-V	
E	Roanoke River and all tributaries in this WQMA.
WQMA-VI	
WQ	Ash Camp Creek.
EL	Twittys Creek.
E	Roanoke Creek to include all tributaries not previously classified in this WQMA.
WQMA-VII	
WQ	Banister River from confluence of Polecat Creet to confluences of Dan and Banister Rivers (River only).
EL	Dan River from confluence Miry Creek to backwaters of Kerr Reservoir (River Only).
WQ	Kerr Reservoir.
WQ	Little Bluestone Creek.
WQ	Butcher Creek.
WQ	Flat Creek.
E	All tributaries to Kerr Reservoir, Dan River and Banister River not previously classified in this WQMA.
E	Roanoke River from confluence Clover Creek to headwaters of Kerr Reservoir.
E	All tributaries to the Roanoke River in this WQMA not previously classified.
WQMA-VIII	
E	Hyco River from the NC-VA State Line to its confluene with the Dan River to include all tributaries.
WQMA-IX	
E	Banister River through this WQMA.
EL	Georges Creek.
EL	Cherrystone Creek.
E	All tributaries to Banister River not previously classified in this WQMA.
WQMA-X	
E	Dan River from the NC-VA State Line to one mile above the confluence of Sandy River (River only).
E	Sandy River to include all tributaries.
WQ	Dan River from one mile above confluence of Sandy River to NC-VA Line.
E	Dan River from NC-VA line to confluence Miry Creek.
E	All tributaries to the Dan River in Virginia not previously classified in this WQMA.
WQMA-XII	
E	Smith River from its headwaters to Philpott Dam.
WQ	Smith River from Philpott Dam to the NC-VA State Line.
EL	Marrowbone Creek.
EL	Leatherwood Creek.
E	All tributaries to the Smith River not previously classified in this WQMA.

# Final Regulations

WQMA XIII E	North Mayo River from its headwaters to the NC-VA State Line to include all tributaries.	EL	South Mayo River from confluence with North Fork to NC-VA Line. All tributaries of the South Mayo River not previously classified in this WQMA.
WQMA XIV E	Headwaters South Mayo River to confluence North Fork South Mayo River.	WQMA XV E	All streams in this WQMA. Source: Hayes, Seay, Mattern & Mattern

Table 2  
Wasteload Allocations for Significant Discharges for Selected Alternative Roanoke River Basin Water Quality Management Plan

Water Quality Management Area Allocation (WQMA)	Study Area Name	Discharger	Name	303(e) Wasteload Stream Classification	Segment BOD <sub>5</sub> lbs/day
WQMA IV	Appomattox	Appomattox STP	Falling R.	EL	100.00
WQMA IV	Brookneal	Brookneal STP and Burlington Ind.—Brookneal	Roanoke R.	EL	1381.20
WQMA IV	Rustburg	Rustburg STP	Molleys Cr.	WQ	17.94
WQMA VI	Drakes Branch	Drakes Branch and Burlington Ind.—Drakes Branch	Twittys Cr.	EL	27.82
WQMA VI	Keysville	Keysville and Virginia Crafts	Ash Camp Cr.	WQ	48.00 <sup>†</sup>
WQMA VII	Clarksville—Chase City—Boydton	Clarksville STP, Burlington Ind.—Clarksville	Kerr Reservoir	WQ	786.00
		Chase City Regional STP	Little Blue Stone Cr.	WQ	35.52
		Boydton	Coleman Cr.	EL	N/A <sup>†</sup>
WQMA VII	South Boston—Halifax—Scottsburg—Clover	South Boston STP	Dan R.	WQ	1854.00
		Halifax STP, Halifax Cotton Mills, Burlington Ind.—Halifax and Scottsburg STP	Banister R.	WQ	584.84
		Clover	Clover Cr.	EL	8.76
WQMA VII	South Hill—Lacrosse—Brodnax	South Hill, Lacrosse and Brodnax	Flat Cr.	WQ	N/A <sup>†</sup>
WQMA VII	Virgilina	Virgilina	X-Trib. to Wolfpit Run	EL	13.00
WQMA IX	Chatham—Gretna	Chatham	Cherrystone Cr.	EL	125.22
		Gretna	Georges Cr.	EL	100.00
WQMA X	Dan River	Danville and U.S. Gypsum	Dan R.	WQ	4407.00
		Dan River, Inc.	WILL DISCHARGE PROCESS WATER TO THE CITY OF DANVILLE STP.		
WQMA XII	Smith R.	Henry County PSA			
		Upper Smith R. STP	Smith R.	WQ	567.00

# Final Regulations

		Collinsville STP		CONNECTED TO UPPER SMITH R. STP	
		Fieldcrest Mills		CONNECTED TO UPPER SMITH R. STP	
		E. I. DuPont	Smith R.	WQ	503.00
		Martinsville STP	Smith R.	WQ	1500.00
		Henry County PSA			
		Lower Smith R. STP	Smith R.	WQ	567.00
WQMA XIV	Stuart—Patrick Springs	Stuart STP	S. Mayo R.	EL	141.90
		United Elastic Patrick Springs	S. Mayo R.	EL	8.38
WQMA XIV	NONE	United Elastic Woolwine	Smith R.	EL	192.00

Notes:

<sup>1</sup> See Table 3

**Table 3**  
Wasteload Allocations for Dischargers with Tiered Permits Roanoke River Basin Water Quality Management Plan

Water Quality Management Area Ammonia (WQMA)	Study Area Name	Discharger	Months	Flow (mgd)	Flow D.O.	303(e) Wasteload Allocation		
						Effluent (lbs/day)	CBOD <sub>5</sub> (mg/l)	BOD <sub>5</sub> (mg/l)
WQMA VI	Keysville	Keysville	Jan.—Feb.	0.250	3.0		23.0	10.0
			Mar.—Nov.	0.250	3.0		23.0	2.0
			Dec.	0.250	3.0		23.0	10.0
WQMA VII	Clarksville	Boydton	Jan.—Apr.	0.145	6.5	36.30	30.0	1.0
	Chase City		May—June	0.145	6.5	18.10	15.0	1.0
	Boydton		July—Oct.	0.145	6.5	6.00	5.0	1.0
			Nov.—Dec.	0.145	6.5	18.10	15.0	1.0
WQMA VII	South Hill—Lacrosse	South Hill	Jan.—Feb.	1.000	6.5	250.00	30.0	20.0
	Brodnax		March	1.000	6.5	250.00	30.0	5.0
			Apr.—May	1.000	6.5	83.00	10.0	1.0
			June—Sept.	1.000	6.5	75.00	9.0	1.0
			Oct.	1.000	6.5	83.00	10.0	1.0
			Nov.	1.000	6.5	142.00	17.0	5.0
			Dec.	1.000	6.5	250.00	30.0	20.0

PLATE NO. 1. Roanoke River Basin Stream Segment Classification (See: 8:1 VA.R. 49 October 7, 1991).

**Table 4**  
Sewerage Service Areas

SSA <sup>1</sup>	Municipality	Receiving Stream Classification <sup>2</sup>	Flow (mgd)	NPDES Limits <sup>3</sup>	SS (lbs/day)	Status of Applicable <sup>4</sup> Section 201 Programs May 1976
				BOD (lbs/day)		
K	Appomattox	EL	0.170	42.55	42.55	
		EL	0.054	*9.48/ 13.45	27.12	

# Final Regulations

BB			Not Applicable <sup>5</sup>			To be served by Henry County Regional Plant
W	Boydton	E	0.145	**	7.48	Step I-III to be submitted Fiscal Year 1976
X	Brodnax		Not applicable <sup>5</sup>			To be served by South Hill
J	Brookneal	EL	0.078	31	31	No grant application yet submitted
		EL	0.082	33	33	
M	Charlotte C.H.		Required permit to be issued <sup>6</sup>			Continue use of existing community septic tank system; to be rated for grant in Fiscal Year 1977
U	Chase City	WQ	0.1	*30/50	*30/50	No grant application yet submitted
		WQ	0.28	112	112	
Z	Chatham	EL	0.45	113	113	
V	Clarksville	WQ	0.35	380	292	No grant application yet submitted
Q	Clover		0.35	8.76	8.76	
BB	Collinsville		Not applicable <sup>5</sup>			STP to be abandoned and area served by Henry County Regional Plant
AA	Danville	WQ	24.0	4203	4203	Construction completed in Spring 1976
	(2 plants)	WQ	15.0	2127	3735	
N	Drakes Branch	EL	0.0575	75	58	Step I to be submitted Fiscal Year 1976
BB	Fieldale		Not Applicable <sup>5</sup>			To be served by Henry County Regional Plant
Y	Gretna	EL	0.230	58	58	
R	Halifax	WQ	0.300	75	75	
BB	Henry County PSA	WQ	4.0	564	1001	
	Upper Smith R. STP					
Not Shown	Henry County PSA	WQ	4.0	567	1001	
	Lower Smith R. STP					
P	Keysville	WQ	0.25	**	62	
X	LaCrosse	WQ	0.072	29	29	To be served by South Hill
		WQ	0.04	16	16	
BB	Martinsville	EL	8.0	1500	2002	
G	Motley		Not applicable <sup>5</sup>			Continue use of individual septic tanks
L	Pamplin City		Not applicable <sup>5</sup>			No grant application yet submitted
CC	Patrick Springs		Not applicable <sup>5</sup>			Continue use of individual septic tanks



H	Rustburg	WQ	0.156	62	62	Step III submitted; construction to begin Summer 1976
S	Scottsburg		Not applicable <sup>5</sup>			To be served by South Boston; Step I for connection to be submitted Fiscal Year 1976
R	South Boston	EL	4.3	4410	4410	Construction completion in December 1976
X	South Hill	E	4.00	**	251.33	
BB	Stanleytown					To be served by Henry County Regional Plant
CC	Stuart		Required Permit to be issued <sup>6</sup>			Construction completed March 1976
			(0.30	130	47.5	
F	Timberlake		Not applicable <sup>5</sup>			To be served by Lynchburg in James River Basin
T	Virgilina		Not applicable <sup>5</sup>			No grant application yet submitted

<sup>1</sup> Sewerage Service Areas (SSA) shown on Plate 1

<sup>2</sup> Effluent Limiting (EL) or Water Quality (WQ)

<sup>3</sup> For existing sewage treatment facility

<sup>4</sup> For new sewage treatment facility

<sup>5</sup> No existing or future sewage treatment plan planned, wastes to be transferred to other sewerage service areas

<sup>6</sup> No existing discharge but new sewage treatment plan is under construction or planned

\* Seasonal NPDES allowable loading: April to September/October to March

\*\* See Table 3

# Step III construction grant funded

Source: Hayes, Seay, Mattern & Mattern

**TABLE 5  
WASTEWATER POINT DISCHARGERS**

Waste Source Number	Wastewater Point Dischargers
<b>APPOMATTOX COUNTY</b>	
240*#@	Appomattox Country Club
241	Town of Appomattox
242*	Maude's Restaurant
<b>CAMPBELL COUNTY</b>	
231&#@	Yellow Branch Elementary School
232*	Rustburg High School
233*	Rustburg Sanitation
234*#	Field Unit #9
235*#@	William Camp High School
236	Town of Brookneal #1
237	Town of Brookneal #2
238*	Universal Electric
239#	Burlington Industries

**CHARLOTTE COUNTY**

243*#@	J. H. Jefferess Elementary School
244*#@	Phenix Elementary School
245*#@	Bacon District Elementary School
246*#@	Reynolds Laundry
247*#@	Phenix Car Wash
248*#@	Kyanite Mining
249*	Randolph Henry High School
250*	Central Elementary School
251*	Central Junior High School
252*	Charlotte City Sewage
253#@	Virginia Crafts
254	Town of Keysville
255#	Burlington Industries
256*	Town of Drakes Branch
257*#@	Spaulding Box Factory
258*#@	Cardinal Homes

**HALIFAX COUNTY**

260*#@	Mac's Washer
261*#@	Sydnor Junior Elementary School

---

# Final Regulations

---

262 \*#@ Meadville Elementary School  
263 \*#@ Clay's Mill Elementary School  
264 \*#@ Southern Mobile Homes  
265 \*#@ Scottsburg Elementary School  
266 \*#@ Carson Anderson Car Wash  
267 \* Lakewood Trailer Park  
268 \* Crabtree Trailer Park  
269 Vulcan Materials  
270 \* South Boston Speedway  
271 \* J. P. Stevens  
272 City of South Boston  
273 \* Oak Hill Subdivision  
274 \* Fordland  
275 \* Highland Hills Subdivision  
276 \* Love Shop Mobile Home  
277 \* C. D. Ragland Car Wash  
278 \*# Burlington Industries  
279 # Burlington Industries  
280 Town of Halifax  
281 \* Sinai Elementary School  
282 \* Hightower Trailer Court  
283 # Halifax Cotton Mill  
284 \*#@ Birchland Park Laundry & Store  
285 \*#@ Tucker's Trailer Court  
286 \* Hillcrest Motel  
287 \* Banner Warehouse  
288 \*#@ Chester Springs Elementary School  
289 \*#@ S. of Dan Elementary School  
290 \*#@ Chester Springs Academy  
291 \* Virgilina Elementary School

## HENRY COUNTY

116 \*#@ State Road Camp #28  
117 \*#@ J. D. Rea Laundry  
118 \*@ Spencer Court Subdivision  
119 \*@ G. W. Carver High School  
120 \*@ Carver Estates  
121 \* Greenbrier  
122 \*#@ Plasters Trailer Court  
123 \* Ridgeway Elementary School  
124 \* Drewry Mason High School  
125 \* Ridgeway Trailer Park  
126 \* Henry County Plywood  
127 \*#@ Penn's Trailer Park  
128 \* Cravely Furniture  
129 \* Countryside Trailer Park  
130 \* Ponderosa Trailer Park  
131 City of Martinsville  
132 \* Town House Motel  
133 \* Eastwood Subdivision  
134 # Bassett Walker Knitting Company  
135 7 # E. I. DuPont  
138 \* Holiday Inn  
140 \* Virginia Carolina Truck  
141 Henry County PSA  
142 Fieldcrest Mills  
143 \* Riverside Shopping Center  
144 \* Martin Processing  
145 \* Stanley Furniture  
146 \* Travel Lodge

147 \* Bassett High School  
148 \* J. D. Bassett #1  
149 \* J. D. Bassett #2  
150 \* Bassett Chair Company  
151 \* Bassett Furniture Plant

## MECKLENBURG COUNTY

292 \*#@ Kieffer Yancey's Restaurant  
293 \*#@ Newton's Trailer Park  
294 \*#@ Little Buffalo Exxon  
295 \* Lighthouse Motel  
296 Town of Clarksville  
297 \*# Burlington Industries (Clarksville)  
298 # Burlington Industries (Clarksville)  
299 \*#@ Marifield Apartment & Trailer Park  
300 \*#@ Hopkins Car Wash  
301 \*#@ Occoneechee State Park  
302 \*#@# Bluestone Junior High School  
303 \*#@ Bluestone Senior High School  
304 Town of Chase City  
306 \* Virginia Home, Inc.  
307 Town of Boynton  
308 \*#@ Correction Field Unit #4  
309 \*#@ Buckhorn Primary School  
310 \*#@ South Hill Motel & Restaurant  
316 Town of South Hill  
318 \*#@ LaCrosse Primary School  
320 \*#@ Parker Oil Company

## PITTSYLVANIA COUNTY

183 \*#@ Tunstall High School  
184 \*#@ Carriage Hill Trailer Court  
185 \*#@ City View Forest Park  
186 \*#@ Faith Home Inc.  
187 \* Westover Mobile Homes  
188 \*#@ C & W Mobile Home Court  
189 Dan River Mills  
191 City of Danville  
192 # U. S. Gypsum Company  
193 Lorillard, Inc.

## Henry County

152 \* Bassett Office Building  
153 \* Bassett Superior Line & Table Plant  
154 \* Bassett Mirror  
155 \* Bassett Stanleystown  
156 \*#@ Stone Hollow Subdivision  
157 \* Lakeview Trailer Park  
158 \*@ Fairways Acres  
159 \*@ Patrick Henry Land Investment Corp.  
161 \*#@ Moran's Trailer Court  
162 \*#@ Longview Trailer Park  
163 \*#@ Green Acres Trailer Park  
164 \*#@ Beechwood  
165 \* People Car Wash  
166 \* Piedmont Car Wash  
167 \*#@ Moose Lodge  
168 \*#@ Atkins Construction Co. Sub.  
169 \* Reed Water Company  
170 \* Winns Laundry  
171 \* Patrick Henry Country Club

172 \*#@ Serwood Manor Apartments  
 173 \* Martinsville Water Plant  
 174 \* Laurel Park  
 176 \*#@ Camp Branch Hills  
 178 \*#@ Pasadena Knoll Subdivision  
 179 \*#@ Pigg City, Inc.  
 180 \*#@ Mt. Olivet School  
 181 \*#@ Leatherwood Elementary School  
 182 \*#@ Campbell Elementary School

**PATRICK COUNTY**

104 \*#@ Joe Alkins  
 105 \*@ United Elastic  
 106 \*#@ Groundhog Mountain, Inc.  
 108 Town of Stuart  
 109 \* Patrick City High School  
 110 \* United Elastic Company  
 111 \* Patrick Memorial Hospital  
 112 United Elastic  
 113 \* East Hampton Rub. Thr.  
 114 \* Garnation  
 115 \* Pannill Knitting

**ROANOKE COUNTY**

**PITTSYLVANIA COUNTY**

194 Goodyear Tire & Rubber Company  
 195 Cornings Glass Works  
 196 \*#@ Lakewood Exxon Truck  
 197 \* Baptist Tabernacle  
 198 \*#@ Danville Airport  
 199 \*#@ Hughes Memorial Home  
 200 \*#@ Dan River High School

201 \*# Chatham High School  
 202 Town of Chatham  
 203 \*#@ Field Unit #15  
 204 \*#@ Union Hall Elementary School  
 205 \*#@ Star Paper Tube  
 206 \*#@ Southern Railway Diesel Shop  
 207 \*#@ Smigh Douglas Fertilizer  
 208 \*#@ Whitehead Trailer Park  
 209 Town of Gretna  
 210 \*#@ Mr. Airy Elementary School  
 211 \* Betterton Car Wash  
 212 \*#@ Vulcan Materials  
 213 \* Zimmerman's Laundry  
 214 \* Dibrell Brothers  
 215 \*#@ Alderson's Trailer Court  
 216 \*#@ Dodson's Trailer Park  
 217 \* Smith Mountain Lake Picnic  
 218 # Klopman Mills  
 219 # Freeman Chemicals  
 219-A Dibrell Brothers  
 219-B Disston Tool Company

**ROANOKE COUNTY**

\* Minor dischargers (less than 50,000 gallons per day)

# No provision to tie into sewerage service area

@ Not inside sewerage service area boundaries

Source: Virginia State Water Control Board

~~PLATE No. 2. Roanoke River Basin Point Discharge and Water Withdrawal Locations Solid Waste Disposal Sites (See: 8:1 VA.R. 58 October 7, 1991).~~

**TABLE 6  
 FISCAL YEAR 1977 CONSTRUCTION GRANT PRIORITIES**

Project	*Population Served	Statewide Priority Points	Remarks
Brodnax	750	2.69	Served by South Hill Regional STP not currently financed
Brookneal, Town of Sewage Treatment Plant w/Collection System	1,282	4.60	
Charlotte Court House	350	2.69	Present considerations in Keysville-Drakes Branch, Step I borderline health hazard
Clover	406	2.00	
Danville, City of Infiltration/Inflow Evaluation and Correction	71,541	4.30	Extensive Infiltration/Inflow Problems
Gretna, Town of Upgrade Treatment	1,390	11.30	
Pamplin, Town of Sewage Treatment Plant w/Collection System	286	2.00	
Ridgeway, Town of Interceptor and Collector	2,836	2.69	
Virgilina	320	2.00	
Volens	200	2.00	

\*Based on 1980 population projection

Source: Virginia State Water Control Board

~~PLATE 3. Roanoke River Basin Slope Classifications (See: 8:1 VA.R. 61 October 7, 1991).~~

VA.R. Doc. No. R97-536; Filed November 17, 1998, 10:11 a.m.

---

# Final Regulations

---

\*\*\*\*\*

Title of Regulation: **9 VAC 25-440-10 et seq. Upper Roanoke River Subarea Water Quality Management Plan (amending 9 VAC 25-440-150; adding 9 VAC 25-440-151).**

Statutory Authority: §§ 62.1-44.15(10) and 62.1-44.15(13) of the Code of Virginia.

Effective Date: January 6, 1999.

Summary:

*The final amendment addresses changed conditions in one segment of the Roanoke (Staunton) River in Roanoke, Virginia, in the Roanoke Valley area. Current biological oxygen demand (BOD<sub>5</sub>) data indicate sustainable treatment capacities in the Roanoke Valley segment.*

*The final action only amends one segment of the Upper Roanoke River Subarea Water Quality Management Plan. Due to the significant interest in the proposed amendments to the Altavista segment, the State Water Control board deferred action on the amendments to the Altavista Segment of the Plan.*

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

Agency Contact: Copies of the regulation may be obtained from Mike Scanlon, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6723.

**9 VAC 25-440-150. Wasteload allocation and total maximum daily load.**

The assimilative capacity of a river segment is the maximum amount of waste that can be discharged to it under specified conditions and yet achieve water quality objectives. For water quality planning "assimilative capacity" is defined by state and federal regulations as the maximum daily load that can be discharged to a stream segment without: violating the minimum stream quality standards; significantly degrading waters of existing high quality; or interfering with the beneficial use of state waters.

The EPA regulations require the development of total maximum daily loads (TMDLs) for all water quality limited segments. TMDLs represent the cumulative allowable loading to a waterbody or stream segment. TMDL is the sum of individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and natural background. WLA is the allowable loading allocated to a point source discharger. LA is the load allocation attributed to existing or future nonpoint sources and /or natural background sources.

WLAs for conventional pollutants have been established for water quality limited segments in the Upper Roanoke

River subarea using the SWCB modeling procedures. These procedures take into account background loads (assumed to be in the range of 2-3 mg/l BOD<sub>5</sub> and use initial flow of 7Q10. During 7Q10 low flow condition there is little precipitation and essentially no run-off resulting in minimal or no nonpoint source load contribution other than the general background load considered in the model. Since no data is available on the actual loads attributable to nonpoint sources and since background loads were taken into account in the modeling procedures, the resulting WLAs are also considered as TMDLs. The determination of TMDLs will be refined as more data on nonpoint sources becomes available.

The SWCB has not developed methodologies for determining TMDLs for fecal coliform and metals. The SWCB awaits the promulgation of federal regulations in this regard. Water quality standards require fecal coliform bacteria to be measured as a number per unit volume and not as a load or concentration. State metals standards for the protection of aquatic life from acute and chronic effects are being developed. The SWCB is working with the EPA to develop a TMDL methodology for pollutants that are measured as a count and for metals.

There are 101 existing or proposed dischargers in the Upper Roanoke River subarea illustrated in Plates 3 and 4 and tabulated in Table 5. VPDES permits issued by the SWCB regulate all discharges. The Tennessee Valley Authority (TVA) flat water equation was used in the 1976 Roanoke River Basin WQMP in determining the assimilative capacity and decree of treatment required for a stipulated wasteload on a specific stream at a given point. The selection of the TVA method was based on the availability of field data. The 1976 plan recognized that as more data become available, alternative methods of analysis should be considered and applied using either the TVA flat water or other equations such as Streeter-Phelps.

Table 5 presents the point source pollutant wasteload allocation (WLA), expressed in kg/day of BOD<sub>5</sub>, for dischargers in the Upper Roanoke River subarea. The basis of this value is on 7Q10 and regulated flow. TMDLs listed are for water quality limited segments only.

It is important to recognize that the waste treatment levels listed in Table 5 represent final effluent limits. Some facilities may operate under interim treatment limits of secondary, best practicable control technology (BPT) or better while stream standards and effluent policies are further evaluated and verified through intensive stream sampling and detailed modeling. Due to the high cost associated with advanced wastewater treatment, the SWCB conducts a detailed evaluation of municipal projects that require greater than secondary/BPT levels of treatment to refine further the treatment levels required to protect water quality and public health.

1. Methods of wasteload allocation. In some instances it may become necessary to determine wasteload allocations between dischargers to maintain water

quality standards. Suggested methods follow for making these determinations:

- a. Proportional allocation based on relative design flows with the use of water quality models;
- b. Equal treatment: All dischargers provide equal treatment; (i.e., the same removal efficiency);
- c. Equal effluent: All dischargers provide the same effluent concentrations;
- d. Population equivalent: Industrial waste and other dischargers converted to population equivalent; (i.e., 240 mg/l BOD<sub>5</sub> per 100 gallons of sewage); or
- e. Affected dischargers negotiate acceptable allocations among themselves.

## 2. Special modeling studies.

### *Altavista segment:*

[ There have been no modeling studies conducted in the subarea. However, ] an error found in the stream flow conditions used in the 1976 TVA flat water model is corrected by this plan. Low flow adjustments have been made from 170 cfs to 225 cfs based on updated stream flow data. Table 5 (Wasteload Allocation Allocations) reflects this adjustment. [ The entire wasteload has been allocated in the Altavista area. ~~A new more sophisticated mathematical model has been calibrated and verified for use in the 10-mile segment (river mile 129.72 to 119.55) of the Roanoke (Staunton) River in Altavista. The STREAM Model (Lung, 1987; US EPA 1992) with antidegradation applied predicts secondary treatment levels/Federal Effluent Guidelines (Technology Based Effluent Limits) will maintain existing water quality in the segment. The STREAM Model shows a wasteload increase over that predicted by the 1976 TVA Flat Water Equation. The segment will remain effluent limited (EL). See 9 VAC 25-440-151. ]~~

### *Roanoke Valley segment:*

*Long-term BOD analysis of the Roanoke City Regional Sewage Treatment Plant's effluent shows BOD concentrations consistently less than 10 mg/l in a range of 6-8 mg/l but show the BOD to have an extremely slow degrading (highly refractory) or nondegrading nature. The tertiary plant maintains a high degree of treatment for BOD<sub>5</sub>, 5 mg/l which is approximately normal stream background level. The proposed 62.0 mgd design flow of the facility is 3.5 times greater than the Roanoke River's 23.60 mgd critical (7Q10) stream flow. However, because of the effluent's low oxygen demand rate compared to the instream or background BOD, the plant can operate at the design flow of 62.0 mgd and maintain existing water quality. Greater BOD<sub>5</sub> wasteloads are a result of the expanded design flow. The resulting WLA is 1173 kg/d with a TMDL of 1352 kg/d. Table 5 (Wasteload Allocations) reflects the new wasteload allocation and TMDL.*

*An instream monitoring program designed to signal any water quality degradation is required to ensure water quality standards are maintained. The monitoring program to be conducted by the permittee shall be designed to monitor the Roanoke River especially during critical conditions. Collected data should also support a more sophisticated mathematical model to address the variables note addressed by the TVA Flat Water Equation.*

3. Plan required treatment improvements. Below are listed those POTWs that have been required to meet the wasteload allocation prescribed by the 1976 Water Quality Management Plan.

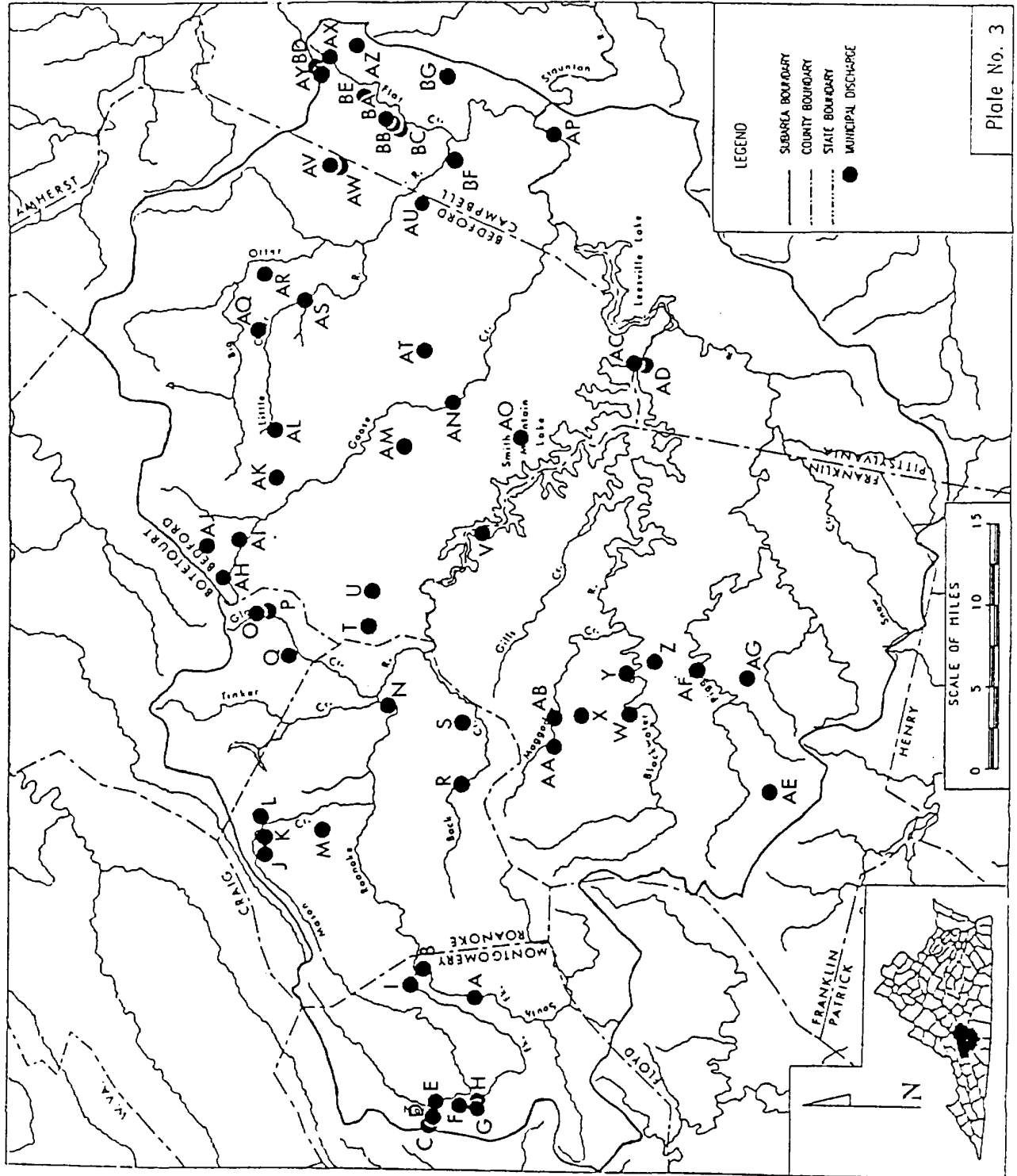
a. City of Bedford. Intensive stream survey results in 1988 indicated low dissolved oxygen values below the City of Bedford STP discharge. Consequently, the permitted discharge of BOD<sub>5</sub> from the STP has been reduced to 52.8 kg/day. This value equals the 1976 303(e) plan's allocation. Bedford officials are upgrading their treatment process to meet the new limits.

b. Ferrum Water and Sewerage Authority. The permitted discharge of BOD<sub>5</sub> from Ferrum's STP has been lowered to 14.2 kg/day, the 303(e) wasteload allocation is 14.2 kg/day. Ferrum Water and Sewer Authority officials are in the process of upgrading their treatment process to meet the new limits.

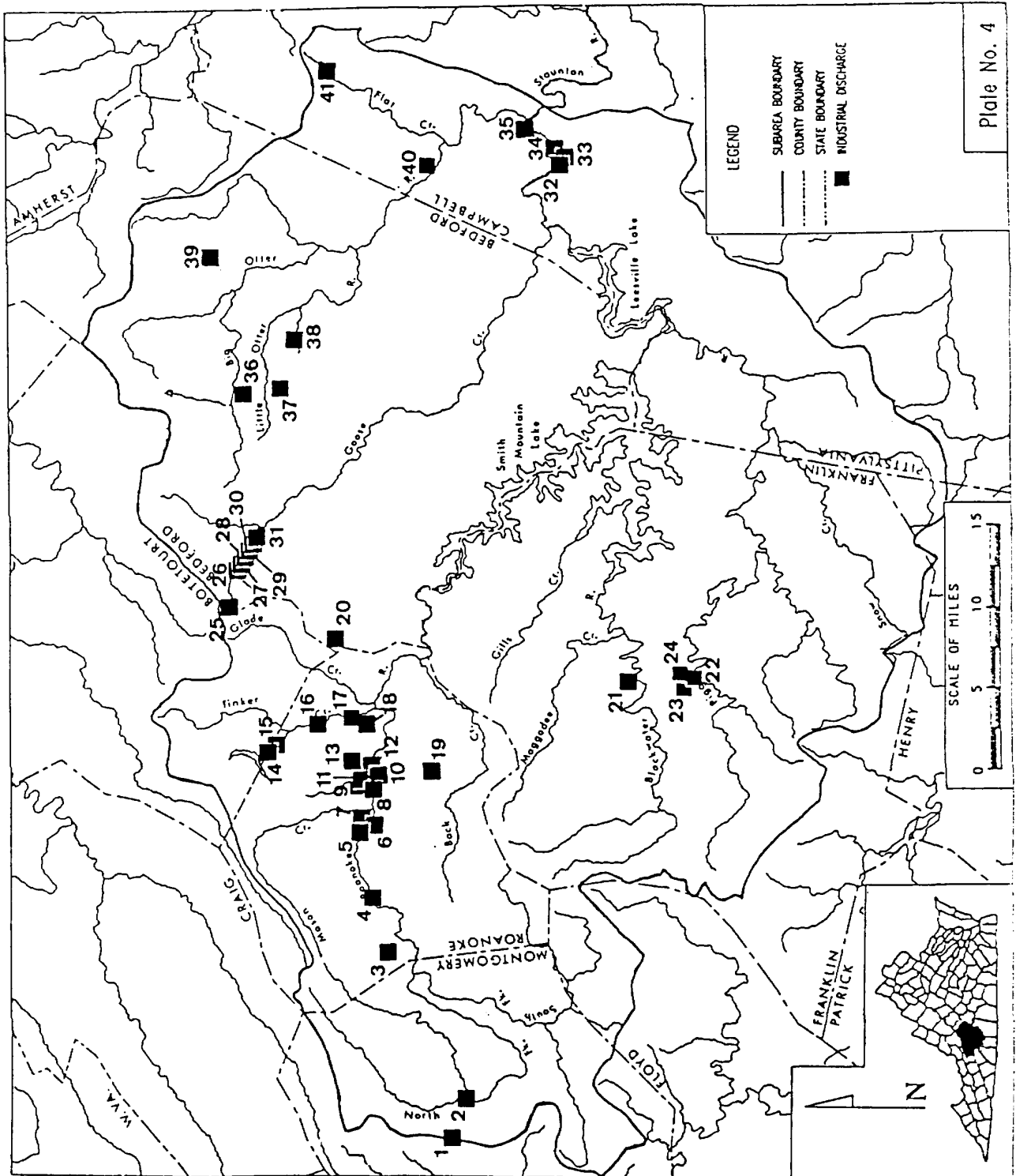
c. Town of Rocky Mount. The total assimilative capacity less background of the Pigg River at the existing discharge point has been allocated between Ronile, Inc. (14.8 kg/day), and the Rocky Mount STP (133 kg/day) BOD<sub>5</sub>. The wasteload allocation for the proposed facility is 133 kg/day at the downstream site based on updated stream flows used in the 1976 TVA flat water equation.

