



VIRGINIA

REGISTER OF REGULATIONS

VOL. 27 ISS. 23

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

JULY 18, 2011

TABLE OF CONTENTS

Register Information Page	2443
Publication Schedule and Deadlines	2444
Petitions for Rulemaking	2445
Regulations	2446
4VAC15-20. Definitions and Miscellaneous: in General (Withdrawal of Proposed Regulation).....	2446
4VAC15-20. Definitions and Miscellaneous: in General (Final).....	2446
4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (Final).....	2450
4VAC15-40. Game: in General (Final).....	2450
4VAC15-50. Game: Bear (Final).....	2451
4VAC15-90. Game: Deer (Final).....	2456
4VAC15-170. Game: Otter (Final).....	2463
4VAC15-200. Game: Rabbit and Hares (Final).....	2464
4VAC15-210. Game: Raccoon (Final).....	2464
4VAC15-230. Game: Squirrel (Final).....	2465
4VAC15-240. Game: Turkey (Final).....	2465
4VAC15-260. Game: Waterfowl and Waterfowl Blinds (Final).....	2467
4VAC15-270. Game: Firearms (Final).....	2468
4VAC20-490. Pertaining to Sharks (Final).....	2468
5VAC5-30. Uniform Commercial Code Filing Rules (Final).....	2473
8VAC20-340. Regulations for Driver Education (Withdrawal of Proposed Regulation).....	2477
9VAC5-10. General Definitions (Rev. A-11) (Final).....	2477
9VAC5-80. Permits for Stationary Sources (Rev. A-11) (Final).....	2477
9VAC5-40. Existing Stationary Sources (Rev. D-11) (Final).....	2506
9VAC5-50. New and Modified Stationary Sources (Rev. D-11) (Final).....	2506
9VAC5-130. Regulation for Open Burning (Rev. D-11) (Final).....	2506
9VAC5-530. Electric Generator Voluntary Demand Response General Permit (Rev. Dg) (Final).....	2523
9VAC5-540. Emergency Generator General Permit (Rev. Eg) (Final).....	2541
10VAC5-210. Motor Vehicle Title Lending (Final).....	2552
12VAC5-66. Regulations Governing Durable Do Not Resuscitate Orders (Forms).....	2560
12VAC30-20. Administration of Medical Assistance Services (Final).....	2560
18VAC41-20. Barbering and Cosmetology Regulations (Final).....	2561
18VAC41-30. Hair Braiding Regulations (Final).....	2563
18VAC41-40. Wax Technician Regulations (Final).....	2564
18VAC41-50. Tattooing Regulations (Final).....	2565
18VAC41-60. Body-Piercing Regulations (Final).....	2567
18VAC41-70. Board for Barbers and Cosmetology Esthetics Regulations (Final).....	2568
22VAC40-780. Elimination of Financial Eligibility Criteria for Direct Social Services (Final).....	2570
24VAC30-281. Revenue-Sharing Program Policy (Final).....	2570

Virginia Code Commission

<http://register.dls.virginia.gov>

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly by Matthew Bender & Company, Inc., 1275 Broadway, Albany, NY 12204-2694 for \$197.00 per year. Periodical postage is paid in Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

TABLE OF CONTENTS

Governor2572
General Notices/Errata.....2573

THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **26:20 V.A.R. 2510-2515 June 7, 2010**, refers to Volume 26, Issue 20, pages 2510 through 2515 of the *Virginia Register* issued on June 7, 2010.

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

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Bill Janis**, Vice Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Tavenner**; **Patricia L. West**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

PUBLICATION SCHEDULE AND DEADLINES

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

July 2011 through August 2012

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
27:23	June 29, 2011	July 18, 2011
27:24	July 13, 2011	August 1, 2011
27:25	July 27, 2011	August 15, 2011
27:26	August 10, 2011	August 29, 2011
28:1	August 24, 2011	September 12, 2011
28:2	September 7, 2011	September 26, 2011
28:3	September 21, 2011	October 10, 2011
28:4	October 5, 2011	October 24, 2011
28:5	October 19, 2011	November 7, 2011
28:6	November 2, 2011	November 21, 2011
28:7	November 15, 2011 (Tuesday)	December 5, 2011
28:8	November 30, 2011	December 19, 2011
28:9	December 13, 2011 (Tuesday)	January 2, 2012
28:10	December 27, 2011 (Tuesday)	January 16, 2012
28:11	January 11, 2012	January 30, 2012
28:12	January 25, 2012	February 13, 2012
28:13	February 8, 2012	February 27, 2012
28:14	February 22, 2012	March 12, 2012
28:15	March 7, 2012	March 26, 2012
28:16	March 21, 2012	April 9, 2012
28:17	April 4, 2012	April 23, 2012
28:18	April 18, 2012	May 7, 2012
28:19	May 2, 2012	May 21, 2012
28:20	May 16, 2012	June 4, 2012
28:21	May 30, 2012	June 18, 2012
28:22	June 13, 2012	July 2, 2012
28:23	June 27, 2012	July 16, 2012
28:24	July 11, 2012	July 30, 2012
28:25	July 25, 2012	August 13, 2012
28:26	August 8, 2012	August 27, 2012

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Initial Agency Notice

Title of Regulation: 6VAC35-140. Standards for Juvenile Residential Facilities.

Statutory Authority: §§ 6.1-309.9, 66-10 and 66-25.1 of the Code of Virginia.

Name of Petitioner: Kate Duvall.

Nature of Petitioner's Request: The petitioner requests the Board of Juvenile Justice to amend its regulation regarding resident classification plans (6VAC35-140-440) in secure residential facilities to provide for a process that implements the policies of the board and is consistent with the goals of the juvenile justice system. The amended regulation should create a classification plan that has due process safeguards, provides for a meaningful ability for a resident's classification level to be lowered, takes into account and gives appropriate weight to factors other than the committing offense(s), and is derived from evidence-based and outcome driven research.

A copy of the full petition is available from Janet P. Van Cuyk, Virginia Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, FAX (804) 371-0773, or email janet.vancuyk@djj.virginia.gov.

Agency's Plan for Disposition of Request: The Board of Juvenile Justice will consider this petition at the next scheduled meeting after the public has had sufficient time to comment. The petition will be published in the Virginia Register of Regulations on July 18, 2011, and will be open for public comment through August 9, 2011.

Comments should be submitted through the Virginia Regulatory Town Hall or to Janet P. Van Cuyk by mail at P.O. Box 1110, Richmond, Virginia 23218-1110, by email to janet.vancuyk@djj.virginia.gov, or by FAX at (804) 371-0773.

Public Comment Deadline: August 9, 2011.

Agency Contact: Janet Van Cuyk, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre, 700 East Franklin Street, 4th Floor, Richmond, VA 23219, telephone (804) 371-4097, FAX (804) 371-0773, or email janet.vancuyk@djj.virginia.gov.

VA.R. Doc. No. R11-49; Filed June 27, 2011, 5:42 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF SOCIAL WORK

Agency Decision

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

Statutory Authority: § 54.1-3700 of the Code of Virginia.

Name of Petitioner: MSW II Students of Norfolk State.

Nature of Petitioner's Request: To include a grandfather clause for educational requirements for a licensed clinical social worker. Students matriculating on or before May 7, 2011, have met the educational requirements detailed in the January 7, 2010 regulations, which were in place at the beginning of the advanced year of clinical study. All students who began or finished their advanced year of clinical course work at an accredited school of social work prior to March 2, 2011, should be eligible to apply for licensure supervision.

Agency Decision: Request denied.

Statement of Reason for Decision: The board determined that a regulatory action would not be a viable alternative to resolve the issue raised by the petition because amending regulations is typically an 18-month to two-year process. The board also noted that any deficiency in the practicum hours can be made up during the residency, so if the practicum was less than 600 hours (i.e., 504 hours), the additional 96 hours could be obtained as necessary for licensure.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R11-31; Filed June 24, 2011, 2:01 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The department is required by § 2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

Withdrawal of Proposed Regulation

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: in General (amending 4VAC15-20-65).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

The Board of Game and Inland Fisheries has WITHDRAWN the amendments to the proposed regulation entitled 4VAC15-20, Definitions and Miscellaneous: In General, which were published in 27:17 VA.R. 2039-2042 April 25, 2011. On May 3, 2011, the board voted to withdraw the amendments to (i) add resident and nonresident bear hunting licenses to the list of license and permit fees and (ii) eliminate bear from the junior resident, resident, and nonresident bear, deer, and turkey hunting licenses.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

VA.R. Doc. No. R11-2791; Filed June 30, 2011, 9:37 a.m.

Final Regulation

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: in General (amending 4VAC15-20-65; adding 4VAC15-20-66).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) increase the fees for most hunting, trapping, and fishing licenses and certain permits by various amounts; (ii) amend the list of licenses to reflect those established by law and by the board; and (iii) establish a daily fee of \$3.00 or an annual fee equal to the price of an annual basic state resident fishing or hunting license for admittance, parking, or other use at department-owned wildlife management areas and public fishing lakes.

4VAC15-20-65. Hunting, trapping, and fishing license and permit fees.

In accordance with the authority of the board under § 29.1-103 (16) of the Code of Virginia, the following fees are established for hunting, trapping, and fishing licenses and permits:

Virginia Resident Licenses to Hunt	
Type license	Fee
Resident License to Hunt, for licensees 16 years of age or older	\$17.00 <u>\$22.00</u>
County or City Resident License to Hunt in County or City of Residence Only, for licensees 16 years of age or older	\$10.00 <u>\$15.00</u>
Resident Senior Citizen Annual License to Hunt, for licensees 65 years of age or older	\$6.00 [\$11.00 <u>\$8.00</u>]
Resident Junior License to Hunt, for licensees 12 through 15 years of age, optional for licensees under 12 years of age	[\$7.50 \$12.50]
Resident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	[\$15.00 <u>\$20.00</u>]

Regulations

Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, [and] to fish in designated stocked trout waters [, and to hunt with a <u>crossbow</u>] (also listed under Virginia Resident Licenses to Fish)	\$102.00 <u>\$132.00</u>	Resident Crossbow License to Hunt with crossbow during archery hunting season	[\$17.00 \$22.00]
		Resident Muzzleloading License to Hunt during muzzleloading hunting season	[\$17.00 \$22.00]
		Resident Bonus Deer Permit	[\$17.00 \$22.00]
Virginia Nonresident Licenses to Hunt			
Resident Junior Lifetime License to Hunt, for licensees under 12 years of age at the time of purchase	\$250.00 <u>\$255.00</u>	Type license	Fee
Resident Lifetime License to Hunt, for licensees at the time of purchase:		Nonresident License to Hunt, for licensees 16 years of age or older	\$85.00 [\$135.00 <u>\$110.00</u>]
through 44 years of age	\$255.00 <u>\$260.00</u>	Nonresident Three-Day Trip License to Hunt	\$45.00 [\$95.00 <u>\$59.00</u>]
45 through 50 years of age	\$205.00 <u>\$210.00</u>	Nonresident Youth License to Hunt, for licensees:	
51 through 55 years of age	\$155.00 <u>\$160.00</u>	under 12 years of age	[\$12.00 \$62.00]
56 through 60 years of age	\$105.00 <u>\$110.00</u>	12 through 15 years of age	[\$15.00 \$65.00]
61 through 64 years of age	\$55.00 <u>\$60.00</u>	Nonresident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	[\$30.00 \$80.00]
65 years of age and over	\$15.00 <u>\$20.00</u>	Nonresident Lifetime License to Hunt	\$505.00 <u>\$555.00</u>
Totally and Permanently Disabled Resident Special Lifetime License to Hunt	\$10.00 <u>\$15.00</u>		
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Fish)	\$10.00 <u>\$15.00</u>		

Virginia Resident Licenses for Additional Hunting Privileges		Virginia Nonresident Licenses for Additional Hunting Privileges	
Type license or permit	Fee	Type license or permit	Fee
Resident Bear, Deer, and Turkey Hunting License, for licensees 16 years of age or older	\$17.00 <u>\$22.00</u>	Nonresident Bear, Deer, and Turkey Hunting License, for licensees:	
Resident Junior Bear, Deer, and Turkey Hunting License, for licensees under 16 years of age	[\$7.50 \$12.50]	16 years of age or older	\$65.00 [\$115.00 <u>\$85.00</u>]
Resident Archery License to Hunt with bow and arrow during archery hunting season	[\$17.00 \$22.00]	12 through 15 years of age	[\$15.00 \$65.00]
		under 12 years of age	[\$12.00 \$62.00]