# Final Regulations

## MUNICIPAL VPDES DISCHARGERS UPPER ROANOKE RIVER SUBAREA



INDUSTRIAL VPDES DISCHARGERS  
UPPER ROANOKE RIVER SUBAREA



# Final Regulations

**TABLE 5:**  
**WASTELOAD ALLOCATIONS BASED ON EXISTING DISCHARGE POINT<sup>1</sup> UPPER ROANOKE RIVER SUBAREA.**  
**HUC 03010101**

Map Location	Stream Name	Segment Number	Segment Classification Standards	Mile to Mile <sup>2</sup>	Discharger	VPDES Permit Number	VPDES Permit Limits BOD <sub>5</sub> kg/day	303(e) <sup>3</sup> Wasteload Allocation BOD <sub>5</sub> kg/day	Total Maximum Daily Load W.Q. Segments BOD <sub>5</sub> kg/day
A	S. F. Roanoke R.	4A-1	E.L.-P W.Q.-FC	6.33	Montgomery County PSA Shawsville STP	VA0024031	11.40	Secondary	
B	S.F. Roanoke R.	4A-1	E.L.-P W.Q.-FC	0.76	Montgomery County PSA Elliston - Lafayette STP	VA0062219	28.00	Secondary	
C	X-trib. To N.F. Roanoke R.	4A-1	E.L.-P	0.25	Lonnie J. Weddle Residence	VA0073229	0.03	Secondary	
D	X-trib. To N.F. Roanoke R.	4A-1	E.L.-P	0.24	James Luther Residence	VA0073237	0.05	Secondary	
E	N.F. Roanoke R.	4A-1	E.L.-P	17.57	Blacksburg Country Club, Inc.	VA0027481	4.00	Secondary	
1	Cedar Run	4A-1	E.L.-P	2.64	Wolverine Gasket Co., Inc.	VA0052825	N/A	Secondary	
F	Cedar Run	4A-1	E.L.-P	0.40	Wendell Hensely Residence	VA0066737	0.07	Secondary	
G	X-trib. To Cedar Run	4A-1	E.L.-P	0.20	Ivan Gary Bland Residence	VA0077488	0.05	Secondary	
H	Cedar Run	4A-1	E.L.-P	0.46	Velma D. Compton Residence	VA0080021	0.06	Secondary	
2	N.F. Roanoke R.	4A-1	E.L.-P	15.21	Federal Mogul, Inc.	VA0001619	N/A	Secondary	
I	N.F. Roanoke R.	4A-1	E.L.-P	0.76	VDOT - I-81 Ironto Rest Area	VA0060941	2.80	Secondary	
3	X-trib. To Roanoke R.	4A-2	E.L.-P	1.04	Salem Stone Corp.	VA0006459	N/A	Secondary	
4	Roanoke R.	4A-2	W.Q.-DO,P	218.13	Koppers Company, Inc.	VA0001333	N/A	N/A	N/A
5	Roanoke R.	4A-2	W.Q.-DO,P	216.33	Roanoke Electric Steel Salem Plant	VA0001341	N/A	N/A	N/A
6	Snyders Br.	4A-2	E.L.-P	0.17	Graham-White Mfg., Inc.	VA0030031	N/A	Secondary	
7	Bowman's Br.	4A-2	E.L.-P	0.20	Mechanical Development Co., Inc.	VA0072311	N/A	Secondary	
8	Roanoke R.	4A-2	W.Q.-DO,P	212.61	Rowe Furniture Corp., Inc.	VA0024716		N/A	N/A
9	Roanoke R.	4A-2	W.Q.-DO,P	212.39	Valleydale Packers, Inc.	VA0001317	N/A	N/A	N/A
J	X-trib. To Mason Cr.	4A-2	E.L.-P	0.21	Gary L. Bryant Residence	VA0063398	0.07	Secondary	
K	Mason Cr.	4A-2	E.L.-P	0.30	Roanoke County Schools Mason Cove E.S.	VA0027545	0.45	Secondary	
L	Mason Cr.	4A-2	E.L.-P	7.79	Roanoke Moose Lodge 284	VA0077895	0.53	Secondary	
M	Gish Br.	4A-2	E.L.-P	1.80	Eddie Miller Residence	VA0076759	0.06	Secondary	
10	Roanoke R.	4A-2	W.Q.-DO,P	209.58	Virginia Plastics Co., Inc.	VA0052477	N/A	N/A	N/A
10	X-trib. To Mud Lick Cr.	4A-2	E.L.-P	0.47	Virginia Plastics Co., Inc.	VA0052477	2.70	Secondary	
11	Peters Cr.	4A-2	W.Q.-DO,P	0.26	Roanoke Electric Steel Roanoke Plant	VA0001589	N/A	N/A	N/A
12	Roanoke R.	4A-2	W.Q.-DO,P	207.60	Fuel Oil & Equipment Co., Inc.	VA0001252	N/A	N/A	N/A
13	Roanoke R.	4A-2	W.Q.-DO,P	207.24	Norfolk & Western Railway Co., Inc. - Shaffers Crossing	VA0001597	N/A	N/A	N/A



# Final Regulations

13	Horton Cr.	4A-2	E.L.-P	0.41	Norfolk & Western Railway Co., Inc. - Shaffers Crossing	VA0001597	N/A	Secondary	
N	Roanoke R.	4A-2	W.Q.-DO,P	201.81	Roanoke City Regional STP	VA0025020	<del>662.00</del> 1173.00 <sup>d</sup>	757.40 1173.00	927.72 1352.00
14	Carvin Cr.	4A-2	E.L.-P	5.77	Roanoke City Carvin Cove WTP	VA0001473	N/A	Secondary	
15	Carvin Cr.	4A-2	E.L.-P	4.98	ITT Electro-Optical Products Division	VA0020443	N/A	Secondary	
16	Tinker Cr.	4A-2	W.Q.-DO,P, FC	5.17	Elizabeth Arden, Inc.	VA0001635	N/A	N/A	N/A
17	Tinker Cr.	4A-2	W.Q.-DO,P, FC	1.45	Exxon Company, USA, Inc.	VA0079006	N/A	N/A	N/A
18	Lick Run	4A-2	E.L.-P	3.51	Norfolk & Western Railway Co., Inc. - Shaffers Crossing	VA0001597	N/A	Secondary	
18	Lick Run	4A-2	E.L.-P	1.12	Norfolk & Western Railway Co., Inc. - East End Shops	VA0001511	N/A	Secondary	
O	X-trib. To Glade Cr.	4A-2	E.L.-P	1.60	R. W. Bowers Commercial Dev.	VA0068497	0.06	Secondary	
P	X-trib. To Glade Cr.	4A-2	E.L.-P	1.24	Geraldine B. Carter Residence	VA0076546	0.06	Secondary	
Q	Coyner Spring Br.	4A-2	E.L.-P	0.50	Roanoke City - Coyner Springs STP	VA0021121	0.80	Secondary	
R	Back Cr.	4A-2	E.L.-P	16.14	Roanoke Sanitary Disposal Corp. - Starkey STP	VA0027103	45.40	Secondary	
19	Back Cr.	4A-2	E.L.-P	1.48	Shell Oil Co., Inc.	VA0001431	N/A	Secondary	
S	X-trib. to Back Cr.	4A-2	E.L.-P	1.00	Suncrest Development Co., Inc. - Suncrest Heights STP	VA0028711	2.30	Secondary	
20	Falling Cr.	4A-2	E.L.-P	7.70	Roanoke City - Falling Cr. WTP	VA0001465	N/A	Secondary	
T	X-trib. To Falling Cr.	4A-2	E.L.-P	0.32	Oak Ridge Mobile Home Park	VA0078392	3.40	Secondary	
U	Nat Branch	4A-2	E.L.-P	0.59	Bedford County Schools Stewartsville E.S.	VA0020842	0.50	Secondary	
V	Roanoke R.	4A-2	W.Q.-DO,P	182.76	L. Jack & Vicki S. Browning Residence	VA0067229	0.07	0.07	170.07
W	X-trib. To Little Cr.	4A-3	E.L.-P	0.16	Robert R. Walter Residence	VA0074004	0.05	Secondary	
X	X-trib. To Teals Cr.	4A-3	E.L.-P	0.96	Franklin County Schools Boones Mill E.S.	VA0060291	0.05	Secondary	
21	Blackwater R.	4A-3	E.L.-P	40.05	Rocky Mount Town Blackwater R. WTP	VA0055999	N/A	Secondary	
Y	Blackwater R.	4A-3	E.L.-P	38.95	Franklin Manor Home for Adults	VA0067555	1.70	Secondary	
Z	X-trib. To Blackwater R.	4A-3	E.L.-P	1.15	Franklin County Schools Rocky Mount E.S.	VA0060283	0.80	Secondary	
AA	X-trib. To Maggoodee Cr.	4A-3	E.L.-P	0.28	Boones Mill Town - Sand Filter	VA0078401	0.50	Secondary	
AB	Maggoodee Cr.	4A-3	E.L.-P	14.51	Boones Mill Town STP	VA0067245	3.40	Secondary	
AC	Roanoke R.	4A-5	E.L.	158.09	APCO - SML Dam Visitors Center	VA0074179	0.57	Secondary	

# Final Regulations

AD	Roanoke R.	4A-5	E.L.	157.49	APCO - SML Dam Picnic Area	VA0074217	0.57	Secondary	
AE	Storey Cr.	4A-4	W.Q.-DO	9.78	Ferrum Water & Sewerage Authority - Ferrum STP	VA0029254	14.20	14.20	14.60
23	X-trib. To Pigg R.	4A-4	E.L.	1.28	The Lane Company - Rocky Mount Plant	VA0098438	N/A	Secondary	
22 AF	Pigg R. Pigg R.	4A-4 4A-4	W.Q.-DO W.Q.-DO	57.24 56.72 52.68	Ronile, Inc. Rocky Mt. Town Existing STP Rocky Mt. Town Proposed STP	VA0076015 VA0023728 VA0085952	14.80 133.00	14.80 133.00 133.00	34.98 153.18
24	X-trib. To Powder Mill Cr.	4A-4	E.L.	1.64	Rocky Top Wood Preservers Inc.	VA0080071	N/A	Secondary	
AG	Willow Cr.	4A-4	E.L.	1.30	Town & Country Subdivision	VA0028657	4.50	Secondary	
25	S.F. Goose Cr.	4A-5	E.L.	6.77	Blue Ridge Stone Corp. Blue Ridge Plant	VA0050636	N/A	Secondary	
AH	X-trib. To S.F. Goose Cr.	4A-5	E.L.	0.66	Woodhaven Village, Inc.	VA0074870	0.50	Secondary	
26	X-trib. To S.F. Goose Cr.	4A-5	E.L.	0.08	Conoco, Inc.	VA0055328	N/A	Secondary	
27	S.F. Goose Cr.	4A-5	E.L.	2.58	Chevron USA, Inc.	VA0026051	N/A	Secondary	
28	X-trib. To S.F. Goose Cr.	4A-5	E.L.	0.20	Phillips Petroleum Co., Inc.	VA0051446	N/A	Secondary	
29	X-trib. to S.F. Goose Cr.	4A-5	E.L.	0.04	Amoco Oil Co., Inc.	VA0054577	N/A	Secondary	
29	X-trib. To S.F. Goose Cr.	4A-5	E.L.	0.06	Amoco Oil Co., Inc.	VA0054577	N/A	Secondary	
29	X-trib. To S.F. Goose Cr.	4A-5	E.L.	0.14	Amoco Oil Co., Inc.	VA0054577	N/A	Secondary	
30	S.F. Goose Cr.	4A-5	E.L.	2.30	Colonial Pipeline Co., Inc.	VA0051721	N/A	Secondary	
AI	X-trib. To N.F. Goose Cr.	4A-5	E.L.	0.20	Bedford County Schools Montvale E.S.	VA0066206	0.42	Secondary	
31	S.F. Goose Cr.	4A-5	E.L.	2.18	Texaco, Inc.	VA0001490	N/A	Secondary	
AJ	X-trib. To Day Cr.	4A-5	E.L.	1.79	Camp Virginia Jaycee Inc.	VA0060909	1.70	Secondary	
AK	X-trib. To Reed Cr.	4A-5	E.L.	0.84	Robincrest Mobile Home Park	VA0078413	2.70	Secondary	
AM	X-trib. To Shoulder Run	4A-5	E.L.	0.95	Bedford County Schools Staunton River H.S.	VA0063738	2.90	Secondary	
AN	Goose Cr.	4A-5	E.L.	19.55	Camp Tipacano, Inc.	VA0068063	1.10	Secondary	
AO	Mattox Cr.	4A-5	E.L.	3.76	VDOC - Field Unit #24 Smith Mtn. Lake	VA0023515	2.40	Secondary	
32	Staunton (Roa.) R.	4A-5	E.L.	129.72	Burlington Industries-Klopman Div. - Altavista Plant	VA0001678	[ 530.00 <del>630.00</del> See 9 VAC 25-440- 151 ]	Secondary	
33	Staunton (Roa.) R.	4A-5	E.L.	128.96	Altavista Town WTP	VA0027189	N/A	Secondary	
34	Staunton (Roa.) R.	4A-5	E.L.	128.94	The Lane Co., Inc. Altavista Plant	VA0001520	N/A	Secondary	
	Staunton (Roa.) R.	4A-5	E.L.		Town of Hurt (Proposed)			Secondary	

# Final Regulations

AP	Staunton (Roa.) R.	4A-5	E.L.	127.96-	Altavista Town STP	VA0020451	[ 204.00 <del>408.00</del> See 9 VAC 25-440- 151 ]	Secondary	
35	Staunton (Roa.) R.	4A-5	E.L.	126.39-	Ross Laboratories	VA0001716	66.20 <sup>45</sup>	Secondary	
36	X-trib. To Big Otter R.	4A-5	E.L.	1.63-	Bedford City WTP	VA0001503	N/A	Secondary	
37	Roaring Run	4A-5	E.L.	3.26-	Gunnoe Sausage Co., Inc.	VA0001449	0.55	Secondary	
AQ	X-trib. To Big Otter R.	4A-5	E.L.	1.15-	Bedford County Schools Otter River E.S.	VA0020851	0.40	Secondary	
38	X-trib. To Little Otter R.	4A-5	E.L.	0.76-	Wheelabrator Frye, Inc.	VA0058033	N/A	Secondary	
AR	X-trib. To Little Otter R.	4A-5	E.L.	0.42-	Bedford County Schools Liberty H.S.	VA0020796	2.80	Secondary	
AS	Little Otter R.	4A-5	W.Q.-DO	14.36-	Bedford City STP	VA0022390	52.80	52.80	64.15
39	Johns Cr.	4A-5	W.Q.-DO	2.61-	Golden West Foods, Inc.	VA0056430	N/A	N/A	N/A
AT	X-trib. To Wells Cr.	4A-5	E.L.	2.22-	Bedford County Schools Body Camp E.S.	VA0020818	0.40	Secondary	
AU	X-trib. To Big Otter R.	4A-5	E.L.	1.20-	David T. Callahan Residence	VA0080667	0.57	Secondary	
AV	X-trib. To Buffalo Cr.	4A-5	E.L.	0.67-	Bedford County Schools New London Academy	VA0020826	0.50	Secondary	
AW	Buffalo Cr.	4A-5	E.L.	12.42-	Alum Springs Shopping Center	VA0078999	4.50	Secondary	
40	Big Otter R.	4A-5	E.L.	11.74-	Campbell County USA (Proposed WTP)	VA0078646	N/A	Secondary	
BF	X-trib. To Big Otter R.	4A-5	E.L.	1.07-	Otterwood Grocery Store	VA0082732	0.05	Secondary	
AX	Flat Cr.	4A-5	E.L.	13.34-	Virginia Track & Equipment Corp.	VA0068594	0.03	Secondary	
BD	X-trib. To Flat Cr.	4A-5	E.L.	0.68-	Montague Betts Co., Inc.	VA0075116	0.45	Secondary	
41	Flat Cr.	4A-5	E.L.	12.62-	Blue Ridge Stone Corp. Lynchburg Plant	VA0050628	N/A	Secondary	
AY	X-trib. To Flat Cr.	4A-5	E.L.	0.12-	Winebarger Corp.	VA0074969	0.70	Secondary	
AZ	Smith Br.	4A-5	E.L.	2.82-	Briarwood Village	VA0031194	2.70	Secondary	
BE	X-trib. To Flat Cr.	4A-5	E.L.	0.88-	Ralph P. Shepard Residence	VA0081591	0.05	Secondary	
BA	X-trib. To Flat Cr.	4A-5	E.L.	1.16-	Phillips, Arthur, Phillips Tract #6	VA0068098	0.05	Secondary	
BB	X-trib. To Flat Cr.	4A-5	E.L.	1.12-	Kyle E. & Annette D. Shupe Residence	VA0068080	0.05	Secondary	
BC	X-trib. To Flat Cr.	4A-5	E.L.	1.08-	Wayne E. & Sherrina D. Shupe Residence	VA0068071	0.05	Secondary	
BG	X-trib. To Troublesome Cr.	4A-5	E.L.	2.15-	Kelly Convenience Store	VA0067078	0.11	Secondary	

---

# Final Regulations

---

## NOTES:

N/A--Not Applicable--currently no BOD<sub>5</sub> limits or wasteload have been required by the VPDES Permit. Should BOD<sub>5</sub> limits be required, a WQMP amendment would be necessary for Water Quality Limited Segments only.

<sup>1</sup> Secondary Treatment levels are required in Effluent Limited segments. Quantities listed for Water Quality Limited segments represent wasteload allocation.

<sup>2</sup> Ending river miles are not available at this time.

<sup>3</sup> These allocations represent current and original (1976 WQMP) modeling with the exception of the Altavista segment, river miles 130.00 to 119.00 on the Staunton (Roanoke) River. Future revisions may be necessary based on State Water Control Board approved modeling.

<sup>4</sup> The VPDES Permit Limit presented here is a future loading, not the current VPDES Permit limitation. The permitting process will determine the current loading not to exceed 1173 kg/d WLA established by this plan.

<sup>45</sup> The current permitted BOD<sub>5</sub> loading for this facility is 30 mg/l monthly average and 45 mg/l daily maximum. Based on maximum flows reported by this facility for 1987-88 (0.389 mgd) the resulting wasteload is 66.2 kg/d. Revocation of the permit has been requested by the permittee.

### [ 9 VAC 25-440-151. Altavista segment. (Reserved.) ]

VA.R. Doc. No. R97-535; Filed November 17, 1998, 10:11 a.m.

---

## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

**Title of Regulation:** 12 VAC 5-90-10 et seq. Regulations for Disease Reporting and Control (amending 12 VAC 5-90-10, 12 VAC 5-90-40, 12 VAC 5-90-50, 12 VAC 5-90-70, 12 VAC 5-90-80, 12 VAC 5-90-90, 12 VAC 5-90-100, 12 VAC 5-90-110, 12 VAC 5-90-130, 12 VAC 5-90-150, 12 VAC 5-90-160, 12 VAC 5-90-170 and 12 VAC 5-90-180; repealing 12 VAC 5-90-60, 12 VAC 5-90-120, 12 VAC 5-90-190, 12 VAC 5-90-210 and 12 VAC 5-90-220).

**Statutory Authority:** §§ 32.1-12 and 32.1-35 of the Code of Virginia.

**Effective Date:** January 6, 1999.

#### Summary:

*The amendments include (i) the addition of newly emerging diseases to the list of reportable conditions; (ii) the deletion of conditions for which public health surveillance is no longer necessary; (iii) additions to the list of conditions reportable by directors of laboratories; (iv) an updated list of laboratory tests, a requirement for laboratories to report certain conditions rapidly, and additional requirements for laboratories to forward certain cultures to the state laboratory; and (v) several other updates including new and modified definitions, a provision for the health department to conduct temporary surveillance in special circumstances, a requirement for*

*perinatal testing for hepatitis B infection, additional items to be included in reports of persons with cancer and encouragement of electronic reporting of cancer, deletion of the section on memory loss disorder reporting, and a requirement for child care centers to report outbreaks.*

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

**Agency Contact:** Copies of the regulation may be obtained from C. Diane Woolard, Ph.D., M.P.H., Department of Health, Office of Epidemiology, P.O. Box 2448, Room 113, Richmond, VA 23218, telephone (804) 786-6261.

#### **12 VAC 5-90-10. Definitions.**

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

"Board" means the State Board of Health.

"Cancer" means all carcinomas, sarcomas, melanomas, leukemias, and lymphomas excluding localized basal and squamous cell carcinomas of the skin, except for lesions of the mucous membranes.

"Carrier" means a person who, with or without any apparent symptoms of a communicable disease, harbors a specific infectious agent and may serve as a source of infection.

"Child care center" means a child day center, child day center system, child day program, family day home, family day system, or registered family day home as defined by § 63.1-195 of the Code of Virginia, or a similar place providing day care of children by such other name as may be applied.

"Clinic" means any facility, freestanding or associated with a hospital, that provides preventive, diagnostic, therapeutic, rehabilitative, or palliative care or services to outpatients.

"Commissioner" means the State Health Commissioner, his duly designated officer or agent.

"Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a susceptible host from an infected person, animal, or arthropod or through the agency of an intermediate host or a vector or through the inanimate environment.

"Condition" means any adverse health event that is not technically a disease, such as an infection, a syndrome, or a procedure indicating that an exposure of public health importance has occurred.

"Contact" means a person or animal known to have been in such association with an infected person or animal as to have had an opportunity of acquiring the infection.

"Contact tracing" means the process by which an infected person or health department employee notifies others that they may have been exposed to the infected person in a manner known to transmit the infectious agent in question.

"Department" means the State Department of Health.

[ "Designee" or "designated officer or agent" means any person, or group of persons, designated by the State Health Commissioner, to act on behalf of the commissioner or the board. ]

"Epidemic" means the occurrence in a community or region of cases of an illness clearly in excess of normal expectancy.

"Foodborne outbreak" means ~~a group manifestation of two or more cases of a similar illness acquired through the consumption of food or water contaminated with chemicals or an infectious agent or its toxic products. [ One case of foodborne botulism is considered an outbreak. ]~~ Such illnesses include but are not limited to heavy metal intoxications, staphylococcal food poisoning, botulism, salmonellosis, shigellosis, Clostridium perfringens food poisoning, hepatitis A, and Escherichia coli O157:H7 illness.

[ "Hepatitis C, acute" means the case meets the following criteria: (i) discrete onset of illness; (ii) jaundice or serum aminotransferase levels greater than 2.5 times the upper normal limit; (iii) test negative for hepatitis A and hepatitis B; and (iv) antibody to hepatitis (anti-HCV) verified by a supplemental test. Persons who have chronic hepatitis or are anti-HCV positive should not be reported unless they have evidence of an acute illness compatible with viral hepatitis and other causes of acute hepatitis have been excluded. ]

"Immunization" means a ~~treatment~~ procedure which renders an individual less susceptible to the pathologic effects of a disease or provides a measure of protection against the disease (e.g., inoculation, vaccination).

"Independent pathology laboratory" means a nonhospital or a hospital laboratory performing surgical pathology, including fine needle aspiration biopsy and bone marrow examination services, which reports the results of such tests directly to physician offices, without reporting to a hospital or accessioning the information into a hospital tumor registry.

"Investigation" means an inquiry into the incidence, prevalence, extent, source, mode of transmission, and causation of a disease occurrence.

"Isolation" means separation for the period of communicability of infected persons or animals from others in such places and under such conditions as to prevent or limit the direct or indirect transmission of an infectious agent from those infected to those who are susceptible. The means of isolation shall be the least restrictive means appropriate under the facts and circumstances as determined by the commissioner.

"Laboratory director" means any person in charge of supervising a laboratory conducting business in the Commonwealth of Virginia.

"Lead-elevated blood levels in children" means a child or children 15 years of age and younger with a confirmed venous blood level greater than or equal to ~~15~~ 10 micrograms of lead per deciliter ( $\mu\text{g}/\text{dL}$ ) of whole blood, a person older than 15 years of age with a venous blood lead level greater than or equal to 25  $\mu\text{g}/\text{dL}$ , or such lower blood lead level as may be recommended for individual intervention by the department or the United States Department of Health and Human Services, Public Health Services, Centers for Disease Control and Prevention.

"Medical care facility" means any hospital or nursing home licensed in the Commonwealth, or any hospital operated by or contracted to operate by an entity of the United States government or the Commonwealth of Virginia.

~~"Memory loss disorder" means any progressive dementia caused by AIDS, alcohol abuse, probable Alzheimer's disease, cerebral vascular disease, Creutzfeldt Jakob disease, depression, head trauma, normal pressure hydrocephalus, Parkinson's disease, space-occupying lesion, toxic or metabolic disorder, or other known cause.~~

"Midwife" means any person who is licensed as a nurse midwife by the Virginia Boards of Nursing and Medicine or who possesses a midwife permit issued by the State Health Commissioner.

"Nosocomial outbreak" means any group of illnesses of common etiology occurring in patients of a medical care facility acquired by exposure of those patients to the disease agent while confined in such a facility.

"Nurse" means any person licensed as a professional nurse or as a licensed practical nurse by the Virginia Board of Nursing.

"Occupational outbreak" means a cluster of illness or disease that is indicative of an occupational health problem. Such diseases include but are not limited to silicosis, asbestosis, byssinosis, and tuberculosis.

"Outbreak" means the occurrence of more cases of a disease than expected.

"Period of communicability" means the time or times during which the etiologic agent may be transferred directly or indirectly from an infected person to another person, or from an infected animal to a person.

"Physician" means any person licensed to practice medicine by the Virginia Board of Medicine.

"Quarantine" means generally, a period of detention for persons or domestic animals that may have been exposed to a reportable, contagious disease for purposes of observation or treatment.

1. Complete quarantine. The formal limitation of freedom of movement of well persons or animals exposed to a reportable disease for a period of time not

---

# Final Regulations

---

longer than the longest incubation period of the disease in order to prevent effective contact with the unexposed. The means of complete quarantine shall be the least restrictive means appropriate under the facts and circumstances, pursuant to 12 VAC 5-90-90 E or as determined by the commissioner.

2. Modified quarantine. A selective, partial limitation of freedom of movement of persons or domestic animals, determined on the basis of differences in susceptibility, or danger of disease transmission. Modified quarantine is designed to meet particular situations and includes but is not limited to, the exclusion of children from school and the prohibition or restriction of those exposed to or suffering from a communicable disease from engaging in a particular occupation. The means of modified quarantine shall be the least restrictive means appropriate under the facts and circumstances, pursuant to 12 VAC 5-90-90 E or as determined by the commissioner.

3. Segregation. The separation, for special control, or observation, of one or more persons or animals from other persons or animals to facilitate control or surveillance of a reportable disease. The means of segregation shall be the least restrictive means available under the facts and circumstances, as determined by the commissioner.

"Reportable disease" means an illness due to a specific toxic substance, occupational exposure, or infectious agent, which affects a susceptible individual, either directly, as from an infected animal or person, or indirectly through an intermediate host, vector, or the environment, as determined by the board.

"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within the Commonwealth; (ii) any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12; (iii) any private or parochial nursery school or preschool, or any private or parochial child care center licensed by the Commonwealth; and (iv) any preschool handicap classes or Head Start classes.

~~"Surveillance" means the continuing scrutiny of all aspects of occurrence and spread of a disease relating to effective control of that disease. Included in the process of surveillance are the collection and evaluation of:~~

- ~~1. Morbidity and mortality reports.~~
- ~~2. Special reports of field investigations of epidemics and individual cases.~~
- ~~3. Isolation and identification of infectious agents by laboratories.~~
- ~~4. Data concerning the availability, use, and untoward side effects of the substances used in disease control.~~
- ~~5. Information regarding immunity levels in segments of the population.~~

"Surveillance" means the ongoing systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation and evaluation of public health practice. A surveillance system includes the functional capacity for data analysis as well as the timely dissemination of these data to persons who can undertake effective prevention and control activities.

"Toxic substance" means any substance, including any raw materials, intermediate products, catalysts, final products, or by-products of any manufacturing operation conducted in a commercial establishment, that has the capacity, through its physical, chemical or biological properties, to pose a substantial risk of death or impairment either immediately or over time, to the normal functions of humans, aquatic organisms, or any other animal but not including any pharmaceutical preparation which deliberately or inadvertently is consumed in such a way as to result in a drug overdose.

"Tuberculosis disease" means bacteriological confirmation of *Mycobacterium tuberculosis* or, in the absence of such confirmation, a significant reaction to a Mantoux tuberculin skin test accompanied by an improvement in the chest radiograph and/or clinical course of disease while on multiple anti-tuberculosis medications.

"Tuberculosis infection in children ages [0-5 <4] years" means a significant reaction resulting from a 0.1 ml intradermal injection of a 5 tuberculin unit (TU) dose of PPD-S (Mantoux tuberculin skin test) with no chest x-ray or clinical indication of active tuberculosis disease in children [ages 0-5 years from birth up to their fourth birthday]. A significant reaction is 5 mm induration in known contacts to tuberculosis disease and HIV seropositive persons and 10 mm in all others.

"Vancomycin-resistant *Staphylococcus aureus*" means any *Staphylococcus aureus* culture that demonstrates intermediate or greater resistance to vancomycin.

~~"Waterborne outbreak" means a group manifestation of two or more cases of a similar illness acquired through the consumption ingestion of or exposure to water contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include but are not limited to giardiasis, viral gastroenteritis, cryptosporidiosis, hepatitis A, cholera, and shigellosis. A single case of laboratory-confirmed primary amebic meningoencephalitis or of waterborne chemical poisoning is considered an outbreak.~~

## 12 VAC 5-90-40. Administration.

A. The State Board of Health ("board") has the responsibility for promulgating regulations pertaining to the reporting and control of diseases of public health importance.

B. The State Health Commissioner ("commissioner") is the executive officer for the State Board of Health with the authority of the board when it is not in session, subject to the rules and regulations of and review by the board.

C. The local health director is responsible for the surveillance and investigation of those diseases specified by this chapter which occur in his jurisdiction. He is further responsible for reporting all such surveillance and investigations to the ~~State Department of Health~~ *department*. In cooperation with the commissioner, he is responsible for instituting measures for disease control, which may include quarantine ~~or~~, isolation, *or segregation* as required by the commissioner.

D. The Office of Epidemiology, *an organizational part of the department*, is responsible for the statewide surveillance of those diseases specified by this chapter, for coordinating the investigation of those diseases with the local health director ~~and operations director~~, and for providing direct assistance where necessary. The Director of the Office of Epidemiology acts as the commissioner's designee in reviewing reports and investigations of diseases and recommendations by local health directors for quarantine or isolation. However, authority to order quarantine or isolation resides solely with the commissioner, unless otherwise expressly provided by him.

E. All persons responsible for the administration of this chapter shall ensure that the anonymity of patients and practitioners is preserved, according to the provisions of §§ 32.1-38, 32.1-41, 32.1-71, and 32.1-71.4 of the Code of Virginia.

**12 VAC 5-90-50. Application of chapter Applicability.**

A. This chapter has general application throughout the Commonwealth.

~~**12 VAC 5-90-60. Application of the Administrative Process Act.**~~

B. The provisions of the Virginia Administrative Process Act, which is codified as Chapter 1.1:1 (§ 9-6.14:1 *et seq.*) of Title 9 of the Code of Virginia, shall govern the adoption, amendment, modification, and revision of this chapter, and the conduct of all proceedings and appeals hereunder. All hearings on such regulations shall be conducted in accordance with § 9-6.14:7.1 of the Code of Virginia.

**12 VAC 5-90-70. Powers and procedures of chapter not exclusive.**

The board reserves the right to authorize a procedure for enforcement of this chapter which is not inconsistent with the provisions set forth herein and the provisions of Chapter 2 (§ 32.1-35 *et seq.*) of Title 32.1 of the Code of Virginia.

**12 VAC 5-90-80. Reportable disease list.**

A. The board declares the following named diseases, toxic effects, and conditions to be reportable by the persons enumerated in 12 VAC 5-90-90. *Conditions identified by an asterisk (\*) require rapid communication as defined in subsection B of this section:*

A. ~~List of reportable diseases:~~

Acquired Immunodeficiency Syndrome (AIDS)

Amebiasis

\*Anthrax

Arboviral infections

[ ~~Aseptic meningitis~~ ]

[ ~~Bacterial meningitis (specify etiology)~~ ]

\*Botulism

Brucellosis

Campylobacter infections (~~excluding C. pylori~~)

Chancroid

Chickenpox

Chlamydia trachomatis infections

~~Congenital rubella syndrome~~

\*Cholera

Cryptosporidiosis

Cyclosporiasis

\*Diphtheria

~~Encephalitis~~

~~primary~~

~~(specify etiology)~~

~~post-infectious~~

~~Foodborne outbreaks~~

Ehrlichiosis

*Escherichia coli* O157:H7 and other enterohemorrhagic *E. coli* infections

Giardiasis

Gonorrhea

Granuloma inguinale

\*Haemophilus influenzae ~~infections~~ *infection*, invasive

Hantavirus pulmonary syndrome

Hemolytic uremic syndrome (HUS)

Hepatitis, acute viral

\*Hepatitis A

Hepatitis B

~~Non-A, Non-B~~

~~Unspecified~~

~~Histoplasmosis~~

~~Hepatitis C~~

~~Other acute viral Hepatitis~~

Human immunodeficiency virus (HIV) infection

Influenza

~~Kawasaki~~ *Kawasaki syndrome*

~~Lead-elevated blood levels~~

---

# Final Regulations

---

Legionellosis  
~~Lead-elevated levels in children~~  
Leprosy (*Hansen disease*)  
~~Leptospirosis~~  
Listeriosis  
Lyme disease  
Lymphogranuloma venereum  
Malaria  
\*Measles (Rubeola)  
\*Meningococcal infections  
Mumps  
~~Nosocomial outbreaks~~  
Occupational illnesses  
Ophthalmia neonatorum  
*\*Outbreaks, all (including foodborne, nosocomial, occupational, toxic substance-related, waterborne, and other outbreaks)*  
\*Pertussis (Whooping cough)  
~~Phenylketonuria (PKU)~~  
\*Plague  
\*Poliomyelitis  
\*Psittacosis  
~~Q fever~~  
Rabies in animals  
~~Rabies in man~~  
*\*Rabies, human and animal*  
Rabies treatment, post-exposure  
Reye syndrome  
Rocky Mountain spotted fever  
Rubella (German measles), *including congenital rubella syndrome*  
Salmonellosis  
Shigellosis  
~~Smallpox~~  
*Streptococcal disease, Group A, invasive*  
*Syphilis (report \*primary and \*secondary syphilis by rapid means)*  
Tetanus  
Toxic shock syndrome  
Toxic substance-related illness

Trichinosis (*Trichinellosis*)  
\*Tuberculosis disease  
*Tuberculosis infection in children ages [ ~~0-5~~ <4 ] years (Mantoux tuberculin skin test reaction [ > <sup>3</sup> ] 10 mm)*  
~~Tularemia~~  
Typhoid fever  
~~Typhus, flea-borne~~  
*Vancomycin-resistant Staphylococcus aureus*  
~~Vibrio infections including cholera~~  
~~Waterborne outbreaks~~  
\*Yellow fever

B. Reportable diseases requiring rapid communication. Certain of the diseases in the list of reportable diseases, because of their extremely contagious nature or their potential for greater harm, or both, require immediate identification and control. Reporting of *persons confirmed or suspected of having* these diseases, listed below and identified by asterisks in subsection A of this section and 12 VAC 5-90-90 B, shall be made *within 24 hours* by the most rapid means available, preferably that of telecommunication (e.g., telephone, telephone transmitted facsimile, telegraph, teletype, etc.) to the local health director or other professional employee of the department:

Anthrax  
Botulism  
Cholera  
Diphtheria  
~~Foodborne outbreaks~~  
Haemophilus influenzae ~~infections~~ *infection*, invasive  
Hepatitis A  
Measles (Rubeola)  
Meningococcal ~~infections~~ *infection*  
*Outbreaks, all*  
*Pertussis*  
Plague  
Poliomyelitis  
Psittacosis  
Rabies in man *and animals*  
~~Smallpox~~  
Syphilis, primary and secondary  
Tuberculosis *disease*  
~~Waterborne outbreaks~~  
Yellow Fever



C. Diseases to be reported by number of cases. The following disease in the list of reportable diseases shall be reported as number-of-cases only:

Influenza (by type, if available)

D. Human immunodeficiency virus (HIV) infection. Every physician practicing in this Commonwealth shall report to the local health department any patient of his who has tested positive for human immunodeficiency virus (HIV). Every person in charge of a medical care facility shall report the occurrence in or admission to the facility of a patient with HIV infection unless there is evidence that the occurrence has been reported by a physician. When such a report is made, it shall include the information required in 12 VAC 5-90-90 A. Only individuals who have ~~positive blood tests for laboratory results which indicate the presence of HIV antigen, nucleic acid, or antibodies (such as demonstrated by~~ at least two enzyme-linked immunosorbent assays (done in duplicate at the same time or singly at different times), and a supplemental test such as the western blot ~~or by rapid tests with confirmation~~) are considered to have HIV infection.