Regulations

Nonresident Archery License to Hunt with bow and arrow during archery hunting season	[\$30.00 \$80.00]	Nonresident License to Trap	\$155.00 \$205.00
Nonresident Crossbow License to Hunt with crossbow during archery hunting season	[\$30.00 \$80.00]	Virginia Resident Licenses to Fish	
Nonresident Muzzleloading License to Hunt during muzzleloading hunting season	[\$30.00 \$80.00]	Type license	Fee
Nonresident Shooting Preserve License to Hunt within the boundaries of a licensed shooting preserve	\$17.00 [\$67.00 \$22.00]	Resident License to Freshwater Fish	\$17.00 \$22.00
Nonresident Bonus Deer Permit	[\$30.00 \$80.00]	County or City Resident License to Freshwater Fish in County or City of Residence Only	\$10.00 \$15.00
Miscellaneous Licenses or Permits to Hunt		Resident License to Freshwater Fish, for licensees 65 years of age or older	\$6.00 [\$11.00 \$8.00]
Type license or permit	Fee	Resident License to Fish in Designated Stocked Trout Waters	\$17.00 \$22.00
Waterfowl Hunting Stationary Blind in Public Waters License	[\$22.50 \$27.50]	Resident License to Freshwater and Saltwater Fish	\$29.00 [\$34.00 \$39.00]
Waterfowl Hunting Floating Blind in Public Waters License	[\$40.00 \$45.00]	Resident License to Freshwater Fish for Five Consecutive Days	\$10.00 [\$15.00 \$13.00]
[<u>Foxhound Training Preserve License</u>]	[<u>\$17.00</u>]	Resident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$15.00 [\$20.00 \$23.00]
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Fish)	[\$17.00 \$22.00]	Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, [and] to fish in designated stocked trout waters [, and to hunt with a crossbow] (also listed under Virginia Resident Licenses to Hunt)	\$102.00 \$132.00
Virginia Resident and Nonresident Licenses to Trap		Resident Special Lifetime License to Freshwater Fish, for licensees at the time of purchase:	
Type license	Fee	through 44 years of age	\$255.00 \$260.00
Resident License to Trap, for licensees 16 years of age or older	\$40.00 \$45.00	45 through 50 years of age	\$205.00 \$210.00
County or City Resident License to Trap in County or City of Residence Only	\$15.00 \$20.00	51 through 55 years of age	\$155.00 \$160.00
Resident Junior License to Trap, for licensees under 16 years of age	[\$10.00 \$15.00]	56 through 60 years of age	\$105.00 \$110.00
Resident Senior Citizen License to Trap, for licensees 65 years of age or older	\$6.00 [\$11.00 \$8.00]		
Resident Senior Citizen Lifetime License to Trap, for licensees 65 years of age or older	\$15.00 \$20.00		
Totally and Permanently Disabled Resident Special Lifetime License to Trap	\$10.00 \$15.00		
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Trap	\$10.00 \$15.00		

Regulations

61 through 64 years of age	\$55.00 <u>\$60.00</u>
65 years of age and over	\$15.00 <u>\$20.00</u>
Resident Special Lifetime License to Fish in Designated Stocked Trout Waters, for licensees at the time of purchase:	
through 44 years of age	\$255.00 <u>\$260.00</u>
45 through 50 years of age	\$205.00 <u>\$210.00</u>
51 through 55 years of age	\$155.00 <u>\$160.00</u>
56 through 60 years of age	\$105.00 <u>\$110.00</u>
61 through 64 years of age	\$55.00 <u>\$60.00</u>
65 years of age and over	\$15.00 <u>\$20.00</u>
Totally and Permanently Disabled Resident Special Lifetime License to Freshwater Fish	\$10.00 <u>\$15.00</u>
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Hunt)	\$10.00 <u>\$15.00</u>

Nonresident Special Lifetime License to Freshwater Fish	\$505.00 <u>\$555.00</u>
Nonresident Special Lifetime License to Fish in Designated Stocked Trout Waters	\$505.00 <u>\$555.00</u>

Miscellaneous Licenses or Permits to Fish	
Type license or permit	Fee
Permit to Fish for One Day at Board-Designated Stocked Trout Fishing Areas with Daily Use Fees	\$3.50; effective January 1, 2007: \$5.50 [\$10.50 <u>\$8.00</u>]
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Hunt)	[\$17.00 <u>\$22.00</u>]
Special Guest Fishing License	\$55.00 <u>\$60.00</u>

4VAC15-20-66. Admittance, parking, or other use fee at certain department-owned facilities.

[A.] Pursuant to the authority of the board under § 29.1-103 (14) of the Code of Virginia and in accordance with § 29.1-113 of the Code of Virginia, a daily fee of \$3.00 or an annual fee equal to the price of an annual basic state resident fishing or hunting license is established for admittance, parking, or other use at department-owned wildlife management areas and public fishing lakes. [~~However, such~~ Such] fee shall not apply to (i) any person holding a valid hunting, trapping, or fishing license, or a current certificate of boat registration issued by the department [~~or~~ ;] (ii) persons 16 years of age or younger [; or (iii) the use of department-owned boat ramps].

[B. Any person violating this section may, in lieu of any criminal penalty, be assessed a civil penalty of \$50.

C. The director may waive fees for any person, group, or organization whenever such action is deemed to be in the department's interest. Any or all facilities may be closed by the director without notice due to an emergency or natural disaster. Full refunds or credits may be issued whenever the closure prevents any use of the facility during the term of the permit. Partial refunds of fees may be made in the interest of providing better customer service.

D. The director may allow deviations from established fees in the form of discounts or special promotions for the purpose of stimulating visitation and use of departmental facilities.]

Virginia Nonresident Licenses to Fish	
Type license	Fee
Nonresident License to Freshwater Fish	\$35.00 [\$85.00 <u>\$46.00</u>]
Nonresident License to Freshwater Fish in Designated Stocked Trout Waters	\$35.00 [\$85.00 <u>\$46.00</u>]
Nonresident License to Freshwater and Saltwater Fish	\$47.00 [\$110.00 <u>\$70.00</u>]
Nonresident License to Freshwater Fish for Five Consecutive Days	\$15.00 [\$65.00 <u>\$20.00</u>]
Nonresident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$20.00 [\$75.00 <u>\$30.00</u>]

VA.R. Doc. No. R11-2803; Filed July 1, 2011, 2:53 p.m.

Regulations

Final Regulation

Title of Regulation: **4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4VAC15-30-50).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) authorize animal shelters or similar facilities to temporarily possess, confine, and euthanize wildlife when conducting these activities under contract with any county, city, or town with animal control responsibilities; (ii) provide a legal means for the public to transport wildlife to these facilities; and (iii) provide a legal provision for nonwildlife agencies and private contractors to assist with pickup, transport, and disposal of road-killed wildlife.

4VAC15-30-50. Possession, transportation, and release of wildlife by authorized persons.

A. Department employees in the performance of their official duties; U.S. government agencies' employees whose responsibility includes fisheries and wildlife management; and county, city or town animal control officers in the performance of their official duties related to public health concerns or problem wildlife removal, and individuals operating under conditions of a commercial nuisance animal permit issued by the department pursuant to §§ 29.1-412 and 29.1-417 of the Code of Virginia will be deemed to be permitted pursuant to this section to capture, temporarily hold or possess, transport, release, and when necessary humanely euthanize wildlife, provided that the methods of and documentation for the capture, possession, transport, release and euthanasia shall be in accordance with board policy.

B. Local animal shelters operating under the authority of, or under contract with, any county, city, or town with animal control responsibilities shall be authorized to receive, temporarily confine, and humanely euthanize wildlife, except for state or federal threatened and endangered species; federally protected migratory bird species; black bear; white-tailed deer; and wild turkey, provided that the methods of and documentation for the possession, confinement, and euthanasia shall be in accordance with conditions defined by the agency director. Provided further that any person may legally transport wildlife, except for those species listed above, to [these an] authorized animal shelter [facilities after contacting the facility to confirm the animal will be accepted].

B. C. Employees or agents of other state wildlife agencies while in the performance of their official duty in transporting wildlife through the Commonwealth will be deemed to be permitted pursuant to this section, provided that a list of animals to be transported, a schedule of dates and locations where those animals will be housed while in the Commonwealth, and a letter of authorization from both the forwarding and receiving state agencies are provided to the department 24 hours prior to the transporting of such animals, and further provided that such animals shall not be liberated within the Commonwealth.

[D. Employees or agents of government agencies, while in the performance of their official duties, may temporarily possess, transport, and dispose of carcasses of wild animals killed by vehicles, except for state or federal threatened and endangered species, and federally protected migratory bird species.]

VA.R. Doc. No. R11-2792; Filed June 30, 2011, 2:53 p.m.

Final Regulation

Title of Regulation: **4VAC15-40. Game: in General (amending 4VAC15-40-200, 4VAC15-40-282, 4VAC15-40-285; adding 4VAC15-40-275, 4VAC15-40-286).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) increase the maximum size of body-gripping traps from 6-1/2 inches to 7-1/2 inches jaw spread that can be used within trap enclosures; (ii) authorize parts of legally taken and possessed furbearers to be sold at any time to fur dealers permitted by the department; (iii) broaden the range and enforceability of the prohibition on using food and other attractants to attract bears, so as to prohibit allowing the placement of such attractants and add trash to the list of prohibited attractants; and (iv) prohibit the feeding or attracting of wildlife when it causes property damage, endangers people, or creates a public health concern. The amendments do not establish the proposed special license to hunt bears, or make it unlawful to feed deer year round in Virginia.

[4VAC15 40 22. Special license for hunting bear.

There shall be a special license to hunt bears that shall be in addition to the state resident license to hunt or state nonresident license to hunt. The fee for the special bear

~~license shall be \$25 for a resident and \$150 for a nonresident.]~~

4VAC15-40-200. Restricted use of above ground body-gripping traps in excess of five inches.

It shall be unlawful to set above the ground any body-gripping trap with a jaw spread in excess of five inches when using any bait, lure, or scent; provided, that baited body gripping traps with a jaw spread up to ~~6-1/2~~ 7-1/2 inches may be used when the trap is within an enclosure with openings no greater than 60 square inches and the trap trigger is recessed at least 12 inches from all openings; provided further that such traps must be staked to prevent them from turning over and may only be used on private lands with written permission of the landowner.

4VAC15-40-275. Sale of furbearer parts.

Carcasses, including portions of carcasses, of legally taken and possessed fur-bearing animals may be sold at any time to buyers permitted in accordance with §§ 29.1-400 through 29.1-407 of the Code of Virginia.

4VAC15-40-282. Unauthorized feeding of bear.

It shall be unlawful for any person as defined in § 1-230 of the Code of Virginia to place ~~or~~ distribute, or allow the placement of food, minerals, carrion, trash, or similar substances to feed or attract bear. Nor, upon ~~written~~ notification by department personnel, shall any person continue to place ~~or~~ distribute, or allow the placement of any food, mineral, carrion, trash, or similar substances for any purpose if the placement of these materials results in the presence of bear ~~in such numbers or circumstances to cause annoyance or inconvenience to any person, cause property damage, or endanger any person or wildlife.~~ After such notification, such person shall be in violation of this section if the placing, distribution, or presence of such food, minerals, carrion, trash, or similar substances continues. This section shall not apply to wildlife management activities conducted or authorized by the department.

4VAC15-40-285. Unauthorized feeding of deer.

It shall be unlawful for any person to place or distribute food, salt, minerals or similar substances, to feed or attract deer [from September 1 through the first Saturday in January, both dates inclusive ~~, except that substances may be placed or distributed during the month of July for the purpose of taking photographs, provided that such substances are present only when and where picture taking devices are present~~]. Nor, upon written notification by department personnel, shall any person continue to place or distribute any food, salt, mineral or similar substances for any purpose if the placement of these materials results in the attraction of and/or feeding of deer. After such notification, such person shall be in violation of this section if the placing, distribution, or presence of such food, salt, minerals or similar substances continues. No part

of this regulation shall be construed to restrict bona fide agronomic plantings (including wildlife food plots), bona fide distribution of food to livestock or wildlife management activities conducted or authorized by the department.

4VAC15-40-286. Unauthorized feeding of wildlife.

It shall be unlawful for any person as defined in § 1-230 of the Code of Virginia to place, distribute, or allow the placement of food, minerals, carrion, trash, or similar substances when it attracts any species of wildlife in such numbers or circumstances to cause property damage, endanger any person or wildlife, or create a public health concern. Upon notification by department personnel, any such person shall be in violation of this section if the placing, distribution, or presence of such food, minerals, carrion, trash, or similar substances continues. This section shall not be construed to restrict bona fide agronomic plantings (including wildlife food plots), bona fide distribution of food to livestock, or wildlife management activities conducted or authorized by the department or U.S. government agencies with wildlife management responsibilities.

VA.R. Doc. No. R11-2793; Filed June 30, 2011, 9:33 a.m.

Final Regulation

Title of Regulation: **4VAC15-50. Game: Bear (amending 4VAC15-50-71, 4VAC15-50-81; adding 4VAC15-50-11; repealing 4VAC15-50-10, 4VAC15-50-20, 4VAC15-50-21, 4VAC15-50-22, 4VAC15-50-25).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) adjust bear hunting season in various counties; (ii) provide the most liberal fall bear hunting season within the incorporated limits of any city; (iii) establish a six-day muzzleloading gun bear hunting season statewide; and (iv) remove references to deer and turkey.

4VAC15-50-10. Open season; generally. (Repealed.)

~~Except as otherwise provided by local legislation and with the specific exceptions provided in the sections appearing in this chapter, it shall be lawful to hunt bear from the fourth Monday in November through the first Saturday in January, both dates inclusive, except in the counties of Accomack, Amelia, Appomattox, Brunswick, Buckingham, Campbell, Charlotte, Cumberland, Dinwiddie, Greensville, Halifax, Isle of Wight, Lunenburg, Mecklenburg, Northampton, Nottoway, Pittsylvania, Prince Edward, Prince George, Southampton, Surry, and Sussex.~~

Regulations

4VAC15-50-11. Open season; generally.

A. It shall be lawful to hunt bears within:

<u>Location</u>	<u>Season</u>
<u>Accomack County</u>	<u>Closed</u>
<u>Albemarle County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Alleghany County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Amelia County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Amherst County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Appomattox County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Arlington County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Augusta County (North of US-250)</u>	<u>Saturday prior to the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Augusta County (South of US-250)</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Bath County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Bedford County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Bland County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Botetourt County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Brunswick County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Buchanan County</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Buckingham County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Campbell County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Caroline County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>

<u>Carroll County</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Charles City County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Charlotte County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Chesapeake (City of)</u>	<u>October 1 through the first Saturday in January, both dates inclusive.</u>
<u>Chesterfield County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Clarke County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Craig County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Culpeper County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Cumberland County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Dickenson County</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Dinwiddie County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Essex County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Fairfax County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Fauquier County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Floyd County</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Fluvanna County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Franklin County</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Frederick County</u>	<u>Saturday prior to the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Giles County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Gloucester County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>

Regulations

<u>Goochland County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Grayson County</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Greene County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Greensville County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Halifax County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Hanover County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Henrico County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Henry County</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Highland County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Isle of Wight County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>James City County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>King and Queen County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>King George County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>King William County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Lancaster County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Lee County</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Loudoun County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Louisa County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Lunenburg County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Madison County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>

<u>Mathews County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Mecklenburg County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Middlesex County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Montgomery County (southeast of I-81)</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Montgomery County (northwest of I-81)</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Nelson County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>New Kent County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Northampton County</u>	<u>Closed</u>
<u>Northumberland County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Nottoway County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Orange County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Page County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Patrick County</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Pittsylvania County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Powhatan County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Prince George County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Prince William County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Pulaski County (southeast of I-81)</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Pulaski County (northwest of I-81)</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Rappahannock County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>

Regulations

<u>Richmond County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Roanoke County</u>	<u>Saturday prior to the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Rockbridge County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Rockingham County</u>	<u>Saturday prior to the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Russell County (except on the Channels State Forest and Clinch Mountain WMA)</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Russell County (on the Channels State Forest and Clinch Mountain WMA)</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Scott County</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Shenandoah County</u>	<u>Saturday prior to the fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Smyth County (southeast of I-81)</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Smyth County (northwest of I-81)</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Southampton County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Spotsylvania County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Stafford County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Suffolk (City of)</u>	<u>October 1 through the first Saturday in January, both dates inclusive.</u>
<u>Surry County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Sussex County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Tazewell County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Virginia Beach (City of)</u>	<u>October 1 through the first Saturday in January, both dates inclusive.</u>

<u>Warren County</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Washington County (southeast of I-81)</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Washington County (northwest of I-81 and east of Route 19)</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>Washington County (northwest of I-81 and west of Route 19)</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Westmoreland County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>
<u>Wise County</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Wythe County (southeast of I-81)</u>	<u>First Monday in December and for 17 consecutive hunting days following.</u>
<u>Wythe County (northwest of I-81)</u>	<u>Fourth Monday in November through the first Saturday in January, both dates inclusive.</u>
<u>York County</u>	<u>Second Monday in December and for 5 consecutive hunting days following.</u>

B. Except as provided in the subsection A of this section, bears may be hunted from the Saturday prior to the fourth Monday in November through the first Saturday in January, both dates inclusive, within the incorporated limits of any city that allows bear hunting.

4VAC15-50-20. Open season; first Monday in December and for 11 consecutive hunting days following in certain counties or portions of counties. (Repealed.)

It shall be lawful to hunt bear from the first Monday in December and for 11 consecutive hunting days following, both dates inclusive, in the counties of Buchanan, Campbell (west of Norfolk Southern Railroad), Carroll, Dickenson, Floyd, Franklin, Grayson, Henry, Lee, Montgomery (south of Interstate 81), Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski (south of Interstate 81), Russell, Scott, Smyth (south of Interstate 81), Washington (south of Interstate 81 and that part north of Interstate 81 that is west of Route 19), Wise, and Wythe (south of Interstate 81).

4VAC15-50-21. Open season; second Monday in December and for five consecutive hunting days following in certain counties or portions of counties. (Repealed.)

It shall be lawful to hunt bear from the second Monday in December and for five consecutive hunting days following in the counties of Amelia, Appomattox, Brunswick, Buckingham, Campbell (east of Norfolk Southern Railroad), Charlotte, Cumberland, Dinwiddie, Greensville, Halifax, Isle

~~of Wight, Lunenburg, Mecklenburg, Nottoway, Pittsylvania (east of Norfolk Southern Railroad), Prince Edward, Prince George, Southampton, Surry, and Sussex.~~

~~4VAC15-50-22. Open season; Saturday prior to the fourth Monday in November through the first Saturday in January, both dates inclusive, in certain counties or portions of counties. (Repealed.)~~

~~It shall be lawful to hunt bear from the Saturday prior to the fourth Monday in November through the first Saturday in January, both dates inclusive, in the counties of Alleghany, Augusta (west of Interstate 81), Bath, Botetourt (west of Interstate 81), Highland, Roanoke (north of Interstate 81), Rockbridge (west of Interstate 81), Rockingham (west of Interstate 81), and Shenandoah (west of Interstate 81).~~

~~4VAC15-50-25. Open season; cities of Chesapeake, Suffolk and Virginia Beach. (Repealed.)~~

~~It shall be lawful to hunt bear from October 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk and Virginia Beach.~~

4VAC15-50-71. Muzzleloading gun hunting.

A. ~~Except as otherwise provided by specific exceptions in this chapter, it~~ It shall be lawful to hunt bear during the special muzzleloading season with muzzleloading guns from the Saturday prior to the second Monday in November through the Friday prior to the third Monday in November, both dates inclusive, except in ~~Bland, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, Lee, Montgomery, Pulaski, Russell, Scott, Smyth, Tazewell, Washington, Wise and Wythe counties and in the cities of Chesapeake, Suffolk, and Virginia Beach.~~

~~B. It shall be lawful to hunt bear during the special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in the counties (including the cities and towns within) of Accomaek, Caroline, Charles City, Chesterfield, Culpeper, Essex, Fauquier, Fairfax, Fluvanna, Gloucester, Goochland, Hanover, Henrico, James City, King George, King William, King and Queen, Lancaster, Loudoun, Louisa, New Kent, Northampton, Northumberland, Orange, Powhatan, Prince William, Richmond, Spotsylvania, Stafford, Mathews, Middlesex, Westmoreland, and York and in the cities of Hampton, Newport News, Norfolk, and Portsmouth.~~

~~C. B.~~ It shall be unlawful to hunt bear with dogs during any special season for hunting with muzzleloading guns.

~~D. C.~~ A muzzleloading gun, for the purpose of this section, means a single shot weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at

least 50 grains of black powder (or black powder equivalent or smokeless powder).

~~E. D.~~ It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

4VAC15-50-81. Validating tags and checking bear by licensee or permittee.

A. Any person killing a bear shall, before removing the carcass from the place of kill, validate an appropriate tag on their special license for hunting bear [, deer, and turkey] or special permit by completely removing the designated notch area from the tag. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a bear tag from any special license for hunting bear [, deer, and turkey] or special permit prior to the killing of a bear. A bear tag that is mistakenly validated (notched) prior to the killing of a bear must be immediately voided by the licensee or permittee by writing, in ink, the word "VOID" on the line provided on the license tag.

B. Upon killing a bear and validating (notching) a license tag or special permit, as provided above, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag or special permit to an authorized bear checking station or to an appropriate representative of the department in the county or adjoining county in which the bear was killed. Upon presentation of the carcass and validated (notched) license tag or special permit to the bear checking station, the licensee shall surrender or allow to be removed one premolar tooth from the carcass. At such time, the person checking the carcass will be given a game check card. The successful hunter shall then immediately record the game check card number, in ink, on the line provided adjacent to the license tag that was validated (notched) in the field. The game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass.

C. It shall be unlawful for any person to destroy the identity (sex) of any bear killed unless and until the license tag or special permit is validated (notched) and checked as required by this section. Successful bear hunters are allowed to dismember the carcass to pack it out from the place of kill, after an appropriate license tag has been validated (notched) as required above, as long as the sex of the animal remains identifiable and all the parts of the carcass are present when the bear is checked at an authorized bear checking station. Any bear found in the possession of any person without a validated (notched) license tag or documentation that the bear has been checked at an authorized bear checking station as

Regulations

required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

VA.R. Doc. No. R11-2794; Filed June 30, 2011, 8:43 a.m.

Final Regulation

Title of Regulation: 4VAC15-90. **Game:** Deer (amending 4VAC15-90-23, 4VAC15-90-70, 4VAC15-90-80, 4VAC15-90-85, 4VAC15-90-90, 4VAC15-90-91, 4VAC15-90-231, 4VAC15-90-241, 4VAC15-90-293).

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments: (i) open the youth deer hunting day statewide by removing the exceptions for Fairfax, Loudoun, and Prince William counties; (ii) allow additional urbanized counties and cities to participate in the urban archery deer season; (iii) allow the killing of deer of either sex during the entire late muzzleloading deer hunting season in the cities of Chesapeake, Virginia Beach, and in Suffolk east of the Dismal Swamp line; (iv) prohibit the hunting of elk in Buchanan, Dickenson, and Wise counties, and require that elk legally killed outside the designated elk restoration area be made available for collection of biological specimens for disease testing; (v) adjust bag limits and season lengths for deer hunting seasons; (vi) require that deer killed after the first Saturday in January through the end of the late season be game-checked via telephone or internet; (vii) allow deer hunters with proof of legal possession to possess unmarked parts of a deer carcass after it has been cut up; and (viii) limit deer carcass interstate importation and possession restrictions only to carcasses originating from an area designated by the department as a carcass-restriction zone.

4VAC15-90-23. Youth deer hunting day.

It shall be lawful for deer hunters 15 years of age and under, when in compliance with all applicable laws and license requirements, to hunt deer on the last Saturday in September when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or is exempt from purchasing a hunting license ~~except in Fairfax, Loudoun, and Prince William counties~~. Deer of either-sex may be taken on this special youth deer hunting day. Adult hunters accompanying youth deer hunters on this day may not carry or discharge weapons. Blaze orange is required for all persons hunting any species or any person accompanying a hunter on this day unless otherwise exempted by state law. Deer hunting with dogs is prohibited.

4VAC15-90-70. Bow and arrow hunting.

A. It shall be lawful to hunt deer during the early special archery season with bow and arrow from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.

B. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer during the late special archery season with bow and arrow from the Monday following the close of the general firearms season on deer through the first Saturday in January, both dates inclusive, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County) and in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and on the Chester F. Phelps Wildlife Management Area and on national forest lands in Frederick County and from December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line) and Virginia Beach.

C. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section (except on PALS (Public Access Lands) in Dickenson County where it shall be unlawful to take antlerless deer during the special archery seasons provided for in subsections A and B of this section).

D. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-90-80, may be in the possession of a properly licensed muzzleloading gun hunter when and where a special archery deer season overlaps a special muzzleloading deer season.

E. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

F. It shall be unlawful to use dogs when hunting with bow and arrow during any special archery season.

G. For the purpose of the application of subsections A through I to this section, the phrase "bow and arrow" includes crossbows.

H. It shall be lawful to hunt antlerless deer during the special urban archery season with bow and arrow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, and from the Monday following the first Saturday in January through the last Saturday in March, both dates inclusive, within the incorporated limits of any city or town in the Commonwealth ~~(except in the cities of Chesapeake, Suffolk, and Virginia Beach) and the counties of Fairfax and York and counties~~

with a human population density of 300 persons per square mile or more (except on national forest and department-owned lands), provided that its governing body submits by certified letter to the department prior to April 1, its intent to participate in the special urban archery season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to April 1 notice of its intent not to participate in the special urban archery season.

I. It shall be lawful to hunt antlerless deer during the special antlerless archery season with bow and arrow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, in Loudoun and Prince William counties, except on department-owned lands.

4VAC15-90-80. Muzzleloading gun hunting.

A. It shall be lawful to hunt deer during the early special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in all cities, towns, and counties where deer hunting with a rifle or muzzleloading gun is permitted, except in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line) and Virginia Beach.

B. It shall be lawful to hunt deer during the late special muzzleloading season with muzzleloading guns starting 18 consecutive hunting days immediately prior to and inclusive of the first Saturday in January, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County), and east of the Blue Ridge Mountains in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and on national forest lands in Frederick County and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line), and Virginia Beach.

C. Deer of either sex may be taken during the entire early special muzzleloading season east of the Blue Ridge Mountains unless otherwise noted below:

- Deer of either sex may be taken on the second Saturday only of the early special muzzleloading season on state forest lands, state park lands (except Occoneechee State Park), department-owned lands and Philpott Reservoir.
- Antlered bucks only—no either sex deer hunting days during the early special muzzleloading season on national forest lands in Amherst, Bedford, and Nelson counties.

D. Deer of either sex may be taken on the second Saturday only during the early special muzzleloading season west of the Blue Ridge Mountains unless otherwise noted below:

- Deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd counties

and on private lands in Carroll, Frederick, Grayson, Montgomery, Roanoke, and Warren counties.

- Antlered bucks only—no either sex deer hunting days during the early special muzzleloading season in Buchanan, Dickenson, Lee, Russell, Smyth, Tazewell, Washington, and Wise counties and on national forest lands in Alleghany, Botetourt, Frederick, Grayson, Page, Rockingham, Scott, Shenandoah, Warren, and on national forest and department-owned lands in Augusta, Bath, Highland, and Rockbridge counties and on Grayson Highlands State Park and on private lands west of Routes 613 and 731 in Rockingham County.

E. Deer of either sex may be taken during the last six days of the late special muzzleloading season unless otherwise listed below:

- Deer of either sex may be taken full season during the entire late special muzzleloading season in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29 except on national forest lands), Bedford (except on national forest lands), Campbell (west of Norfolk Southern Railroad), Floyd, Franklin, Henry, Nelson (west of Route 151, except on national forest lands), and Patrick and on private lands in Carroll, Grayson, Montgomery, Roanoke and Warren counties and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line), and Virginia Beach.
- Deer of either sex may be taken the last day only during the late special muzzleloading season in Dickenson (north of Route 83), Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wise counties and on national forest lands in Alleghany, Amherst, Bedford, Botetourt, Frederick, Grayson, Nelson, Page, Rockingham, Shenandoah, and Warren counties, and on national forest and department-owned lands in Augusta, Bath, Highland, and Rockbridge counties and on private lands west of Routes 613 and 731 in Rockingham County and Grayson Highlands State Park.
- Antlered bucks only—no either-sex deer hunting days during the late special muzzleloading season in Buchanan and Dickenson (south of Route 83).

F. Deer of either sex may be taken full season during the special muzzleloading seasons within the incorporated limits of any city or town in the Commonwealth that allows deer hunting except in the counties of Buchanan, Dickenson, and Wise and in the cities of Chesapeake, Suffolk, and Virginia Beach.

G. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns.

H. A muzzleloading gun, for the purpose of this section, means a single shot weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single projectile or sabot

Regulations

(with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent or smokeless powder).

I. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

4VAC15-90-85. ~~Hunting elk of either sex~~ Elk hunting.

~~Elk of either sex may be taken during the general firearms deer season (as prescribed by 4VAC15-90-10, 4VAC15-90-20, 4VAC15-90-21, and 4VAC15-90-30), during the special archery seasons (as prescribed by 4VAC15-90-70), and during the special muzzleloading seasons (as prescribed by 4VAC15-90-80) with bag limits and checking requirements as prescribed in 4VAC15-90-90, 4VAC15-90-230, and 4VAC15-90-240.~~

A. Closed season. There shall be a continuous closed season for elk (*Cervus elaphus*) hunting in Buchanan, Dickenson, and Wise counties.

B. Open season. Except as otherwise provided by this chapter, it shall be lawful to hunt elk of either sex during (i) the general firearms deer seasons (as prescribed by 4VAC15-90-10, 4VAC15-90-20, 4VAC15-90-21, 4VAC15-90-22, 4VAC15-90-23, and 4VAC15-90-30), (ii) the special archery seasons (as prescribed by 4VAC15-90-70), and (iii) the special muzzleloading seasons (as prescribed by 4VAC15-90-80) with bag limits as prescribed in 4VAC15-90-90.

C. Validating tags and checking elk by licensee or permittee. Upon killing an elk, any licensed or permitted hunter shall validate a tag, bonus deer permit, or special permit and check the elk in accordance with 4VAC15-90-231. At the time of checking, the hunter must call 1-804-367-1258 to schedule an inspection of the carcass and the site of kill for the collection of biological samples for disease testing.

D. Checking elk by persons exempt from license requirements or holding a license authorization number. Upon killing an elk, any person (i) exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, (ii) issued a complimentary license as prescribed in § 29.1-339, (iii) holding a permanent license issued pursuant to § 29.1-301 E, or (iv) holding a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B shall check the elk in accordance with 4VAC15-90-241. At the time of checking, the hunter must call 1-804-367-1258 to schedule an inspection of the carcass and the site of kill for the collection of biological samples for disease testing.

4VAC15-90-90. Bag limit, bonus deer permits and special antlerless provision for youth hunters and earn a buck.

A. The bag limit for deer east of the Blue Ridge Mountains (except on national forest lands in Amherst, Bedford, and

Nelson counties) is two per day (except for the counties of Fairfax, Loudoun, and Prince William where the daily bag limit is unlimited), six per license year, three of which must be antlerless.

B. The bag limit for deer west of the Blue Ridge Mountains and on national forest lands in Amherst, Bedford, and Nelson counties is one per day, five per license year, three of which must be antlerless. Only one antlered buck taken in the county of Shenandoah County or Rockingham per license year may have less than four antler points one inch or longer on one side of the antlers.

C. Except as noted in subsection E below, antlerless deer may be taken only during designated either-sex deer hunting days during the special archery seasons, special muzzleloading seasons, and the general firearms season.

D. Bonus deer permits shall be valid on private land in counties and cities where deer hunting is permitted (except Buchanan, Dickenson, and Wise counties) during the special archery seasons, special muzzleloading seasons, and the general firearms season. Bonus deer permits shall be valid on public lands, including state parks, state forests, national wildlife refuges, military areas, etc., as authorized by the managing agency. Unless otherwise posted or authorized in writing for wildlife management areas by the department, or for national forest lands by the U.S. Forest Service, the use of bonus permits is prohibited on department-owned and national forest lands. Bonus deer permits shall be valid for antlerless deer only. Deer taken on bonus permits shall count against the daily bag limit but are in addition to the seasonal bag limit.

E. Deer hunters 15 years of age and under, including those exempt from purchasing a hunting license, when in compliance with all applicable laws and license requirements, may take one antlerless deer per license year on days other than designated either-sex deer hunting days during the special muzzleloading seasons or the general firearms season in all counties that have at least one either-sex deer hunting day during the general firearms deer season.

~~F. [Earn a buck. At least one antlerless deer must be taken on private lands in Bedford, Fairfax, Fauquier, Franklin, Loudoun, Patrick, Prince William, or Roanoke counties before the second antlered deer of the license year may be taken on private lands in any of these counties. Furthermore, at least two antlerless deer must have been taken on private lands in Bedford, Fairfax, Fauquier, Franklin, Loudoun, Patrick, or Prince William counties before the third antlered deer of the license year may be taken on private lands in any of these counties.] Earn a buck (EAB) areas include all private lands in the counties (including private lands in the cities and towns within) of Bedford, Fairfax, Fauquier, Franklin, Loudoun, Patrick, Prince William, and Roanoke. In EAB areas at least one antlerless deer must be taken on private lands in an EAB area before the second antlered deer~~

of the license year may be taken on private lands in an EAB area. Furthermore, at least two antlerless deer must have been taken on private lands in an EAB area before the third antlered deer of the license year may be taken on private lands in an EAB area.

4VAC15-90-91. General firearms season either-sex deer hunting days.

A. During the general firearms deer season, deer of either sex may be taken within:

Accomack County: full season.

Albemarle County: full season.

Alleghany County: ~~the second Saturday and the last two hunting days~~ the second Saturday and the last hunting day.

-National forest lands: the last hunting day.

Amelia County: ~~the second and third Saturdays and the last 12 hunting days~~ the second, third, and fourth Saturdays and the last 24 hunting days.

-Amelia WMA: the second and third Saturdays and the last six hunting days.

Amherst County (east of U.S. Route 29): the second, third, and fourth Saturdays and the last 24 hunting days.

Amherst County (west of U.S. Route 29): full season.

-National forest lands: the last hunting day.

Appomattox County: the second and third Saturdays and the last 12 hunting days.

-Appomattox-Buckingham State Forest: the second and third Saturdays.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

Arlington County: full season.

Augusta County: the second Saturday and the last six hunting days.

-National forest and department-owned lands: the last hunting day.

Bath County: ~~the second Saturday and the last two hunting days~~ the second Saturday and the last hunting day.

-National forest and department-owned lands: the last hunting day.

Bedford County: full season.

-National forest lands: the last hunting day.

Bland County: the second Saturday and the last six hunting days.

-National forest lands: the second Saturday and the last hunting day.

Botetourt County: full season.

-National forest lands: the last hunting day.

Brunswick County: the second and third Saturdays and the last 12 hunting days.

Buchanan County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Buckingham County: the second and third Saturdays and the last 12 hunting days.

-Horsepen Lake WMA: the second and third Saturdays and the last six hunting days.

-Appomattox-Buckingham State Forest: the second and third Saturdays.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

Campbell County (east of Norfolk Southern Railroad): the second, third, and fourth Saturdays and the last 24 hunting days.

Campbell County (west of Norfolk Southern Railroad): full season.

Caroline County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

-Mattaponi WMA: the second and third Saturdays and the last six hunting days.

Carroll County: full season.

-National forest and department-owned lands: the second Saturday and the last hunting day.

Charles City County: full season.

-Chickahominy WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Charlotte County: the second and third Saturdays and the last 12 hunting days.

Chesapeake (City of): full season.

Chesterfield County: full season.

Clarke County: full season.

Craig County: full season.

-National forest lands: the second Saturday and the last hunting day.

Culpeper County: full season.

-Chester F. Phelps WMA: the second Saturday and the last hunting day.

Regulations

Cumberland County: ~~the second and third Saturdays and the last 12 hunting days~~ the second, third, and fourth Saturdays and the last 24 hunting days.

-Cumberland State Forest: the second and third Saturdays.

Dickenson County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Dinwiddie County: the second and third Saturdays and the last 12 hunting days.

Essex County: full season.

Fairfax County: full season (restricted to certain parcels of land by special permit).

Fauquier County: full season.

-G. Richard Thompson WMA: the second Saturday and the last hunting day.

-Chester F. Phelps WMA: the second Saturday and the last hunting day.

Floyd County: full season.

Fluvanna County: second and third Saturdays and the last 12 hunting days.

Franklin County: full season.

-Philpott Reservoir: the second Saturday and the last six hunting days.

-Turkeycock Mountain WMA: ~~the second and third Saturdays and the last six hunting days~~ the second Saturday and the last six hunting days.

Frederick County: full season

-National forest lands: the last hunting day.

Giles County: full season.

-National forest lands: the second Saturday and the last hunting day.

Gloucester County: full season.

Goochland County (~~east of U.S. Route 522~~): the second, third, and fourth Saturdays and the last 24 hunting days.

~~Goochland County (west of U.S. Route 522): the second and third Saturdays and last 12 hunting days.~~

Grayson County: full season.

-National forest lands and Grayson Highlands State Park: the last hunting day.

Greene County: full season.

Greensville County: full season.

Halifax County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Hanover County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Henrico County: full season.

Henry County: full season.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six hunting days.

-Turkeycock Mountain WMA: ~~the second and third Saturdays and the last six hunting days~~ the second Saturday and the last six hunting days.

Highland County: ~~the second Saturday and the last two hunting days~~ the second Saturday and the last hunting day.

-National forest and department-owned lands: the last hunting day.

Isle of Wight County: full season.

-Ragged Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

James City County: full season.

King and Queen County: full season.

King George County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

King William County: the second, third, and fourth Saturdays and the last 24 hunting days.

Lancaster County: full season.

Lee County: the second Saturday and the last two hunting days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Loudoun County: full season.

Louisa County: ~~the second and third Saturdays and the last 12 hunting days~~ the second, third, and fourth Saturdays and the last 24 hunting days.

Lunenburg County: the second and third Saturdays and the last 12 hunting days.

Madison County: full season.

-Rapidan WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

Mathews County: the second, third, and fourth Saturdays and last 24 hunting days.

Mecklenburg County: the second and third Saturdays and the last 12 hunting days.

-Dick Cross WMA: the second and third Saturdays and the last six hunting days.

Middlesex County: the second, third, and fourth Saturdays and last 24 hunting days.

Montgomery County: full season.

-National forest lands: the second Saturday and the last hunting day.

Nelson County (east of Route 151): the second, third, and fourth Saturdays and the last 24 hunting days.

-James River WMA: the second Saturday and the last six hunting days.

Nelson County (west of Route 151): full season.

-National forest lands: the last hunting day.

New Kent County: full season.

Northampton County: full season.

Northumberland County: full season.

Nottoway County: ~~the second and third Saturdays and the last 12 hunting days~~ the second, third, and fourth Saturdays and the last 24 hunting days.

Orange County: full season.

Page County: the second Saturday and the last two hunting days.

-National forest lands: the last hunting day.

Patrick County: full season.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six hunting days.

Pittsylvania County: the second, third, and fourth Saturdays and the last 24 hunting days.

-White Oak Mountain WMA: the second Saturday and the last hunting day.

Powhatan County: the second, third, and fourth Saturdays and the last 24 hunting days.

-Powhatan WMA: the second and third Saturdays and the last six hunting days.

Prince Edward County: the second and third Saturdays and the last 12 hunting days.

-Briery Creek WMA: the second and third Saturdays and the last six hunting days.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

-Prince Edward State Forest: the second and third Saturdays.

Prince George County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Prince William County: full season.

Pulaski County: full season.

-National forest lands: the second Saturday and the last hunting day.

Rappahannock County: full season.

Richmond County: full season.

Roanoke County: full season.

-National forest and department-owned lands: the second Saturday and the last hunting day.

Rockbridge County: the second Saturday and the last two hunting days.

-National forest and department-owned lands: the last hunting day.

Rockingham County: the second Saturday and the last six hunting days.

-National forest lands and private lands west of Routes 613 and 731: the last hunting day.

Russell County: the second Saturday and the last two hunting days.

-Clinch Mountain WMA, Hidden Valley WMA, and the Channels State Forest: the last hunting day.

Scott County: the second Saturday and the last six hunting days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Shenandoah County: full season.

-National forest lands: the last hunting day.

Smyth County: the second Saturday and the last six hunting days.

-National forest lands, Clinch Mountain WMA, and Hungry Mother State Park: the last hunting day.

Southampton County: full season.

Spotsylvania County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Stafford County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Suffolk (City of): full season.

Regulations

Surry County: full season.

-Carlisle Tract of the Hog Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Sussex County: full season.

Tazewell County: the second Saturday and the last two hunting days.

-National forest lands, Clinch Mountain WMA, and Hidden Valley WMA: the last hunting day.

Virginia Beach (City of): full season.

Warren County: full season.

-National forest lands: the last hunting day.

Washington County: the second Saturday and the last six hunting days.

-National forest lands, Clinch Mountain WMA, Hidden Valley WMA, and the Channels State Forest: the last hunting day.

Westmoreland County: full season.

Wise County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Wythe County: full season.

-National forest lands and Big Survey WMA: the second Saturday and the last hunting day.

York County: full season.

B. Except as provided in the subsection A of this section, deer of either sex may be taken full season during the general firearms deer season within the incorporated limits of any city or town, state park, national wildlife refuge, or military installation that allows deer hunting.

4VAC15-90-231. Validating tags and checking deer by licensee or permittee.

A. Any person killing a deer shall, before removing the carcass from the place of kill, validate an appropriate tag on his special license for hunting [bear,] deer [,] and turkey, bonus deer permit, or special permit by completely removing the designated notch area from the tag. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a deer tag from any special license for hunting [bear,] deer [,] and turkey, bonus deer permit, or special permit prior to the killing of a deer. A deer tag that is mistakenly validated (notched) prior to the killing of a deer must be immediately voided by the licensee or permittee by writing, in ink, the word "VOID" on the line provided on the license tag.