E. ~~Toxic substances related substance-related diseases or illnesses. Diseases or illnesses resulting from exposure to a toxic substance, shall include, but not be limited to the following:~~

<p><del>Occupational Lung Diseases</del></p> <p>silicosis asbestosis byssinosis</p>	<p><del>Occupationally Related Cancers</del></p> <p>mesothelioma</p>
---	--

~~Furthermore, All toxic substances-related substance-related diseases or illnesses, including pesticide poisonings, and heavy metal poisoning or illness or disease resulting from exposure to a an occupational dust or fiber or radioactive substance, or any illness or disease that is indicative of an occupational health, public health, or environmental problem shall be reported.~~

If such disease or illness is verified, or suspected, and presents an emergency, or a serious threat to public health or safety, the report of such disease or illness shall be by rapid communication as in subsection B of this section.

~~F. Unusual or ill-defined diseases, illnesses, or Outbreaks. The occurrence of outbreaks or clusters of any illness which may represent an unusual or group expression of an illness which may be of public health concern shall be reported to the local health department by the most rapid means available.~~

G. *Unusual or ill-defined diseases or emerging or reemerging pathogens. Unusual or emerging conditions of public health concern shall be reported to the local health department by the most rapid means available. In addition, the commissioner or his designee may establish temporary surveillance systems for diseases or conditions that are not on the list of reportable diseases. Such surveillance may be established to identify cases (delineate the magnitude of the situation), to identify the mode of transmission and risk*

*factors for the disease, and to identify and implement appropriate action to protect public health. Any person reporting information at the request of the department for special surveillance or other epidemiological studies shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.*

~~G. H. Contact tracing. When notified about a disease specified in subsection A of this section, the local health department shall perform contact tracing for HIV infection, infectious syphilis, and HIV infection tuberculosis, and may perform contact tracing for the other diseases if deemed necessary to protect the public health. The local health director shall have the responsibility to accomplish contact tracing by either having patients inform their potential contacts directly or through obtaining pertinent information such as names, descriptions, and addresses to enable the health department staff to inform the contacts. All contacts of HIV infection shall be afforded the opportunity for appropriate counseling, testing, and individual face-to-face disclosure of the their test results and appropriate counseling. In no case shall names of informants or infected persons be revealed to contacts by the health department. All information obtained shall be kept strictly confidential.~~

**12 VAC 5-90-90. Those required to report.**

A. Physicians. Each physician who treats or examines any person who is suffering from or who is suspected of having a reportable disease, ~~or who is suspected of being a carrier of a reportable disease or condition~~ shall report that person's name, address, age [ or date of birth or both ] , sex, race, name of disease diagnosed or suspected, and the date of onset of illness, except that influenza should be reported by number of cases only (and type of influenza, if available). Reports are to be made to the local health department serving the jurisdiction where the physician practices. *A physician may designate someone to report on his behalf. Provider organizations, such as health maintenance organizations, may assume the responsibility for reporting on behalf of their member physicians.* Any physician, *designee, or organization* making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

Such reports shall be made on a form to be provided by the department (Epi-1), a computer generated facsimile of Form Epi-1, or a Centers for Disease Control and Prevention (CDC) surveillance form that provides the same information and shall be made within seven days of *the identification of disease* unless the disease in question requires rapid reporting under 12 VAC 5-90-80 B ~~or 12 VAC 5-90-80-F.~~

B. Directors of laboratories. Any person who is in charge of a laboratory conducting business in the Commonwealth shall report any laboratory examination of any specimen derived from the human body, *whether performed in-house or referred to an out-of-state laboratory, which yields evidence, by the laboratory method(s) indicated or any other confirmatory test, of a disease listed below:*

---

# Final Regulations

---

*Amebiasis - by microscopic examination or antigen detection method or serology*

*\*Anthrax - by culture*

*Arboviral infection - by viral isolation [ or serology ]*

*\*Botulism - by identification of toxin in stool or serum or by culture*

*Brucellosis - by culture or serology or immunofluorescence of Brucella spp. in a clinical specimen*

*Campylobacter infections (excluding C. pylori) infection - by culture*

*Chancroid - by culture*

*Chlamydia trachomatis infections - by culture or antigen or nucleic acid detection methods*

*\*Cholera - by culture*

*Cryptosporidiosis - by microscopic examination of stool or biopsy specimens or by antigen detection method*

*Cyclosporiasis - by microscopic examination of stool*

*\*Diphtheria - by culture or histopathologic diagnosis*

*Escherichia coli O157:H7 - by isolation of E. coli O157:H7 or other enterohemorrhagic E. coli from a specimen or isolation of Shiga toxin-producing E. coli O157 nonmotile (unable to detect flagellar factor) from a clinical specimen*

*Giardiasis - by microscopic examination or antigen detection method*

*Gonococcal infections - by culture or microscopic examination or by antigen or nucleic acid detection method*

*\*Haemophilus influenzae infections infection - by culture or antigen detection assay of blood or cerebrospinal fluid polymerase chain reaction of a normally sterile site*

*\*Hepatitis A - by serology specific for ~~IgM~~ IgM antibodies*

*Hepatitis B - by serology specific for IgM antibodies*

*Human immunodeficiency virus (HIV) infection - by ~~positive blood tests for~~ laboratory results which indicate the presence of HIV antigen, nucleic acid, or antibodies (such as demonstrated by at least two enzyme-linked immunosorbent assays (done in duplicate at the same time or singly at different times), and a supplemental test such as the western blot- or by rapid tests with confirmation)*

*Influenza - by culture or serology*

*Lead-elevated blood levels in children - venous blood lead level greater than or equal to 45 10 µg/dL in children ~~age~~ ages 0-15 or greater than or equal to 25 µg/dL in persons older than 15 years of age*

*Legionellosis - by culture or, direct fluorescent antibody test, serology, urine antigen detection method or polymerase chain reaction*

*Listeriosis - by culture*

*Malaria - by microscopic examination or polymerase chain reaction*

*\*Measles - by serology specific for IgM antibodies or paired sera results indicating a significant rise in antibody level or by culture*

*\*Meningococcal infections infection - by culture of blood or cerebrospinal fluid a normally sterile site*

*Mumps - by serology specific for IgM antibodies or paired sera results indicating a significant rise in antibody level or by culture*

*\*Mycobacterial diseases - Report any of the following:*

*1. Acid fast bacilli - on smear*

*2. Mycobacterial identification - preliminary identification by rapid methodologies and/or by culture*

*3. Drug susceptibility test results for M. tuberculosis*

*\*Pertussis - confirmed by culture or polymerase chain reaction or suspected by direct fluorescent antibody test*

*\*Plague - by culture or direct fluorescent antibody test*

*\*Poliomyelitis - by culture or serology*

*\*Rabies in animals - by ~~microscopic or immunologic examination~~ direct fluorescent antibody test*

*Rubella - by serology specific for IgM antibodies or paired sera results indicating a significant rise in antibody level or by culture*

*Salmonella infections - by culture*

*Shigella infections - by culture*

*Streptococcal disease, Group A - by culture from a normally sterile site*

*\*Syphilis - by serology or dark field examination*

*Trichinosis - by serology or microscopic examination of a muscle biopsy*

*Vancomycin-resistant Staphylococcus aureus - by antimicrobial susceptibility testing conducted on culture*

*Vibrio infection - by culture*

Each report shall give the source of the specimen and the laboratory method and result; the name, age [ or date of birth or both ] , race, sex, and address of the person from whom the specimen was obtained; and, ~~when available, the person's age, race and sex.~~ the name and address of the physician or medical facility for whom the examination was made ~~shall also be provided.~~ When the influenza virus is isolated, the type should be reported, if available. Reports shall be made within seven days of identification of evidence

of disease, except that those identified by an asterisk shall be reported within 24 hours by the most rapid means available, to the local health department serving the jurisdiction in which the laboratory is located ~~and~~. Reports shall be made on Form Epi-1 or on the laboratory's own form if it includes the required information. Computer generated reports containing the required information may be submitted. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

~~Exceptions: With the exception of reporting laboratory evidence of gonococcal infections and syphilis, laboratories operating within a medical care facility shall be considered to be in compliance with the regulations when the director of that medical care facility assumes the reporting responsibility.~~

A laboratory ~~may~~ operating within a medical care facility shall fulfill its responsibility to report ~~mycobacterial diseases anthrax, cholera, diphtheria, E. coli O157:H7, H. influenzae infection, meningococcal infection, Mycobacterium tuberculosis, pertussis, plague, poliomyelitis, Salmonella infection, Shigella infection, invasive Group A streptococcal infection, and other diseases as may be requested by the health department by sending a positive culture for identification or confirmation, or both, both notifying the health department of the positive culture and submitting the initial culture to the Virginia Division of Consolidated Laboratory Services.~~ The culture must be identified with the patient and physician information required ~~above~~ in this subsection. At times, other laboratories may also be requested to submit specimens to the Virginia Division of Consolidated Laboratory Services.

Laboratories operating within a medical care facility shall be considered to be in compliance with the requirement to report to the health department when the director of that medical care facility assumes the reporting responsibility.

C. Person in charge of a medical care facility. Any person in charge of a medical care facility shall make a report to the local health department serving the jurisdiction where the facility is located of the occurrence in or admission to the facility of a patient with a reportable disease listed in 12 VAC 5-90-80 A unless he has evidence that the occurrence has been reported by a physician. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia. The requirement to report shall include all inpatient, outpatient and emergency care departments within the medical care facility. Such report shall contain the patient's name, age [ or date of birth or both ], address, sex, race, name of disease being reported, the date of admission, hospital chart number, date expired (when applicable), and attending physician. Influenza should be reported by number of cases only (and type of influenza, if available). Reports shall be made within seven days of the identification of disease unless the disease in question requires rapid reporting under 12 VAC 5-90-80 B or 12 VAC 5-90-80 F and shall be made on Form Epi-1, a computer generated facsimile of Form

Epi-1, or a Centers for Disease Control and Prevention (CDC) surveillance form that provides the same information.

~~(Note: See subsection B of this section "Exceptions") A person in charge of a medical care facility may assume the reporting responsibility on behalf of the director of the laboratory operating within the facility.~~

D. Person in charge of a school or child care center. Any person in charge of a school or child care center shall report immediately to the local health department the presence or suspected presence in his school or child care center of children who have common symptoms suggesting an epidemic or outbreak situation. Any person so reporting shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

E. Local health directors. The local health director shall forward within seven days of receipt to the Office of Epidemiology of the State Health Department any report of a disease or report of evidence of a disease which has been made on a resident of his jurisdiction. This report shall be by telecommunication if the disease is one requiring rapid communication, as required in 12 VAC 5-90-80 B or 12 VAC 5-90-80 F. All such rapid reporting shall be confirmed in writing and submitted to the Office of Epidemiology within seven days. Furthermore, the local health director shall immediately forward to the appropriate local health director any disease reports on individuals residing in the latter's jurisdiction or to the Office of Epidemiology on individuals residing outside Virginia. The local health director shall review reports of diseases received from his jurisdiction and follow up follow up such reports, when indicated, with an appropriate investigation in order to evaluate the severity of the problem. He shall determine, in consultation with the operations director, the Director of the Office of Epidemiology, and the commissioner, if further investigation is required and if complete or modified quarantine will be necessary.

Modified quarantine shall apply to situations in which the local health director on the scene would be best able to judge the potential threat of disease transmission. Such situations shall include, but are not limited to, the temporary exclusion of a child with a communicable disease from school and the temporary prohibition or restriction of any individual(s), exposed to or suffering from a communicable disease, from engaging in an occupation such as foodhandling that may pose a threat to the public. Modified quarantine shall also include the exclusion, under § 32.1-47 of the Code of Virginia, of any unimmunized child from a school in which an outbreak, potential epidemic, or epidemic of a vaccine preventable disease has been identified. In these situations, the local health director may be authorized as the commissioner's designee to order the least restrictive means of modified quarantine.

Where modified quarantine is deemed to be insufficient and complete quarantine or isolation is necessary to protect the public health, the local health director, in consultation with the operations director and the Director of the Office of

---

# Final Regulations

---

Epidemiology, shall recommend to the commissioner that a quarantine order or isolation order be issued.

F. Persons in charge of hospitals, nursing homes, homes for adults, and correctional facilities. In accordance with § 32.1-37.1 of the Code of Virginia, any person in charge of a hospital, nursing home, home for adults or correctional facility shall, at the time of transferring custody of any dead body to any person practicing funeral services, notify the person practicing funeral services or his agent if the dead person was known to have had, immediately prior to death, an infectious disease which may be transmitted through exposure to any bodily fluids. These include any of the following infectious diseases:

Creutzfeldt-Jakob disease

Human immunodeficiency virus infection

Hepatitis B

*Hepatitis C*

[ ~~Other Hepatitis Non-A, Non-B~~ ]

Rabies

Infectious syphilis

## 12 VAC 5-90-100. Methods.

The "Methods of Control" sections of the ~~Fifteenth~~ *Sixteenth* Edition of the Control of Communicable Diseases in ~~Man~~ *Manual* (1990 1995) published by the American Public Health Association shall be complied with by the board and commissioner in controlling the diseases listed in 12 VAC 5-90-80 A, except to the extent that the requirements and recommendations therein are outdated, inappropriate, inadequate, or otherwise inapplicable. The board and commissioner reserve the right to use any legal means to control any disease which is a threat to the public health.

### PART V.

#### IMMUNIZATION OF CHILDREN.

## 12 VAC 5-90-110. Dosage and age requirements for immunizations; obtaining immunizations.

A. Every child in Virginia shall be immunized against the following diseases by receiving the specified number of doses of vaccine by the specified ages:

1. Diphtheria, Tetanus, and Pertussis (Whooping cough) Vaccine - ~~three~~ *four* doses by ~~age one year~~ *18 months of age* of toxoids of diphtheria and tetanus, combined with pertussis vaccine.

2. Poliomyelitis Vaccine, trivalent type - three doses by age 18 months of attenuated (live) trivalent oral polio virus vaccine or inactivated poliomyelitis vaccine *or combination*.

3. Measles (Rubeola) Vaccine - one dose at 12-15 months of age, ~~or by age two years~~, of further ~~attenuated~~ *attenuated* (live) measles virus vaccine (~~Schwartz or Moraten~~). A second dose shall also be required at the time of initial entry to school. For those

children who did not receive a second dose at initial school entry, a second dose shall be required at the time of entry to grade six.

4. Rubella (German measles) Vaccine - one dose at 12-15 months of age ~~or by age two years~~ of attenuated (live) rubella virus vaccine.

5. Mumps Vaccine - one dose at 12-15 months of age or by age two years of mumps virus vaccine (live).

6. Haemophilus influenzae type b (Hib) vaccine - a maximum of four doses of Hib vaccine for children up to 30 months of age as appropriate for the child's age and in accordance with current recommendations of either the American Academy of Pediatrics or the U.S. Public Health Services.

7. *Hepatitis B Vaccine - three doses by 18 months of age.*

## ~~12 VAC 5-90-120. Obtaining immunization.~~

*B.* The required immunizations may be obtained from a physician licensed to practice medicine or from the local health department.

## 12 VAC 5-90-130. Prenatal testing.

Every physician attending a pregnant woman during gestation shall examine and test such woman for syphilis *and hepatitis B surface antigen (HBsAg)* within 15 days after beginning such attendance. A second prenatal test for syphilis *and HBsAg* shall be conducted at the beginning of the third trimester (28 weeks) for women who are at higher risk for ~~syphilis~~ *these diseases*. Persons at higher risk for syphilis include those who have had multiple sexual partners within the previous year and those with any prior history of a sexually transmitted disease. *Persons at higher risk for hepatitis B virus infection include injecting drug users and those with personal contact with a hepatitis B patient, multiple sexual partners, and/or occupational exposure to blood.* If the patient first seeks care during the third trimester, only one test shall be required. Every physician should also examine and test a pregnant woman for any sexually transmitted disease as clinically indicated.

## 12 VAC 5-90-150. Authority.

*Article 9 (§ 32.1-70 et seq.) of Title 32.1* (~~§ 32.1-70~~) of the Code of Virginia authorizes the establishment of a statewide cancer registry.

## 12 VAC 5-90-160. Reportable cancers and tumors.

~~Newly~~ *Clinically or pathologically diagnosed malignant tumors or cancers, as defined in Part 4 12 VAC 5-90-10, and benign brain tumors* shall be reported to the Virginia Cancer Registry in the department.

## 12 VAC 5-90-170. Those required to report.

Any person in charge of a medical care facility, *clinic*, or independent pathology laboratory which diagnoses or treats cancer patients is required to report. *Physicians are required to report cases of cancer in those instances when it has*

been determined that a medical care facility, clinic, or instate pathology laboratory has not reported. Any person making such report shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

**12 VAC 5-90-180. Data which must to be reported.**

Each report shall include the patient's name, address (including county or independent city of residence), age, date of birth, sex, date of diagnosis, date of admission or first contact, primary site of cancer, histology (including type, behavior, and grade), basis of diagnosis, and history of service in the Vietnam war and exposure to dioxin-containing compounds. Medical care facility reports shall also include social security number, date of birth, race, ethnicity, marital status, usual occupation, and usual industry, sequence number, laterality, stage, treatment, recurrence information (when applicable), name of reporting facility, vital status, cause of death (when applicable), date of last contact, history of tobacco and alcohol use, and history of service in Vietnam and exposure to dioxin-containing compounds.

The reporting requirement may be met by submitting a copy of the hospital facesheet and pathology report to the Virginia Cancer Registry. Reports shall be made within four months of the diagnosis of cancer.

Reporting shall be by electronic means where possible. Output file formats shall conform to the most recent version of the North American Association of Central Cancer Registries' standard data file layout. Facilities without electronic reporting means and physicians shall submit the required information on the Virginia Cancer Registry Reporting Form. A copy of the pathology report(s) should accompany each completed reporting form, when available. Medical care facilities and clinics reporting via the reporting form should also submit a copy of the admission form and discharge summary.

Reports shall be made within six months of the diagnosis of cancer and submitted to the Virginia Cancer Registry on a monthly basis. Cancer programs conducting annual follow-up on patients shall submit follow-up data monthly in an electronic format approved by the Virginia Cancer Registry.

**12 VAC 5-90-190. Additional data which may be reported. (Repealed.)**

Any person in charge of a medical care facility may also elect to provide more extensive clinical information as required for cancer programs approved by the American College of Surgeons. These additional data may include staging, treatment, and recurrence information and may be reported by submitting a hospital abstract to the Virginia Cancer Registry within six months of the diagnosis of cancer. Annual follow-up may be conducted on persons reported in this manner.

**PART X.  
MEMORY LOSS DISORDER REPORTING.**

**12 VAC 5-90-210. Authority. (Repealed.)**

Article 9.1 (§ 32.1-71.1 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia authorizes the establishment of a statewide Alzheimer's Disease and related disorders registry.

**12 VAC 5-90-220. Provisions. (Repealed.)**

Each nursing facility, hospital, clinic, individual practitioner or other agency or facility providing health care shall report to the registry, on forms provided by the registry or other forms approved by the Registry Director, information regarding persons who are in the care of the provider and who have been diagnosed as having a memory loss disorder, as defined in Part I. Any person making such report shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

**DOCUMENTS INCORPORATED BY REFERENCE**

Control of Communicable Diseases in Man Manual, 15th 16th Edition, American Public Health Association, 1990 1995.

**NOTICE:** The forms used in administering 12 VAC 5-90-10 et seq. Regulations for Disease Reporting and Control, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

**FORMS**

Virginia Department of Health Office of Epidemiology Confidential Morbidity Report, Epi-1 (eff. 1993 rev. 1998).

Virginia Tumor Registry Abstract, VTR-1a (eff. 7/89).

Virginia Tumor Registry Cancer Registry Reporting Incidence Only, VTR form #2 Form (rev. 1/98).

# Final Regulations

MAIL THE TOP TWO COPIES TO YOUR <b>LOCAL HEALTH DEPARTMENT</b>		<b>Epi-1 Form - Front</b>	
<b>VIRGINIA DEPARTMENT OF HEALTH Confidential Morbidity Report</b>			
Patient's Name (Last, First, Middle Initial):		SSN: _____	
Patient's Address (Street, City or Town, State, Zip Code):		Home #: (    ) _____	
		Work #: (    ) _____	
Date of Birth:		City or County of Residence:	
		Age:	
Race: <input type="checkbox"/> Asian/Pacific Islander <input type="checkbox"/> White		Hispanic: <input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/> Black <input type="checkbox"/> Other (specify):		Sex: <input type="checkbox"/> F <input type="checkbox"/> M	
DISEASE OR CONDITION:			Date of Onset:
Date of Diagnosis:		Influenza: (Report # and type only. No patient identification).	
Death: <input type="checkbox"/> Yes <input type="checkbox"/> No		Number of Cases:                  Type, if known:	
Death Date:		Physician's Name:                                  Phone: (    )	
Address:			
Hospital Admission? <input type="checkbox"/> Yes <input type="checkbox"/> No		Hospital Name:	
Dates of Admission/Discharge:		Chart ID No:	
<b>Laboratory Information and Results</b>			
Source of Specimen:		Date Collected:	
Laboratory Test:			
Results:			
Name/Address of Lab:			
CLIA Number:			
<b>Other Information</b>			
Comments: (E.g., Risk Situation [Food Handling, Patient Care, Day Care], Treatment [including dates], Immunization Status [including dates], Signs/Symptoms, Exposure, Outbreak Associated, etc.)			
For Health Department Use:			Date Received:
Name, Address, and Phone Number of Person Completing This Form:		Date Reported:	
		Check here if you need more of these forms, or call your local health department. (Be sure your address is complete.) <input type="checkbox"/>	

Please enter as much information as possible.

Form Epi-1, 1998

## MAIL THE TOP TWO COPIES TO YOUR LOCAL HEALTH DEPARTMENT

Please report the following diseases (and any other disease or outbreak of public health importance) in the manner required by Section 32.1-36 of the Health Laws of Virginia and 12 VAC 5-90-80 of the Board of Health *Regulations for Disease Reporting and Control*. Enter as much information as possible on the reporting form.

### Epi-1 Form - Back

Acquired immunodeficiency syndrome (AIDS)	Lyme disease
Amebiasis *	Lymphogranuloma venereum
ANTHRAX *	Malaria *
Arboviral infection *	MEASLES (Rubeola) *
BOTULISM *	MENINGOCOCCAL INFECTION *
Brucellosis *	Mumps *
<i>Campylobacter</i> infection *	Ophthalmia neonatorum
Chancroid *	OUTBREAKS, ALL (including foodborne, nosocomial, occupational, toxic substance- related, waterborne, and other outbreaks)
Chickenpox	PERTUSSIS (Whooping cough) *
<i>Chlamydia trachomatis</i> infection *	PLAGUE *
CHOLERA *	POLIOMYELITIS *
Cryptosporidiosis *	PSITTACOSIS
Cyclosporiasis *	RABIES, HUMAN AND ANIMAL *
DIPHTHERIA *	Rabies treatment, post-exposure
Ehrlichiosis	Rocky Mountain spotted fever
<i>Escherichia coli</i> O157:H7 and other enterohemorrhagic <i>E. coli</i> infections *	Rubella (German measles), including congenital rubella syndrome *
Giardiasis *	Salmonellosis *
Gonorrhea *	Shigellosis
Granuloma inguinale	Streptococcal disease, Group A, invasive *
HAEMOPHILUS INFLUENZAE INFECTION, INVASIVE *	Syphilis (report PRIMARY and SECONDARY syphilis by rapid means) *
Hantavirus pulmonary syndrome	Tetanus
Hemolytic uremic syndrome (HUS)	Toxic shock syndrome
Hepatitis, Acute Viral	Toxic substance related illnesses
HEPATITIS A *	Trichinosis *
Hepatitis B *	TUBERCULOSIS DISEASE (MYCOBACTERIA *-)
Hepatitis C	Tuberculosis infection in children age <4 years (Mantoux skin test reaction $\geq$ 10 mm)
Other Acute Viral Hepatitis	Typhoid fever
Human immunodeficiency virus (HIV) infection *	Typhus
Influenza * †	Vancomycin-resistant <i>Staphylococcus aureus</i> *
Kawasaki syndrome	<i>Vibrio</i> infection *
Lead - elevated blood levels *	YELLOW FEVER
Legionellosis *	
Leprosy (Hansen disease)	
Listeriosis *	

UPPER CASE indicates conditions that must be reported rapidly to the local health director via telecommunication. Report all other diseases within seven days of diagnosis.

\*These conditions are reportable by directors of laboratories. These and all other conditions are reportable by physicians and directors of medical care facilities as well.

†Physicians and directors of medical care facilities should report influenza by number of cases only (and type of influenza, if available).

-AFB on smear, speciation, and drug susceptibility

Virginia Department of Health, Office of Epidemiology  
P. O. Box 2448, Room 113  
Richmond, Virginia 23218-2448

# Final Regulations

## Virginia Cancer Registry Reporting Form P.O. Box 2448, Room 114 - Richmond, VA 23218

Facility Name: \_\_\_\_\_

Patient's Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_ Suffix \_\_\_\_\_

Number of Previous Primary Cancers \_\_\_\_\_ Date Admitted \_\_\_\_\_ SS#: \_\_\_\_\_

Street Address (at DX) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ City/Co. of Residence \_\_\_\_\_

Please indicate with a check whether residence is in a county \_\_\_ or independent city \_\_\_

**Race**

01 = White	20 = Micronesian, NOS*
02 = Black	21 = Chamorroan
03 = American Indian	22 = Guamanian, NOS
Aleutian, Eskimo	25 = Polynesian, NOS
04 = Chinese	26 = Tahitian
05 = Japanese	27 = Samoan
06 = Filipino	28 = Tongan
07 = Hawaiian	30 = Melanesian, NOS
08 = Korean	31 = Fiji Islander
09 = Asian Indian,	32 = New Guinean, NOS
Pakistani	96 = Other Asian (including
10 = Vietnamese	Asian, NOS and Oriental,
11 = Laotian	NOS)
12 = Hmong	97 = Pacific Islander, NOS
13 = Kampuchean	98 = Other
14 = Thai	99 = Unknown

**Ethnic Type**

0 = Non Spanish	4 = South American
1 = Mexican	5 = Other Spanish
2 = Puerto Rican	6 = Spanish, NOS
3 = Cuban	9 = Unknown if Spanish

**Sex**

1 = Male	4 = Transsexual
2 = Female	9 = Not stated
3 = Other	

**Age at Diagnosis**

**Date of Birth**

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M	M	D	D	Y	Y	Y	Y

**Usual Occupation** \_\_\_\_\_

\_\_\_\_\_

**Company or Industry** \_\_\_\_\_

\_\_\_\_\_

**Marital Status at Dx**

1 = Single (never married)	4 = Divorced
2 = Married (incl. common law)	5 = Widowed
3 = Separated	9 = Unknown

**Date of Initial Diagnosis**

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M	M	D	D	Y	Y	Y	Y

Revised 1/98

**Primary Site of Cancer** \_\_\_\_\_

**Paired Organ**

0 = not paired organ	3 = one side, NOS
1 = right side	4 = both sides, single primary
2 = left side	9 = unknown

**Diagnostic Confirmation**

1 = positive histology
2 = positive exfoliative cytology - no positive histology
4 = positive microscopic confirmation - method not specified
5 = positive laboratory test or marker study
6 = direct visualization without microscopic confirmation
7 = radiography and other imaging techniques without microscopic confirmation
8 = clinical diagnosis only (other than 5, 6 or 7)
9 = unknown whether or not microscopically confirmed

**Histology** \_\_\_\_\_

**Behavior Code**

0 = Benign
1 = Uncertain whether benign or malignant, Borderline malignancy, Low malignant potential
2 = Carcinoma in-situ, Intraepithelial, Noninfiltrating, Noninvasive
3 = Malignant, primary site

**Grade**

1 = Grade I - Well differentiated, Differentiated, NOS
2 = Grade II - Moderately differentiated, Moderately well differentiated, Intermediate differentiation
3 = Grade III - Poorly differentiated
4 = Grade IV - Undifferentiated Anaplastic
9 = Grade or differentiation not determined, not stated or not applicable

**Summary Stage**

0 = Carcinoma in-situ
1 = Localized
2 = Regional, direct extension only
3 = Regional, nodes only
4 = Regional, direct extension & nodes
5 = Regional, NOS
7 = Distant
9 = Unstaged, unknown or unspecified

**Treatment (type)**

Surgery Date \_\_\_\_\_

Type \_\_\_\_\_

**Radiation Date** \_\_\_\_\_

Type \_\_\_\_\_

**Chemotherapy Date** \_\_\_\_\_

Type \_\_\_\_\_

**Other Treatments (specify date and type for each)**

\_\_\_\_\_

\_\_\_\_\_

**Date of Last Contact or Death**

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M	M	D	D	Y	Y	Y	Y

**Status of Patient**

0 = Dead
1 = Alive

**Tobacco History** Y N

**Alcohol History** Y N

**Vietnam Veteran** Y N

**Dioxin Exposure** Y N

**Hospital Referred from** \_\_\_\_\_

**Hospital Referred to** \_\_\_\_\_

**Person Completing Form:** \_\_\_\_\_

Date \_\_\_\_\_

\*NOS - Not Otherwise Specified



## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **Medicaid Coverage for Licensed Clinical Nurse Specialists-Psychiatric.**

**12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-140 and 12 VAC 30-50-150).**

**12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-40 and 12 VAC 30-60-120).**

**12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-30).**

Statutory Authority: § 32.1-325 of the Code of Virginia.

Effective Date: January 6, 1999.

Summary:

*Although counseling services are available from multiple types of providers, until 1996 Medicaid policy provided for enrollment and direct reimbursement only to psychiatrists and licensed clinical psychologists. Legislation passed in 1996 added licensed clinical social workers and licensed professional counselors to the plan.*

*Chapter 730 of the 1997 Virginia Acts of Assembly (House Bill 2425) requires the board to promulgate regulations which reimburse licensed clinical nurse specialists at rates based upon reasonable criteria, including the professional credentials for licensure. Reimbursement is currently provided to psychologists at 90% of the rate for psychiatrists. Licensed clinical social workers (LCSWs) and licensed professional counselors (LPCs) who directly enroll are reimbursed at a rate of 75% of the rate for psychologists. Clinical nurse specialists-psychiatric will also be reimbursed at 75% of the rate for psychologists. The department is not imposing any supervision requirements beyond those required for licensure of these professionals.*

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

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

**12 VAC 30-50-140. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.**

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Outpatient psychiatric services.

1. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to DMAS' approval) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by DMAS. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. Consistent with § 6403 of the Omnibus Budget Reconciliation Act of 1989, medically necessary psychiatric services shall be covered when prior authorized by DMAS for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening.

2. Psychiatric services can be provided by psychiatrists or by a licensed clinical social worker or, licensed professional counselor, or licensed clinical nurse specialist-psychiatric under the direct supervision of a psychiatrist.\*

3. Psychological and psychiatric services shall be medically prescribed treatment which is directly and specifically related to an active written plan designed and signature-dated by either a psychiatrist or by a licensed clinical social worker or, licensed professional counselor, or licensed clinical nurse specialist-psychiatric under the direct supervision of a psychiatrist.\*

\* Licensed clinical social workers and, licensed professional counselors, and licensed clinical nurse specialists-psychiatric may also directly enroll or be supervised by psychologists as provided for in 12 VAC 30-50-150.

4. Psychological or psychiatric services shall be considered appropriate when an individual meets the following criteria:

a. Requires treatment in order to sustain behavioral or emotional gains or to restore cognitive functional levels which have been impaired;

b. Exhibits deficits in peer relations, dealing with authority; is hyperactive; has poor impulse control; is clinically depressed or demonstrates other dysfunctional clinical symptoms having an adverse impact on attention and concentration, ability to learn, or ability to participate in employment, educational, or social activities;

---

# Final Regulations

---

- c. Is at risk for developing or requires treatment for maladaptive coping strategies; and
  - d. Presents a reduction in individual adaptive and coping mechanisms or demonstrates extreme increase in personal distress.
5. Psychological or psychiatric services may be provided in an office or a mental health clinic.
- E. Any procedure considered experimental is not covered.
- F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus was carried to term.
- G. Physician visits to inpatient hospital patients over the age of 21 are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses or treatment plan and is further restricted to medically necessary authorized (for enrolled providers)/approved (for nonenrolled providers) inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in general hospitals and freestanding psychiatric facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days shall be limited to medically necessary inpatient hospital days.

- H. (Reserved.)
- I. Reimbursement shall not be provided for physician services provided to recipients in the inpatient setting whenever the facility is denied reimbursement.
- J. (Reserved.)
- K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma or breast cancer. Transplant services for liver, heart, and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow/stem cell transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow/stem cell transplant services and

any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. If the actual charges are lower than the fee, the agency shall reimburse actual charges. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-540 through 12 VAC 30-50-570.

## **12 VAC 30-50-150. Medical care by other licensed practitioners within the scope of their practice as defined by state law.**

- A. Podiatrists' services.
1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.
  2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.
  3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.
- B. Optometrists' services. Diagnostic examination and optometric treatment procedures and services by ophthalmologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.
- C. Chiropractors' services are not provided.
- D. Other practitioners' services; psychological services, psychotherapy. Limits and requirements for covered services are found under *Outpatient Psychiatric Services* (see 12 VAC 30-50-140 D).
1. These limitations apply to psychotherapy sessions provided, within the scope of their licenses, by licensed clinical psychologists or licensed clinical social workers/licensed professional counselors/licensed

*clinical nurse specialists-psychiatric* who are either independently enrolled or under the direct supervision of a licensed clinical psychologist. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

2. Psychological testing is covered when provided, within the scope of their licenses, by licensed clinical psychologists or licensed clinical social workers/licensed professional counselors/*licensed clinical nurse specialists-psychiatric* who are either independently enrolled or under the direct supervision of a licensed clinical psychologist.

## **12 VAC 30-60-40. Utilization control: Nursing facilities.**

A. Long-term care of residents in nursing facilities will be provided in accordance with federal law using practices and procedures that are based on the resident's medical and social needs and requirements. All nursing facility services, including specialized care, shall be provided in accordance with guidelines found in the Virginia Medicaid Nursing Home Manual.

B. Nursing facilities must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. Each resident must be reviewed at least quarterly, and a complete assessment conducted at least annually.

C. The Department of Medical Assistance Services shall periodically conduct a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. The survey will be composed of a sample of Medicaid residents and will include review of both current and closed medical records.

D. Nursing facilities must submit to the Department of Medical Assistance Services resident assessment information at least every six months for utilization review. If an assessment completed by the nursing facility does not reflect accurately a resident's capability to perform activities of daily living and significant impairments in functional capacity, then reimbursement to nursing facilities may be adjusted during the next quarter's reimbursement review. Any individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties.

E. In order for reimbursement to be made to the nursing facility for a recipient's care, the recipient must meet nursing facility criteria as described in 12 VAC 30-60-300 (Nursing facility criteria).

In order for reimbursement to be made to the nursing facility for a recipient requiring specialized care, the recipient must meet specialized care criteria as described in 12 VAC 30-60-320 (Adult specialized care criteria) or 12 VAC 30-60-340 (Pediatric and adolescent specialized care criteria). Reimbursement for specialized care must be preauthorized by the Department of Medical Assistance Services. In addition, reimbursement to nursing facilities for residents requiring specialized care will only be made on a contractual basis. Further specialized care services requirements are set forth below.

In each case for which payment for nursing facility services is made under the State Plan, a physician must recommend at the time of admission, or if later, the time at which the individual applies for medical assistance under the State Plan, that the individual requires nursing facility care.

F. For nursing facilities, a physician must approve a recommendation that an individual be admitted to a facility. The resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter. At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

G. When the resident no longer meets nursing facility criteria or requires services that the nursing facility is unable to provide, then the resident must be discharged.

## H. Specialized care services.

1. Providers must be nursing facilities certified by the Division of Licensure and Certification, State Department of Health, and must have a current signed participation agreement with the Department of Medical Assistance Services to provide nursing facility care. Providers must agree to provide care to at least four residents who meet the specialized care criteria for children/adolescents or adults.

2. Providers must be able to provide the following specialized services to Medicaid specialized care recipients:

a. Physician visits at least once weekly (after initial physician visit, subsequent visits may alternate between physician and physician assistant or nurse practitioner);

b. Skilled nursing services by a registered nurse available 24 hours a day;

c. Coordinated multidisciplinary team approach to meet the needs of the resident;

d. Infection control;

e. For residents under age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of 90 minutes each day, five days per week;

---

# Final Regulations

---

f. For residents over age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of two hours per day, five days a week;

g. Ancillary services related to a plan of care;

h. Respiratory therapy services by a board-certified therapist (for ventilator patients, these services must be available 24 hours per day);

i. Psychology services by a licensed clinical psychologist, a licensed clinical social worker, ~~or a~~ licensed professional counselor, or *licensed clinical nurse specialist-psychiatric* related to a plan of care;

j. Necessary durable medical equipment and supplies as required by the plan of care;

k. Nutritional elements as required;

l. A plan to assure that specialized care residents have the same opportunity to participate in integrated nursing facility activities as other residents;

m. Nonemergency transportation;

n. Discharge planning; and

o. Family or caregiver training.

3. Providers must coordinate with appropriate state and local agencies for educational and habilitative needs for Medicaid specialized care recipients who are under the age of 21.

## **12 VAC 30-60-120. Utilization control: Intensive physical rehabilitative services.**

A. A patient qualifies for intensive inpatient rehabilitation or comprehensive outpatient physical rehabilitation as provided in a comprehensive outpatient rehabilitation facility (CORF) if the following criteria are met:

1. Adequate treatment of his medical condition requires an intensive rehabilitation program consisting of an interdisciplinary coordinated team approach to improve his ability to function as independently as possible; and

2. It has been established that the rehabilitation program cannot be safely and adequately carried out in a less intense setting.

B. In addition to the disability requirement, participants shall meet the following criteria:

1. Require at least two of the listed therapies in addition to rehabilitative nursing:

a. Occupational therapy.

b. Physical therapy.

c. Cognitive rehabilitation.

d. Speech/language pathology services.

2. Medical condition stable and compatible with an active rehabilitation program.

3. For continued intensive rehabilitation services, the patient must demonstrate an ability to actively participate in goal-related therapeutic interventions developed by the interdisciplinary team. This is evidenced by regular attendance in planned activities and demonstrated progress toward the established goals.

4. Intensive rehabilitation services are to be considered for termination regardless of the preauthorized length of stay when any of the following conditions are met:

a. No further potential for improvement is demonstrated. The patient has reached his maximum progress and a safe and effective maintenance program has been developed.

b. There is limited motivation on the part of the individual or caregiver.

c. The individual has an unstable condition that affects his ability to participate in a rehabilitative plan.

d. Progress toward an established goal or goals cannot be achieved within a reasonable length of time.

e. The established goal serves no purpose to increase meaningful function or cognitive capabilities.

f. The service can be provided by someone other than a skilled rehabilitation professional.

C. Within 72 hours of a patient's admission to an intensive rehabilitation program, or within 72 hours of notification to the facility of the patient's Medicaid eligibility, the facility shall notify the Department of Medical Assistance Services in writing of the patient's admission. This notification shall include a description of the admitting diagnoses, plan of treatment, expected progress and a physician's certification that the patient meets the admission criteria. The Department of Medical Assistance Services will make a determination as to the appropriateness of the admission for Medicaid payment and notify the facility of its decision. If payment is approved, the department will establish and notify the facility of an approved length of stay. Additional lengths of stay shall be requested in writing and approved by the department. Admissions or lengths of stay not authorized by the Department of Medical Assistance Services will not be approved for payment.

D. Documentation of rehabilitation services shall, at a minimum:

1. Describe the clinical signs and symptoms of the patient necessitating admission to the rehabilitation program;

2. Describe any prior treatment and attempts to rehabilitate the patient;

3. Document an accurate and complete chronological picture of the patient's clinical course and progress in treatment;
4. Document that an interdisciplinary coordinated treatment plan specifically designed for the patient has been developed;
5. Document in detail all treatment rendered to the patient in accordance with the interdisciplinary plan of care with specific attention to frequency, duration, modality, response to treatment, and identify who provided such treatment;
6. Document change in the patient's conditions;
7. Describe responses to and the outcome of treatment; and
8. Describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no reimbursement will be provided. All intensive rehabilitative services shall be provided in accordance with guidelines found in the Virginia Medicaid Rehabilitation Manual.

E. For a patient with a potential for physical rehabilitation for which an outpatient assessment cannot be adequately performed, an intensive evaluation of no more than seven calendar days will be allowed. A comprehensive assessment will be made of the patient's medical condition, functional limitations, prognosis, possible need for corrective surgery, attitude toward rehabilitation, and the existence of any social problems affecting rehabilitation. After these assessments have been made, the physician, in consultation with the rehabilitation team, shall determine and justify the level of care required to achieve the stated goals.

If during a previous hospital stay an individual completed a rehabilitation program for essentially the same condition for which inpatient hospital care is now being considered, reimbursement for the evaluation will not be covered unless there is a justifiable intervening circumstance which necessitates a reevaluation.

Admissions for evaluation or training, or both, for solely vocational or educational purposes or for developmental or behavioral assessments are not covered services.

F. Interdisciplinary team conferences shall be held as needed but at least every two weeks to assess and document the patient's progress or problems impeding progress. The team shall assess the validity of the rehabilitation goals established at the time of the initial evaluation, determine if rehabilitation criteria continue to be met, and revise patient goals as needed. A review by the various team members of each others' notes does not constitute a team conference. Where practical, the patient or family or both shall participate in the team conferences. A summary of the conferences, noting the team members

present, shall be recorded in the clinical record and reflect the reassessments of the various contributors.

Rehabilitation care is to be considered for termination, regardless of the approved length of stay, when further progress toward the established rehabilitation goal is unlikely or further rehabilitation can be achieved in a less intensive setting.

Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate and that the patient continues to meet intensive rehabilitation criteria throughout the entire program. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

G. Properly documented medical reasons for furlough may be included as part of an overall rehabilitation program. Unoccupied beds (or days) resulting from an overnight therapeutic furlough will not be reimbursed by the Department of Medical Assistance Services.

H. Discharge planning shall be an integral part of the overall treatment plan which is developed at the time of admission to the program. The plan shall identify the anticipated improvements in functional abilities and the probable discharge destination. The patient, unless unable to do so, or the responsible party shall participate in the discharge planning. Notations concerning changes in the discharge plan shall be entered into the record at least every two weeks, as a part of the team conference.

I. Rehabilitation services are medically prescribed treatment for improving or restoring functions which have been impaired by illness or injury or, where function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning. The rules pertaining to them are:

1. Rehabilitative nursing requires education, training, or experience that provides special knowledge and clinical skills to diagnose nursing needs and treat individuals who have health problems characterized by alteration in cognitive and functional ability. Rehabilitative nursing are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan approved by a physician after any needed consultation with a registered nurse who is experienced in rehabilitation;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by a registered nurse or licensed professional nurse, nursing assistant, or rehabilitation technician under the direct supervision of a registered nurse who is experienced in rehabilitation;

---

# Final Regulations

---

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The service shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice and include the intensity of rehabilitative nursing services which can only be provided in an intensive rehabilitation setting.

2. Physical therapy services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by a physical therapist licensed by the Board of Medicine or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a qualified physical therapist licensed by the Board of Medicine;

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

3. Occupational therapy services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification

Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of a qualified occupational therapist as defined above;

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

4. Speech-language therapy services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440.1109 (c);

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

5. Cognitive rehabilitation services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with a clinical psychologist experienced in working with the neurologically impaired and licensed by the Board of Medicine;

- b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be rendered after a neuropsychological evaluation administered by a clinical psychologist or physician experienced in the administration of neuropsychological assessments and licensed by the Board of Medicine and in accordance with a plan of care based on the findings of the neuropsychological evaluation;
  - c. Cognitive rehabilitation therapy services may be provided by occupational therapists, speech-language pathologists, and psychologists who have experience in working with the neurologically impaired when provided under a plan recommended and coordinated by a physician or clinical psychologist licensed by the Board of Medicine;
  - d. The cognitive rehabilitation services shall be an integrated part of the interdisciplinary patient care plan and shall relate to information processing deficits which are a consequence of and related to a neurologic event;
  - e. The services include activities to improve a variety of cognitive functions such as orientation, attention/concentration, reasoning, memory, discrimination and behavior; and
  - f. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis.
6. Psychology services are those services furnished a patient which meet all of the following conditions:
- a. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;
  - b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by a qualified psychologist as required by state law or ~~by~~ a licensed clinical social worker ~~or~~, a licensed professional counselor, *or a licensed clinical nurse specialist-psychiatric*;
  - c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and
  - d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.
7. Social work services are those services furnished a patient which meet all of the following conditions:
- a. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;
  - b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by a qualified social worker as required by state law;
  - c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and
  - d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.
8. Recreational therapy are those services furnished a patient which meet all of the following conditions:
- a. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;
  - b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services are performed as an integrated part of a comprehensive rehabilitation plan of care by a recreation therapist certified with the National Council for Therapeutic Recreation at the professional level;
  - c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and
  - d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.
9. Prosthetic/orthotic services.
- a. Prosthetic services furnished to a patient include prosthetic devices that replace all or part of an external body member, and services necessary to

---

# Final Regulations

---

design the device, including measuring, fitting, and instructing the patient in its use.

b. Orthotic device services furnished to a patient include orthotic devices that support or align extremities to prevent or correct deformities, or to improve functioning, and services necessary to design the device, including measuring, fitting and instructing the patient in its use.

c. Maxillofacial prosthetic and related dental services are those services that are specifically related to the improvement of oral function not to include routine oral and dental care.

d. The services shall be directly and specifically related to an active written treatment plan approved by a physician after consultation with a prosthetist, orthotist, or a licensed, board eligible prosthodontist, certified in Maxillofacial prosthetics.

e. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and predictable period of time, or shall be necessary to establish an improved functional state of maintenance.

f. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical and dental practice; this includes the requirement that the amount, frequency, and duration of the services be reasonable.

## 12 VAC 30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12 VAC 30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services (12 VAC 30-80-160 has obstetric/pediatric fees). Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public), except that reimbursement rates for designated physician services when performed in hospital outpatient settings shall be 50% of the reimbursement rate established for those services when performed in a physician's office. The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this subdivision 1, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12 VAC 30-80-160, rendered in emergency departments which DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.



(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers and, licensed professional counselors, or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment.

a. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.

b. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.

7. Local health services, including services paid to local school districts.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12 VAC 30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and adjusted to disregard offsets attributable to Medicare coinsurance amounts.

VA.R. Doc. No. R97-538; Filed November 17, 1998, 10:03 a.m.



## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF OPTOMETRY

**Title of Regulation:** 18 VAC 105-20-10 et seq. Regulations of the Virginia Board of Optometry (amending 18 VAC 105-20-10, 18 VAC 105-20-20, 18 VAC 105-20-40, 18 VAC 105-20-50, 18 VAC 105-20-60 and 18 VAC 105-20-70; adding 18 VAC 105-20-15 and 18 VAC 105-20-45; repealing 18 VAC 105-20-30).

**Statutory Authority:** § 54.1-2400 and Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia.

**Effective Date:** January 6, 1999.

**Summary:**

*Amendments to these regulations implement the recommendations of the board in its report pursuant to Executive Order 15 (94), which were to simplify, clarify, and eliminate redundancy and unnecessary requirements. Specifically, the amendments: (i) provide a listing of approved providers of continuing education and eliminate the burden and expense of submitting for board approval the materials for each course offered; (ii) increase the number of mandatory continuing education credits per license period from 12 to 14 hours; (iii) change the requirements for licensure by examination and endorsement; (iv) clarify that records should include a diagnosis and any treatment ordered during a comprehensive eye examination, a contact lens examination, and a follow-up contact lens examination; and (v) clarify that the licensed optometrist who has registered a professional designation with the board has a responsibility to comply with the laws and regulations governing the practice of optometry and to comply with this regulation.*

**Summary of Public Comments and Agency's Response:** No public comment was received by the promulgating agency.

**Agency Contact:** Copies of the regulation may be obtained from Elizabeth A. Carter, Ph.D., Department of Health Professions, 6606 West Broad Street, 4th floor, Richmond, VA 23230-1717, telephone (804) 662-9915.

---

# Final Regulations

---

## **18 VAC 105-20-10. Licensure qualifications by examination.**

A. The applicant, in order to be qualified to be examined by the board for licensure eligible for licensure by examination to practice optometry in the Commonwealth, shall:

1. Be a graduate of a school of optometry approved accredited by the Council on Optometric Education; have the registrar of the school provide an official transcript verifying graduation sent to the board;

2. File at least 30 days prior to the date of examination, on a form supplied by the board, a completed application which shall have affixed securely in the space provided, two identical recent passport-type photographs of himself, not less than 2½ by 2½ inches in size;

3. Submit 2. Request submission of an official report from the National Board of Examiners in Optometry of the scores a score received on all parts each required part of the examination of the National Board of Examiners in Optometry or other board-approved examination; and

4. 3. Submit a completed application and the prescribed examination fee.

B. If any applicant withdraws from the examination at least 30 days prior to the examination date, all but the prescribed administrative fee will be refunded. If the applicant withdraws in 30 days or fewer prior to the examination date, only the licensure fee will be refunded. If an applicant is unsuccessful in passing the examination, the applicant shall receive upon request a refund of the licensure fee.

C. The provisions for licensure by endorsement are established in this subsection.

1. When a license is issued without examination, subsections A, B, and D of this section may be waived once the board determines that the examination from the state from which the applicant is applying for endorsement was approximately comparable at the time of the initial licensure.

2. An application for licensure by endorsement shall be filed that certifies the following:

B. Applicants who passed the National Board Examination prior to August 1993 shall apply for licensure by endorsement as provided for in 18 VAC 105-20-15.

### C. Required examinations.

1. For the purpose of § 54.1-3211 of the Code of Virginia, the board adopts all parts of the examination of the National Board of Examiners in Optometry as its written examination for licensure. After July 1, 1997, the board shall require passage as determined by the board of Parts I, II, and III of the National Board Examination.

2. As part of the application for licensure, an applicant must sign a statement attesting that he has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.

## **18 VAC 105-20-15. Licensure by endorsement.**

A. An applicant for licensure by endorsement shall pay the fee as prescribed in 18 VAC 105-20-20 and file a completed application that certifies the following:

a. 1. The applicant has successfully completed an a licensing examination or certification in optometry in any state jurisdiction of the United States that is approximately comparable to Virginia examination; at the time of initial licensure.

b. 2. The applicant has been engaged in active clinical practice for at least 36 months out of the last 60 months immediately preceding application;

3. The applicant is not a respondent in a pending or unresolved malpractice claim.

4. Each jurisdiction in which the applicant is currently licensed has verified that:

a. The license is full and unrestricted, and all continuing education requirements have been completed, if applicable;

b. The applicant is not a respondent in any pending or unresolved board action;

c. The applicant has completed all continuing education requirements from the state in which he is currently licensed;

d. The applicant has been certified to be in good standing from each state in which he is currently licensed;

e. c. The applicant has not committed any act which would constitute a violation of § 54.1-3204 or § 54.1-3215 of the Code of Virginia, and is not the respondent in any pending or unresolved board action or malpractice claim;

f. d. The applicant has graduated from an accredited school or college of optometry.

[ 5. B. ] The applicant shall also provide proof of competency in the use of diagnostic pharmaceutical agents (DPAs) which shall consist of a report from the national board of passing scores on all sections of Parts I and II of the National Board Examination taken in August 1993 or thereafter. If the applicant does not qualify through examination, he shall provide other proof of meeting the requirements for the use of DPA as provided in §§ 54.1-3220 and 54.1-3221 of the Code of Virginia.

[ 6. C. ] As part of the application for licensure, an applicant must sign a statement attesting that he has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.

~~3. [B. D.] In the case of a federal service optometrist, the commanding officer shall also verify that the applicant is in good standing and provide proof of credentialing and quality assurance review to satisfy subdivisions 2-b, 2-c, 2-e, and 2-f compliance with applicable requirements of this subsection A of this section. The state board of optometry in which the federal service optometrist is currently licensed shall provide the remainder of information required from this subsection.~~

~~4. The applicant must take and pass the law portion of the Virginia State Board Examination.~~

~~5. All appropriate fees must be paid as prescribed in 18 VAC 105-20-20.~~

~~D. [C. E.] In the event the examinations for initial licensure are determined not comparable, the board may require the applicant to take and pass a regional or national practical examination.~~

### 18 VAC 105-20-20. Fees.

The following fees are required: A. *Required fees.*

	Fiscal Years		
	94/95	95/96	Thereafter
Application for Licensure by Examination Fee	\$150	\$150	\$150
Initial application and licensure Fee (Prorated \$8/month prior to annual renewal)	\$95*	\$95*	\$95* \$245
Application for Licensure by Endorsement Fee (Includes initial licensure fee)	\$195	\$195	\$195
Examination Fee Endorsement of certification to use diagnostic pharmaceutical agents	\$100	\$100	\$100
Annual licensure renewal Fee (due October 31)	\$150	\$20	\$150
Late Fee renewal	\$100	\$100	\$100
Administrative Fee Returned check	\$25	\$25	\$25
Professional designation application	\$100	\$100	\$100
Annual professional designation renewal (due October 31 per location)	\$50**	\$50**	\$50**
Reinstatement application fee	\$250	\$250	\$250
Reinstatement application after disciplinary action			\$500

*Continuing education [course] review (per course)* \$25

Duplicate wall certificate \$25 \$25 \$25

Duplicate License \$40 \$40 \$10

\*Maximum

\*\*per location

B. *Unless otherwise specified, all fees are nonrefundable.*

### 18 VAC 105-20-30. Examinations. (Repealed.)

~~A. For the purpose of § 54.1-3211 of the Code of Virginia, the board adopts all parts of the examination of the National Board of Examiners in Optometry as its written examination for licensure.~~

~~B. In addition, upon receiving a passing score on all parts of the examination of the National Board of Examiners in Optometry, an applicant shall pass a practical examination administered or accepted by the Virginia Board of Optometry. If the board chooses to use a regional or national practical examination, the applicant must pass this examination prior to licensure.~~

~~C. All candidates must take and pass the law portion of the examination.~~

~~D. A candidate may take or retake the practical examination or law examination upon payment of the prescribed examination fee.~~

### 18 VAC 105-20-40. Unprofessional conduct.

It shall be deemed unprofessional conduct for any licensed optometrist in the Commonwealth to *violate any statute or regulation governing the practice of optometry or to fail to:*

- ~~1. Fail to Use in connection with the optometrist's name wherever it appears relating to the practice of optometry one of the following: the word "optometrist," the abbreviation "O.D.," or the words "doctor of optometry."~~
- ~~2. Practice optometry under a name other than the optometrist's own name, except to the extent authorized by 18 VAC 105-20-50, "Professional Designations."~~
- ~~3. Fail to 2. Maintain records on each patient for not less than five years from the date of the most recent service rendered.~~

~~A complete record of all examinations and treatment made of a patient shall include but not be limited to:~~

- ~~a. During a comprehensive eye examination:~~
- ~~(1) Case history;~~
  - ~~(2) Acuity measure;~~
  - ~~(3) Internal tissue health evaluation;~~
  - ~~(4) External tissue health evaluation;~~
  - ~~(5) Refraction;~~

---

# Final Regulations

---

- ~~(6) Treatment, recommendations and directions to the patients, including prescriptions; and~~
- ~~(7) Name of attending optometrist.~~
- ~~b. During a contact lens examination:~~
- ~~(1) The requirements of subdivision 3 a of this section;~~
- ~~(2) Assessment of corneal curvature;~~
- ~~(3) Acuity through the lens;~~
- ~~(4) Directions for the care and handling of lenses and an explanation of the implications of contact lenses with regard to eye health and vision; and~~
- ~~(5) Name of attending optometrist.~~
- ~~c. During a follow-up contact lens examination:~~
- ~~(1) Assessment of fit of lens;~~
- ~~(2) Acuity through the lens;~~
- ~~(3) Such further instructions as in subdivision 3 b~~
- ~~(4) above as necessary for the individual patient; and~~
- ~~(4) Name of attending O.D.~~
- ~~4. Fail to include the following information on a prescription for ophthalmic goods:~~
- ~~a. The printed name of the prescribing optometrist;~~
- ~~b. The address and telephone number at which the patient's records are maintained and the optometrist can be reached for consultation;~~
- ~~c. The name of the patient;~~
- ~~d. The signature of the optometrist;~~
- ~~e. The date of the examination, and, in the case of a spectacle prescription, an expiration date, if medically appropriate.~~
- ~~f. Any special instructions.~~
- ~~5. Refuse to provide a written prescription for spectacle lenses upon the request of the patient once all fees have been paid.~~
- ~~6. Refuse to provide a written prescription for contact lenses upon the request of the patient once all fees have been paid and the prescription has been established and the follow-up care completed. Follow-up care will be presumed to have been completed if there is no reappointment scheduled within 30 days after the last visit.~~
- ~~Sufficient information for complete and accurate filling of an established contact lens prescription shall include but not be limited to the power, the fit, the material or manufacturer, the curve or appropriate designation, the diameter when appropriate, and medically appropriate expiration date.~~

~~7. Advertise in a manner that is false, misleading, or deceptive. False, misleading and deceptive advertising shall include, but not be limited to, when the price of ophthalmic goods or services (or both) is advertised, to fail to state what goods and services the advertised price includes.~~

~~8. Administer any diagnostic pharmaceutical agents, specified in § 54.1-3221 of the Code of Virginia, without certification of the Board of Optometry to use such agent.~~

~~9. Fail to 3. Post conspicuously in the entrance or reception an area of the optometric office which is conspicuous to the public, a chart or directory listing the names of all optometrists practicing at that particular location.~~

~~10. Violate any provision of this chapter pertaining to professional designations.~~

~~11. Fail to 4. Maintain patient records, perform procedures or make recommendations during any eye examination contact lens examination or treatment as necessary to protect the health and welfare of the patient.~~

~~12. Practicing on an invalid license shall occur when the requirements as set forth in 18 VAC 105-20-60 A and C or 18 VAC 105-20-70 A and B have not been met.~~

## **18 VAC 105-20-45. Standards of practice.**

*A. A complete record of all examinations [ and treatment made ] of a patient shall include [ a diagnosis and any treatment and shall also include ] but not be limited to:*

- 1. During a comprehensive eye examination:*
  - a. Case history;*
  - b. Acuity measure;*
  - c. Internal health evaluation;*
  - d. External health evaluation;*
  - e. [ Treatment, ] Recommendations and directions to the patients, including prescriptions; and*
- 2. During an initial contact lens examination:*
  - a. The requirements of a comprehensive eye examination;*
  - b. Assessment of corneal curvature;*
  - c. Assessment of corneal/contact lens relationship;*
  - d. Acuity through the lens;*
  - e. Directions for the care and handling of lenses and an explanation of the implications of contact lenses with regard to eye health and vision; and*
- 3. During a follow-up contact lens examination:*
  - a. Assessment of corneal/contact lens relationship and anterior segment health;*

b. Acuity through the lens;

c. Such further instructions as in subdivision 2 of this subsection, as necessary for the individual patient; and

4. In addition, the record of any examination shall include the signature of the attending optometrist and, if indicated, refraction of the patient.

B. The following information shall appear on a prescription for ophthalmic goods:

1. The printed name of the prescribing optometrist;
2. The address and telephone number at which the patient's records are maintained and the optometrist can be reached for consultation;
3. The name of the patient;
4. The signature of the optometrist;
5. The date of the examination and an expiration date, if medically appropriate; and
6. Any special instructions.

C. Sufficient information for complete and accurate filling of an established contact lens prescription shall include but not be limited to the power, the material or manufacturer or both, the base curve or appropriate designation, the diameter when appropriate, and medically appropriate expiration date.

D. A licensed optometrist shall provide a written prescription for spectacle lenses upon the request of the patient once all fees have been paid. In addition, he shall provide a written prescription for contact lenses upon the request of the patient once all fees have been paid and the prescription has been established and the follow-up care completed. Follow-up care will be presumed to have been completed if no reappointment is recommended within 60 days after the last visit.

## 18 VAC 105-20-50. Professional designations.

A. In addition to the name of the optometrist as it appears on the license, an optometrist may practice in an office that uses any one of the following professional designations.:

- ~~1. The name of the optometrist as it appears on his license or renewal certificate; or~~
- ~~2. 1. The name of an optometrist who employs him and practices in the same office; or~~
3. 2. A partnership name composed of some or all names of optometrists practicing in the same office; or
- ~~4. 3. A fictitious name professional designation, if the conditions set forth in subsection B of this section are fulfilled.~~

B. Optometrists licensed in this Commonwealth who practice as individuals, partnerships, associations, or other group practices may use a ~~fictitious name professional~~

~~designation~~ for the optometric office in which they conduct their practices, provided the following conditions are met:

1. Each ~~fictitious name professional designation~~ shall be registered with the board by a licensed optometrist, who ~~must be associated with the optometric office has an ownership or equity interest in the optometric practice and who must practice in any location with that registered designation~~ and who shall assume responsibility for compliance with this section [ ~~and with the statutes and regulations governing the practice of optometry~~ ]. Each ~~fictitious name professional designation~~ shall be approved by the board and a fee shall be paid as prescribed by board regulations prior to use of the name. Names which, in the judgment of the board, are false, misleading, or deceptive will be prohibited.

2. No licensed optometrist may, at any time, register to practice optometry under more than one ~~fictitious name professional designation~~.

3. All advertisements, including but not limited to signs, printed advertisements, and letterheads, shall contain the word "optometry" or reasonably recognizable derivatives thereof unless the name of the optometrist is used with the ~~fictitious name professional designation~~ with the O.D. designation, Doctor of Optometry or optometrist.

4. In the entrance or reception area of the optometric office, a chart or directory listing the names of all optometrists practicing at that particular location shall be kept at all times prominently and conspicuously displayed.

5. The names of all optometrists who practice under the ~~fictitious name professional designation~~ shall be maintained in the records of the optometric office for five years following their departure from the practice.

~~6. Subsequent to the administration of any optometric service, the optometrist of record shall place his name in the record of the patient following a description of the service rendered. If the treatment is rendered by an optometrist other than the optometrist of record, the name of that optometrist shall be placed in the record of the patient.~~

~~7. 6. The name of the licensed optometrist providing care shall appear on the initial statement all statements of charges and on the receipts given to patients.~~

~~8. No fictitious name may be used~~ 7. An optometrist may use a professional designation which contains the name of an inactive, retired, removed, or deceased optometrist, ~~except that~~ for a period of no more than one year from the date of succession to a practice, ~~an optometrist may list the name of the inactive, retired, removed, or deceased optometrist,~~ and so long as he does so in conjunction with his own name, together with the words, "succeeded by," "succeeding," or "successor to."

---

# Final Regulations

---

## **18 VAC 105-20-60. Renewal of licensure; reinstatement; renewal fees.**

A. Every person authorized by the board to practice optometry shall, on or before October 31 of every year, ~~submit a completed renewal application and pay to the executive director of the Board of Optometry the prescribed annual licensure fee.~~

B. It shall be the duty and responsibility of each licensee to assure that the board has the licensee's current address. All changes of mailing address or name shall be furnished to the board within ~~five~~ 30 days after the change occurs. All notices required by law or by these rules and regulations are to be deemed to be validly tendered when mailed to the address given and shall not relieve the licensee of the obligation to comply.

C. ~~It shall be the duty of each person so licensed to return the renewal application with the prescribed fee prior to the expiration of their license postmarked no later than October 31. Upon expiration of the license, the executive director of the board shall notify the licensee of expiration and reinstatement procedures. The license of every person who does not return the completed form and fee by October 31 of each year shall may be extended for 30 days until November 30 and may be renewed by paying the prescribed late fee, postmarked no later than November 30, provided the requirements of 18 VAC 105-20-70 have been met. After November 30, an unrenewed license is invalid. Failure to renew a license may subject the licensee to disciplinary action by the board. The executive director may grant reinstatement provided that:~~

1. The applicant can demonstrate continuing competence;

~~that~~ 2. The applicant has satisfied requirements for continuing education during the lapsed period; and

~~that~~ 3. The applicant has paid all unpaid renewal fees from the time the license lapsed; and the prescribed reinstatement fee. ~~In addition to the foregoing reinstatement procedure, the failure to renew a license may subject the licensee to disciplinary action by the board.~~

D. The board may, ~~in its discretion,~~ require an applicant who ~~has allowed his license to expire and who cannot satisfy 18 VAC 105-20-10 and 18 VAC 105-20-30 and the requirement of subsection C of 18 VAC 105-20-60 of this chapter,~~ demonstrate continuing competency to pass all or parts of the ~~written examination of the National Board of Examiners in Optometry or the practical examination administered or accepted by the board, or both board-approved examinations.~~

## **18 VAC 105-20-70. Continuing education.**

A. Each license renewal shall be conditioned upon submission of evidence to the board of ~~42~~ 14 hours of continuing education taken by the applicant during the previous license period.

~~B. It shall be the responsibility of each licensee to submit evidence substantiating attendance of continuing education courses, as required by subsection A of this section, no later than October 31 of the license period. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to October 31 unless an extension or waiver has been granted by the Continuing Education Committee. A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses.~~

C. An approved continuing education course or program shall be sponsored by one of the following:

1. The American Optometric Association and its constituent organizations.

2. Regional optometric organizations.

3. State optometric associations and their affiliate local societies.

4. Accredited colleges and universities providing optometric or medical courses.

5. The American Academy of Optometry and its affiliate organizations.

6. The American Academy of Ophthalmology and its affiliate organizations.

7. The Virginia Academy of Optometry.

8. Council on Optometric Practitioner Education (C.O.P.E.).

9. State or federal governmental agencies.

10. College of [ ~~Optometry~~ Optometrists ] in Vision Development.

11. Specialty organizations.

12. Journals or optometric information networks as recognized by the board.

13. Optometric Extension Program.

~~G. D. For board approval of courses offered by other sponsors, the board will review courses for acceptability for purposes of continuing education requirements if the course review fee as prescribed in 18 VAC 105-20-20 has been paid and the following information is provided:~~

1. The title of the course;

2. The sponsoring organization(s);

3. The name of the lecturer;

4. The qualifications of the lecturer;

5. An outline of the course's content;

6. The length of the course in clock hours;

7. The method of certification of attendance or completion if offered as a correspondence course; and

8. Number of credit hours requested.

~~D. The titles of all~~ E. Courses approved by the board will be kept on a list maintained by the board. All courses approved by the board shall pertain directly to the care of the patient.

Courses excluded by the board shall include:

1. Courses which are *solely* designed to promote the sale of specific instruments or products;
2. Courses offering instruction on augmenting income; and
3. Courses which are neither advertised nor in fact available to all optometrists ~~or any courses for which there is no independent assurance that no part of the educational session is devoted to the promotion of specific instruments, products, or marketing philosophies.~~

~~E. When the annual license fee is submitted to the executive director of the board, the licensee shall enclose with it the required forms to indicate fulfillment of the continuing education requirements for the previous period. All continuing education must be completed prior to October 31 unless extension or waiver has been granted by the Continuing Education Committee. In the event that continuing education has not been completed by October 31, the executive director of the board shall notify the licensee that his license has lapsed. The board may reinstate the license, upon showing of disability or undue hardship, or upon showing that the licensee has complied with the requirements of subsection B of this section.~~

**NOTICE:** The forms used in administering 18 VAC 105-20-10 et seq., Regulations of the Virginia Board of Optometry, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

## FORMS

~~Application for License to Practice Optometry.~~

~~Diagnostic Pharmaceutical Agents Application.~~

~~Verification of Licensure Instructions for Applicant.~~

~~Application for Approval of Continuing Education Course.~~

~~Application for Reinstatement of License.~~

~~Application for Professional Designation.~~

~~Renewal Notice and Application.~~

*Instructions to Applicant* ( [ ~~eff. 3/95~~ rev. 11/98 ] ).