B. Upon killing a deer and validating (notching) a license tag, bonus deer permit or special permit, as provided above, the licensee or permittee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag, bonus deer permit or special permit to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the deer was killed or report the kill through the department's automated harvest reporting system. All deer killed after the first Saturday in January (as prescribed in 4VAC15-90-22 and 4VAC15-90-70 [H]) must be checked by telephone or Internet. At such time, the person checking or reporting the carcass will be given a game check card furnished by the department or a confirmation number from the automated reporting system. The successful hunter shall then immediately record the game check card number or confirmation number, in ink, on the line provided on the tag that was validated (notched) in the field. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If the kill is reported using the automated harvest reporting system, no check card is required as long as the hunter who killed the animal is in possession of the carcass. If the automated harvest reported carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass. Processed carcass parts of a deer killed legally in Virginia may be transported; however, upon request of any authorized law enforcement officer, [sufficient verbal or written] information necessary to properly establish legal possession must be furnished immediately.

C. It shall be unlawful for any person to destroy the identity of the sex of any deer killed unless and until the license tag, bonus deer permit or special permit is validated (notched) and checked as required by this section. Successful deer hunters are allowed to dismember the carcass to pack it out from the place of kill, after an appropriate license tag has been validated (notched) as required above, as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the deer is checked at a big game check station or reported through the automated harvest reporting system. Any deer found in the possession of any person without a validated (notched) license tag or documentation that the deer has been checked (via a big game check station or the automated harvest reporting system) as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

4VAC15-90-241. Checking deer by persons exempt from license requirement or holding a license authorization number.

A. Upon killing a deer, any person (i) exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, [~~or (ii)~~] issued a complimentary license as prescribed in § 29.1-339, [~~or the holder of (iii) holding~~] a permanent license issued pursuant to § 29.1-301 E, or [~~the holder of (iv) holding~~] a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass to an authorized checking station or to any appropriate representative of the department in the county or adjoining county in which the deer was killed or report the kill through the department's automated harvest reporting system. All deer killed after the first Saturday in January (as prescribed in 4VAC15-90-22 and 4VAC15-90-70 [H]) must be checked by telephone or Internet. At such time, the person checking or reporting the carcass shall be given a game check card furnished by the department or a confirmation number from the automated reporting system. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If the kill is reported using the automated harvest reporting system, the successful hunter shall immediately create written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number. This written documentation must be kept in possession with the carcass until the carcass is processed. If the automated harvest reported carcass is transferred to the possession of another individual, the written documentation must be transferred with the carcass to the individual and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass. Processed carcass parts of a deer killed legally in Virginia may be transported; however, upon request of any authorized law enforcement officer, [sufficient verbal or written] information necessary to properly establish legal possession must be furnished immediately.

B. It shall be unlawful for any person to destroy the identity (sex) of any deer killed until the deer is checked as required by this section. Successful deer hunters are allowed to dismember the carcass to pack it out from the place of kill as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the deer is checked at a big game check station or reported through the automated harvest reporting system. Any deer that has not been checked (via a big game check station or the automated harvest reporting system) as required by this section found in the possession of any person exempt from license requirements

or holding a license authorization number shall be forfeited to the Commonwealth to be disposed of as provided by law.

4VAC15-90-293. Chronic Wasting Disease deer carcass importation restrictions.

A. No person shall import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating from [~~any county that includes or adjoins a county that is part of a designated Chronic Wasting Disease containment area in any area designated by the department as a carcass-restriction zone in or adjacent to~~] a state or Canadian province in which Chronic Wasting Disease has been found in free-ranging or captive deer, except that the following carcass parts may be imported and possessed:

1. Boned-out meat that is cut and wrapped;
2. Quarters or other portions of meat with no part of the spinal column or skull attached;
3. Hides or capes with no skull attached;
4. Clean (no meat or tissue attached) skull plates with antlers attached;
5. Antlers (with no meat or tissue attached);
6. Upper canine teeth (buglers, whistlers, or ivories); and
7. Finished taxidermy products.

A legible label shall be affixed to packages or containers containing the allowed carcass parts bearing the following information: the species of animal, the state or province from where the animal originated, and the name and address of the person who killed or owned the animal.

B. Any person who imports into Virginia any deer carcass or parts described in subsection A of this section and is notified that the animal has tested positive for Chronic Wasting Disease must report the test results to the department within 72 hours of receiving the notification. In order to facilitate the proper disposal of any infected material, the department may take into possession any imported carcass or carcass part of an animal if the animal has tested positive for Chronic Wasting Disease.

VA.R. Doc. No. R11-2795; Filed June 30, 2011, 5:10 p.m.

Final Regulation

Title of Regulation: 4VAC15-170. **Game:** Otter (amending 4VAC15-170-20; repealing 4VAC15-170-21).

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Regulations

Summary:

The amendment eliminates the mandatory carcass submission requirement for otters trapped west of the Blue Ridge Mountains.

4VAC15-170-20. Open season for trapping in ~~counties east of Blue Ridge Mountains; generally; season bag limit west of the Blue Ridge Mountains.~~

A. It shall be lawful to trap otter ~~in all counties east of the Blue Ridge Mountains~~ from December 1 through the last day of February, both dates inclusive.

B. The season bag limit for trapping otter shall be two per trapper in counties west of the Blue Ridge Mountains.

4VAC15-170-21. ~~Open season for trapping in counties west of the Blue Ridge Mountains; carcass presented to department agent; season bag limit. (Repealed.)~~

~~A. It shall be lawful to trap otter in all counties west of the Blue Ridge Mountains from December 1 through the last day of February, both dates inclusive.~~

~~B. The entire skinned carcass of all otters trapped in counties west of the Blue Ridge Mountains must be presented to an agent of the department within three days of capture.~~

~~C. The season bag limit for trapping otter shall be two per trapper in counties west of the Blue Ridge Mountains.~~

VA.R. Doc. No. R11-2796; Filed June 30, 2011, 5:34 p.m.

Final Regulation

Title of Regulation: **4VAC15-200. Game: Rabbit and Hares (amending 4VAC15-200-30).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) allow lawfully captured rabbits to be transported for release or restocking purposes and (ii) prohibit such rabbits' release on to the lands of another without permission.

4VAC15-200-30. Trapping with box traps.

It shall be lawful to trap rabbits with box traps from October 15 through January 31, both dates inclusive; provided, that no traps shall be set on the lands of another without written permission; provided further, that it shall be lawful to live-trap rabbits and transport them for release or restocking

purposes in Virginia at any time, provided they are not released onto the lands of another without permission.

VA.R. Doc. No. R11-2797; Filed June 30, 2011, 6:05 p.m.

Final Regulation

Title of Regulation: **4VAC15-210. Game: Raccoon (amending 4VAC15-210-10; repealing 4VAC15-210-20).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) establish a continuous open season for chasing raccoons with dogs statewide except on department-controlled lands west of the Blue Ridge Mountains and on national forest lands and (ii) allow raccoon chase with dogs during bear hound training season on additional national forest and department-owned lands west of the Blue Ridge Mountains.

Part I
Chasing

4VAC15-210-10. Open season; ~~counties east of Route 29~~ raccoon chase on areas open to bear hound training; possession of certain devices unlawful.

A. Except as otherwise specifically provided in the sections appearing in this chapter, there shall be a continuous open season for chasing raccoon with dogs, without capturing or taking, ~~in all counties and portions of counties east of Route 29 and in the counties of Loudoun (east of Route 15) and Prince William (east of Route 15).~~ It shall be unlawful to ~~have in possession a firearm, bow, axe, saw, or any tree climbing device while hunting during this chase season.~~ The meaning of "possession" for the purpose of this section shall include, but not be limited to, having these devices in or on one's person, vehicle or conveyance while engaged in the act of chasing except on department-controlled lands west of the Blue Ridge Mountains and on national forest lands.

B. It shall be lawful to chase raccoon with dogs, without capturing or taking, on department-controlled lands west of the Blue Ridge Mountains and on national forest lands where bear hound training is permitted during the season dates specified in 4VAC15-50-120.

C. It shall be unlawful to have in possession a firearm, bow, crossbow, axe, saw, or any tree climbing device while hunting during this chase season. The meaning of "possession" for the purpose of this section shall include, but

not be limited to, having these devices in or on one's person, vehicle, or conveyance while engaged in the act of chasing.

4VAC15-210-20. Open season; counties west of Route 29; possession of certain devices unlawful. (Repealed.)

A. It shall be lawful to chase raccoon with dogs, without capturing or taking, on private lands in all counties and portions of counties west of Route 29 and in the counties of Loudoun (west of Route 15); Prince William (west of Route 15); and on Fairystone Farms, G. Richard Thompson, Rapidan, and Turkeycock Wildlife Management Areas from August 1 through May 31, both dates inclusive.

B. It shall be lawful to chase raccoon with dogs, without capturing or taking, on national forest and department-controlled lands in the counties of Bland, Buchanan, Craig, Dickenson, Giles, Lee, Montgomery (north of Interstate 81), Pulaski (north of Interstate 81), Russell, Scott, Smyth (north of Interstate 81), Tazewell, Washington (north of Interstate 81), Wise, and Wythe (north of Interstate 81) from the second Saturday in August through the last Saturday in September.

C. It shall be unlawful to have in possession a firearm, bow, crossbow, axe, saw, or any tree climbing device while hunting during this chase season. The meaning of "possession" for the purpose of this section shall include, but not be limited to, having these devices in or on one's person, vehicle, or conveyance while engaged in the act of chasing.

VA.R. Doc. No. R11-2798; Filed June 30, 2011, 7:13 p.m.

Final Regulation

Title of Regulation: 4VAC15-230. **Game:** Squirrel (amending 4VAC15-230-21, 4VAC15-230-61).

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments open the spring hunting season for (i) gray and red squirrels on all lands except national forest lands and (ii) fox squirrels on all lands on which there is a regular season for fox squirrels, with the exception of national forest lands.

4VAC15-230-21. Spring season for gray and red squirrel.

It shall be lawful to hunt gray and red squirrels from the first Saturday in June through the third Saturday in June, both dates inclusive, on private lands and on Amelia Wildlife Management Area, Big Survey Wildlife Management Area, Briery Creek Wildlife Management Area, Chickahominy Wildlife Management Area, Dick Cross Wildlife

Management Area, Dismal Swamp Wildlife Management Area, Fairystone Wildlife Management Area (including Fairystone State Park and Philpott Reservoir), Featherfin Wildlife Management Area, Goshen Wildlife Management Area, Hardware River Wildlife Management Area, Havens Wildlife Management Area, Hog Island Wildlife Management Area (Carlisle Tract only), Horsepen Wildlife Management Area, James River Wildlife Management Area, Little North Mountain Wildlife Management Area, Merrimac Farms Wildlife Management Area, Pettigrew Wildlife Management Area, Phelps Wildlife Management Area, Powhatan Wildlife Management Area (including the Goochland Tract), Rapidan Wildlife Management Area, Thompson Wildlife Management Area, Turkeycock Mountain Wildlife Management Area, and White Oak Mountain Wildlife Management Area except on national forest lands.

4VAC15-230-61. Spring season for fox squirrel.

It shall be lawful to hunt fox squirrels from the first Saturday in June through the third Saturday in June, both dates inclusive, on private all lands in all counties open to fox squirrel hunting during the regular squirrel season, and on Big Survey Wildlife Management Area, Goshen Wildlife Management Area, Havens Wildlife Management Area, Little North Mountain Wildlife Management Area, Merrimac Farms Wildlife Management Area, Phelps Wildlife Management Area, Rapidan Wildlife Management Area, and Thompson Wildlife Management Area except on national forest lands.

VA.R. Doc. No. R11-2799; Filed June 30, 2011, 7:27 p.m.

Final Regulation

Title of Regulation: 4VAC15-240. **Game:** Turkey (amending 4VAC15-240-10, 4VAC15-240-20, 4VAC15-240-31, 4VAC15-240-81, 4VAC15-240-91; repealing 4VAC15-240-11).

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) simplify the fall turkey hunting season dates by uniformly opening the December segment on the Monday nearest December 2 and closing it on the last Saturday in December; (ii) establish a new two-week January hunting season segment that includes three Saturdays; (iii) lengthen the fall turkey hunting season from two weeks to four weeks duration for seven eastern counties and the City of Suffolk, lengthen the same season from two weeks to six weeks duration for Buchanan

Regulations

County, and shorten the fall turkey hunting season for 11 western counties from six weeks to two weeks duration; and (iv) revise requirements for checking turkeys by providing the option for fall turkey hunters to check game killed before the proposed January segment at a check station in addition to the option of checking via the automated harvest reporting system.

4VAC15-240-10. Open season; generally.

Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to hunt turkeys from the Saturday prior to the last Monday in October and for 11 consecutive hunting days following; on Thanksgiving Day; and on the Monday nearest December 9 2 through the first last Saturday in January December, both dates inclusive; and on the second Saturday in January and for 12 consecutive hunting days following.

~~4VAC15-240-11. Open season; certain counties and areas; Saturday prior to the last Monday in October and for 11 hunting days following, on Thanksgiving Day, and on the Monday closest to December 2 through the last Saturday in December, both dates inclusive. (Repealed.)~~

~~Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to hunt turkeys in counties, cities and towns east of the Blue Ridge Mountains except Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) from the Saturday prior to the last Monday in October and for 11 consecutive hunting days following, on Thanksgiving Day, and on the Monday nearest December 2 through the last Saturday in December, both dates inclusive.~~

4VAC15-240-20. Open season; certain counties and areas; Saturday prior to the last Monday in October and for 11 hunting days following, and on Thanksgiving Day.

It shall be lawful to hunt turkeys on the Saturday prior to the last Monday in October and for 11 consecutive hunting days following, and on Thanksgiving Day in the counties of Accomack, Buchanan, Isle of Wight, Northampton, Prince George, Southampton, Surry, and Sussex and the City of Suffolk Albemarle, Alleghany, Augusta, Bath, Greene, Highland, Madison, Page, Orange, Rockingham, and Warren.

4VAC15-240-31. Open season; certain counties and areas; Saturday prior to the last Monday in October and for 11 hunting days following, on Thanksgiving Day, and on the Monday closest to December 2 and for 11 hunting days following.

It shall be lawful to hunt turkeys on the Saturday prior to the last Monday in October and for 11 consecutive hunting days following, on Thanksgiving Day, and on the Monday closest to December 2 and for 11 hunting days following in the

counties of Accomack, [Buchanan,] Charles City, Gloucester, Isle of Wight, James City, King George, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York (except on Camp Peary) [,] and the City of Suffolk.

4VAC15-240-81. Validating tags and checking turkey by licensee.

A. Any person killing a turkey shall, before removing the carcass from the place of kill, validate an appropriate tag on his special license for hunting [bear,] deer [,] and turkey by completely removing the designated notch area from the tag. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a turkey tag from any special license for hunting [bear,] deer [,] and turkey prior to the killing of a turkey. A turkey tag that is mistakenly validated (notched) prior to the killing of a turkey must be immediately voided by the licensee by writing, in ink, the word "VOID" on the line provided on the tag.

B. Upon killing a turkey and validating (notching) a license tag, as provided above, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the turkey was killed or report their spring his kill (as provided by 4VAC15-240-40) through the department's automated harvest reporting system. Turkeys killed during the January season (as prescribed in 4VAC15-240-10) and the spring turkey seasons (as prescribed in 4VAC15-240-40 and 4VAC15-240-60) must be reported through the department's automated harvest reporting system. At such time, the The person reporting the carcass will be given a game check card furnished by the department or a confirmation number from the automated harvest reporting system. The successful hunter shall then immediately record the game check card number or confirmation number, in ink, on the line provided on the license tag that was validated (notched) in the field. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If reported using the automated harvest reporting system, no check card is required as long as the hunter who killed the turkey is in possession of the carcass. If the automated harvest reported ~~spring~~ carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the ~~animal~~ turkey was killed, and the confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left

unattended, this written documentation must be securely attached to the carcass.

C. It shall be unlawful for any person to destroy the identity of the sex of any turkey killed unless and until the license tag is validated (notched) and reported to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the turkey was killed or by using the automated harvest reporting system as required by this section. Any turkey found in the possession of any person without a validated (notched) license tag or documentation that the turkey has been reported to an authorized checking station or to an appropriate representative of the department in the county or adjoining counties in which the turkey was killed or by using the automated harvest reporting system as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

4VAC15-240-91. Checking turkey by persons exempt from license requirement or holding a license authorization number.

A. Upon killing a turkey, any person exempt from the license requirement as described in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in § 29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, or the holder of a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever comes first, and without unnecessary delay, present the carcass to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the turkey was killed or report their spring his kill (as provided by 4VAC15-240-40) through the department's automated harvest reporting system. At such time, the Turkeys killed during the January season (as prescribed in 4VAC15-240-10) and the spring turkey seasons (as prescribed in 4VAC15-240-40 and 4VAC15-240-60) must be reported through the department's automated harvest reporting system. The person reporting the carcass shall be given a game check card furnished by the department or a confirmation number from the automated harvest reporting system. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If a spring season kill is reported using the automated harvest reporting system, the successful hunter shall immediately create no check card is required as long as the hunter who killed the turkey is in possession of the carcass. If the automated harvest reported carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the animal turkey was killed, and the confirmation number. This written documentation must be created and kept

in possession with the carcass until the carcass is processed. If the automated harvest reported carcass is transferred to the possession of another individual, the written documentation must be transferred with the carcass to the individual and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass.

B. It shall be unlawful for any person to destroy the identity of the sex of any turkey killed until the turkey is reported to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the turkey was killed or by using the automated harvest reporting system as required by this section. Any turkey that has not been reported to an authorized checking station or to an appropriate representative of the department in the county or adjoining county or counties in which the turkey was killed or by using the automated harvest reporting system as required by this section found in the possession of any person exempt from license requirements or holding a license authorization number shall be forfeited to the Commonwealth to be disposed of as provided by law.

VA.R. Doc. No. R11-2800; Filed June 30, 2011, 7:51 p.m.

Final Regulation

Title of Regulation: **4VAC15-260. Game: Waterfowl and Waterfowl Blinds (amending 4VAC15-260-90; adding 4VAC15-260-180).**

Statutory Authority: §§ 29.1-103, 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) allow public waterfowl hunting from floating blinds in waters adjacent to the Saxis Wildlife Management Area, (ii) identify the area of Michael Marsh in Accomack County closed to waterfowl hunting, and (iii) require a permit to hunt Tundra Swans.

4VAC15-260-90. Blinds and hunting prohibited in sections of Accomack County.

A. The waters adjacent to the Free School and Michael marshes in the vicinity of the Town of Saxis in Accomack County shall be closed to stake and floating waterfowl blinds stationary blinds as defined by 4VAC15-260-10, starting from a stake on the north shore of Back Creek S 230° 37' E for a distance of 7560' more or less to a point 1500' more or less west of South Point, then S 58° 00' E for a distance of 9380' more or less to the center of the mouth of Cattail Creek.

Regulations

The waters of Messongo Creek shall be closed to ~~stake and floating~~ stationary blinds from the above-described line to Mill Creek. The waters of Cattail Creek shall be closed to ~~stake and floating~~ stationary blinds from its mouth following the center of the creek to the southeast corner stake of ~~Michael's marsh~~ Michael Marsh.

B. In the section known as Michael Marsh, waterfowl hunting is prohibited in all marsh above mean high tide and in the creeks running into the marsh.

4VAC15-260-180. Tundra Swan hunting permit.

Only persons with a valid Tundra Swan hunting permit will be allowed to take Tundra Swans during the prescribed season in Virginia. Tundra Swan hunting permits are nontransferable and are valid for use only by the person to whom issued. Permits must be in the immediate possession of the permit holder while swan hunting. Immediately at the time and place of kill, successful permittees must permanently record the month and day of kill on their permit and attach the permit to the swan as instructed.

VA.R. Doc. No. R11-2801; Filed June 30, 2011, 8:06 p.m.

Final Regulation

Title of Regulation: 4VAC15-270. Game: Firearms (adding 4VAC15-270-95).

Statutory Authority: §§ 29.1-103, 29.1-501, 29.1-502, and 29.1-528.1 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendment establishes model local government ordinances for governance of archery deer hunting, as mandated by § 29.1-528.1 of the Code of Virginia.

4VAC15-270-95. Model ordinances related to archery deer hunting.

Pursuant to § 29.1-528.1 A of the Code of Virginia, the following model ordinances related to hunting deer with bow and arrow (including crossbows) may be adopted by those counties and cities where there is an overabundance of the deer population, which is creating conflicts between humans and deer, including safety hazards to motorists. In accordance with § 29.1-528.1 B of the Code of Virginia, no such ordinance shall be enforceable unless the governing body of the locality notifies the director by registered mail prior to May 1 of the year in which the ordinance is to take effect.

Model Ordinance 1:

The times at which hunting shall commence and end each day shall be in accordance with the provisions of § 29.1-520 of the Code of Virginia.

Model Ordinance 2:

The number of deer that can be taken shall be in accordance with bag limits established by the Board of Game and Inland Fisheries pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Model Ordinance 3:

No person shall discharge a bow and arrow from, over, or across any street, sidewalk, alley, roadway, or toward any building or dwelling in such a manner that an arrow may strike it. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 4:

It shall be unlawful to discharge a bow and arrow in a manner that can be reasonably expected to result in the impact of the arrow upon the property of another without permission from the owner or tenant of such property. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

VA.R. Doc. No. R11-2802; Filed June 30, 2011, 8:21 p.m.

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: 4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-20, 4VAC20-490-30, 4VAC20-490-40, 4VAC20-490-41, 4VAC20-490-42, 4VAC20-490-44; adding 4VAC20-490-46, 4VAC20-490-47).

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

Effective Date: July 1, 2011.

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

Summary:

The amendments establish (i) a state commercial quota, (ii) additional qualification criteria for the spiny dogfish limited entry permit, (iii) quota monitoring requirements, and (iv) a management control date.

4VAC20-490-20. Definitions.

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

"Agent" means any person who possesses the Commercial Fisherman Registration License, fishing gear license, or fishing permit of a registered commercial fisherman in order to fish that commercial fisherman's gear or sell that commercial fisherman's harvest.

"Carcass length" means that length measured in a straight line from the anterior edge of the first dorsal fin to the posterior end of the shark carcass.

"COLREGS Line" means the COLREGS Demarcation lines, as specified in Coastal Pilot, 35th and 36th editions by Lighthouse Press.

"Commercial shark ~~fishermen~~ fisherman" means any ~~commercially permitted fisherman who~~ commercial fisherman permitted to land or possess sharks (excluding spiny dogfish) that has landed and sold one pound of shark or more (excludes spiny dogfish) in that calendar year (January 1 through December 31).

"Commercially permitted nonsandbar large coastal shark" means any of the following species:

- Blacktip, *Carcharhinus limbatus*
- Bull, *Carcharhinus leucas*
- Great hammerhead, *Sphyrna mokarran*
- Lemon, *Negaprion brevirostris*
- Nurse, *Ginglymostoma cirratum*
- Scalloped hammerhead, *Sphyrna lewini*
- Silky, *Carcharhinus falciformis*
- Smooth hammerhead, *Sphyrna zygaena*
- Spinner, *Carcharhinus brevipinna*
- Tiger, *Galeocerdo cuvier*

"Commercially permitted pelagic shark" means any of the following species:

- Blue, *Prionace glauca*
- Oceanic whitetip, *Carcharhinus longimanus*
- Porbeagle, *Lamna nasus*
- Shortfin mako, *Isurus oxyrinchus*
- Thresher, *Alopias vulpinus*

"Commercially permitted small coastal shark" means any of the following species:

- Atlantic sharpnose, *Rhizoprionodon terraenovae*

Blacknose, *Carcharhinus acronotus*

Bonnethead, *Sphyrna tiburo*

Finetooth, *Carcharhinus isodon*

"Commercially prohibited shark" means any of the following species:

Atlantic angel, *Squatina dumeril*

Basking, *Cetorhinus maximus*

Bigeye sand tiger, *Odontaspis noronhai*

Bigeye sixgill, *Hexanchus nakamurai*

Bigeye thresher, *Alopias superciliosus*

Bignose, *Carcharhinus altimus*

Caribbean reef, *Carcharhinus perezii*

Caribbean sharpnose, *Rhizoprionodon porosus*

Dusky, *Carcharhinus obscurus*

Galapagos, *Carcharhinus galapagensis*

Longfin mako, *Isurus paucus*

Narrowtooth, *Carcharhinus brachyurus*

Night, *Carcharhinus signatus*

Sand tiger, *Carcharias taurus*

Sevengill, *Heptranchias perlo*

Sixgill, *Hexanchus griseus*

Smalltail, *Carcharhinus porosus*

Whale, *Rhincodon typus*

White, *Carcharodon carcharias*

"Control rule" means a time-certain date, past, present or future, used to establish participation in a limited entry fishery and may or may not include specific past harvest amounts.

"Dressed weight" means the result from processing a fish by removal of head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass.

"Finning" means removing the fins and returning the remainder of the shark to the sea.

"Fork length" means the straight-line measurement of a fish from the tip of the snout to the fork of the tail. The measurement is not made along the curve of the body.

"Movable gill net" means any gill net other than a staked gill net.

"Large mesh gill net" means any gill net having a stretched mesh equal to or greater than five inches.

Regulations

"Longline" means any fishing gear that is set horizontally, either anchored, floating or attached to a vessel, and that consists of a mainline or groundline, greater than 1,000 feet in length, with multiple leaders (gangions) and hooks, whether retrieved by hand or mechanical means.

"Permitted commercial gear" means rod and reel, handlines, shark shortlines, small mesh gill nets, large mesh gill nets, pound nets, and weirs.

"Recreational shore angler" means a person not fishing from a vessel nor transported to or from a fishing location by a vessel.

"Recreational vessel angler" means a person fishing from a vessel or transported to or from a fishing location by a vessel.

"Recreationally permitted shark" means any of the following species:

Atlantic sharpnose, *Rhizoprionodon terraenovae*

Blacknose, *Carcharhinus acronotus*

Blacktip, *Carcharhinus limbatus*

Blue, *Prionace glauca*

Bonnethead, *Sphyrna tiburo*

Bull, *Carcharhinus leucas*

Finetooth, *Carcharhinus isodon*

Great hammerhead, *Sphyrna mokarran*

Lemon, *Negaprion brevirostris*

Nurse, *Ginglymostoma cirratum*

Oceanic whitetip, *Carcharhinus longimanus*

Porbeagle, *Lamna nasus*

Scalloped hammerhead, *Sphyrna lewini*

Shortfin mako, *Isurus oxyrinchus*

Smooth dogfish, *Mustelus canis*

Smooth hammerhead, *Sphyrna zygaena*

Spinner, *Carcharhinus brevipinna*

Thresher, *Alopias vulpinus*

Tiger, *Galeocerdo cuvier*

"Recreationally prohibited shark" means any of the following species:

Atlantic angel, *Squatina dumeril*

Basking, *Cetorhinus maximus*

Bigeye sand tiger, *Odontaspis noronhai*

Bigeye sixgill, *Hexanchus nakamurai*

Bigeye thresher, *Alopias superciliosus*

Bignose, *Carcharhinus altimus*

Caribbean reef, *Carcharhinus perezii*

Caribbean sharpnose, *Rhizoprionodon porosus*

Dusky, *Carcharhinus obscurus*

Galapagos, *Carcharhinus galapagensis*

Longfin mako, *Isurus paucus*

Narrowtooth, *Carcharhinus brachyurus*

Night, *Carcharhinus signatus*

Sand tiger, *Carcharias taurus*

Sandbar, *Carcharhinus plumbeus*

Sevengill, *Heptranchias perlo*

Silky, *Carcharhinus falciformis*

Sixgill, *Hexanchus griseus*

Smalltail, *Carcharhinus porosus*

Whale, *Rhincodon typus*

White, *Carcharodon carcharias*

"Research only shark" means any of the following species:

Sandbar, *Carcharhinus plumbeus*

"Shark shortline" means a fish trotline that is set horizontally, either anchored, floating or attached to a vessel, and that consists of a mainline or groundline, 1,000 feet in length or less, with multiple leaders (gangions) and no more than 50 corrodible circle hooks, whether retrieved by hand or mechanical means.