*Application for a License to Practice Optometry* (~~eff. 3/95~~ 11/13/98 ] ).

*Diagnostic Pharmaceutical Agents Endorsement Application* (eff. 7/95).

*Application for Approval of a Continuing Education Course* (eff. 3/95).

*Application for Professional Designation* (~~eff. 1/98~~ rev. 2/5/98 ] ).

*Application for Reinstatement of License* ( [ ~~eff. 3/95~~ rev. 12/11/97 ] ).

*Renewal Notice and Application* (eff. 7/97).

## COMMONWEALTH of VIRGINIA

### *Department of Health Professions*

6606 West Broad Street, Fourth Floor  
Richmond, Virginia 23230-1717  
FAX(804) 662-7098  
TDD(804) 662-7197

Elizabeth A. Carter, Ph.D.  
Executive Director for the Board  
E-mail [ecarter@dhp.state.va.us](mailto:ecarter@dhp.state.va.us)



### *Board of Veterinary Medicine*

(804) 662-9915  
E-mail [tbehr@dhp.state.va.us](mailto:tbehr@dhp.state.va.us)

### *Board of Optometry*

(804) 662-9910  
E-mail [cstamey@dhp.state.va.us](mailto:cstamey@dhp.state.va.us)

## VIRGINIA BOARD OF OPTOMETRY

### APPLICATION FOR LICENSURE PROCEDURES FOR OPTOMETRISTS

**To be considered for licensure, applicants must be graduates of International Association of Board of Optometry (IAB) approved schools of optometry and must file a complete and properly executed application package with the Board office.**

#### FOR ALL APPLICANTS

All of the following must accompany the enclosed application for licensure:

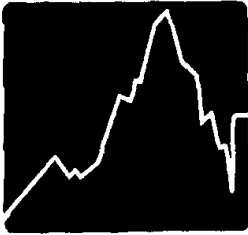
- National Board of Examiners in Optometry (NBEO) Examination scores. They may be received directly from NBEO or will be accepted in an envelope from the applicant provided the seal from NBEO has not been broken.
- Transcript certifying graduation with a doctorate in optometry (O.D.) from an IAB accredited school. Again, the transcript may be received directly from the school or will be accepted in an envelope from the applicant provided the seal from the school has not been broken.
- Licensure verification from any other jurisdiction in which the applicant has been licensed/certified. Again, the verification may be received directly from the jurisdiction or in an envelope from the applicant provided the seal from the jurisdiction has not been broken.
- Payment of the \$245 initial application and licensure fee.

#### FOR APPLICANTS SEEKING LICENSURE BY ENDORSEMENT

In addition to the above, the applicant seeking licensure by endorsement must also provide the psychometric profile (including content domains and scoring) and the regulations at time of licensure from the licensing examination from the endorsing jurisdiction.

INSTRUCTIONS TO APPLICANT (REV. 11/98)





COMMONWEALTH OF VIRGINIA  
 BOARD OF OPTOMETRY  
 Department of Health Professions  
 6606 West Broad Street, 4<sup>th</sup> Floor  
 Richmond, VA 23320  
 (804) 662-9910 e-mail: [cstamey@dhp.state.va.us](mailto:cstamey@dhp.state.va.us)

APPLICATION FOR A LICENSE TO PRACTICE OPTOMETRY	
Licensure by Examination <input type="checkbox"/>	Indicate NBE0 Examination Dates _____ Other _____
Licensure by Endorsement <input type="checkbox"/>	Endorsing State _____

Each question must be answered fully, truthfully and accurately. If the space for any answer is insufficient, the applicant must complete his/her answer on a rider signed by him/her specifying the number of question to which it relates and enclose with this application.

I hereby make application for issuance to me of a license to practice optometry in the Commonwealth of Virginia, in accordance with and subject to the regulations of the Board of Optometry and the laws governing the practice of optometry in Virginia.

APPLICANT: PLEASE COMPLETE ALL SECTIONS (PRINT OR TYPE)						
LAST NAME		FIRST		MIDDLE/MAIDEN		
STREET			CITY	STATE	ZIP CODE	
AREA CODE/TELEPHONE NO.		FAX NUMBER		E-MAIL ADDRESS		
DATE OF BIRTH	PLACE OF BIRTH		*SOCIAL SECURITY NUMBER OR DMV NUMBER*			
<small>Month Day Year</small>						
GRADUATION DATE		PROFESSIONAL DEGREE	SCHOOL	CITY	STATE	
<small>Month Day Year</small>						
≡ ≡ ≡ <b>SPACES BELOW ARE FOR OFFICE USE ONLY</b> ≡ ≡ ≡						
CLASS	APPLICANT NUMBER		FEES:			
LICENSE NO.		DATE ISSUED		EXPIRATION DATE		

\*In accordance with § 54.1-116 of the *Code of Virginia*, you are required to submit your Social Security Number or your control number issued by the Virginia Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will not be refunded.

This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as provided for by law. Federal and state law requires that this number be shared with other agencies for child support enforcement activities.

# Final Regulations

1. Have you ever been known by any other name [ ] Yes [ ] No. If yes, state in full every other name by which you have been known, the reason therefore, and dates so used. If name change was made by court order, enclose herein a Certified Copy of such order.

2. Name two persons who will always know your address.				
Name	Street	City	State	Zip Code

3. Optometric Professional Experience. (List all Professional Practice in reverse chronological order). Explain any period when not practicing.					
Began Date		Ended	Name of Practice And Address	Type of Activity	Status of Applicant (Employee, Owner, Partner)
Month	Year	Month			

4. OPTOMETRIC EDUCATION			
Month/Day/Year		Name of School	Degree
From	To		

5. List all jurisdictions that you are or have been licensed to practice optometry.					
Jurisdiction	How Licensed	License No.	Date of Issuance	Years of Practice	License Status

6. Have you ever been denied approval to take an optometry examination given by another jurisdiction? If yes, they were as follows and no others: (give dates and jurisdiction)  Yes  No

\_\_\_\_\_

7. Have you ever been disciplined by an optometry board from another jurisdiction? If yes, they were as follows and no others: (give dates and jurisdiction)  Yes  No

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. Are you currently under disciplinary investigation by any jurisdiction? If yes, give jurisdiction.  Yes  No

9. Have you been convicted of a violation of or pled Nolo Contendere to any federal, state, or local statute, regulation, entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except convictions for driving under the influence.) Please provide written statement of explanation.  Yes  No

\_\_\_\_\_

\_\_\_\_\_

10. Have you been the subject of any malpractice suits in the last ten years? If yes, provide a letter explaining each case.  Yes  No

11. Have you, within the last two (2) years, received treatment for or been hospitalized for a nervous, emotional, or mental disorder which could impair your practice? If yes, please provide a letter from your treating professional summarizing diagnosis, treatment, and prognosis.  Yes  No

12. Have you, within the last two (2) years, been treated by, consulted with or been under the care of a professional for any substance abuse? If yes, please provide a letter from the treating professional.  Yes  No

13. Do you have a physical condition which could affect your performance of professional duties? If yes, please provide a letter from the treating professional.  Yes  No

14. Have you, within the last five (5) years, been adjudged mentally incompetent or been committed to a mental institution? If yes, please provide details.  Yes  No

\_\_\_\_\_

\_\_\_\_\_

# Final Regulations

## THIS SECTION MUST BE NOTARIZED

15. In addition to the foregoing, I add the following:

- (a) I have read and understand the Virginia Board of Optometry statutes and regulations and am aware that if granted a license to practice optometry in Virginia, I am required to comply with any laws and regulations governing the practice of optometry and the use of controlled substances in Virginia.
- (b) I hereby give permission to the Virginia Board of Optometry to secure additional information concerning me or any statement in this application from any person or any source the Board may desire. I further agree to submit to questioning by the Board or any Agent thereof, and to substantiate my statement(s) if desired by the Board.
- (c) I shall present any credentials required or requested by the Board.
- (d) I HAVE ATTACHED A MONEY ORDER OR CHECK IN THE AMOUNT OF \$ \_\_\_\_\_, MADE PAYABLE TO THE TREASURER OF VIRGINIA.
- (e) I hereby certify that in applying to the Virginia Board of Optometry for a license to practice optometry in Virginia, I have made no fraudulent or deceitful statement, nor have I made any misrepresentation of a material fact. I agree that if I am granted a license I will practice my profession of optometry in an ethical manner; that I will not participate directly in any illegal or unethical modes of practice; that I will not practice optometry under a false or assumed name; that I will not knowingly enter the employment of or the association with any person, firm or corporation engaged in the practice of optometry contrary to the laws of the Commonwealth of Virginia; I further certify that I will at all times obey the regulations of the Virginia Board of Optometry and the laws of the Commonwealth of Virginia relating to the practice of optometry.
- (f) I, \_\_\_\_\_, the applicant herein, depose and say that all facts, statements, and answers contained in this application are true and correct; I am not omitting any information which might be of value to this Board in determining my qualifications and character, whether it is called for or not; and I agree that any falsification, omission, or withholding of information of facts concerning my qualification as an applicant shall be sufficient grounds for the suspension, cancellation, or revocation of my Virginia Board of Optometry License even though it is not discovered until after issuance.

\_\_\_\_\_  
Applicant's Signature

State \_\_\_\_\_ City/County \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_ who after being duly sworn by me on his or her oath that all facts, statements, and answers contained in this application are true and correct in every respect.

\_\_\_\_\_  
Applicant's Signature (Signed in Presence of Notary)

Sworn and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ 20\_\_\_\_, to certify which witness my hand and official seal of office.

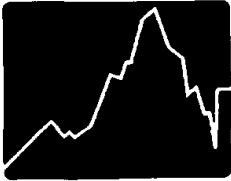
\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

(SEAL)

APPLIC\_REGS97-98  
11/13/1998

FOR ENDORSEMENT APPLICANTS ONLY

	<p>COMMONWEALTH OF VIRGINIA</p> <p>BOARD OF OPTOMETRY</p> <p>Department of Health Professions          6606 W. Broad Street, 4<sup>th</sup> Floor          Richmond, VA 23230-1717          (804) 662-9910</p>	<p>PASSPORT TYPE PHOTO</p>
<b>DIAGNOSTIC PHARMACEUTICAL AGENTS ENDORSEMENT APPLICATION</b>		
<p>APPLICANT - Please provide the information requested below. (Print or Type) Use full name with middle initial.</p>		
NAME (Last, First, M.I., Suffix, Maiden)	SOCIAL SECURITY NO.	TELEPHONE NO.
STREET ADDRESS		
CITY	STATE	ZIP CODE
<p>VIRGINIA LICENSE NUMBER: _____</p> <p>I AM DPA CERTIFIED BY THE STATE BOARD(S) LISTED: _____</p> <p>OTHER STATE(S) LICENSED IN: _____</p>		

---

# Final Regulations

---

**Please have the state(s) provide information on the content domain covered on the DPA certifying examination and on its scoring. Also, provide a copy of the statutes and regulations from the state(s) from the date you were certified in the state(s).**

I HAVE MET THE EDUCATIONAL REQUIREMENTS BASED ON:

\_\_\_\_\_ Graduation from one of the designated schools on or after the specific dates set by the Board

Please return this form with an official transcript or letter of certification from your school of optometry.

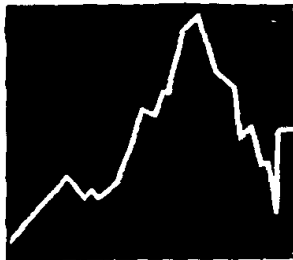
YOUR CHECK OR MONEY ORDER IN THE AMOUNT OF \$100.00 SHOULD BE MADE PAYABLE TO THE

TREASURER OF VIRGINIA and mailed to:

VIRGINIA BOARD OF OPTOMETRY

\_\_\_\_\_  
SIGNATURE

Effective 7-1-95



**COMMONWEALTH OF VIRGINIA**

**Board of Optometry**

Department of Health Professions  
 6606 West Broad Street, 4th Floor  
 Richmond, Virginia 23230-1717  
 (804) 662-9910

**APPLICATION FOR APPROVAL OF A CONTINUING EDUCATION COURSE**

✕ (Please Submit Application 45 Days Prior to Course Date.) ✕

<b>A. INDIVIDUAL REQUESTING COURSE APPROVAL</b>		
Name - Last	First	Middle/Maiden
Street Address		
City	State	Zip Code
Area Code and Telephone Number		

<b>B. COURSE PROVIDER</b>		
Name		
Street Address		
City	State	Zip Code
Area Code and Telephone Number		

<b>C. WILL OTHER ORGANIZATIONS ALSO SPONSOR COURSE?</b>			YES [ ]	NO [ ]
Name				
Street Address				
City	State	Zip Code		
Area Code and Telephone Number				

# Final Regulations

<b>D. TITLE OF PROGRAM</b>			
Dates		Location	
Beginning	Ending		
City		State	Zip Code

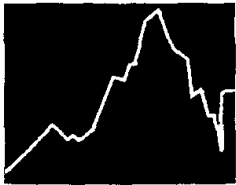
1. Attach list of courses to be given at program. Show beside each course title, the amount of credit hours requested. (The Board allows 1.0 credit hour for each 60 minutes of course work attended. This does not include welcoming remarks, introductions, breaks, and meals. Credit hours of instruction will be rounded to the nearest half hour).
2. **ATTACH COMPREHENSIVE COURSE OUTLINES WITH LESSON PLANS, INCLUDING AMOUNT OF TIME TO BE DEVOTED TO ALL COMPONENTS, I.E., OPENING REMARKS, INTRODUCTION, INSTRUCTIONAL TIME, BREAKS AND MEALS.**
3. Amount of credits requested for entire program: \_\_\_\_\_
4. **ATTACH LIST OF LECTURERS AND CURRICULUM VITAE FOR EACH LECTURER.**
5. Manner of certifying attendance: \_\_\_\_\_
6. Will there be speeches or any literature or products distributed promoting a particular brand or company product? Yes \_\_\_\_\_ No \_\_\_\_\_. If yes, what will be the nature of the promotion? \_\_\_\_\_  
\_\_\_\_\_
7. Will there be an objective third party sponsor or co-sponsor to ensure the criteria for approval? Yes \_\_\_\_\_ No \_\_\_\_\_. Name and nature of organization: \_\_\_\_\_  
\_\_\_\_\_
8. Will the program be made available to any optometrist? Yes \_\_\_\_\_ No \_\_\_\_\_.

\_\_\_\_\_  
Signature

**COURSEWORK WILL NOT BE SUBMITTED TO THE EDUCATION COMMITTEE UNLESS ALL THE ABOVE CRITERIA ARE MET.**

(rev. 3/95)



	<p><b>COMMONWEALTH OF VIRGINIA</b> <b>BOARD OF OPTOMETRY</b></p> <p>Department of Health Professions 6606 West Broad Street, 4<sup>th</sup> Floor Richmond, Virginia 23230-1717 (804) 662-9910</p>				
<p><b>APPLICATION FOR PROFESSIONAL DESIGNATION</b></p>					
<p>APPLICANT - PLEASE PROVIDE THE INFORMATION REQUESTED BELOW (PRINT OR TYPE). A NON-REUNDABLE \$100 (PAYABLE TO THE TREASURER OF VIRGINIA) APPLICATION FEE IS REQUIRED FOR REVIEW AND APPROVAL.</p>					
<p>Name of Optometrist (Assuming responsibility for Professional Designation Application)</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 30%; border: none;">Last</td> <td style="width: 30%; border: none;">First</td> <td style="width: 30%; border: none;">MI</td> <td style="width: 10%; border: none;">Area Code/Telephone #</td> </tr> </table>		Last	First	MI	Area Code/Telephone #
Last	First	MI	Area Code/Telephone #		
<p>Street Address</p>					
City	State	Zip Code			
<p>Proposed Professional Designation Name:</p> <p>1<sup>st</sup> Choice: _____</p> <p>2<sup>nd</sup> Choice: _____</p> <p>3<sup>rd</sup> Choice: _____</p>					
<p>Street address of practice location(s):</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p>					
<p><b>FOR OFFICE USE ONLY</b></p> <p>Pending application no. _____</p>	<p><b>FEE</b></p>	<p><b>PERMIT#/ISSUE DATE</b></p>			

Continued on back

# Final Regulations

## REQUIRED ATTACHMENTS:

1. Provide an explanation of the ownership of the entity.
2. If multiple locations are involved, explain the business relationship between locations.
3. Provide a drawing (by hand is acceptable) of the physical layout of your entire practice area. If an optical area is involved, please designate it.

## DISCLAIMER

The application or registration of a professional designation with the Virginia Board of Optometry shall not authorize the use in this state of any professional designation in violation of any third parties' rights under federal, state or common law. Application or registration herein shall not be a defense to an action for violation of any such rights. It is the applicant's responsibility to insure that a particular professional designation is not otherwise registered and/or protected.

It is my belief or the belief of the firm, corporation or association in whose behalf I make the following verification or declaration, that no other person, firm, corporation or association, to the best of my knowledge and belief, has the right to use such professional designation with respect to the practice of optometry in the Commonwealth and that I have read and understood the foregoing disclaimer:

## SEEN AND APPROVED

\_\_\_\_\_  
Signature of Applicant

## COMMONWEALTH OF VIRGINIA

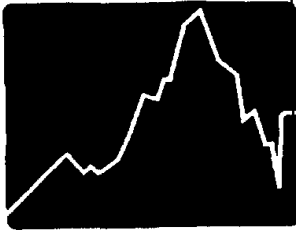
CITY/COUNTY OF \_\_\_\_\_, to wit:

Subscribed and sworn to before me, the undersigned and Notary Public, in and for the Commonwealth at large, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

g:\pdapplic  
Revised date: 2/5/98



**COMMONWEALTH OF VIRGINIA  
BOARD OF OPTOMETRY**  
6606 WEST BROAD STREET, 4<sup>TH</sup> FLOOR  
RICHMOND, VIRGINIA 23230-1717  
(804) 662-9910

**APPLICATION FOR REINSTATEMENT OF LICENSE**

<b>APPLICANT - Please provide the information requested below and on the back of this page.</b>			
<b>NAME - LAST</b>	<b>FIRST</b>	<b>MIDDLE</b>	<b>MAIDEN</b>
<b>STREET ADDRESS</b>		<b>AREA CODE &amp; TELEPHONE NUMBER</b>	
<b>CITY</b>	<b>STATE</b>	<b>ZIP CODE</b>	
<b>DATE OF BIRTH (M/D/Y)</b>	<b>VIRGINIA LICENSE NUMBER</b>	<b>ORIGINAL ISSUE DATE</b>	
Reinstatement requested due to lapse of license _____ or suspension or revocation of license _____			
<p>1. Why do you seek reinstatement at this time? _____                  _____                  _____</p> <p>2. Please attach a detailed summary of your professional activities, affiliations, employment and education since the expiration of your license. Be sure to explain any absences from practice and work. Please account for all time.</p> <p>3. Date(s) you took the NBEO examination(s): _____</p> <p>4. Do you have a mental, physical or chemical dependency condition which could interfere with your current ability to practice optometry? Yes ___ No ___. If yes, explain response in detail and have a letter from your treating licensed professional sent to the Board of Optometry.</p> <p>5. Has your license ever been voluntarily surrendered to a licensing authority in any jurisdiction ___ or revoked ___ suspended ___ placed on probation ___ otherwise disciplined ___ by any licensing authority in any jurisdiction? If yes, explain response in detail.</p> <p>6. Have you ever been convicted, pled guilty to or pled Nolo Contendere to the violation of any federal, state or other statute ordinance constituting a felony or misdemeanor? (Including convictions for driving under the influence, but excluding traffic violations. Yes ___ No ___ If yes, explain in detail and have a certified copy of the court order mailed to the Board of Optometry.</p> <p>7. List all states in which you are or have been licensed to practice optometry and request that each state provide licensure verification to Virginia: _____</p>			

---

# Final Regulations

---

Please enclose the reinstatement fee of \$250.  
Make check or money order payable to the "Treasurer of  
Virginia".

## AFFIDAVIT

(To be completed before a notary public)

State of \_\_\_\_\_ County/City of \_\_\_\_\_

Name \_\_\_\_\_, being duly sworn, says that he/she is the person who is referred to in the foregoing application for licensure as an optometrist in the Commonwealth of Virginia; that the statements herein contained are true in every respect; that he/she has complied with all requirements of the law; and that he/she has read and understands this affidavit.

\_\_\_\_\_  
Signature of Applicant

Subscribed to and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_.

My commission expires on \_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

SEAL

RENSTAPL  
Revised 12/11/97

Department of Health Professions  
COMMONWEALTH OF VIRGINIA

## RENEWAL NOTICE AND APPLICATION

Telephone:  
License, certificate or registration number:

TYPE OF RENEWAL	CURRENT EXPIRATION DATE	LICENSE FEE	RENEWAL PERIOD FROM TO	AMOUNT DUE IF RECEIVED AFTER \$
		\$		\$

MAKE CHECKS PAYABLE TO THE "TREASURER OF VIRGINIA"  
RETURN PAYMENT AND THE COMPLETED BOTTOM PORTION ONLY IN THE ENCLOSED ENVELOPE  
KEEP TOP PORTION FOR YOUR RECORDS

**DISCLOSURE OF SOCIAL SECURITY OR VIRGINIA DMV CONTROL NUMBER**  
In accordance with § 54.1-116 of the Code of Virginia, you are required to submit your Social Security Number or your control number issued by the Virginia Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will not be refunded.

This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as provided for by law. Federal and state law requires that this number be shared with other agencies for child support enforcement activities.  
If the boxes below are empty, write in your Social Security or Virginia DMV Control Number. If the boxes do contain numbers, please verify that they are correct and make any necessary changes.

**NO LICENSE, CERTIFICATION OR REGISTRATION WILL BE ISSUED TO ANY INDIVIDUAL WHO HAS FAILED TO DISCLOSE ONE OF THESE NUMBERS.**

\*In order to obtain a Virginia driver's license control number, it is necessary to appear in person at an office of the Department of Motor Vehicles in Virginia. A fee and disclosure of your Social Security Number will be required.

**THIS BOTTOM PORTION MUST BE RETURNED IN ORDER TO RENEW**

Department of Health Professions

Type of renewal:

License, certificate or registration number:

DETACH HERE

### INSTRUCTIONS

1. Verify Social Security or Virginia DMV Control Number at left.
2. Complete statements "A" and "B" below, if renewing.
3. Complete statement "C" if you desire inactive status or do not wish to renew.
4. Make any address changes on this application.
5. Make any name change on this application and enclose a copy of your marriage license or court order.
6. Note name and certificate number on all enclosures.
7. Return the bottom portion of this application in the enclosed envelope.

### STATEMENTS

- A. I certify that I have met all continuing education requirements to renew this license, certificate or registration.  Yes  No
- B. I swear that I have not made any misrepresentation on this renewal application and understand that furnishing false information constitutes cause for loss of license to practice.

- C. Check the appropriate box and sign below.  
 I wish to take inactive status and enclose the inactive fee of: \$

I do not wish to renew.

Signature

Signature

VA.R. Doc. No. R97-306; Filed November 17, 1998, 11:41 a.m.

---

# Final Regulations

---

## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

Title of Regulation: 22 VAC 40-35-5 et seq. Virginia Independence Program (amending 22 VAC 40-35-10; adding 22 VAC 40-35-125).

Statutory Authority: §§ 63.1-25 and 63.1-25.3 of the Code of Virginia.

Effective Date: January 6, 1999.

Summary:

The amendments to the Virginia Independence Program implement the Virginia Targeted Jobs Grant Program, which was passed by the General Assembly (Chapter 563, 1997 Acts of Assembly). The Virginia Initiative for Employment not Welfare (VIEW) Program is the work program of the Virginia Independence Program. Under the Virginia Targeted Jobs Grant Program employers who meet certain qualifications may receive a grant not to exceed \$1,000 per employee for hiring Temporary Assistance for Needy Families (TANF) recipients in the Virginia Independence Program's work component, the Virginia Initiative for Employment not Welfare (VIEW). In order to qualify for a grant, the employer must hire a TANF recipient who (i) has been receiving assistance for at least nine months; (ii) is unemployed or underemployed at the time of hiring; (iii) is not a relative of the employer; and (iv) worked for at least 1,000 hours during the taxable year for which the credit is being claimed. Additionally, the TANF recipient must be placed with the employer as a condition of his VIEW participation.

Summary of Public Comments and Agency's Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Thomas J. Steinhauser, Division of Temporary Assistance Programs, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1703.

#### 22 VAC 40-35-10. Definitions.

The following words and terms [  $\tau$  ] when used in this chapter [  $\tau$  ] shall have the following meaning [ , ] unless the context clearly indicates otherwise:

"Actively seeking employment" means satisfactorily participating in any assigned job-seeking activity while in the program.

"Adult portion" means the [ AFDC TANF ] amount paid on behalf of the parent or other caretaker-relative with whom the [ AFDC TANF ] child resides, including a minor parent. This amount is the difference in the standard of assistance for a family size which includes the adult and the standard of assistance for a family size of one less person.

[ "~~Aid to Families with Dependent Children Program~~" or "~~AFDC~~" means the program authorized in § 406 of the Social Security Act (42 USC § 606) and administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children. ]

"AFDC-Foster Care" means a federal program authorized under § 472 of the Social Security Act (42 USC § 672) and administered by the Virginia Department of Social Services, which provides financial assistance on behalf of qualifying children.

[ "~~Aid to Families with Dependent Children Unemployed Parent~~" or "~~AFDC-UP~~" means the program authorized in § 407 of the Social Security Act (42 USC § 607) and administered by the Virginia Department of Social Services, which provides aid to families with dependent children who are deprived of parental support or care by reason of the unemployment of the parent who is the principal wage earner. ]

"Agreement" means the written individualized Agreement of Personal Responsibility required by § 63.1-133.49 of the Code of Virginia.

"Allotment" means the monthly food stamp benefit given to a household.

"Applicant" means a person who has applied for [ AFDC or AFDC-UP TANF or TANF-UP ] benefits and the disposition of the application has not yet been determined.

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive assistance.

"Caretaker-relative" means the natural or adoptive parent or other relative, as specified in 45 CFR 233.90(c)(1)(v), who is responsible for supervision and care of the needy child.

"Case management" means the process of assessing, coordinating, monitoring, delivering or brokering activities and services necessary for VIEW participants to enter employment or employment-related activities as quickly as possible.

"Case management services" means services which include, but are not limited to, job development and job placement, community work experience, education, skills training, and support services.

"Case manager" means the worker designated by the local department of social services, a private-sector contractor or a private community-based organization including nonprofit entities, churches, or voluntary organizations that provide case management services.

"Child day care" means those services for which a participant is eligible pursuant to child day care services policy.

"Child day care services/program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization

has agreed to assume responsibility for the supervision, protection, and well-being of children under the age of 13 (or children up to 18 years of age if they are physically or mentally incapable of caring for themselves or subject to court supervision) for less than a 24-hour period.

"Community work experience" means work for benefits in a public or private organization that serves a community/public function.

~~"Division of Child Support Enforcement" or "DCSE" means that division of the Virginia Department of Social Services which is responsible under Title IV-D of the Social Security Act (42 USC §§ 651-669) to locate noncustodial parents, establish paternity, establish child support and health care orders, enforce payment of delinquent support, and collect and distribute support payments.~~

"Department" means the Virginia Department of Social Services.

"Diversionary cash assistance" means a one-time lump sum payment to an individual or third-party vendor to prevent long-term receipt of [ AFDC TANF ] .

[ ~~"Division of Child Support Enforcement" or "DCSE" means that division of the Virginia Department of Social Services which is responsible under Title IV-D of the Social Security Act (42 USC §§ 651-669) to locate noncustodial parents, establish paternity, establish child support and health care orders, enforce payment of delinquent support, and collect and distribute support payments. ]~~

"Family" means [ ~~an AFDC a TANF~~ ] assistance unit.

"Food Stamp Program" means the program administered through the Virginia Department of Social Services through which a household can receive food stamps with which to purchase food products.

"Full Employment Program" or "FEP" means subsidized, training-oriented, employment which replaces the [ AFDC TANF ] and food stamp benefits of a participant. This component of VIEW is designed to train the recipient for a specific job, increase his self-sufficiency and improve his competitiveness in the labor market.

"Full-time unsubsidized employment" means employment which is considered by the employer to be full time, but in no case less than 30 hours per week, and for which no JOBS, VIEW, [ AFDC TANF ] , or food stamp funds are used to pay the individual's salary.

"Grant" means the monthly [ AFDC TANF ] benefit payment.

"Hardship exceptions" means prescribed reasons which, if applicable, would allow an extension of receipt of [ AFDC TANF ] benefits.

"He" means a male or female as applicable.

"Hiring authority" means an individual with the authority to hire employees for a business.

"In loco parentis" means an adult relative or other adult who is acting in place of a parent.

"Incapacitated" means a medically verified condition which renders an individual unable to work.

"Job Opportunities and Basic Skills Training Program (JOBS)" means the program authorized by Title IV-F of the Social Security Act (42 USC §§ 681-687). This program provides education, training and work experience to enhance employment opportunities for [ AFDC TANF ] recipients who are not exempt from participation.

"Job finding" means identification of available jobs.

"Job matching" means matching a participant's minimum skills or prior work experience to available job openings.

"Job placement" means placing a participant in an unsubsidized or subsidized job. Job placement is the result of job finding and job matching.

"Job search" means a structured, time-limited period in which the participant is required to search for employment. To complete the job search, the participant must search and apply for a set number of jobs.

"Job skills training" means training in technical job skills or required knowledge in a specific occupational area in the labor market.

"Local agency" or "local department" means any one of the local social services or welfare agencies throughout the Commonwealth which administers the VIP program.

"Minor parent" means any parent under 18 years of age.

"On-the-job training" means training which is provided by an employer during routine performance of a job.

"Parent" means a mother or father, married or unmarried, natural, or adoptive following entry of an interlocutory order. The parent may be a minor parent.

"Participant" means [ ~~an AFDC a TANF~~ ] or [ AFDC-UP TANF-UP ] recipient who is participating in the VIEW program.

"Participating family" means an assistance unit including a parent who participates in the Virginia Initiative for Employment not Welfare (VIEW) Program.

"Part-time unsubsidized employment" means employment of at least eight hours but less than 30 hours per week and for which no JOBS, VIEW, [ AFDC TANF ] , or food stamp funds are used to pay the individual's salary.

"Post-secondary education" means formal instruction at an institution of higher education or vocational school leading to the attainment of a certificate, an associate degree, or a baccalaureate degree.

"Qualified employer" means an employer who may participate in the [ Virginia ] Targeted Jobs Grant Program by virtue of meeting all of the program criteria for employers.

---

# Final Regulations

---

"Qualified participant" means a Virginia Initiative for Employment not Welfare participant who meets all of the program criteria and may be hired by a qualified employer.

"Recipient" means an individual who is presently receiving [ ~~an AFDC a TANF~~ ] assistance payment or whose eligibility exists even though the assistance payment is zero.

"Recipient family" means an assistance unit in which the caretaker-relative is a parent of the eligible child and the parent's needs may or may not be included on the grant.

"Sanction" means to reduce or suspend a participant's [ ~~AFDC TANF~~ ] grant or food stamp allotment or both, where applicable, for noncompliance with these regulations or the statute.

"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within this Commonwealth [ ; ] or (ii) any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12.

"Support services" means services such as child care or transportation provided to program participants to enable the participant to work or to receive training or education which are intended to lead to employment.

[ ~~"Targeted Jobs Grant Program" means a program which pays a grant to employers who hire qualified participants in the Virginia Initiative for Employment not Welfare Program.~~ ]

[ "Temporary Assistance for Needy Families" or "TANF" means the program authorized in § 406 of the Social Security Act (42 USC § 606) and administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children. ]

[ "Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the program authorized in § 63.1-105 of the Code of Virginia and administered by the Virginia Department of Social Services, which provides aid to two-parent families with dependent children who are in financial need. ]

"Time limitations" means a specified period of time, under the statute, to receive [ ~~AFDC TANF~~ ] .

"Transitional support services" means child care, transportation or medical assistance provided to working participants whose [ ~~AFDC TANF~~ ] has been terminated either voluntarily [ , ] although still eligible for [ ~~AFDC TANF,~~ ] or involuntarily [ , ] due to time limitations.

"Truant" means a child who fails to report to school for three consecutive school days, or for a total of five scheduled school days per month or an aggregate of seven scheduled school days per school calendar quarter, whichever occurs sooner, and no indication has been received by school personnel that the child's parent or guardian is aware of the child's absence, and a reasonable effort by school personnel to notify the parent or guardian has failed; or (ii) is not enrolled in school at any time during the month.

"Underemployed" means working at a job for less than the federal hourly minimum wage.

"Unsubsidized employment" means employment in which no government funds are used to subsidize directly the wages earned by a participant.

[ ~~"Virginia Initiative for Employment not Welfare" or "VIEW" means the Job Opportunities and Basic Skills Training Program as implemented in the Commonwealth.~~ ]

"Virginia Independence Program" or "VIP" means the program in the Commonwealth of Virginia which is made up of the [ ~~AFDC TANF~~ ] Program and the Virginia Initiative for Employment not Welfare.

[ ~~"Virginia Initiative for Employment not Welfare" or "VIEW" means the Job Opportunities and Basic Skills Training Program as implemented in the Commonwealth.~~ ]

"Virginia Targeted Jobs Grant Program" or "VTJG" means the program established in § 63.1-25.3 of the Code of Virginia which pays a grant to employers who hire qualified participants in the Virginia Initiative for Employment not Welfare Program. ]

"Work activity" means participation in unsubsidized employment, FEP, part-time work, community work experience, or on-the-job training.

## **22 VAC 40-35-125. [ The Virginia ] Targeted Jobs Grant Program.**

A. In order to enhance the employment opportunities of participants, the VIEW program shall administer a grant program called the [ Virginia ] Targeted Jobs Grant Program ( [ ~~TAG~~ VTJG ] ).

1. The [ Virginia ] Targeted Jobs Grant Program shall pay a grant [ ~~of not to exceed~~ ] \$1,000 to participating qualified employers. [ For the purpose of this section, a qualified employer may not claim a grant if the qualified employee was employed within one year of the date of the current hiring. ]

2. Participating employers shall sign an agreement with the Virginia Department of Social Services which will outline the program requirements for both the employer and the Commonwealth.

B. [ ~~The participant~~ In order to be a qualified employee, the individual ] must have been [ ~~in the VIEW program~~ a recipient of TANF ] for at least nine months prior to hiring.

1. The [ ~~participant~~ employee ] must be unemployed or underemployed at the time he is hired by the employer.

2. The [ ~~participant~~ employee ] shall not be a relative of the hiring authority. [ For the purpose of this section, a relative means a spouse, child, grandchild, parent or sibling of the employer. ]

[ 3. The employee must have worked for the employer for at least 1,000 hours during the taxable year.