"Small mesh gill net" means any gill net having a stretched mesh less than five inches.

"Smooth dogfish" means any shark of the species *Mustelus canis*.

"Spiny dogfish" means any shark of the species *Squalus acanthias*.

4VAC20-490-30. Gear restrictions.

A. It shall be unlawful for any person to place, set, or fish any longline in Virginia's tidal waters.

B. It shall be unlawful for any person to place, set, or fish any shark shortline in Virginia's tidal waters with more than 50 hooks. All hooks must be corrodible circle hooks. In addition, any person aboard a vessel fishing shortlines must practice the protocols and possess the federally required release equipment, for pelagic and bottom longlines, for the safe handling, release and disentanglement of sea turtles and

other nontarget species; all captain and vessel owners must be certified in using handling and release equipment.

C. It shall be unlawful for a person to ~~have~~ possess more than two shark shortlines on board a vessel.

D. It shall be unlawful for any person fishing recreationally to take any shark using any gear other than handline or rod and reel.

E. It shall be unlawful for any person fishing for commercial purposes to possess any shark caught ~~in state waters~~ by means other than permitted commercial gear.

F. Any commercial shark fisherman fishing for sharks shall check all of his large mesh gill nets at least once every two hours.

4VAC20-490-40. Recreational catch limitations.

A. Recreational fishing vessels are allowed a maximum possession limit of one recreationally permitted shark, excluding smooth dogfish, per trip, regardless of the number of people on board the vessel. In addition, each recreational vessel angler may possess one bonnethead and one Atlantic sharpnose per trip. The possession aboard a vessel of more than one recreationally permitted shark, excluding smooth dogfish, or the possession of more than one Atlantic sharpnose shark or one bonnethead shark, per person, shall constitute a violation of this regulation. When fishing from any boat or vessel where the entire catch is held in a common hold or container, the possession limits for Atlantic sharpnose shark or bonnethead shark shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish, plus one additional recreationally permitted shark. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limits.

B. A recreational shore angler is allowed a maximum possession limit of one recreationally permitted shark, excluding smooth dogfish, per calendar day. In addition a recreational shore angler may harvest one additional bonnethead and one additional Atlantic sharpnose per calendar day. The possession of more than one recreationally permitted shark, excluding smooth dogfish, or the possession of more than one bonnethead and one Atlantic sharpnose, by any person, shall constitute a violation of this regulation.

C. It shall be unlawful for any person to possess any recreationally prohibited shark.

D. It shall be unlawful for any person to possess any recreationally permitted shark landed under the recreational catch limitations described in this section that is less than 54 inches fork length except Atlantic sharpnose, bonnethead, finetooth, blacknose, and smooth dogfish.

E. It shall be unlawful for any person to take, harvest, land, or possess any blacktip, bull, great hammerhead, lemon, nurse, scalloped hammerhead, smooth hammerhead, spinner

or tiger shark from May 15 through July 15 of any calendar year.

F. All sharks must have heads, tails and fins attached naturally to the carcass. Anglers may gut and bleed the carcass as long as the head and tail are not removed. Filletting ~~sharks at sea~~ any shark is prohibited until that shark is offloaded at the dock or on shore.

4VAC20-490-41. Commercial catch limitations.

A. It shall be unlawful for any person to possess on board a vessel or to land in Virginia more than 33 commercially permitted nonsandbar large coastal sharks in one 24-hour period. The person who owns or operates the vessel is responsible for compliance with the provisions of this subsection.

B. It shall be unlawful for any person to fillet a shark ~~at sea~~, until that shark is offloaded at the dock or on shore, except smooth dogfish as provided in subsection C of this section. A licensed commercial fisherman may eviscerate and remove the head of any shark, but the tail and all fins of any shark, except smooth dogfish as provided in subsection C of this section, shall remain naturally attached to the carcass through landing. The fins of any shark, except smooth dogfish, may be partially cut but some portion of the fin shall remain attached, until the shark is landed.

C. From July 1 through the end of February, commercial fishermen may process smooth dogfish at sea, except the first dorsal fin shall remain attached naturally to the carcass until landed. From March 1 through June 30, commercial fishermen may completely process smooth dogfish at sea prior to landing.

D. It shall be unlawful to possess, on board a vessel, or to land in Virginia any species of shark, after NOAA Fisheries has closed the fishery for that species in federal waters.

E. There are no commercial trip limits or possession limits for smooth dogfish or sharks on the lists of commercially permitted pelagic species or commercially permitted small coastal species.

F. Except as described in this section, it shall be unlawful for any person to take, harvest, land, or possess in Virginia any blacktip, bull, great hammerhead, lemon, nurse, scalloped hammerhead, silky, smooth hammerhead, spinner or tiger shark from May 15 through July 15. These sharks may be transported by vessel, in Virginia waters, during the closed season provided the sharks were caught in a legal manner consistent with federal regulations outside Virginia waters and:

1. The vessel does not engage in fishing, in Virginia waters, while possessing the above species; and
2. All fishing gear aboard the vessel is stowed and not available for immediate use.

Regulations

G. It shall be unlawful for any person to retain, possess or purchase any commercially prohibited shark or any research only shark, except as provided in subsection I of this section.

H. All sharks harvested from state waters or federal waters, for commercial purposes, shall only be sold to a federally permitted shark dealer.

I. The commissioner may grant exemptions from the seasonal closure, quota, possession limit, size limit, gear restrictions and prohibited species restrictions. Exemptions shall be granted only for display or research purposes. Any person granted an exemption for the harvest of any shark for research or display shall report the species, weight, location caught and gear used for each shark collected within 30 days. Any person granted a permit to possess any shark for research or display shall provide the commissioner, on an annual basis, information on the location and status of the shark throughout the life of the shark.

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

A. For the 12-month period of May 1, 2011, through April 30, 2012, the spiny dogfish commercial landings quota shall be limited to 2,148,224 pounds.

~~A. B.~~ It shall be unlawful for any person to take, possess aboard any vessel or land in Virginia any spiny dogfish harvested from federal waters (~~Exclusive Economic Zone (3-200 miles)~~), for commercial purposes after it has been announced that the federal quota for spiny dogfish has been taken.

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

~~C. D.~~ It shall be unlawful for any person to harvest or to land in Virginia any spiny dogfish for commercial purposes ~~from state waters after it has been announced that the interstate quota for spiny dogfish has been taken after the quota specified in subsection A of this section has been landed and announced as such.~~

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

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

4VAC20-490-44. Spiny dogfish limited entry fishery permit and permit transfers.

A. It shall be unlawful for any person to take, catch, possess, or land any spiny dogfish without first having obtained a spiny dogfish limited entry fishery permit from the Marine Resources Commission. Such permit shall be completed in

full by the permittee who shall keep a copy of that permit in his possession while fishing for or selling spiny dogfish. Permits shall only be issued to Virginia registered commercial fishermen meeting either of the following criteria:

1. Shall have documented on Virginia mandatory harvest reporting forms harvest from a legally licensed, movable gill net for an average of at least 60 days from 2006 through 2008, and a minimum harvest of one pound of spiny dogfish at any time from 2006 through 2008.

2. Shall have documented on Virginia mandatory reporting forms harvests that total greater than 10,000 pounds of spiny dogfish in any one year from 2006 through 2008.

3. Any smooth dogfish or unidentified dogfish documented on Virginia mandatory reporting forms as harvested during the months of November through February, 2006 through 2008, shall be classified as spiny dogfish when determining eligibility for a Spiny Dogfish Limited Entry Fishery Permit as described in subdivisions 1 and 2 of this subsection.

B. It is unlawful to transfer any spiny dogfish limited entry fishery permit after November 23, 2009.

C. The use of agents in the spiny dogfish fishery is prohibited.

D. The commissioner or his designee may grant exceptions to the prohibition against transfers of the spiny dogfish limited entry fishery permit as described in subsection B of this section to any individual who meets any of the following criteria:

1. Demonstrates a significant hardship on the basis of health and provides the commissioner documentation, by an attending physician, of the medical condition.

2. Demonstrates a significant hardship on the basis of a call to active military duty and provides the commissioner an explanation, in writing, and copy of the military orders for active duty.

3. Documents the retirement or death of the immediate family member permitted for the spiny dogfish limited entry fishery and possessing a legal Commercial Fisherman Registration License.

4VAC20-490-46. Spiny dogfish monitoring requirements.

A. Any Virginia seafood buyer purchasing spiny dogfish shall provide written reports to the Marine Resources Commission of weekly landings for each registered commercial fisherman to include that commercial fisherman's registration license number and exact weight of the spiny dogfish landed, in pounds, until it is projected and announced that 80% of Virginia spiny dogfish quota has been landed.

B. When it has been projected and announced by the Marine Resources Commission that 80% of the Virginia spiny dogfish quota has been landed, each Virginia seafood buyer shall call the Marine Resources Commission's interactive voice recording system on a daily basis to report the daily landings for each registered commercial fisherman to include the commercial fisherman's registration license number and exact weight of spiny dogfish landed, in pounds, until it is projected and announced that the Virginia spiny dogfish quota has been landed and the fishery closed.

4VAC20-490-47. Control date.

The Marine Resources Commission hereby establishes April 30, 2011, as the control date for management of all spiny dogfish licenses and fisheries in Virginia. The harvest of any spiny dogfish or the participation by any individual in any spiny dogfish fishery after the control date will not be considered in the calculation of spiny dogfish rights should further entry limitations be established. Any individual entering the spiny dogfish fishery after the control date may forfeit any right to future participation in the spiny dogfish fishery should further entry limitation be established.

VA.R. Doc. No. R11-2884; Filed June 30, 2011, 12:03 p.m.



TITLE 5. CORPORATIONS

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: 5VAC5-30. Uniform Commercial Code Filing Rules (amending 5VAC5-30-20 through 5VAC5-30-70).

Statutory Authority: §§ 8.9A-526 and 12.1-13 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Joel Peck, Clerk of the Commission, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9733, FAX (804) 371-9012, or email joel.peck@scc.virginia.gov.

Summary:

The regulations amend the filing rules for Uniform Commercial Code financing statements in a number of ways. The amendments (i) facilitate the use of electronic commerce for increased customer service, (ii) authorize

the Clerk of the Commission to act in accordance with law with regard to personal identifiable information, (iii) clarify certain provisions and make appropriate technical amendments, and (iv) delete obsolete definitions.

AT RICHMOND, JUNE 21, 2011

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2011-00003

Ex Parte: In re: Uniform Commercial Code filing rules

ORDER ADOPTING REGULATIONS

On April 14, 2011, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Commission to adopt regulations pursuant to § 8.9A-526 of the Code of Virginia. The proposed regulations, amending Chapter 30 (5 VAC 5-30-10 et seq.) of Title 5 of the Virginia Administrative Code, update the existing rules for the implementation of Title 8.9A of the Code of Virginia and facilitate the use of electronic commerce for increased customer service. The Order and proposed regulations were published in the Virginia Register of Regulations on May 9, 2011, posted on the Commission's website, and sent to various interested parties. Interested parties were afforded the opportunity to file written comments or request a hearing on or before May 23, 2011. No comments or requests for a hearing were filed.

NOW THE COMMISSION, upon consideration of the proposed regulations and applicable law, concludes that the proposed regulations should be adopted as proposed.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations, as attached hereto, are adopted effective July 1, 2011.

(2) This Order and the attached regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof shall be sent to the Clerk of the Commission, who shall forthwith mail a copy of this Order, including a copy of the attached regulations, to interested parties as he may designate.

Regulations

5VAC5-30-20. Definitions.

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

~~"Active record" means a UCC record that has not reached the one year anniversary of its lapse date.~~

"Amendment" means a UCC record that amends the information contained in a financing statement. Amendments also include (i) assignments and (ii) continuation and termination statements.

"Assignment" means an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

"Continuation statement" shall have the meaning prescribed by § 8.9A-102(a)(27) of the Code of Virginia.

"Correction statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.

"File number" shall have the meaning prescribed by § ~~8.9A-519(b)~~ 8.9A-102(a)(36) of the Code of Virginia.

"Filing office" means the Clerk's Office of the State Corporation Commission.

"Filing officer" means the Clerk of the State Corporation Commission.

"Filing officer statement" means a statement entered into the ~~filing office's~~ UCC information management system to ~~correct~~ describe the correction of an error or inaccuracy made by the filing office.

"Financing statement" shall have the meaning prescribed by § 8.9A-102(a)(39) of the Code of Virginia.

~~"Inactive record" means a UCC record that has reached the first anniversary of its lapse date.~~

"Individual" means a natural person, living or deceased.

"Initial financing statement" means a UCC record containing the information required to be in an initial financing statement and that causes the filing office to establish the initial record of existence of a financing statement.

"Organization" means a legal person that is not an individual.

"Personal identifiable information" shall have the meaning prescribed by § 12.1-19 B of the Code of Virginia.

"Remitter" means a person who tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service but does include a service

provider who acts as a filer's representative in the filing process.

"Secured party of record" shall have the meaning prescribed by § 8.9A-511 of the Code of Virginia.

"Termination statement" shall have the meaning prescribed by § 8.9A-102(a)(79) of the Code of Virginia.