4. *The employee must have been placed with the employer as a result of his participation in the Department of Social Services' VIEW Program. ]*

C. *In order to make application for the [ Virginia ] Targeted [ Jobs ] Grant Program grant, a participating employer shall complete the application form supplied by the Department of Social Services. The application form shall be submitted to the [ Virginia ] Department of Social Services [ , Division of Financial Management ] with [ verification certification ] of the participant's employment for the period in question. [ The application must be filed no later than the last day of the third quarter following the close of the taxable year for which the grant is claimed. Grants will be awarded by May 30 of each year. Grants for applications received after April 15 will not be awarded until the following fiscal year. A VTJG Certification of Participant Placement must accompany the application.*

D. *The Commissioner of the Department of Social Services, or his designee, may examine the books, records, and other applicable documents to determine that the employer has satisfied the above requirements and is eligible for a VTJG. ]*

VA.R. Doc. No. R98-55; Filed November 10, 1998, 9:15 a.m.



---

# EMERGENCY REGULATIONS

---

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHARMACY

Title of Regulation: 18 VAC 110-20-10 et seq. Virginia Board of Pharmacy Regulations (amending 18 VAC 110-20-10, 18 VAC 110-20-130, and 18 VAC 110-20-140; adding 18 VAC 110-20-135, 18 VAC 110-20-690, 18 VAC 110-20-700, and 18 VAC 110-20-710).

Statutory Authority: §§ 54.1-2400 and 54.1-3400 et seq. of the Code of Virginia.

Effective Dates: November 5, 1998, through November 4, 1999.

#### STATEMENT OF NECESSITY FOR EMERGENCY REGULATIONS

*At its meeting on August 18, 1998, the Virginia Board of Pharmacy adopted emergency regulations relating to the closing or acquisition of a pharmacy and to the issuance of a controlled substance registration to entities or practitioners who maintain large amounts of Schedule II through VI drugs. The emergency regulations are necessary to conform rules of the board to the statutory provisions of Chapters 470 and 490 of 1998 Acts of Assembly.*

*In accordance with the Administrative Process Act, the "emergency situation" which exists is specified in § 9-6.14:4.1 C 5 (ii) of the Code of Virginia as one in which the agency is required by statutory law to have regulations in effect within 280 days from the enactment of the law.*

*The board intends to promulgate these emergency rules as permanent regulations.*

#### 18 VAC 110-20-10. Definitions.

*In addition to words and terms defined in §§ 54.1-3300 and 54.1-3401, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:*

"ACPE" means the American Council on Pharmaceutical Education.

"Acquisition" of an existing entity permitted, registered or licensed by the board means (i) the purchase or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor or change in partnership composition; (iii) the acquiring of fifty percent or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; or (iv) the merger of a corporation owning the entity,

*or of the parent corporation of a wholly-owned subsidiary owning the entity, with another business or corporation.*

"Aseptic processing" means the technique involving procedures designed to preclude contamination of drugs, packaging, equipment, or supplies by microorganisms during processing.

"Board" means the Virginia Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the Board of Pharmacy.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Class 100 environment" means an atmospheric environment which contains less than 100 particles, 0.5 microns in diameter, per cubic foot of air.

"Closed system transfer" means the movement of sterile products from one container to another in which the container-closure system and transfer devices remain intact throughout the entire transfer process, compromised only by the penetration of a sterile, pyrogen-free needle or cannula through a designated stopper or port to effect transfer, withdrawal, or delivery, to include the withdrawal of a sterile solution from an ampul in a class 100 environment.

"Compliance packaging" means packaging for dispensed drugs which is comprised of a series of containers for solid oral dosage forms and which is designed to assist the user in administering or self-administering the drugs in accordance with directions for use.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Cytotoxic drug" means a drug which has the capability of killing living cells.

"Electronic transmission prescription" is any prescription, other than an oral or written prescription or a prescription transmitted by facsimile machine, that is electronically transmitted from a practitioner authorized to prescribe directly to a pharmacy without interception or intervention from a third party, or from one pharmacy to another pharmacy.

"Expiration date" means that date placed on a drug package by the manufacturer or repacker beyond which the product may not be dispensed or used.

"Facsimile (FAX) prescription" means a written prescription or order which is transmitted by an electronic device over telephone lines which sends the exact image to the receiver (pharmacy) in a hard copy form.

"Foreign college of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.

*"Generic drug name"* means the nonproprietary name listed in the United States Pharmacopeia-National Formulary (USP-NF) or in the USAN and the USP Dictionary of Drug Names.

*"Hermetic container"* means a container that is impervious to air or any other gas under the ordinary or customary conditions of handling, shipment, storage, and distribution.

*"Home infusion pharmacy"* means a pharmacy which compounds solutions for direct parenteral administration to a patient in a private residence, long-term care facility or hospice setting.

*"Hospital" or "nursing home"* means those facilities as defined in Title 32.1 of the Code of Virginia or as defined in regulations by the Virginia Department of Health.

*"Inactive license"* means a license which is registered with the Commonwealth but does not entitle the licensee to practice, the holder of which is not required to submit documentation of CE necessary to hold an active license.

*"Light resistant container"* means a container that protects the contents from the effects of light by virtue of the specific properties of the material of which it is composed, including any coating applied to it. Alternatively, a clear and colorless or a translucent container may be made light-resistant by means of an opaque covering, in which case the label of the container bears a statement that the opaque covering is needed until the contents have been used. Where a monograph directs protection from light, storage in a light-resistant container is intended.

*"Long-term care facility"* means a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients.

*"Nuclear pharmacy"* means a pharmacy providing radiopharmaceutical services.

*"Open-system transfer"* means the combining of products in a nonsealed reservoir before filling or when a solution passes through the atmosphere during a transfer operation.

*"Permitted physician"* means a physician who is licensed pursuant to § 54.1-3304 of the Code of Virginia to dispense drugs to persons to whom or for whom pharmacy services are not reasonably available.

*"Personal supervision"* means the pharmacist must be physically present and render direct, personal control over the entire service being rendered or act being performed. Neither prior nor future instructions shall be sufficient nor, shall supervision rendered by telephone, written instructions, or by any mechanical or electronic methods be sufficient.

*"Pharmacy closing"* means that the permitted pharmacy ceases pharmacy services or fails to provide for continuity of pharmacy services or lawful access to patient prescription records or other required patient records for the purpose of continued pharmacy services to patients.

*"Prescription department"* means any contiguous or noncontiguous areas used for the compounding, dispensing

and storage of all Schedule II through VI drugs and devices and any Schedule I investigational drugs.

*"Radiopharmaceutical"* means any article that exhibits spontaneous decay or disintegration of any unstable atomic nucleus, usually accompanied by the emission of ionizing radiation and any nonradioactive reagent kit or nuclide generator which is intended to be used in the preparation of any such article.

*"Repackaged drug"* means any drug removed from the manufacturer's original package and placed in different packaging.

*"Safety closure container"* means a container which meets the requirements of the federal Poison Prevention Packaging Act of 1970 (15 USC §§ 1471-1476), i.e., in testing such containers, that 85% of a test group of 200 children of ages 41-52 months are unable to open the container in a five-minute period and that 80% fail in another five minutes after a demonstration of how to open it and that 90% of a test group of 100 adults must be able to open and close the container.

*"Satellite pharmacy"* means a pharmacy which is noncontiguous to the centrally permitted pharmacy of a hospital but at the location designated on the pharmacy permit.

*"Special packaging"* means packaging that is designed or constructed to be significantly difficult for children under five years of age to open to obtain a toxic or harmful amount of the drug contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

*"Special use permit"* means a permit issued to conduct a pharmacy of a special scope of service that varies in any way from the provisions of any board regulation.

*"Sterile pharmaceutical product"* means a dosage form free from living microorganisms.

*"Storage temperature"* means those specific directions stated in some monographs with respect to the temperatures at which pharmaceutical articles shall be stored, where it is considered that storage at a lower or higher temperature may produce undesirable results. The conditions are defined by the following terms:

1. *"Cold"* means any temperature not exceeding 8°C (46°F). A refrigerator is a cold place in which temperature is maintained thermostatically between 2° and 8°C (36° and 46°F). A freezer is a cold place in which the temperature is maintained thermostatically between -20° and -10°C (-4° and 14°F).

2. *"Room temperature"* means the temperature prevailing in a working area.

3. *"Controlled room temperature"* is a temperature maintained thermostatically that encompasses the usual and customary working environment of 20° to 25°C (68° to 77°F); that results in a mean kinetic temperature

---

# Emergency Regulations

---

calculated to be not more than 25°C; and that allows for excursions between 15° and 30°C (59° and 86°F) that are experienced in pharmacies, hospitals, and warehouses.

4. "Warm" means any temperature between 30° and 40°C (86° and 104°F).

5. "Excessive heat" means any temperature above 40° C (104° F).

6. "Protection from freezing" means where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to the destructive alteration of its characteristics, the container label bears an appropriate instruction to protect the product from freezing.

7. "Cool" means any temperature between 8° and 15° C (46° and 59° F).

"Terminally ill" means a patient with a terminal condition as defined in § 54.1-2982 of the Code of Virginia.

"Tight container" means a container that protects the contents from contamination by extraneous liquids, solids, or vapors, from loss of the drug, and from efflorescence, deliquescence, or evaporation under the ordinary or customary conditions of handling, shipment, storage, and distribution, and is capable of tight reclosure. Where a tight container is specified, it may be replaced by a hermetic container for a single dose of a drug and physical tests to determine whether standards are met shall be as currently specified in United States Pharmacopoeia-National Formulary.

"Unit dose container" means a container that is a single-unit container, as defined in United States Pharmacopoeia-National Formulary, for articles intended for administration by other than the parenteral route as a single dose, direct from the container.

"Unit dose package" means a container that contains a particular dose ordered for a patient.

"Unit dose system" means a system in which multiple drugs in unit dose packaging are dispensed in a single container, such as a medication drawer or bin, labeled only with patient name and location. Directions for administration are not provided by the pharmacy on the drug packaging or container but are obtained by the person administering directly from a physician's order or medication administration record.

"U.S.P.-N.F." means the United States Pharmacopoeia-National Formulary.

"Well-closed container" means a container that protects the contents from extraneous solids and from loss of the drug under the ordinary or customary conditions of handling, shipment, storage, and distribution.

## **18 VAC 110-20-130. Pharmacies going out of business Pharmacy closing, going out of business, or change of ownership.**

A. At least 14 days prior to the closing date a pharmacy closes in accordance with § 54.1-3434.01 of the Code of Virginia, the owner shall notify the board ~~shall be notified by the pharmacist in charge or owner~~. The proposed disposition of all Schedule II through VI drugs, prescription dispensing records, patient information, and other required records shall be reported to the board. If the pharmacy drug stock is and records are to be transferred to another licensee, the ~~pharmacist in charge or owner~~ shall inform the board of the name and address of the licensee to whom the drugs and records are being transferred and the date of transfer.

B. Exceptions to the public notice as required in § 54.1-3434.01 of the Code of Virginia and the notice required in subsection A of this section shall be approved by the board and may include sudden closing due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy, or other emergency circumstances ~~as approved by the board~~.

C. In the event of an exception to the notice as required in § 54.1-3434.01 of the Code of Virginia and in subsection A of this section, the ~~pharmacist in charge~~ owner shall provide notice as far in advance of closing as allowed by the circumstances.

D. At least 14 days prior to any change in ownership of an existing pharmacy, the owner shall notify the board of the pending change.

1. Upon any change in ownership of an existing pharmacy, the prescription dispensing records for the two years immediately preceding the date of change of ownership and other required patient information shall be provided to the new owners on the date of change of ownership in substantially the same format as previously used immediately prior to the transfer to provide continuity of pharmacy services.

2. The previous owner shall be held responsible for assuring the proper and lawful transfer of records on the date of the transfer.

3. The format of the prescription dispensing records which are transferred to a new owner shall comply with the requirements of Chapter 34 of Title 54.1 of the Code of Virginia, and with this chapter. Failure to comply with this regulation during a change in ownership shall be deemed to be a closing of the pharmacy for which the existing pharmacy owner shall be required to provide notice to the board and public in accordance with § 54.1-3434.01 of the Code of Virginia and subsection A of this section.

## **18 VAC 110-20-135. Change of hours in an existing pharmacy.**

A notice for a change in the hours of operation shall be given to the public and to the board in accordance with

§ 54.1-3434 of the Code of Virginia unless the change is necessitated by emergency circumstances beyond the control of the pharmacist-in-charge. If the pharmacy is not able to post the changes 14 days in advance, as required by § 54.1-3434, the owner shall notify the board as soon as he knows of the change and disclose the emergency circumstances preventing the required notification.

## **18 VAC 110-20-140. New pharmacies, acquisitions and changes to existing pharmacies.**

A. Any person wishing to open a new pharmacy, engage in the acquisition of an existing pharmacy, change the location of an existing pharmacy, or move the location or make structural changes to an existing prescription department shall file an application with the board.

B. In the acquisition of an existing pharmacy, if prescription records are to be accessible to anyone for purposes other than for continuity of pharmacy services at substantially the same level offered by the previous owner or for the necessary transfer of prescription records, the owner of the pharmacy acquiring the records shall disclose such information in writing to each patient 14 days prior to the acquisition. Such release of prescription records shall be allowed only to the extent authorized by § 32.1-127.1:03 of the Code of Virginia.

B. C. The proposed location or structural changes shall be inspected by an authorized agent of the board prior to issuance of a permit.

1. Pharmacy permit applications which indicate a requested inspection date, or requests which are received after the application is filed, shall be honored provided a 14-day notice is allowed prior to the requested inspection date.

2. Requested inspection dates which do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

3. At the time of the inspection, the dispensing area shall comply with 18 VAC 110-20-150, 18 VAC 110-20-160, 18 VAC 110-20-170, 18 VAC 110-20-180, and 18 VAC 110-20-190 of this chapter.

C. D. Upon completion of the inspection, the executive director of the board shall review the findings of the inspection. Drugs shall not be stocked within the proposed pharmacy or moved to a new location until approval is granted or the permit is issued by the executive director of the board or his designee.

### **PART XVI.**

#### **CONTROLLED SUBSTANCES REGISTRATION FOR OTHER PERSONS OR ENTITIES.**

## **18 VAC 110-20-690. Persons or entities authorized or required to obtain a controlled substances registration.**

A. A person or entity which maintains or intends to maintain a supply of Schedule II through Schedule VI controlled substances, other than manufacturer's samples, in

order to administer such drugs in accordance with provisions of the Drug Control Act may apply for a controlled substances registration on forms approved by the board.

B. Persons or entities which may be registered by the board shall include, but not be limited to, hospitals without in-house pharmacies, ambulatory surgery centers, out-patient clinics, and emergency medical services agencies provided such persons or entities are otherwise authorized by law and hold required licenses or appropriate credentials to administer the drugs for which the registration is being sought.

C. In determining whether to register an applicant the board shall consider factors listed in subsections A and D of § 54.1-3423 of the Code of Virginia and compliance with applicable requirements of this chapter.

D. The board may require a person or entity to obtain a controlled substances registration upon a determination that Schedule II through VI controlled substances have been obtained and are being used as common stock by multiple practitioners and that one or more of the following factors exist:

1. A federal, state, or local government agency has reported that the person or entity has made large purchases of controlled substances in comparison with other persons or entities in the same classification or category.

2. The person or entity has experienced a diversion, theft, or other unusual loss of controlled substances which requires reporting pursuant to § 54.1-3404 of the Code of Virginia, Drug Control Act.

3. The person or entity has failed to comply with recordkeeping requirements for controlled substances.

4. The person or entity or any other person with access to the common stock has violated any provision of federal, state, or local law or regulation relating to controlled substances.

## **18 VAC 110-20-700. Requirements for supervision for controlled substances registrants.**

A. A practitioner licensed in Virginia shall provide supervision for all aspects of practice related to the maintenance and use of controlled substances as follows:

1. In a hospital without an in-house pharmacy, a pharmacist shall supervise.

2. In an emergency medical services agency, the operational medical director shall supervise.

3. For any other person or entity approved by the board, a practitioner of pharmacy, medicine, osteopathy, podiatry, dentistry, or veterinary medicine whose scope of practice is consistent with the practice of the person or entity and who is approved by the board shall provide the required supervision.

B. The supervising practitioner shall approve the list of drugs which may be ordered by the holder of the controlled

---

# Emergency Regulations

---

substances registration; possession of controlled substances by the entity shall be limited to such approved drugs. The list of drugs approved by the supervising practitioner shall be maintained at the address listed on the controlled substances registration.

C. Access to the controlled substances shall be limited to the supervising practitioner or to those persons who are authorized by the supervising practitioner and who are authorized by law to administer drugs in Virginia or to other such persons as designated to have access in an emergency situation.

D. The supervising practitioner shall establish procedures for and provide training as necessary to ensure compliance with all requirements of law and regulation, including, but not limited to, storage, security, and record-keeping.

## **18 VAC 110-20-710. Requirements for storage and security for controlled substances registrants.**

A. Drugs shall be stored under conditions which meet USP-NF specifications or manufacturers' suggested storage for each drug.

B. Any drug which has exceeded the expiration date shall not be administered; it shall be separated from the stock used for administration and maintained in a separate, locked area until properly disposed.

C. If a controlled substances registrant wishes to dispose of unwanted or expired Schedule II through VI drugs, he shall transfer the drugs to another person or entity authorized to possess and to provide for proper disposal of such drugs.

D. Drugs shall be maintained in a lockable cabinet, cart, device or other area which shall be locked at all times when not in use. The keys or access code shall be restricted to the supervising practitioner and persons designated access in accordance with subsection C of 18 VAC 110-20-700.

E. In a facility not staffed 24-hours a day, the drugs shall be stored in a fixed and secured room, cabinet or area which has a security device for the detection of breaking meeting the following conditions:

1. The device shall be sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.
2. The installation shall be hard-wired and both the installation and device shall be based on accepted burglar alarm industry standards.
3. The device shall be maintained in operating order and shall have an auxiliary source of power.
4. The device shall fully protect all areas where prescription drugs are stored and shall be capable of detecting breaking by any means when activated.
5. Access to the alarm system shall be restricted to only designated and necessary persons, and the system shall be activated whenever the drug storage areas are closed for business.

## **18 VAC 110-20-720. Requirements for record-keeping.**

The person named as the responsible party on the controlled substances registration shall be responsible for record-keeping for Schedule II through VI drugs in accordance with provisions of § 54.1-3404 of the Code of Virginia and the following:

1. Inventories and administration records of Schedule II drugs shall be maintained separately from all other records and shall be kept in chronological order by date of administration.
2. All records shall be maintained at the same location as listed on the controlled substances registration or, if maintained in an off-site database, retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.
3. In the event that an inventory is taken as the result of a theft of drugs, the inventory shall be used as the opening inventory within the current biennial period. Such an inventory does not preclude the taking of the required inventory on the required biennial inventory date. All inventories required by § 54.1-3404 of the Code of Virginia shall be signed and dated by the person taking the inventory and shall indicate whether the inventory was taken prior to the opening or after the close of business on that date. An entity which is open 24-hours a day shall clearly document whether the receipt or distribution of drugs on the inventory date occurred before or after the inventory was taken.
4. Any computerized system used to maintain records shall also provide retrieval via computer monitor display or printout of the history for drugs administered during the past two years. It shall also have the capacity of producing a printout of any data which the registrant is responsible for maintaining under the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

/s/ John W. Hasty  
Director, Department of Health Professions  
Date: August 31, 1998

/s/ Claude A. Allen  
Secretary of Health and Human Resources  
Date: September 21, 1998

/s/ James S. Gilmore, III  
Governor  
Date: October 29, 1998

VA.R. Doc. No. R99-54; Filed November 5, 1998, 12:07 p.m.



---

# GENERAL NOTICES/ERRATA

---

## STATE CORPORATION COMMISSION

AT RICHMOND, November 6, 1998

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC970009

Ex Parte: Implementation of  
IntraLATA Toll Dialing Parity  
pursuant to the provisions of  
47 U.S.C. § 251(b)(3)

ORDER ON MOTION OF BELL ATLANTIC-VIRGINIA, INC.  
TO CLARIFY ITS OBLIGATION TO IMPLEMENT  
INTRALATA TOLL 1+PRESUBSCRIPTION

Our investigation of implementing intraLATA toll dialing parity ("dialing parity") pursuant to the provisions of 47 U.S.C. § 251(b)(3) was commenced on February 6, 1997. The Commission considered the dialing parity plan proposed by Bell Atlantic-Virginia, Inc. ("BA-VA") as well as plans filed by other local exchange companies ("LECs"). Following comments and a Staff Report, the Commission ordered on May 9, 1997, that BA-VA's dialing parity plan be approved in accordance with its findings.

On July 17, 1998, BA-VA filed its Motion To Clarify Its Obligation to Implement IntraLATA Toll 1+Presubscription ("Motion"). The Commission issued an Order on August 4, 1998, inviting comments. On August 28, 1998, Hyperion Telecommunications of Virginia, Inc. ("Hyperion") filed comments. On August 31, 1998, the Competitive Telecommunications Association ("CompTEL"), AT&T Communications of Virginia, Inc., MCI Telecommunications Corporation, and Qwest/LCI Telecom Corporation filed comments. Additionally, two comments were filed by members of the public. All opposed BA-VA's Motion.

In its Motion, BA-VA requests that the Commission clarify that BA-VA is not required to implement intrastate, intraLATA toll 1+ presubscription until BA-VA is permitted to provide interstate toll services and sets forth certain allegations in support of its request.

In the entry of our Order Establishing Requirements and Conditionally Approving Plans ("Order") dated May 9, 1997, we considered the Federal Communications Commission's Order, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, C.C. Docket No. 96-98, Second Report and Memo. Opinion (FCC, Aug. 8, 1996) ("the Dialing Parity Order"). The Dialing Parity Order established a timetable for LECs to provide intraLATA and interLATA dialing parity no later than February 8, 1999, and required LECs to submit to State Commissions their plans for implementing toll dialing parity at least ninety (90) days prior to February 8, 1999.

The FCC's Dialing Parity Rules, relied upon in our Order, were subsequently vacated in part by the United States Court of Appeals for the Eighth Circuit in its decision, *People of the State of California v. FCC*, 124 F.3d 934, 943 (Eighth Cir.,

1997), which case is now before the United States Supreme Court on appeal by the FCC.

Due to the compressed schedule that would be necessary for BA-VA to comply with our May 9, 1997 Order herein and based upon our reading of the holding in *California v. FCC*, and the inconvenience to LECs and CLECs in complying with the timeframes incidental to our Order of May 9, 1997, the Commission orders as follows:

That part of the Order of May 9, 1997, establishing the February 8, 1999, date for implementing dialing parity shall be suspended, and another date, or dates, to so implement may be established at a later time in this proceeding; and, upon the establishment of such date, all parties will be granted time to file implementation plans on a timely basis. However, any party that wishes to file an implementation plan, or an amendment or modification thereto, at any time prior to the establishment of any such implementation date or dates may proceed to do so.

The Commission does not rule on BA-VA's Motion to Clarify at this time but will consider this Motion in a timely manner in further proceedings in this docket.

This matter is now continued until further order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: each local exchange telephone company operating in Virginia as set out in Appendix A attached hereto; each certificated interexchange carrier operating in Virginia as set out in Appendix B attached hereto; the Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; Jean Ann Fox, Vice President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; Sheryl Butler, Office of the Judge Advocate General, Department of the Army, 901 North Stuart Street, Room 400, Arlington, Virginia 22203-1837; Ronald B. Mallard, Director, Department of Consumer Affairs, County of Fairfax, 12000 Government Center Parkway, Fairfax, Virginia 22035; Charles R. Smith, Hello, Inc., 2315 West Broad Street, Richmond, Virginia 23220; James C. Roberts, Esquire, Mays & Valentine, P.O. Box 1122, Richmond, Virginia 23218-1122; Alexander Bouton, Swidler & Berlin, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007-5116; the Commission's Office of General Counsel; and the Commission's Divisions of Communications, Public Utility Accounting, and Economics and Finance.

\*\*\*\*\*

---

# General Notices/Errata

---

AT RICHMOND, NOVEMBER 6, 1998

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC970113

Ex Parte: Investigation of the termination of local exchange service for failure to pay for long distance services

## ORDER GRANTING MOTION

On November 3, 1998, the Virginia Telecommunications Industry Association ("VTIA") filed its Motion for Additional Time requesting that the Commission extend the schedule of this case by 120 days and postpone the hearing from November 24, 1998, as presently scheduled, until sometime in March, 1999.

The Commission has determined to grant the motion in part. The date for the hearing shall be changed from November 24, 1998, to February 17, 1999, and the date for prefiling direct testimony and exhibits shall be changed from November 13, 1998, to January 15, 1999. Accordingly,

IT IS THEREFORE ORDERED THAT:

(1) The date of November 24, 1998, established by our order of October 20, 1998, is changed to February 17, 1999. The hearing shall commence at 10:00 a.m. in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia on that date.

(2) The date of November 13, 1998, established by our order of October 20, 1998, is changed to January 15, 1999. Persons desiring to present evidence at the February 17, 1999 hearing shall prefile the original and fifteen (15) copies of their testimony and exhibits with the Clerk's Office on or before January 15, 1999.

(3) In all other respects, the Commission's order of October 20, 1998, remains unchanged.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: All Certificated Local Exchange Telephone Companies as set out in Appendix A; all Certificated Interexchange Carriers as set out in Appendix B; Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; Cox Virginia Telecom, Inc., Edward L. Petrini, Esquire, and John D. Sharer, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095; Warner F. Brundage, Jr., Vice President, General Counsel, and Secretary, Bell Atlantic-Virginia, Inc., 600 East Main Street, 24th Floor, Richmond, Virginia 23219; Wilma R. McCarey, Esquire, AT&T Communications of Virginia, Inc., 3033 Chainbridge Road, Room 3-D, Oakton, Virginia 22185-0001; Virginia Telecommunications Industry Association, Michelle K. Walsh, Esquire, and Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Stephen C. Spencer,

Regional Director-External Affairs, GTE South Incorporated, Three James Center, Suite 1200, 1051 East Cary Street, Richmond, Virginia 23219; MCI Telecommunications Corporation, Michelle Billand, Esquire, and James R.J. Scheltema, Esquire, 1133 Nineteenth Street, N.W., Room 437, Washington, D.C. 20036; James B. Wright, Senior Attorney, Sprint Mid-Atlantic Telecom, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900; Hyperion Telecommunications of Virginia, Inc., Janet S. Livengood, Esquire, DDI Plaza Two, 500 Thomas Street, Suite 400, Bridgeville, Pennsylvania 15107-2838; J. Scott Nicholls, and Heather Troxell, LCI International, 8180 Greensboro Drive, Suite 800, McLean, Virginia 22102; Catherine L. Caddy, President, Bottom Line Solutions, Inc., P.O. Box 8791, Roanoke, Virginia 24014; Joseph S. Terrell, Sr., President, John Grier Construction Company, P.O. Box 191, Williamsburg, Virginia 23187-0191; MCI Telecommunications Corporation, Sarah Hopkins Finley, Esquire, Williams, Mullen, Christian & Dobbins, P.C., P.O. Box 1320, Richmond, Virginia 23210; Hyperion Telecommunications of Virginia, Inc., Dana Frix, Esquire, and Jonathan D. Draluck, Esquire, Swidler & Berlin, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007-5116; Jean Ann Fox, Vice President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; Andrew D. Lipman, Esquire, and Jean L. Kiddoo, Esquire, 3000 K Street, N.W., #300, Washington, D.C. 20007; Operator Service Providers, Mr. Paul Gamberg, 6611 Valjean Avenue, #201, Van Nuys, California 91406; Lois Hash, 3328 Williamson Road, Roanoke, Virginia 24012; David Altizer, 301 Memorial Boulevard, Narrows, Virginia 24124; Hilda Isaacs, 4601 Mayflower Road, Apartment 4K, Norfolk, Virginia 23508; Louise Gwaltney, 100 Tricia Lane, Apartment 1A, Newport News, Virginia 23601; W. Charles Cox, 4612 Sanders Drive, Roanoke, Virginia 24019-5836; Janelle K. Hamric, 5034 Sugar Grove Highway, Sugar Grove, Virginia 24375-3160; Mr. and Mrs. James C. Eure, 1916 Redgate Drive, Portsmouth, Virginia 23701; Eileen P. Humphrey, 2 Hampton Road, Round Hill, Virginia 20141; Horace and Arline McClellan, 480 Wassona Drive, Marion, Virginia 24354; Elizabeth D. Prater, 4885 Sugar Grove Highway, Sugar Grove, Virginia 24375-3166; Perry A. Rivkind, 11164 Park Place, Smithfield, Virginia 23430; Ann M. Hills, Worthington Hanon, Ltd., 469 South Five Fork Road, Monroe, Virginia 24574-2753; David F. Johnston, Sr., President, Antique Properties, Inc., P.O. Box 1265, Bowling Green, Virginia 22427; Carol L. Baynes, 1105-D North Hamilton Street, Richmond, Virginia 23221; Elizabeth R. Price, 13060 Northridge Road, Abingdon, Virginia 24210; the Commission's Office of General Counsel and the Commission's Divisions of Communications, Public Utility Accounting, and Economics and Finance.

\*\*\*\*\*



## Bureau of Insurance

November 10, 1998

ADMINISTRATIVE LETTER 1998-11

**TO: Health Maintenance Organizations Licensed in Virginia**

**RE: Service Area Concerns and Notices of Material Transactions**

In recent months, the Bureau of Insurance (Bureau) has received a number of questions concerning the "MCHIP" legislation contained in Senate Bill 712 of the 1998 General Assembly and how it will impact the regulation of HMOs. Many questions concern the regulatory recognition of service areas and changes in service areas. This letter answers some of these questions by identifying pertinent statutes in Title 38.2 of the Code of Virginia and some related procedures. These procedures take into account statutes in Chapters 43 (§ 38.2-4300 et seq.) and 58 (§ 38.2-5800 et seq.) of Title 38.2.

### BACKGROUND

Senate Bill 712 defined and introduced the concept of "managed care health insurance plans" or "MCHIPs." In the process, it amended multiple provisions in Chapter 43 authorizing regulation of health maintenance organizations (HMOs) and, in addition, added a new Chapter 58 (§ 38.2-5800 et seq.) in Title 38.2 and new articles in Title 32.1 at §§ 32.1-137.1 et seq. and 32.1-137.7 et seq. All of the new provisions affect HMOs because, by definition of the term "MCHIP," an HMO is deemed to be offering one or more MCHIPs. The Virginia Department of Health (VDH) is responsible for provisions in Title 32.1 of the Code of Virginia. The State Corporation Commission shall apply the provisions in Title 38.2 of the Code of Virginia.

### STATUTORY PROVISIONS

"Service area" is now defined in the Code of Virginia for all HMOs and other health carriers managing care through the operation of one or more MCHIPs. Section 38.2-5800 defines service area as follows:

"Service area" means a clearly defined geographic area in which a health carrier has directly or indirectly arranged for the provision of health care services to be generally available and readily accessible to covered persons of an MCHIP.

This statutory definition supplants and supercedes the service area definition in 14 VAC 5-210-40. The definition is applicable for any health carrier that defines, describes, offers or delivers health care services, by reference to a geographic area. We believe the definition in § 38.2-5800 is compatible with the "service area" definition in § 38.2-3431 relating to health plans that are offered to employees of small employers.

Section 38.2-5803 requires HMOs and other health carriers operating an MCHIP in Virginia on or after July 1, 1998, to give an MCHIP's covered person a description of the service

area or areas within which the MCHIP shall provide health care services. The service area description is to be provided at the time of enrollment or at the time the contract or evidence of coverage is issued. In addition, a description of the service area or areas is to be made available to covered persons upon request or at least annually. Additionally, HMOs are to disclose service areas or counties on the jurat page of the annual and quarterly statements filed pursuant to § 38.2-4307. The Commission requires that these disclosures describe service area by reference to city and county. The statutory requirements in Chapter 58 impose on HMOs and other health carriers disclosure requirements which have been applied to HMOs since 1987 pursuant to 14 VAC 5-210-100 B 8. On and after July 1, 1998, market conduct examinations may consider whether compliance is evidenced in the records of the health carrier. HMOs and other health carriers are expected to keep the service area descriptions current and available upon request to regulators as well as covered persons.

Senate Bill 712 removed from § 38.2-4301 statutory provisions which required, as conditions of licensure, that HMOs file descriptions of geographic service areas and describe their procedures for assuring the accessibility and adequacy of care. Senate Bill 712 inserted similar language in § 32.1-137.2. The bill also deleted subsection C of § 38.2-4301 concerning notices of modifications of an HMO's operations. Additionally, the legislation added related language in § 38.2-5802 to require HMOs and other health carriers responsible for an MCHIP to make periodic filings describing the MCHIP's health care delivery system.

Subsection A of § 38.2-5802 requires health carriers and HMOs to include with their applications for initial and renewal licensure, material that describes and categorizes the health carrier's transactions and operations in this Commonwealth. Required disclosures should focus on factors that influence the cost or level of health care services between the health carrier and one or more providers with respect to the delivery of health care services through its MCHIPs. These provisions are currently applicable to entities seeking initial licensure as a health carrier under Title 38.2 of the Code of Virginia. All licensed health carriers will be required to include the descriptions and other disclosures prescribed by § 38.2-5802 A in the license renewal applications filed with the Bureau in 1999. Descriptions should reveal, for instance, the following:

- Type or types of organizations through which health care services are delivered; e.g., hospitals, physician groups, IPA, provider panels, etc., and whether each is an affiliate or non-affiliate.
- For each organization: the type of payment arrangements used to compensate providers; e.g., withholds, bonus payments, capitation, fee-for-service discounts, etc.
- The type and extent of out-of-network services, point of service products, indemnity products, and the actual percentages characterizing each.

---

## General Notices/Errata

---

- The actual and projected numbers of covered persons as compared to the size and amount of risk arising from the delivery of health care services.
- When and how premiums are paid for each plan; e.g., monthly or semi-annually; by employers on behalf of eligible employees, by employees, or by individual subscribers; or in accordance with medicaid or medicare provisions.
- A general description of the benefit payment differential incentive used for each type, group or category of providers.
- Whether and to what extent the health carrier does one or more of the following: provides, arranges for, pays for, or reimburses health care services.
- The types of risk management employed by the health carrier for any services delivered on a prepaid or insured basis.
- Incentive arrangements which are in addition to or have an impact on the identified payment arrangements.
- The identity and roles of all intermediaries in the chain of delivery of health care services under an MCHIP between the health carrier and the provider who actually interacts with the covered person.

The foregoing are illustrative examples. They are not definitive guidelines. Each HMO should develop descriptions which clearly explain its operations and which might also distinguish its transactions from those of other health carriers (HMOs and non-HMOs) operating MCHIPs. Description should clearly reveal revisions of information reported in the HMO's most recently filed annual statement concerning operations and organization and related parties.

Subsection D of § 38.2-5802 requires the Commission's prior approval for any changes which would result in operational changes that are materially at variance with the information required by § 38.2-5802 and filed with the Commission. The statute provides that a material change in the MCHIP's health care delivery system shall be deemed to result in such an operational change, and provides also that the Commission may determine that other changes are material. Therefore, a change in the service area may be viewed as a material change in the MCHIP's health care delivery system and subject to the Bureau's prior approval, if the change materially affects the health carrier's financial operations in the manner described in this letter. It should be clarified that the Commission is no longer "approving" service areas and service area expansions. The Commission is, however, requiring prior approval for changes that would result in operational changes that are materially at variance with the information submitted to the Commission pursuant to § 38.2-5802, even if the change happens to be a service area change. The filing instructions set forth in this letter describe such changes.

HMOs are reminded that portions of § 38.2-4301 dealing with geographic areas and service area concerns that were deleted by Senate Bill 712 now appear in § 32.1-137.2 A.

Also, it can be noted that § 38.2-5807 states that access to care shall be assessed by the VDH in accordance with provisions in Article 1.1 (§ 32.1-137.1 et seq.) of Chapter 5 of Title 32.1 concerning quality assurance. Health carriers, including HMOs, with questions concerning these filing requirements should contact the VDH's Center for Quality Health Care Services and Consumer Protection.

The filing instructions that follow and the material transaction checklist attached to this letter provide additional guidance for filings required under § 38.2-5802. The instructions include provisions for complying with the requirement at § 38.2-5802 E that each health carrier give notice to the State Health Commissioner of the filing it makes with the Commission pursuant to § 38.2-5802.

### FILING INSTRUCTIONS

*These filing instructions are applicable for the notices of material transaction required by section 38.2-5802 D of Chapter 58 of Title 38.2 of the Code of Virginia. They are significant for any "operational change," that is, any change in the manner in which a health carrier operates one or more MCHIPs.*

1. As provided by statute, a health carrier shall file a request for approval prior to effecting a change which is materially at variance with information currently on file with the Commission. Health carriers shall be expected to consider the significance of anticipated changes and to seek prior approval of any change which can be reasonably identified as having a material impact at any time in the foreseeable future on an MCHIP's health care delivery system. The health carrier's decision not to seek prior approval must be supported by reasonable and documented consideration of materiality. Failure to file notice of a material change shall be deemed a violation of § 38.2-5802 D subject to penalty pursuant to § 38.2-218.

2. As a general guideline, changes requiring prior approval pursuant to § 38.2-5802 D include any change that increases or decreases, or is likely to increase or decrease, the health carrier's revenues, expenses, or net worth in an amount that exceeds 5% of the health carrier's current net worth. For a health carrier other than a health maintenance organization, net worth shall mean capital and surplus.

When evaluating an anticipated change, the health carrier shall project the impact of the change on total expenses, total revenues and net worth through the end of the current year, and also during each of the next two successive calendar years. If the projected impact on revenue, expenses or net worth in one of the three time periods includes an amount greater than 5% of the health carrier's current net worth, the change shall require prior approval. For purposes of this calculation, "current net worth" shall mean the health carrier's net worth as determined by the most recently filed annual or quarterly financial statement.

A "change" shall include and may result from any single transaction and also any series of transactions occurring within a 12-month period that are sufficiently similar in nature as to be reasonably construed as a single transaction or change. If the aggregate impact of such change on net worth, total revenue or total expenses may be projected to exceed 5% of the health carrier's current net worth, the series shall be deemed a material change subject to timely notice and prior approval.

3. The Commission may identify additional measures of materiality after considering the operating results and financial position of a health carrier.

4. As described in the appended "Material Transaction Checklist," the health carrier shall disclose and explain the proposed change in a statement that describes the change and its projected impact on operations. If requested by the Commission, the health carrier shall disclose also the detailed financial projections used to determine materiality.

5. An initial filing shall be made with the Financial Regulation Division of the Bureau and a duplicate introductory cover letter shall be sent to the Virginia Department of Health's Center for Quality Health Care Services and Consumer Protection (VDH). The cover letter shall contain all the information described in Part A of the appended "Material Transaction Checklist." The health carrier shall give adequate written notice to the VDH of any supplemental filings and amendments filed with the Bureau. Notice will be adequate when the health carrier provides the VDH with a copy of a transmitting cover letter containing the information described in Part A of the appended "Material Transaction Checklist."

6. Duplicate copies shall have original signatures.

7. Material to be filed with the State Health Commissioner or the VDH may be directed to:

Tom Bridenstine, Supervisor  
 Center for Quality Health Care Services & Consumer Protection  
 Virginia Department of Health  
 Suite 216, 3600 West Broad Street  
 Richmond, VA 23230-4920  
 (804) 367-2370

Careful adherence to the procedures set forth in this Administrative Letter will be appreciated. Questions regarding the letter should be addressed in writing to:

Andy Delbridge, Supervisor  
 Company Licensing and Regulatory Compliance Section  
 Financial Regulation Division  
 SCC Bureau of Insurance  
 P. O. Box 1157  
 Richmond, VA 23218

/s/ Alfred W. Gross  
 Commissioner of Insurance

**MATERIAL TRANSACTION CHECKLIST**

Initial notice of an anticipated change shall include the material described in this checklist. Parts A and B shall be filed with the SCC Bureau of Insurance, Financial Regulation Division, Company Licensing and Regulatory Compliance Section., P. O. Box 1157, Richmond, VA 23218. A duplicate of the Part A cover letter should be provided to: The Virginia Department of Health, Center for Quality Health Care Services and Consumer Protection, Suite 216, 3600 W. Broad Street, Richmond, VA 23230-4920.

**PART A: INTRODUCTORY COVER LETTER** with general description of the proposed change. This cover letter should:

- Be addressed to the SCC Bureau of Insurance and directed to the Financial Regulation Division; the Virginia Department of Health's Center for Quality Care Health Services and Consumer Protection should be designated as receiving a copy.
- Identify the controlling statute.
- State the purpose of the filing.
- Briefly describe proposed change. Identify aspects of the delivery system which are subject to change, e.g., service area, provider contracts, numbers or types of providers, provider compensation structure, incentive arrangements. Comment on how the proposed change in the delivery system is projected to have a material impact on the financial condition of the health carrier.
- State the effective date of the proposed change.
- Provide the name and telephone number of a contact person.
- Be signed and dated by an officer or director of the health carrier.

**PART B: STATEMENT OF PROJECTED IMPACT** describing the proposed changes and fully disclosing their significance and materiality. At a minimum, the statement shall:

- Describe the reasons that change was determined to be material.
- Identify the elements of operations subject to change.
- Disclose the projected impact of change, in total, on expenses, revenues, and net worth through the end of the current year and each of the next two successive calendar years.
- Disclose the projected impact of change, if any, on the health carrier's statutory minimum net worth as projected for the current year and the next two successive years.
- Describe provider arrangements and include a schedule of provider contracts and network access agreements to be used to effect the proposed change. Non-

---

## General Notices/Errata

---

standardized contracts and representative copies of any new or revised forms of contracts and agreements not currently on file with the Bureau shall be highlighted and attached to the listing.

- State why the change should be approved as proposed.

The Bureau may determine that additional information is necessary to secure full and accurate knowledge of the affairs and condition of the health carrier. Such additional information may include detailed financial projections and supportive schedules and statements documenting critical assumptions such as changes in enrollment, premium rates, provider reimbursement, utilization rates, risk-sharing arrangements, costs of long-term financing, and inflation.

NOTE: The Bureau will notify VDH of its determination with respect to each filing; and VDH has advised that it will notify the Bureau of any determination made or action taken with respect to any duplicate filing made in whole or in part with the Bureau.

\* \* \* \* \*

<p><u>Editor's Note:</u> The HCFA Program memorandum, Transmittal Number 98-01, dated March 1998, referenced as an attachment to Administrative Letter 1998-15 is not being published. Copies are available for inspection from the State Corporation Commission, Document Control Center, Tyler Building, 1300 East Main Street, 1st Floor, Richmond, VA, from 8:15 a.m. to 5 p.m., Monday through Friday.</p>
---

November 13, 1998

Administrative Letter 1998-15

**TO: ALL INSURERS AUTHORIZED TO ISSUE ACCIDENT & SICKNESS INSURANCE, ALL HEALTH SERVICES PLANS, AND ALL HEALTH MAINTENANCE ORGANIZATIONS**

**RE: COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)**

As you may be aware, President Clinton issued an Executive Memorandum on July 7, 1998, seeking to increase carrier compliance with HIPAA. Commissioner Glenn Pomeroy, as President of the National Association of Insurance Commissioners, pledged that the NAIC would encourage its members to cooperate to the fullest extent possible in reporting to the Health Care Financing Administration (HCFA) "practices that are inconsistent with the letter and spirit of HIPAA."

Virginia has developed a process and procedure for receiving complaints regarding certain insurer practices that may be "inconsistent with the letter and spirit of HIPAA." While we will make no judgments as to the validity of such complaints, it is our intention to forward any such complaints to the Insurance Standards Team at HCFA's Center for Medicaid and State Operations for whatever action that office may deem appropriate.

In order to assist our licensees in understanding the types of practices that may be considered by HCFA to be "inconsistent with the letter and spirit of HIPAA", I am attaching to this Administrative Letter a copy of HCFA's Program Memorandum, Transmittal Number 98-01, dated March 1998. Many of you will have already received copies of this document from other sources, but I am attaching it to this Administrative Letter to emphasize Virginia's commitment to informing our licensed carriers of both the Bureau's expectations and the expectations of the federal government.

Any questions regarding the content of this letter may be addressed to:

Robert L. Wright, III, CLU, CIE  
Principal Insurance Analyst  
Life and Health Division  
Bureau of Insurance  
P.O. Box 1157  
Richmond, VA 23218

/s/ Alfred W. Gross  
Commissioner of Insurance

### DEPARTMENT OF HEALTH

#### 1999 Comprehensive Plan for HIV Care Grant

The Virginia Department of Health's 1999 Comprehensive Plan for HIV Care Grant moneys (approximately \$13,700,000) under Title II of the Ryan White Comprehensive AIDS Resource Emergency Act of 1990 (as amended in 1996) is available for review and comments.

The proposed plan is to:

- Provide continuation of the AIDS Drug Assistance Program to cover antiretrovirals, protease inhibitors and other medications related to the treatment of HIV/AIDS and the prevention of opportunistic infections for eligible individuals with HIV disease.
- Fund and operate HIV Care Consortia within five regional areas of the state that are affected by HIV diseases.

The purpose of this comprehensive plan is to improve the quality and availability of care for individuals with HIV and their families.

The goals of the Ryan White Care Act are to support local planning and service delivery, promote involvement of PLWHIV, and increase access to services for previously underserved groups.

Persons may comment in writing to the Department of Health on the intended plan until Tuesday, February 10, 1999. A public hearing will be held Friday, January 22, 1999, at 10 a.m. in the Main Street Station, 1500 East Main Street, Room 223, Richmond, VA 23219. Speakers will be received until 10:30 a.m. For further information and correspondence please contact Kathryn A. Hafford.

**Contact:** Kathryn A. Hafford, R.N., MS, Department of Health, Division of STD/AIDS, Room 112, P.O. Box 1448, Richmond, VA 23218, telephone (804) 225-4845.

\*\*\*\*\*

## Virginia's Source Water Assessment Program

### SAFE DRINKING WATER ACT

The 1996 Amendments to the Safe Drinking Water Act (SDWA) initiated a new era in cost-effective protection of drinking water quality, state flexibility, and citizen involvement. Source water assessment programs required under the 1996 amendments offer tools and opportunities to build a prevention barrier to drinking water contamination.

### SOURCE WATER ASSESSMENTS

Under the SDWA, states are required to develop comprehensive Source Water Assessment Programs (SWAP) that will:

- identify the areas that supply public water;
- inventory potential contaminants and assess water system susceptibility to contamination;
- inform the public of the results.

### STATE SOURCE WATER ASSESSMENT PROGRAM GUIDANCE

EPA is responsible for the review and approval of SWAPs. The states must submit their SWAP to EPA in February 1999. The EPA State Source Water Assessment and Protection Programs Guidance lays out the information that states need to provide about their program before approval, public participation requirements, and funding available through the 1997 Drinking Water State Revolving Fund.

### SOURCE WATER PROTECTION

Once completed, assessments can be used to focus prevention resources on drinking water protection. Implementation of source water protection programs should be linked to the source water assessments.

### PUBLIC INVOLVEMENT

Virginia's Primacy Agency for the implementation of the SDWA is the Virginia Department of Health (VDH). VDH has been developing its SWAP with the involvement of three separate groups:

- Source Water Protection Team – made up of VDH representatives and members from the Waterworks Advisory Committee described below. Their function is to develop the details of the SWAP with guidance from the other two committees.
- Source Water Assessment Technical and Citizens Committee – established to meet § 1428(b) of the SDWA public participation requirements. Some of this

committee's functions include advice and guidance on the team's recommendations, responding to EPA's specific questions listed in the guidance and final concurrence on the SWAP.

- Waterworks Advisory Committee – an existing committee that offers a wide array of technical and citizen involvement. This committee has general oversight and input and their concurrence on the SWAP will be obtained prior to submittal to EPA.

Public meetings will be held at the following locations to afford you the opportunity to learn more about this program and to offer your comments.

Roanoke - January 11, 1999, 1 p.m. and 7 p.m., SE/RCAP office, 145 Campbell Ave. (Crystal Tower Bldg), Roanoke, VA.

Richmond - January 12, 1999, 2 p.m. and 7 p.m., Virginia War Memorial, 621 S. Belvidere St., Richmond, VA.

For further information please contact G. W. Peaks, P.E., Virginia Department of Health, Room 109, Richmond, VA 23218, Voice: 804/371-2882 or FAX: 804/786-5567.

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

### Forms for Filing Material for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material for publication in *The Virginia Register of Regulations*. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

**Internet:** Forms and other *Virginia Register* resources may be printed or downloaded from the *Virginia Register* web page:  
<http://legis.state.va.us/codecomm/register/regindex.htm>

#### FORMS:

- NOTICE of INTENDED REGULATORY ACTION - RR01
- NOTICE of COMMENT PERIOD - RR02
- PROPOSED (Transmittal Sheet) - RR03
- FINAL (Transmittal Sheet) - RR04
- EMERGENCY (Transmittal Sheet) - RR05
- NOTICE of MEETING - RR06
- AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS - RR08

---

# General Notices/Errata

---

## ERRATA

### DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: 4 VAC 25-150-10 et seq. Virginia Gas and Oil Regulation.

Publication: 15:2 VA.R. 135-174 October 12, 1998.

Corrections to Final Regulation:

Page 140, column 2, 4 VAC 25-150-90 D 4 I, after the symbol for "abandoned coalbed methane gas well" insert "CBM"

Page 162, column 2, 4 VAC 25-150-500, line 1, before "In addition to" insert "A."

Page 163, column 1, 4 VAC 25-150-500 (5), line 1, change "5." to "B." **and** in line 2, change "4 VAC 25-150-100" to "4 VAC 25-150-110"

Page 167, column 1, 4 VAC 25-150-560, line 1, before "In addition to" insert "A."

Page 167, column 2, 4 VAC 25-150-560 (9), line 1, change "9." to "B." **and** in line 2, change "4 VAC 25-150-100" to "4 VAC 25-150-110"

Page 169, column 2, 4 VAC 25-150-610 B, in catchline change "production" to "protection"

Page 172, column 1, 4 VAC 25-150-690, line 2, change "operational" to "operation"

Page 174, column 1, FORMS, Notice of Application for a Permit or Permit Modification, DGO-GO-4, change the revision date from "1/98" to "7/97"

Page 174, column 1, FORMS, Persons Receiving Official Notice of Permit Application or Permit Modification, DGO-GO-5, change the revision date from "7/97" to "1/98"

Page 174, Column 1, FORMS, Technical Data Sheet for Permit Application Under § 45.1-361.29, DGO-GO-9, change the revision date from "5/23/96" to "10/96"

Page 174, column 1, FORMS, Operations Plan - Checklist, DGO-GO-12A, strike form. This form was replaced by DGO-GO-12 which was listed.

---

# CALENDAR OF EVENTS

---

## Symbol Key

† Indicates entries since last publication of the *Virginia Register*

♿ Location accessible to handicapped

☎ Teletype (TTY)/Voice Designation

## NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY☎, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

## EXECUTIVE

### BOARD FOR ACCOUNTANCY

† **January 19, 1999 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Conference Room 5W, Richmond,  
Virginia.♿

The board will conduct routine business. A public comment period will be held at the beginning of the meeting.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8505, FAX (804) 367-2475 or (804) 367-9753/TTY☎

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

**December 10, 1998 - 9 a.m.** -- Open Meeting  
Department of Agriculture and Consumer Services,  
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.♿

A regular meeting to discuss issues related to Virginia agriculture and consumer protection. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Roy E. Seward at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 211, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3538 or FAX (804) 371-7679.

## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Virginia State Apple Board

† **December 8, 1998 - 10 a.m.** -- Open Meeting  
Harrisonburg Laboratory, 116 Reservoir Street,  
Harrisonburg, Virginia.♿

A meeting to review past minutes and tax collections and to discuss a marketing plan for 1998-99. The board will entertain public comments at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Nancy L. Israel at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Nancy L. Israel, Program Director, Virginia State Apple Board, Washington Bldg., 1100 Bank St., Suite 1012, Richmond, VA 23219, telephone (804) 371-6104 or FAX (804) 371-7786.

### Virginia Corn Board

**December 17, 1998 - 9 a.m.** -- Open Meeting  
Wallace Manor, 3821 North Courthouse Road, Providence Force, Virginia.♿

A meeting to discuss checkoff revenues and the financial status resulting from sales of the 1998 corn crop. In addition, reports will be heard from the chairman of the Virginia Corn Board and representatives of the U.S. Feed Grains Council, the National Corn Growers Association, and other committee representatives. The nomination and election of 1999 officers will take place at this meeting. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Philip T.

---

# Calendar of Events

---

Hickman at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Philip T. Hickman, Program Director, Virginia Corn Board, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

## Virginia Irish Potato Board

**December 15, 1998 - 7 p.m.** -- Open Meeting  
Eastern Shore Agricultural Research and Extension Center, Painter, Virginia. ☎

A meeting to discuss programs (including promotion, research and education programs), the annual budget and other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any special accommodations in order to participate at the meeting should contact J. William Mapp at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** J. William Mapp, Program Director, Virginia Irish Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867 or FAX (757) 787-5973.

## Virginia Soybean Board

**December 7, 1998 - 10 a.m.** -- Open Meeting  
The Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia. ☎

A meeting to discuss checkoff revenues and the financial status resulting from the sales of the 1998 Virginia soybean crop, dry growing conditions coupled with low prices, as well as reports from the Chairman of the United Soybean Board representatives, the Southeast Planning Committee and other committees. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Phil Hickman at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Philip T. Hickman, Program Director, Virginia Soybean Board, Washington Bldg., 1100 Bank St., Suite 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

## STATE AIR POLLUTION CONTROL BOARD

**January 7, 1999 - 10 a.m.** -- Open Meeting  
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

A regular meeting of the board.

**Contact:** Cindy M. Berndt, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378.

\* \* \* \* \*

† **January 20, 1999 - 9 a.m.** – Public Hearing  
Department of Environmental Quality, 629 East Main Street, Training Room, First Floor, Richmond, Virginia.

**February 5, 1999** – Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **Regulations for the Control and Abatement of Air Pollution (G-97): 9 VAC 5-40-10 et seq. Existing Stationary Sources; 9 VAC 5-50-10 et seq., New and Modified Stationary Sources; and 9 VAC 5-60-10 et seq., Hazardous Air Pollutant Sources.** The regulation amendments concern provisions covering hazardous pollutants and are summarized below:

With certain exemptions, stationary sources which emit hazardous pollutants and which fall into specified applicability limits shall comply with the specified standard and shall employ a control strategy to achieve that standard. Unlike most other regulations, these contain no definitive emission limits in the emission standards themselves. These regulations do, however, provide significant ambient air concentration guidelines as a mechanism for the board to require the owner, on a case-by-case basis, to reduce emissions after analysis and review by the agency. Subject sources shall also observe the provisions governing the submittal of information, the determination of ambient air concentrations, the compliance options and schedules, and the public participation procedures.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Office of Program Development (eighth floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices



(listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office  
Department of Environmental Quality  
355 Deadmore Street  
Abingdon, Virginia  
Ph: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
3019 Peters Creek Road  
Roanoke, Virginia  
Ph: (540) 562-6700

Lynchburg Satellite Office  
Department of Environmental Quality  
7705 Timberlake Road  
Lynchburg, Virginia  
Ph: (804) 582-5120

Valley Regional Office  
Department of Environmental Quality  
4411 Early Road  
Harrisonburg, Virginia 22801  
Ph: (540) 574-7800

Fredericksburg Satellite Office  
Department of Environmental Quality  
300 Central Road, Suite B  
Fredericksburg, Virginia  
Ph: (540) 899-4600

Northern Regional Office  
Department of Environmental Quality  
13901 Crown Court  
Woodbridge, Virginia  
Ph: (703) 583-3800

Piedmont Regional Office  
Department of Environmental Quality  
4949-A Cox Road  
Glen Allen, Virginia  
Ph: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
5636 Southern Boulevard  
Virginia Beach, Virginia  
Ph: (757) 518-2000

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., February 5, 1999, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Kathleen R. Sands, Policy Analyst, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413 or FAX (804) 698-4510.

\*\*\*\*\*

† **January 20, 1999 - 9 a.m.** – Public Hearing  
Department of Environmental Quality, 629 East Main Street,  
Training Room, First Floor, Richmond, Virginia.

**February 5, 1999** – Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **Regulations for the Control and Abatement of Air Pollution (J-97): 9 VAC 5-80-10 et seq., Permits for Stationary Sources.** The regulation concerns new source review for sources of hazardous air pollutants (HAPs). The regulation applies to the construction or reconstruction of a major source of HAPs. Electric utility steam generating units and research and development activities are specifically exempt.

The regulation encompasses permitting for all potential major sources of HAPs in addition to those affected by § 112(g) of the federal Clean Air Act. Thus, a major source for this rule may be a § 112(g) source, a § 112(i) source, or a 40 CFR Part 61 source.

The regulation addresses the following subjects: applicability; general requirements; permit application requirements; application information required; action on permit applications; public participation; standards and conditions for granting permits; application review and analysis; compliance determination and verification by performance testing; permit invalidation, rescission, revocation and enforcement; existence of permit no defense; compliance with local zoning requirements; transfer of and changes to permits; administrative and minor permit amendments; significant amendment procedures; reopening for cause; requirements for constructed or reconstructed major sources subject to a subsequently promulgated MACT standard or MACT requirements

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Office of Program Development (eighth floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices

---

# Calendar of Events

---

(listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office  
Department of Environmental Quality  
355 Deadmore Street  
Abingdon, Virginia  
Ph: (540) 676-4800

West Central Regional Office  
Department of Environmental Quality  
3019 Peters Creek Road  
Roanoke, Virginia  
Ph: (540) 562-6700

Lynchburg Satellite Office  
Department of Environmental Quality  
7705 Timberlake Road  
Lynchburg, Virginia  
Ph: (804) 582-5120

Valley Regional Office  
Department of Environmental Quality  
4411 Early Road  
Harrisonburg, Virginia 22801  
Ph: (540) 574-7800

Fredericksburg Satellite Office  
Department of Environmental Quality  
300 Central Road, Suite B  
Fredericksburg, Virginia  
Ph: (540) 899-4600

Northern Regional Office  
Department of Environmental Quality  
13901 Crown Court  
Woodbridge, Virginia  
Ph: (703) 583-3800

Piedmont Regional Office  
Department of Environmental Quality  
4949-A Cox Road  
Glen Allen, Virginia  
Ph: (804) 527-5020

Tidewater Regional Office  
Department of Environmental Quality  
5636 Southern Boulevard  
Virginia Beach, Virginia  
Ph: (757) 518-2000

Statutory Authority: § 10.1-1308 of the Code of Virginia.


Public comments may be submitted until 4:30 p.m., February 5, 1999, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Kathleen R. Sands, Policy Analyst, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413 or FAX (804) 698-4510.

## ALCOHOLIC BEVERAGE CONTROL BOARD

**December 14, 1998 - 9:30 a.m.** -- Open Meeting

**December 28, 1998 - 9:30 a.m.** -- Open Meeting


Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. 

A meeting to receive and discuss reports and activities of staff members.


**Contact:** W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409 or FAX (804) 213-4442.

## BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS


**December 10, 1998 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)


A meeting of the Interior Design Section to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY 


**December 10, 1998 - 1 p.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

A meeting of the Regulatory Review Task Force Committee to conduct board business. A public comment period will be held at the beginning of the workshop. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY 

**December 17, 1998 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

A meeting to conduct board business.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

## BOARD FOR ASBESTOS AND LEAD

† **February 23, 1999 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. ♿

A meeting to conduct routine business. Public comment will be received at the beginning of the meeting.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2176, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

## BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† **December 16, 1998 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

A general business meeting. Public comment will be heard for 15 minutes prior to the beginning of the meeting. An informal hearing will be held beginning at 1 p.m. No public comments will be heard during this time.

**Contact:** Senita Booker, Senior Program Support Technician, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7390, FAX (804) 662-9523 or (804) 662-7197/TTY ☎

## VIRGINIA AVIATION BOARD

**December 8, 1998 - 6 p.m.** -- Open Meeting  
Richmond International Airport, 1 Richard E. Byrd Terminal Drive, Richmond International Airport, Virginia. ♿ (Interpreter for the deaf provided upon request)

A joint meeting with the Capital Region Airport Commission to discuss mutual issues. No formal actions will be taken. Individuals with disabilities should contact Margaret Fuller at least 10 days prior to the meeting if assistance is needed.

**Contact:** Margaret Fuller, Department of Aviation, 5702 Gulfstream Road, Richmond International Airport, VA 23250-2422, telephone (804) 236-3632 or (804) 236-3624/TTY ☎

**December 9, 1998 - 9 a.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular bimonthly meeting of the board. Applications for state funding will be presented to the board and other matters of the Virginia aviation community will be discussed. Individuals with disabilities should contact Margaret Fuller at least 10 days prior to the meeting if assistance is needed.

**Contact:** Margaret Fuller, Department of Aviation, 5702 Gulfstream Road, Richmond International Airport, VA 23250-2422, telephone (804) 236-3632 or (804) 236-3624/TTY ☎

## BOARD FOR BARBERS

**December 14, 1998 - 1 p.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room 4 West, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss entry requirements.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TTY ☎

† **January 11, 1999 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room 4 West, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TTY ☎

## BOARD FOR BRANCH PILOTS

**December 7, 1998 - 8 a.m.** -- Open Meeting  
**December 8, 1998 - 8 a.m.** -- Open Meeting  
Virginia Pilot Association, 3329 Shore Drive, Virginia Beach, Virginia. ♿ (Interpreter for the deaf provided upon request)


A meeting to conduct examinations and renewals. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎


---

# Calendar of Events


---

**December 15, 1998 - 9:30 a.m.** -- Open Meeting  
Virginia Port Authority, 600 World Trade Center, Norfolk,  
Virginia.  (Interpreter for the deaf provided upon request)


A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY 


## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **December 14, 1998 - 10 a.m.** -- Open Meeting  
Department of Social Services Building, Conference Room 3,  
Lower Level, 730 East Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs and review of the FY 2000 Competitive Grants Program Request for Proposals. Public comment will be taken during the meeting. A tentative agenda is available from the Chesapeake Bay Local Assistance Department.

**Contact:** Carolyn J. Elliott, Executive Secretary, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TTY 


## CHILD DAY-CARE COUNCIL

**December 10, 1998 - 9:30 a.m.** -- Open Meeting  
Department of Social Services, Theater Row Building, 730 East Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss issues and concerns that impact child day centers, camps, school age programs, and preschool/nursery schools. Public comment will be received at noon. Please call ahead of time for possible change in meeting time.

**Contact:** Rhonda Harrell, Division of Licensing Programs, Department of Social Services, Theatre Row Bldg., 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1775 or FAX (804) 692-2370.


## STATE CHILD FATALITY REVIEW TEAM

**December 9, 1998 - 10 a.m.** -- Open Meeting  
400 East Jackson Street, Richmond, Virginia. 


A meeting to discuss confidential cases materials. The first half hour will include announcements, acceptance of minutes and other administrative issues that team members bring up.

**Contact:** Suzanne J. Keller, Coordinator, State Child Fatality Review Team, 400 East Jackson St., Richmond, VA 23219, telephone (804) 786-1047, FAX (804) 371-8595 or toll-free 1-800-447-1708.


## COMPENSATION BOARD

**December 23, 1998 - 11 a.m.** -- Open Meeting  
202 North 9th Street, Ninth Street Office Building, 10th Floor,  
Richmond, VA.  (Interpreter for the deaf provided upon request)

Monthly board meeting.

**Contact:** Cindy P. Waddell, Administrative Assistant, Compensation Board, 202 N. 9th St., Ninth Street Office Bldg., Richmond, VA 23219, telephone (804) 786-0786, FAX (804) 371-0235 or (804) 786-0786/TTY 


## COMMONWEALTH COMPETITION COUNCIL

**December 11, 1998 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A regular meeting to make recommendations on the ESOP pre-feasibility analysis and report.

**Contact:** Peggy R. Robertson, Executive Assistant, Commonwealth Competition Council, James Madison Bldg., 109 Governor St., P.O. Box 1475, Richmond, VA 23218-1475, telephone (804) 786-0240 or FAX (804) 786-1594.

## BOARD OF CONSERVATION AND RECREATION

**December 7, 1998 - 10 a.m.** -- Open Meeting  
State Capitol, Capitol Square, House Room 1, Richmond,  
Virginia. 

A regular business meeting.

**Contact:** Leon E. App, Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141 or (804) 786-2121/TTY 

## DEPARTMENT OF CONSERVATION AND RECREATION

**December 10, 1998 - 7 p.m.** -- Open Meeting  
Austinville Elementary School, 459 Store Hill Road, Austinville, Virginia. (Interpreter for the deaf provided upon request)

The update master development plan for the New River Trail State Park will be presented to the public. State park staff will solicit the public's comments on the plan and its recommendations for proposed future developments. Maps and schematics of the park and its development nodes will be presented.

**Contact:** Robert S. Munson, Planner, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140 or (804) 786-2121/TTY

## Chippokes Plantation Farm Foundation

**† December 8, 1998 - 9:30 a.m.** -- Open Meeting  
Chippokes Plantation State Park, Mansion, 695 Chippokes Park Road, Surry, Virginia.

A meeting to review comments on the draft plan from the previous meeting and to receive an update on the Chippokes Farm Foundation study.

**Contact:** Richard G. Gibbons, Environmental Program Planner, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899 or (804) 786-2121/TTY

## BOARD OF CORRECTIONAL EDUCATION

**† December 18, 1998 - 10 a.m.** -- Open Meeting  
Department of Correctional Education, James Monroe Building, 101 North 14th Street, 7th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting to discuss general business.

**Contact:** Patty Ennis, Board Clerk, Department of Correctional Education, James Monroe Bldg., 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-3314.

## BOARD OF CORRECTIONS

**† December 15, 1998 - 9:30 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.

A meeting of the Correctional Services Committee to discuss correctional services matters which may be presented to the board.

**Contact:** Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

**† December 16, 1998 - 8:30 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.

A meeting of the Administration Committee to discuss administrative matters which may be presented to the full board.

**Contact:** Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

**† December 16, 1998 - 10 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.

A meeting of the full board to discuss matters which may be presented.

**Contact:** Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

**† December 17, 1998 - 9:30 a.m.** -- Open Meeting  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.

A meeting of the Liaison Committee to discuss matters which may be presented.

**Contact:** Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

## BOARD FOR COSMETOLOGY

**December 7, 1998 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action, including disciplinary cases.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TTY

## LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF ALEXANDRIA

**December 9, 1998 - 4 p.m.** -- Open Meeting  
Potomac Electric Power Company, 1400 North Royal Street, Alexandria, Virginia. (Interpreter for the deaf provided upon request)

---

## Calendar of Events

---

A meeting to conduct business in accordance with SARA Title III, Emergency Planning and Community Right-to-Know Act of 1986.

**Contact:** Charles W. McRorie, Emergency Preparedness Coordinator, P.O. Box 178, Alexandria, VA 22313, telephone (703) 838-3825 or (703) 838-5056/TTY ☎

### LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

**January 7, 1999 - 5:30 p.m.** -- Open Meeting  
6610 Public Safety Way, Chesterfield, Virginia.

A regular meeting.

**Contact:** Lynda G. Furr, Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

### LOCAL EMERGENCY PLANNING COMMITTEE - GOOCHLAND COUNTY

**December 8, 1998 - 7:30 p.m.** -- Open Meeting  
Goochland Fire Station #5, 2710 Fairground Road, Goochland, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting.

**Contact:** Stephen E. Grainer, Emergency Coordinator, P.O. Box 306, Goochland, VA 23063, telephone (804) 556-5304 or (804) 556-5317/TTY ☎

### DEPARTMENT OF ENVIRONMENTAL QUALITY

† **December 7, 1998 - 7 p.m.** – Public Hearing  
Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia.

A public hearing on an air permit application from the Norfolk Naval Base to construct and operate a spray paint booth in Norfolk.

**Contact:** Eric C. Horner, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 518-2004.

† **December 15, 1998 - 7 p.m.** – Public Hearing  
Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia.

A public hearing to receive comments on an air permit application for CIBA Specialty Chemicals Water Treatments, Inc. to construct and operate a chemical manufacturing plant in Suffolk, Virginia.

**Contact:** Barry W. Halcrow, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 518-2004.

† **January 5, 1999 - 10 a.m.** – Open Meeting  
Department of Environmental Quality, 629 East Main Street, 5th Floor, Conference Room, Richmond, Virginia. ♿

The department is establishing an ad hoc advisory group to assist DEQ staff in considering whether to propose amendments to the water quality standards to address four Environmental Protection Agency (EPA) issues of concern which were unresolved during the 1997 triennial review of the regulation: application of EPA dissolved conversion factors to numerical criteria for metals, provision of specific protection to endangered and threatened species in mixing zones, updates to the listing of endangered species, and application of the antidegradation policy to all state activities (including nonpoint source activities). Other meetings of the advisory group have been scheduled at the same location and meeting time on January 11, January 20, February 3, and February 9 and 10, 1999; however, these dates are not firm and are subject to change if weather conditions prevent travel on these dates. Persons interested in attending the meetings of this committee should confirm the dates with Jean W. Gregory.

**Contact:** Jean W. Gregory, Environmental Program Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4113, FAX (804) 698-4522 or toll-free 1-800-592-5482.

### STATE EXECUTIVE COUNCIL

† **December 18, 1998 - 9 a.m.** -- Open Meeting  
Theater Row Building, 730 East Broad Street, Training Room 2, Richmond, Virginia.

The monthly meeting of the council to provide for interagency programmatic and fiscal policies, oversee the administration of funds appropriated under the Comprehensive Services Act, review and take actions on issues brought by the State Management Team, and advise the Governor.

**Contact:** Alan G. Saunders, Director, Comprehensive Services for At-Risk Youth and Families, 730 E. Broad St., Richmond, VA 23219, telephone (804) 786-5394.

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **January 7, 1999 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

A general board meeting. Public comment will be received during the first 15 minutes of the meeting.


**Contact:** Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9523 or (804) 662-7197/TTY ☎

## DEPARTMENT OF GENERAL SERVICES


### Design-Build/Construction Management Review Board

**December 21, 1998 - 11 a.m.** -- Open Meeting

**January 18, 1999 - 11 a.m.** -- Open Meeting


The Library of Virginia, 800 East Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the board to review requests submitted by localities for the use of the design-build or construction management type of contract. Public comments will be taken. The chairman may cancel the meeting if there is no business for the board's consideration. Please contact Sandra H. Williams at the Division of Engineering and Buildings to confirm meeting date and time.

**Contact:** Sandra H. Williams, Administrative Assistant, Department of General Services, Division of Engineering and Buildings, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934 or (804) 786-6152/TTY 

## DEPARTMENT OF HEALTH

† **January 22, 1999 - 10 a.m.** -- Public Hearing


Department of Health, 1500 East Main Street, Main Street Station, Room 223, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A public hearing to review and receive comments on the Department of Health's 1999 Comprehensive Plan for HIV Care Grant moneys under Title II of the Ryan White Comprehensive AIDS Resource Emergency Act of 1990 (as amended in 1996). See the General Notices section of this issue of the Register for details.


**Contact:** Kathryn A. Hafford, R.N., MS, Assistant Director, Health Care Services, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23219, telephone (804) 225-4845, FAX (804) 225-3517 or toll-free 1-800-533-4148.

## DEPARTMENT OF HEALTH PROFESSIONS

**December 11, 1998 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Health Practitioners' Intervention Program Committee to meet with the committee's contractor and representatives to review reports, policies and procedures for the Health Practitioner's Intervention Program. The committee will meet in open session for general discussion of the program. The committee may meet in executive session to consider specific requests from applicants or participants in the program.

**Contact:** John W. Hasty, Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9424, FAX (804) 662-9114 or (804) 662-7197/TTY 

\* \* \* \* \*

**January 6, 1999 - 10 a.m.** -- Public Hearing

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

**January 22, 1999** -- Public comments may be submitted until this date.


Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health Professions intends to consider amending regulations entitled: **18 VAC 75-20-10 et seq. Regulations Governing Practitioner Self-Referral.** The purpose of the proposed amendments is to simplify the process for administration of the Practitioner Self-Referral Act (§ 54.1-2410 et seq. of the Code of Virginia) and to eliminate a standing committee of the board to consider applications for advisory opinions or exceptions to the Act.

Statutory Authority: § 54.1-2412 of the Code of Virginia.


**Contact:** Robert A. Nebiker, Executive Director, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or FAX (804) 662-9943.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **December 15, 1998 - 11 a.m.** -- Open Meeting

Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. 

A regular meeting of the Board of Commissioners to review and, if appropriate, approve the minutes from the prior monthly meeting; consider for approval and ratification mortgage loan commitments under its various programs; consider for approval amendments to the authority's rules and regulations for allocation of low-income housing tax credits; review the authority's operations for the prior month; and consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.


**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll-free-1-800-968-7837 or (804) 783-6705/TTY 

---


# Calendar of Events

---


## COUNCIL ON INFORMATION MANAGEMENT

**December 18, 1998 - 1:30 p.m.** -- Open Meeting  
Virginia Economic Development Partnership, 901 East Byrd Street, Richmond, Virginia. 

A regular meeting of Virginia Geographic Information Network Advisory Board.

**Contact:** William Shinar, Virginia Geographic Information Network Coordinator, Washington Bldg., 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622, FAX (804) 371-7952 or toll-free 1-800-828-1120/TTY 


## VIRGINIA INNOVATIVE TECHNOLOGY AUTHORITY

**December 8, 1998 - 10 a.m.** -- Open Meeting  
Center for Innovative Technology, 2214 Rock Hill Road, Suite 600, Herndon, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting of the Executive Committee of the Virginia Commercial Space Flight Authority to discuss business of the authority as determined by the chairman and executive director of the authority.

**Contact:** Robert G. Templin, Jr., Virginia Innovative Technology Authority, 2214 Rock Hill Rd., Suite 600, Herndon, VA 20170, telephone (703) 689-3010 or FAX (703) 689-3001.

## VIRGINIA INTERAGENCY COORDINATING COUNCIL


**December 9, 1998 - 9 a.m.** -- Open Meeting  
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The council meets quarterly to advise and assist the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services as lead agency for Part C (of IDEA), early intervention for infants and toddlers with disabilities and their families. Discussion will focus on issues related to Virginia's implementation of the Part C program.

**Contact:** Nicole Rada, Part C Office Services Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, 10th Floor, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3710 or FAX (804) 371-7959.

## DEPARTMENT OF LABOR AND INDUSTRY


### Virginia Apprenticeship Council

**December 10, 1998 - 9:30 a.m.** -- Open Meeting  
Confederate Hills Recreation Center, 302 Lee Avenue, Highland Springs, Virginia.  (Interpreter for the deaf provided upon request)


A regular quarterly meeting of the council to discuss the subcommittee's report on bylaws and goals and objectives of the council and to discuss the 60th Celebration Committee's report.

**Contact:** Beverly Donati, Assistant Program Director, Department of Labor and Industry, Powers-Taylor Bldg, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418 or (804) 786-2376/TTY 


## MARINE RESOURCES COMMISSION

**December 21, 1998 - 9:30 a.m.** -- Open Meeting  
Marine Resources Commission, 2600 Washington Avenue, Room 403, Newport News, Virginia.  (Interpreter for the deaf provided upon request)

The commission will hear and decide the following marine environmental matters at 9:30 a.m.: permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; and policy and regulatory issues. The commission will hear and decide the following fishery management items at approximately noon: regulatory proposals and fishery management plans; fishery conservation issues; licensing; and shellfish leasing. Amendments to 4 VAC 20-720-10 et seq., Pertaining to Restrictions on Oyster Harvest, will be considered. Meetings are open to the public. Testimony will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be taken on resource matters, regulatory issues and items scheduled for public hearing.

**Contact:** LaVerne Lewis, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (757) 247-2261, toll-free 1-800-541-4646 or (757) 247-2292/TTY 

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**December 7, 1998 - 1 p.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Suite 1300, Richmond, Virginia. 

A regular meeting of the Pharmacy Liaison Committee.

**Contact:** Marianne Rollings, R.Ph., Pharmacy Services, Client Services, Department of Medical Assistance Services,



600 E. Broad St., Suite 1300, Richmond, VA 23219,  
telephone (804) 225-4268.

## BOARD OF MEDICINE

### Informal Conference Committee

**December 10, 1998 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Richmond, Virginia.

**December 11, 1998 - 9:30 a.m.** -- Open Meeting  
Williamsburg Hospitality House, 415 Richmond Road,  
Williamsburg, Virginia.

**December 16, 1998 - 9 a.m.** -- Open Meeting  
Sheraton Inn, 2801 Plank Road, Fredericksburg, Virginia.

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. On December 10, a panel of the board will convene, pursuant to § 54.1-2400 of the Code of Virginia, to inquire into allegations that a practitioner may have violated laws governing the practice of medicine. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

**Contact:** Karen W. Perrine, Deputy Executive Director, Board of Medicine, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9517 or (804) 662-7197/TTY ☎

## STATE MILK COMMISSION

**December 11, 1998 - 11 a.m.** -- Open Meeting  
Department of Forestry, 900 Natural Resources Drive,  
Training Room, 1st Floor, Charlottesville, Virginia. ♿

A regular meeting to discuss industry issues, distributor licensing, Virginia base transfers, Virginia baseholding license amendments, regulations, and fiscal matters and to review reports from the staff of the Milk Commission. The commission may consider other matters pertaining to its responsibilities. Any persons who require accommodations in order to participate in the meeting should contact Edward C. Wilson, Jr., at least five days prior to the meeting date so that suitable arrangements can be made.

**Contact:** Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 200 N. 9th St., Suite 915, Richmond, VA 23219-3414, telephone (804) 786-2013 or (804) 786-2013/TTY ☎

## BOARD OF NURSING

† **December 8, 1998 - 9 a.m.** – Open Meeting  
† **December 10, 1998 - 9 a.m.** – Open Meeting  
† **December 14, 1998 - 9 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf  
provided upon request)

A Special Conference Committee will conduct informal conferences with licensees and certificate holders. Public comments will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9512 or (804) 662-7197/TTY ☎

† **December 15, 1998 - 10 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf  
provided upon request)

The Nursing Education Advisory Committee, comprised of designated representatives from different nursing education organizations, will discuss educational issues of mutual interest. Public comments will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9512 or (804) 662-7197/TTY ☎

## OLD DOMINION UNIVERSITY

**December 10, 1998 - 3 p.m.** -- Open Meeting  
Old Dominion University, Webb University Center, Norfolk,  
Virginia. ♿ (Interpreter for the deaf provided upon request)

Quarterly meeting of the Board of Visitors to discuss business of the University as brought forth as a result of meetings of its Academic Affairs, Administration and Finance, Institutional Advancement, and Student Affairs Committees, and as determined by the Rector and President of the University.

**Contact:** Donna W. Meeks, Secretary to the Board of Visitors, 225 New Administration Building, Norfolk, VA 23529, telephone (757) 683-3072 or FAX (757) 683-5679.

## VIRGINIA OUTDOORS FOUNDATION

**December 9, 1998 - 10 a.m.** -- Open Meeting  
Wytheville Community College, Smyth Hall, Continuing  
Education Conference Room, Wytheville, Virginia. ♿  
(Interpreter for the deaf provided upon request)

A meeting of the Open-Space Lands Preservation Trust Fund Advisory Board (Region 4) to conduct the general business of the board, review applications received for funding under the Open-Space Lands Preservation Trust

---

# Calendar of Events

---

Fund, and make recommendations on funding. Public comment will be received after the conclusion of the regular business meeting.

**Contact:** Tamara Vance, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Suite 317, Richmond, VA 23219, telephone (540) 951-2822 or FAX (540) 951-2695.


**December 10, 1998 - 10 a.m.** -- Open Meeting

**December 11, 1998 - 10 a.m.** -- Open Meeting  
State Capitol, Capitol Square, Richmond, Virginia.

A regularly scheduled meeting of the Board of Trustees to discuss foundation business and accept conservation easements. Public input will be accepted after the regular business meeting.


**Contact:** Tamara Vance, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Suite 317, Richmond, VA 23219, telephone (804) 225-2147 or FAX (804) 371-4810.

## BOARD OF PHARMACY

**December 8, 1998 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

A general business meeting to (i) consider disciplinary matters and conduct disciplinary proceedings; (ii) review and respond to public comments received on proposed regulation 18 VAC 110-20-10 et seq., published on August 3, 1998, and adopt final regulations; and (iii) receive a report from the Regulation Committee and respond to petitions for rulemaking and recommendations of that committee. Public comments will be received at the beginning of the meeting immediately following the approval of the agenda and the review and acceptance of the minutes.


**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911 or FAX (804) 662-9313.

**December 15, 1998 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. 


A Special Conference Committee will hear informal conferences. Public comments will not be received.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911 or FAX (804) 662-9313.


## POLYGRAPH EXAMINERS ADVISORY BOARD

**December 15, 1998 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room 4-West, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other board action and to administer the Polygraph Examiner Licensing Examination to eligible polygraph examiner interns.

**Contact:** Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TTY 

## BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

**December 8, 1998 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, Conference Room 4, Richmond, Virginia. 

Informal administrative hearings will be held pursuant to § 9-6.14:11 of the Code of Virginia. No public comment will be received.

**Contact:** Evelyn Brown, Executive Director, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9967 or FAX (804) 662-9343.

## VIRGINIA RACING COMMISSION

**December 11, 1998** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to amend regulations entitled: **11 VAC 10-60-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Participants.** The proposed regulation reflects more closely the intent of the statute regarding the consideration of applications for participation in horse racing, thereby eliminating the provisional permit. Furthermore, the regulation takes into account changes in the standard operating procedures found at most racetracks in the mid-Atlantic region since the current regulation was promulgated seven years ago.

Statutory Authority: § 59.1-369 of the Code of Virginia.


**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Road, New Kent,

VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.


## REAL ESTATE BOARD

**December 9, 1998 - 4 p.m.** -- Open Meeting


**December 10, 1998 - 8 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A general business meeting of the Education Committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TTY 


**December 10, 1998 - 8 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A general business meeting of the Fair Housing Committee and the Education Committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TTY 


**December 10, 1998 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A general business meeting of the board. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TTY 

**December 14, 1998 - 9 a.m.** -- Open Meeting

Department of Alcoholic Beverage Control, Chesapeake Regional Office, 1103 South Military Highway, Chesapeake, Virginia.  (Interpreter for the deaf provided upon request)


A meeting to conduct informal fact-finding conferences pursuant to § 9-6.14:11 of the Administrative Process

Act. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.


**Contact:** Debbie A. Amaker, Legal Assistant, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8582, FAX (804) 367-2179, or (804) 367-9753/TTY 

## VIRGINIA RECYCLING MARKETS DEVELOPMENT COUNCIL

**December 8, 1998 - 10 a.m.** -- Open Meeting

Central Virginia Waste Management Authority, 2104 West Laburnum Avenue, Board Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting. Meetings are dependent on a quorum of 10. Subcommittee meetings may be held prior to or after the general council meeting.

**Contact:** Michael P. Murphy, Director, Environmental Enhancement, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4003, FAX (804) 698-4319, (804) 698-4021/TTY , toll free 1-800-592-5482 or e-mail [mpmurphy@deq.state.va.us](mailto:mpmurphy@deq.state.va.us).

## VIRGINIA RESOURCES AUTHORITY

**December 8, 1998 - 9:30 a.m.** -- Open Meeting


Virginia Resources Authority, Mutual Building, 909 East Main Street, Suite 700, Richmond, Virginia.

A meeting to approve minutes of the prior meeting, to review the authority's operations for the prior month, and to consider other matters and take other actions as the authority may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

**Contact:** Robert W. Lauterberg, Executive Director, Virginia Resources Authority, P.O. Box 1300, Richmond, VA 23218, telephone (804) 644-3100 or FAX (804) 644-3109.

## RICHMOND HOSPITAL AUTHORITY

**December 18, 1998 - 11 a.m.** -- Open Meeting

Richmond Nursing Home, 1900 Cool Lane, 2nd Floor Classroom, Richmond, Virginia. 

A monthly meeting of the Board of Commissioners to discuss nursing home operations and related matters.

**Contact:** Marilyn H. West, Chairman, Richmond Hospital Authority, P.O. Box 548, 700 E. Main St., Suite 904, Richmond, VA 23219-0548, telephone (804) 782-1938.

---

# Calendar of Events

---


## SMALL BUSINESS ENVIRONMENTAL COMPLIANCE ADVISORY BOARD

† **December 8, 1998 - 9 a.m.** -- Open Meeting  
Department of Information Technology, 110 South 7th Street, 3rd Floor, Executive Conference Room, Richmond, Virginia.

A quarterly meeting.

**Contact:** Richard Rasmussen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4394.


## VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **December 8, 1998 - 10 a.m.** -- Open Meeting  
Department of Business Assistance, 707 East Main Street, 3rd Floor, Main Board Room, Richmond, Virginia. 

A meeting of the Loan Committee to review applications for loans submitted to the authority for approval. Contact the authority for confirmation of meeting time.

**Contact:** Cathleen M. Surface, Executive Director, Virginia Small Business Financing Authority, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8254 or FAX (804) 225-3384.


## VIRGINIA SOIL AND WATER CONSERVATION BOARD

**December 7, 1998 - 3 p.m.** -- Open Meeting  
Roanoke Airport Marriott Hotel, 9300 Hershberger Road, N.W., Roanoke, Virginia. 

A regular board meeting and joint board meeting with the Virginia Association of Soil and Water Conservation Districts' Board of Directors. Election of officers will take place.


**Contact:** Leon App, Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141 or (804) 786-2121/TTY 

## COMMONWEALTH TRANSPORTATION BOARD

**December 16, 1998 - 2 p.m.** -- Open Meeting  
Department of Transportation, 1401 East Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.


**Contact:** Shirley J. Ybarra, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675.

**December 17, 1998 - 10 a.m.** -- Open Meeting  
Department of Transportation, 1401 East Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact Department of Transportation Public Affairs at (804) 786-2715 for schedule.

**Contact:** Shirley J. Ybarra, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675.


## TREASURY BOARD

**January 21, 1999 - 9 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. 

A regular business meeting.

**Contact:** Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.


## BOARD FOR THE VISUALLY HANDICAPPED

**January 19, 1999 - 1 p.m.** -- Open Meeting  
Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting to receive information regarding department activities and operations, review expenditures from the board's institutional fund, and discuss other issues raised by board members.

**Contact:** Katherine C. Proffitt, Executive Secretary Senior, Board for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, FAX (804) 371-3351, toll-free 1-800-622-2155, or (804) 371-3140/TTY 

## VIRGINIA WAR MEMORIAL FOUNDATION

**January 12, 1999 - Noon** -- Open Meeting  
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting of the Board of Trustees.

**Contact:** Sandra H. Williams, Administrative Assistant, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934 or (804) 786-6152/TTY ☎

## VIRGINIA WASTE MANAGEMENT BOARD

**December 10, 1998 - 9:30 a.m.** -- Open Meeting  
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

A regular meeting.

**Contact:** Cindy M. Berndt, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378.

**December 10, 1998 - 1 p.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Technical Advisory Committee to discuss the development of the proposed Regulation for Transportation of Solid and Medical Wastes on State Waters, 9 VAC 20-170-10 et seq. Persons wishing to receive notification of future meetings of the Technical Advisory Committee should contact Lily Choi.

**Contact:** Lily Choi, Environmental Engineer Senior, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4054 or FAX (804) 698-4032.

## BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† **January 8, 1999 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. ♿

The board will conduct routine business. A public comment period will be held at the beginning of the meeting.

**Contact:** David E. Dick, Assistant Director, Board for Waste Management Facility Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

## STATE WATER CONTROL BOARD

† **December 15, 1998 - 7 p.m.** -- Open Meeting  
Mount Clinton Elementary School, Mount Clinton, Virginia.

A meeting on the fecal coliform total maximum daily load for Muddy Creek.

**Contact:** Charles Martin, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4462.

\* \* \* \* \*

**January 8, 1999 - 10 a.m.** -- Public Hearing  
Department of Environmental Quality, Piedmont Regional Office Training Room, 4949-A Cox Road, Glen Allen, Virginia.

**January 25, 1999** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-190-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining.** The purpose of the proposed amendment is to reissue a general VPDES permit for nonmetallic mineral mining for another five-year period. The current general permit expires on June 30, 1999. Minor modifications to the general permit have also been made.

Statutory Authority: § 62.1-44.15 (10) of the Code of Virginia.

**Contact:** Michael B. Gregory, Environmental Engineer Senior, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065 or FAX (804) 698-4032.

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† **January 14, 1999 - 8:30 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. ♿

A routine business meeting. A public comment period will be held at the beginning of the meeting.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA, telephone (804) 367-8505, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

## INDEPENDENT

### STATE LOTTERY BOARD

**December 10, 1998 - 9:30 a.m.** -- Open Meeting  
State Lottery Department, 900 East Main Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

---

# Calendar of Events


---

A regular business meeting of the board. Public comment will be received at the beginning of the meeting.


**Contact:** Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7105 or FAX (804) 692-7775.

## LEGISLATIVE


### SENATE COMMITTEE ON AGRICULTURE, CONSERVATION AND NATURAL RESOURCES

**December 16, 1998 - 1 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A meeting called by the chairman of the committee to consider legislation continued to the 1999 Session of the General Assembly. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

**Contact:** Brian B. Taylor, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY 


### COMMISSION ON THE CONDITION AND FUTURE OF VIRGINIA'S CITIES (HJR 432)

**January 5, 1999 - Time to be announced** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be directed to Jeff Sharp or Nikki Rovner, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact Barbara Regen at least 10 working days prior to the meeting.


**Contact:** Barbara L. Regen, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 

### HOUSE COMMITTEE ON COUNTIES, CITIES AND TOWNS


**December 7, 1998 - 1 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to consider carryover legislation. Questions regarding the meeting should be addressed to Jeff Sharp or Nikki Rovner, Division of Legislative Services,


(804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

**Contact:** Barbara L. Regen, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 


### COMMISSION ON COORDINATION OF SERVICES TO FACILITATE SELF-SUFFICIENCY AND SUPPORT OF PERSONS WITH PHYSICAL AND SENSORY DISABILITIES (HJR 274)

**† December 16, 1998 - 1 p.m.** -- Open Meeting  
State Capitol, Capitol Square, House Room 1, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A regular meeting. Questions regarding the meeting should be addressed to Brian Parsons or Barbara Ettner, Virginia Board for People with Disabilities, (804) 786-0016. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

**Contact:** Barbara L. Regen, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 


### COMMISSION ON EARLY CHILDHOOD AND CHILD DAY CARE PROGRAMS

**December 22, 1998 - 2 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Questions regarding the meeting should be directed to Amy Marschean, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other assistance should contact Brian Taylor, Senate Committee Operations.

**Contact:** Brian B. Taylor, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY 

### JOINT SUBCOMMITTEE STUDYING EARLY INTERVENTION SERVICES FOR INFANTS AND TODDLERS WITH DISABILITIES (HJR 581, 1998)

**December 10, 1998 - 1:30 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Please call Amy Marschean, Division of Legislative Services, 910 Capitol Square, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591 with any questions regarding this meeting. Individuals

requiring interpreter services or special assistance should contact Dawn Smith at least 10 working days prior to the meeting.

**Contact:** Dawn B. Smith, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## SENATE COMMITTEE ON EDUCATION AND HEALTH

### Subcommittee on Health Professions

† **December 8, 1998 - 9 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Third Floor West Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A subcommittee meeting to consider SB 600 which was continued to the 1999 session. Individuals requiring interpreter services or other assistance should contact Brian Taylor, Senate Committee Operations.

**Contact:** Brian B. Taylor, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

## JOINT SUBCOMMITTEE STUDYING ELECTRIC UTILITY RESTRUCTURING (SJR 91, 1998)

† **December 8, 1998 - 2 p.m.** -- Open Meeting  
State Capitol, Capitol Square, House Room 2, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Task Force on Legislative Drafting. Individuals requiring interpreter services or other accommodations should call or write Thomas C. Gilman seven working days before the meeting.

**Contact:** Thomas C. Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

† **December 17, 1998 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Individuals requiring interpreter services or other accommodations should call or write Thomas C. Gilman seven working days before the meeting.

**Contact:** Thomas C. Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

## SUBCOMMITTEE STUDYING THE FUTURE OF VIRGINIA'S ENVIRONMENT (HJR 136)

**December 17, 1998 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Please direct all questions regarding the agenda to Shannon Varner, Division of Legislative Services, at (804) 786-3591. Individuals requiring interpreter services or other accommodations should contact the committee operations office at least 10 working days prior to the meeting.

**Contact:** Lois V. Johnson, House Committee Operations, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## HOUSE COMMITTEE ON FINANCE

### Business Tax Incentives Subcommittee

† **December 18, 1998 - 8:45 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, 4th Floor West Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be addressed to Joan E. Putney or Stephanie L. Hamlett, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

**Contact:** Lois V. Johnson, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

## JOINT SUBCOMMITTEE STUDYING THE EDUCATIONAL NEEDS OF UNDERSERVED GIFTED STUDENTS (HJR 251, 1998)

**December 7, 1998 - 10 a.m.** -- Open Meeting  
Regional Governor's School, Richmond, Virginia.

A regular meeting. Questions regarding the meeting should be addressed to Brenda Edwards, Division of Legislative Services, telephone (804) 786-3591. Individuals requiring interpreter services or special assistance should contact Dawn Smith at least 10 working days prior to the meeting.


**Contact:** Dawn B. Smith, House Committee Operations, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

---


# Calendar of Events

---


## **JOINT SUBCOMMITTEE STUDYING THE VIRGINIA FREEDOM OF INFORMATION ACT (HJR 187, 1998)**

† **December 21, 1998 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A work session of the subcommittee. Questions regarding the meeting should be addressed to Maria J. K. Everett, Senior Attorney, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

**Contact:** Anne R. Howard, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 


## **HOUSE COMMITTEE ON GENERAL LAWS**

† **December 15, 1998 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to consider the following carryover bills: (i) HB 1, Religious freedom preserved; (ii) HB 43, Council on the Status of Women; abolished; (iii) HB 44, Council on Coordinating Prevention; abolished; (iv) HB 387, Loan of property to museums; unclaimed loans; (v) HB 1109, Emblems of the Commonwealth; official state reptile; (vi) HB 1368, Prevention of Youth Access to Tobacco Act; created; (vii) HB 1369, Notice of use of pesticide; registry created; and (viii) SB 260, Land Management and Stewardship Commission; created. Questions regarding the meeting agenda should be addressed to Maria J.K. Everett, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

**Contact:** Lois V. Johnson, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 


## **VIRGINIA HOUSING STUDY COMMISSION**

† **December 14, 1998 - 11:30 a.m.** -- Public Hearing  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. 


A meeting to discuss HJR 208 (creation of a nonprofit corporation or foundation to foster the preservation of affordable housing), SJR 115 (apartment sprinklers), affordable assisted living facilities for the elderly, and other matters as the commission may wish to discuss. Questions regarding the meeting should be addressed to Nancy D. Blanchard.

**Contact:** Nancy D. Blanchard, Virginia Housing Study Commission, 601 South Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.


## **SPECIAL JOINT COURTS OF JUSTICE SUBCOMMITTEE STUDYING THE JUDICIAL SELECTION PROCESS**

**December 7, 1998 - 1:30 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, 6th Floor Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting and working session. Questions regarding the meeting should be addressed to Mary K. Geisen, Judicial Staff, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

**Contact:** Anne R. Howard, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 


## **JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION**

† **December 14, 1998 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. 


Staff briefings on the review of welfare reform and regional training academies.

**Contact:** Phillip A. Leone, Director, Joint Legislative Audit and Review Commission, General Assembly Building, 9th and Broad Streets., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

## **JOINT SUBCOMMITTEE STUDYING MEDICAID REIMBURSEMENT BILLING PROGRAM FOR PUBLIC SCHOOLS (SJR 182, 1998)**


**December 18, 1998 - 1 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Individuals requiring interpreter services or other accommodations should call or write the committee operations office at least 10 working days prior to the meeting.


**Contact:** Patty Lung, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY 




## JOINT SUBCOMMITTEE STUDYING THE FUTURE DELIVERY OF PUBLICLY FUNDED MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (HJR 225)

**December 16, 1998 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Individuals requiring interpreter services or other special assistance should contact Dawn Smith at least 10 working days prior to the meeting.

**Contact:** Dawn B. Smith, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 


## JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

**December 11, 1998 - 10:30 a.m.** -- Open Meeting  
EDS, 13600 EDS Drive, Herndon, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss workforce issues. The proposed agenda is posted on the commission's web page at <http://legis.state.va.us/jcots/jcots.htm>.

**Contact:** Diane E. Horvath, Director, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169 or e-mail [DHorvath@leg.state.va.us](mailto:DHorvath@leg.state.va.us).

## JOINT COMMISSION ON TECHNOLOGY AND SCIENCE AND HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY


**December 18, 1998 - 1 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the full commission and the House Committee on Science and Technology to consider carryover legislation and discuss the joint commission's legislative recommendations for the 1999 Session of the General Assembly. About one week before the meeting, the proposed agenda will be posted on the commission's web page at <http://legis.state.va.us/jcots/jcots.htm>. Please direct all questions regarding the agenda to Diane Horvath, Division of Legislative Services, at (804) 786-3591. Individuals requiring interpreter services or other accommodations should contact the committee operations office at least 10 working days prior to the meeting.


**Contact:** Diane E. Horvath, Director, Joint Commission on Technology and Science, General Assembly Bldg, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804)

786-3591, FAX (804) 371-0169 or e-mail [DHorvath@leg.state.va.us](mailto:DHorvath@leg.state.va.us).


## HOUSE TRANSPORTATION COMMITTEE

† **December 17, 1998 - 1:30 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A regular meeting to hear carryover legislation. Questions regarding the meeting and legislation should be addressed to Alan Wambold, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact Dawn Smith at least 10 working days prior to the meeting.

**Contact:** Dawn B. Smith, House Committee Operations, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 


## SENATE COMMITTEE ON TRANSPORTATION

† **December 14, 1998 - 2 p.m.** -- Open Meeting  
Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia.  (Interpreter for the deaf provided upon request)


A meeting to hear carryover legislation from the 1998 session. Individuals requiring interpreter services or other accommodations should call or write Thomas C. Gilman seven working days before the meeting.

**Contact:** Thomas C. Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY 

## STATE WATER COMMISSION

† **December 7, 1998 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be addressed to Martin Farber, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact the committee operations office at least 10 working days prior to the meeting.

**Contact:** Lois V. Johnson, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY 

---

# Calendar of Events

---

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### December 7

Agriculture and Consumer Services, Department of  
- Virginia Soybean Board  
Branch Pilots, Board for  
Conservation and Recreation, Board of  
Cosmetology, Board for  
Counties, Cities and Towns, House Committee on  
Gifted Students, Joint Subcommittee Studying the  
Educational Needs of Underserved  
Judicial Selection Process, Special Joint Courts of  
Justice Subcommittee Studying the  
Medical Assistance Services, Department of  
- Pharmacy Liaison Committee  
Soil and Water Conservation Board, Virginia  
† Water Commission, State

#### December 8

† Agriculture and Consumer Services, Department of  
- Virginia State Apple Board  
Aviation Board, Virginia  
Branch Pilots, Board for  
† Conservation and Recreation, Department of  
- Chippokes Plantation State Park Master Plan  
Advisory Committee  
† Education and Health, Senate Committee on  
- Subcommittee on Health Professions  
† Electric Utility Restructuring, Joint Subcommittee  
Studying  
Emergency Planning Committee, Local - Goochland  
County  
Innovative Technology Authority, Virginia  
- Virginia Commercial Space Flight Authority  
Executive Committee  
† Nursing, Board of  
- Special Conference Committee  
Pharmacy, Board of  
Professional Counselors, Marriage and Family  
Therapists and Substance Abuse Treatment  
Professionals, Board of Licensed  
Recycling Markets Development Council, Virginia  
Resources Authority, Virginia  
† Small Business Environmental Compliance Advisory  
Board  
† Small Business Financing Authority, Virginia  
- Loan Committee

#### December 9

Aviation Board, Virginia  
Child Fatality Review Team, State  
Emergency Planning Committee, Local - City of  
Alexandria  
Interagency Coordinating Council, Virginia  
Outdoors Foundation, Virginia  
- Open-Space Lands Preservation Trust Fund  
Advisory Board (Region 4)  
Real Estate Board

- Education Committee

#### December 10

Agriculture and Consumer Services, Board of  
Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
- Interior Designers Section  
- Regulatory Review Task Force Committee  
Child Day-Care Council  
Conservation and Recreation, Department of  
- New River Trail State Park  
Early Intervention Services for Infants and Toddlers with  
Disabilities, Joint Subcommittee Studying  
Labor and Industry, Department of  
- Virginia Apprenticeship Council  
Lottery Board, State  
Medicine, Board of  
- Informal Conference Committee  
† Nursing, Board of  
- Special Conference Committee  
Old Dominion University  
- Board of Visitors  
Outdoors Foundation, Virginia  
- Board of Trustees  
Real Estate Board  
- Education Committee  
- Fair Housing Committee  
Waste Management Board, Virginia  
- Technical Advisory Committee

#### December 11

Competition Council, Commonwealth  
Health Professions, Department of  
- Health Practitioners' Intervention Program  
Committee  
Medicine, Board of  
- Informal Conference Committee  
Milk Commission, State  
Outdoors Foundation, Virginia  
- Board of Trustees  
Technology and Science, Joint Commission on

#### December 14

Alcoholic Beverage Control Board  
Barbers, Board for  
† Chesapeake Bay Local Assistance Board  
† Housing Study Commission, Virginia  
† Legislative Audit and Review Commission, Joint  
† Nursing, Board of  
- Special Conference Committee  
Real Estate Board  
† Transportation, Senate Committee on

#### December 15

Agriculture and Consumer Services, Department of  
- Virginia Irish Potato Board  
Branch Pilots, Board for  
† Corrections, Board of  
- Correctional Services Committee  
† General Laws, House Committee on

† Housing Development Authority, Virginia  
- Board of Commissioners  
† Nursing, Board of  
- Education Advisory Committee  
Pharmacy, Board of  
- Special Conference Committee  
Polygraph Examiners Advisory Board  
† Water Control Board, State

## December 16

Agriculture, Conservation and Natural Resources,  
Senate Committee on  
† Audiology and Speech-Language Pathology, Board of  
† Corrections, Board of  
- Administration Committee  
† Disabilities, Commission on Coordination of Services  
to Facilitate Self-Sufficiency and Support of Persons  
with Physical and Sensory  
Medicine, Board of  
- Informal Conference Committee  
Mental Health, Mental Retardation and Substance Abuse  
Services, Joint Subcommittee Studying the Future  
Delivery of Publicly Funded  
Transportation Board, Commonwealth

## December 17

Agriculture and Consumer Services, Department of  
- Virginia Corn Board  
Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
† Corrections, Board of  
- Liaison Committee  
† Electric Utility Restructuring, Joint Subcommittee  
Studying  
Environment, Subcommittee Studying the Future of  
Virginia's  
Transportation Board, Commonwealth  
† Transportation Committee, House

## December 18

† Correctional Education, Board of  
† Executive Council, State  
† Finance, House Committee on  
- Business Tax Incentives Subcommittee  
Information Management, Council on  
- Virginia Geographic Information Network Advisory  
Board  
Medicaid Reimbursement Billing Program for Public  
Schools, Joint Subcommittee Studying  
Richmond Hospital Authority  
- Board of Commissioners  
Technology and Science and House Committee on  
Science and Technology, Joint Commission on

## December 21

† Freedom of Information Act, Joint Subcommittee  
Studying the  
General Services, Department of  
- Design-Build/Construction Management Review  
Board  
Marine Resources Commission

## December 22

Early Childhood and Child Day Care Programs,  
Commission on

## December 23

Compensation Board

## December 28

Alcoholic Beverage Control Board

## January 5, 1999

Cities, Commission on the Condition and Future of  
Virginia's  
† Environmental Quality, Department of  
- Ad Hoc Advisory Group

## January 7

Air Pollution Control Board, State  
Emergency Planning Committee, Local - Chesterfield  
County  
† Funeral Directors and Embalmers, Board of

## January 8

† Waste Management Facility Operators, Board for

## January 11

† Barbers, Board for

## January 12

War Memorial Foundation, Virginia  
- Board of Trustees

## January 14

† Waterworks and Wastewater Works Operators, Board  
for

## January 18

General Services, Department of  
- Design-Build/Construction Management Review  
Board

## January 19

† Accountancy, Board for  
Visually Handicapped, Board for the

## January 21

Treasury Board

## February 23

† Asbestos and Lead, Board for

## PUBLIC HEARINGS

## December 7

† Environmental Quality, Department of

## December 15

† Environmental Quality, Department of

## January 6, 1999

Health Professions, Department of

## January 8

Water Control Board, State

---

## Calendar of Events

---

**January 20**

† Air Pollution Control Board, State

**January 22**

† Health, Department of  
- Division of STD/AIDS