"Through date" means the most recent date that all submissions for a specified day have been indexed in the UCC information management system.

"UCC" means the Uniform Commercial Code - Secured Transactions (§ 8.9A-101 et seq. of the Code of Virginia).

"UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements.

"UCC record" means an initial financing statement, an amendment, and a correction or filing officer statement, and shall not be deemed to refer exclusively to paper or paper-based writings.

5VAC5-30-30. General filing and search requirements.

A. UCC records may be tendered for filing at the filing office as follows:

1. By personal delivery, at the filing office street address;
2. By courier delivery, at the filing office street address; ~~or~~
3. By postal delivery, to the filing office mailing address; or
4. By electronic delivery method provided and authorized by the filing office.

B. The filing time for a UCC record delivered by ~~any of the foregoing methods~~ personal, courier, or postal delivery is the time the UCC record is date-and-time stamped by the filing office even though the UCC record may not yet have been accepted for filing and may be subsequently rejected. The filing time for a UCC record delivered by authorized electronic delivery method is the date and time the UCC information management system receives the record and determines that all the required elements of the transmission have been received in the required format.

C. UCC search requests may be delivered to the filing office by ~~any of the methods by which UCC records may be delivered to the filing office~~ personal, courier, or postal delivery.

5VAC5-30-40. Forms, fees, and payments.

A. Forms.

1. The filing office shall only accept forms for UCC records that conform to the requirements of this chapter.

2. The forms set forth in § 8.9A-521 of the Code of Virginia shall be accepted.

3. The forms approved by the International Association of Commercial Administrators as they appear on the filing office's website (http://www.scc.virginia.gov/division/clk/fee_uce.htm) (<http://www.scc.virginia.gov/division/clk/uccfile.aspx>) shall be accepted.

4. The filing officer may approve other forms for acceptance, including additional forms promulgated approved by the International Association of Commercial Administrators.

B. Fees.

1. The fee for filing and indexing a UCC record ~~communicated on paper~~ is \$20.

2. The fee for submitting a UCC search request ~~communicated on paper~~ is \$7.00.

3. The fee for furnishing UCC search copies is \$.50 for each page. The fee for affixing the seal of the commission to a certificate is \$3.00.

C. Methods of payment. Filing fees and fees for services provided under this ~~regulation~~ chapter may be paid by the following methods:

1. Payment in cash shall be accepted if paid in person at the filing office.

2. Personal checks, cashier's checks and money orders made payable to the State Corporation Commission or Treasurer of Virginia shall be accepted for payment if drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.

3. Payment by credit card acceptable to the filing office or electronic check shall be accepted for the filing or submission of documents delivered by authorized electronic method.

D. Overpayment and underpayment policies.

1. The filing officer shall notify the remitter of the amount of any overpayment exceeding \$24.99 and send the remitter the appropriate procedure and form for requesting a refund. The filing officer shall refund an overpayment of \$24.99 or less only upon the written request of the remitter. A request for a refund shall be delivered to the filing office within 12 months from the date of payment.

2. Upon receipt of a UCC record with an insufficient filing fee, the filing officer shall return the record to the remitter with a notice stating the deficiency and ~~shall~~ may retain the filing fee.

E. Federal liens. A notice of lien, certificate and other notice affecting a federal tax lien or other federal lien presented to

the filing office pursuant to the provisions of the Uniform Federal Lien Registration Act (§ 55-142.1 et seq. of the Code of Virginia) shall be treated as the most analogous UCC record unless the Uniform Federal Lien Registration Act or federal law provides otherwise.

Part II
Record Requirements

5VAC5-30-50. Acceptance and refusal of records; continuation statements.

A. The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to this chapter, the filing officer does none of the following:

1. Determine the legal sufficiency or insufficiency of a record;
2. Determine that a security interest in collateral exists or does not exist;
3. Determine that information in the record is correct or incorrect, in whole or in part; or
4. Create a presumption that information in the record is correct or incorrect, in whole or in part.

B. The first day on which a continuation statement may be filed is the day of the month corresponding to the date upon which the related financing statement would lapse in the sixth month preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation statement may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. The last day on which a continuation statement may be filed is the date upon which the financing statement lapses. If the lapse date falls on a Saturday, Sunday, or other day on which the filing office is not open, then the last day on which a continuation statement may be filed, if tendered for filing by personal, courier, or postal delivery, is the last day the filing office is open prior to the lapse date. An authorized electronic delivery method may be available to file a continuation statement on a Saturday, Sunday, or other day on which the filing office is not open. The relevant anniversary for a February 29 filing date shall be March 1 in the fifth or 30th year following the date of filing.

C. Except as provided in 5VAC5-30-40 D, if the filing officer finds grounds to refuse a UCC record, the filing officer shall return the record to the remitter and ~~shall~~ may retain the filing fee.

D. Nothing in this chapter shall prevent a the filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing ~~officer~~ office is under no obligation to do so and may not, in fact, have the resources to identify potential defects.

Regulations

The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

E. The filing officer may act in accordance with § 12.1-19 B of the Code of Virginia with respect to submissions that contain personal identifiable information.

F. If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused, the filing officer shall file the UCC record as provided in this chapter with a filing date and time assigned when the record was originally tendered for filing. The filing officer shall also file a filing officer statement that states the effective date and time of filing, which shall be the date and time the UCC record was originally tendered for filing.

Part III Record Filing and Searches

5VAC5-30-60. Filing and data entry procedures.

A. The filing office may correct errors made by its personnel in the UCC information management system at any time. If the correction occurs after the filing officer has issued a certification, the filing officer shall file a filing officer statement in the UCC information management system identifying the record to which it relates, the date of the correction, and explaining the nature of the corrective action taken. The record shall be preserved as long as the record of the initial financing statement is preserved in the UCC information management system.

B. An error by a filer or remitter is the responsibility of that person. It can be corrected by filing an amendment or it can be disclosed by filing a correction statement pursuant to § 8.9A-518 of the Code of Virginia. A correction statement shall be made only on a Statement of Claim form (Form UCC5).

C. 1. A UCC record tendered for filing shall designate whether a name is a name of an individual or an organization. If the name is that of an individual, the first, middle and last names and any suffix shall be given.

2. Organization names are entered into the UCC information management system exactly as set forth in the UCC record, even if it appears that multiple names are set forth in the record or if it appears that the name of an individual has been included in the field designated for an organization name.

3. The filing office will only accept forms that designate separate fields for individual and organization names and separate fields for first, middle, and last names and any suffix. Such forms diminish the possibility of filing office error and help assure that filers' expectations are met. However, the inclusion of names in an incorrect field or

the failure to transmit names accurately to the filing office may cause a financing statement to be ineffective.

D. The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor ~~named~~ included in the UCC information management system.

5VAC5-30-70. Search requests and reports.

A. The filing officer maintains for public inspection a searchable index for all UCC records. The index shall provide for the retrieval of all filed records by the name of the debtor and by the file number of the initial financing statement.

B. Search requests shall be made only on the National Information Request ~~Form~~ form (Form UCC11) and shall ~~contain the following information~~ include:

1. The name of the debtor to be searched, specifying whether the debtor is an individual or organization. A search request will be processed using the exact name provided by the requestor.
2. The name and address of the person to whom the search report is to be sent.
3. ~~The Payment of the appropriate fee, which shall be enclosed, payable made~~ by a method described herein set forth in this chapter.

C. Search requests may ~~contain the following information~~ include:

1. A request that copies of records found in the search be included with the search report, ~~or~~ and
2. Instructions on the mode of delivery desired, if other than by ~~ordinary mail~~ postal delivery, which ~~request~~ shall be ~~honored~~ followed if the ~~requested~~ desired mode is ~~available~~ acceptable to the filing office.

D. Search results are produced by the application of standardized search logic to the name presented to the filing officer. The following criteria apply to searches:

1. There is no limit to the number of matches that may be returned in response to the search request.
2. No distinction is made between upper and lower case letters.
3. Punctuation marks and accents are disregarded.
4. "Noise words" are limited to "an," "and," "for," "of," and "the." The word "the" ~~always will be~~ is disregarded ~~and other~~. Other noise words appearing anywhere except at the beginning of an organization name ~~will be~~ are disregarded. Certain business words are modified to a standard abbreviation: company to "co," corporation to "corp," limited to "Ltd," incorporated to "inc."
5. All spaces are disregarded.

6. After using the preceding criteria to modify the name to be searched, the search will reveal names of debtors that are contained in unexpired or all initial financing statements in an alphabetical list.

E. Reports created in response to a search request shall include the following:

1. The date and time the report was generated.
2. Identification of the name searched.
3. The through date as of the date and time the report was generated.
4. For an organization, the name as it appears after application of the standardized search logic.
5. Identification of each unexpired initial financing statement or all initial financing statements filed on or prior to the report date and time corresponding to the search criteria, by name of debtor, by ~~identification~~ file number, and by file date and file time.
6. For each initial financing statement on the report, a listing of all related UCC records filed by the filing officer on or prior to the report date.
7. Copies of all UCC records revealed by the search and requested by the requestor.

F. The filing office may provide access to the searchable index via the Internet that produces search results beyond exact name matches. Search results obtained via the Internet shall not constitute an official search and will not be certified by the filing office.

VA.R. Doc. No. R11-2808; Filed June 22, 2011, 2:17 p.m.

◆ ————— ◆
TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Withdrawal of Proposed Regulation

The State Board of Education has WITHDRAWN the proposed regulation for 8VAC20-340, Regulations for Driver Education, which was published as VR 270-01-0033, Regulations Governing Driver Education, in 6:4 VA.R. 471-472 November 20, 1989.

Agency Contact: Margaret Roberts, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2540, FAX (804) 225-2524, or email margaret.roberts@doe.virginia.gov.

VA.R. Doc. No. R11-2898; Filed June 8, 2011, 3:27 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC5-10. General Definitions (amending 9VAC5-10-30) (Rev. A-11).**

9VAC5-80. Permits for Stationary Sources (amending 9VAC5-80-1615, 9VAC5-80-1635, 9VAC5-80-1695, 9VAC5-80-1715, 9VAC5-80-1765, 9VAC5-80-2010, 9VAC5-80-2120) (Rev. A-11).

Statutory Authority: § 10.1-1308 of the Code of Virginia; Clean Air Act (§§ 110, 112, 165, 173, 182 and Title V); 40 CFR Parts 51, 61, 63, 70, and 72.

Effective Date: August 17, 2011.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

Articles 8 and 9 of 9VAC5-80 (Permits for Stationary Sources) apply to the construction or reconstruction of new major stationary sources or major modifications to existing ones in prevention of significant deterioration (PSD) areas and in nonattainment areas. This major new source review (NSR) permitting program requires that the owner obtain a permit prior to the construction or modification of a major source. The owner of the proposed new or modified source must provide information as may be needed to enable a preconstruction review in order to determine compliance with applicable control technology and other standards, and to assess the impact of the emissions from the facility on air quality. The regulations also provide the basis for final action on the permit depending on the results of the preconstruction review.

On May 16, 2008 (73 FR 28321), the U.S. Environmental Protection Agency (EPA) promulgated a final rule revising the NSR permitting program for PSD and nonattainment areas. The new rule includes the major source threshold, significant emissions rate, and offset ratios for particulate matter less than 2.5 micrometers (PM_{2.5}), interpollutant

Regulations

trading for offsets, and applicability of NSR to PM_{2.5} precursors. On October 20, 2010 (75 FR 64864), EPA promulgated a final rule revising the federal NSR permitting program for PSD. The new rule amends the requirements for PM_{2.5} under the PSD program by adding maximum allowable increases in ambient pollutant concentrations (increments) and two screening tools known as the significant impact levels (SILs) and a significant monitoring concentration (SMC) for PM_{2.5}. In Virginia, where the state is administering the NSR program under an approved SIP, the state may adopt and submit revisions to the SIP to reflect the rule revisions. The revised SIP should be the same as or equivalent to the revised federal program.

9VAC5-10-30. Abbreviations.

A -- ampere	EPA -- U.S. Environmental Protection Agency
act -- actual	eq -- equivalents
AQCR -- Air Quality Control Region	°F -- degree Fahrenheit
AQMA -- Air Quality Maintenance Area	FR -- Federal Register (36 FR 1492, May 3, 1971 means page 1492, dated May 3, 1971, of Volume 36 of the Federal Register - the page indicated is the first page of the referenced material)
ASTM -- American Society for Testing and Materials	ft -- feet
avg -- average	ft ² -- square feet
Be -- Beryllium	ft ³ -- cubic feet
Btu -- British thermal unit	g -- gram
°C -- degree Celsius (centigrade)	gal -- gallon
cal -- calorie	GEP -- good engineering practice
cc -- cubic centimeter	g-eq -- gram equivalents
CdS -- cadmium sulfide	gr -- grain
cfm -- cubic feet per minute	HCl -- hydrochloric acid <u>or hydrogen chloride</u>
CFR -- Code of Federal Regulations (40 CFR 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means Section 35.20 in Part 35 of Title 40 of the Code of Federal Regulations)	Hg -- mercury
CO -- carbon monoxide	hp -- horse power
CO ₂ -- carbon dioxide	hr -- hour
COH -- Coefficient of Haze (unit of measure for the soiling index)	H ₂ O -- water
cu ft -- cubic feet	H ₂ S -- hydrogen sulfide
d -- day	H ₂ SO ₄ -- sulfuric acid
dcf -- dry cubic feet	Hz -- hertz
dcm -- dry cubic meter	I.D. -- inside diameter
dscf -- dry cubic feet at standard conditions	in -- inch
dscm -- dry cubic meter at standard conditions	inHg -- inches of mercury
	inH ₂ O -- inches of water
	J -- joule
	K -- Kelvin
	k -- 1,000
	kg -- kilogram = 10 ³ gram
	l -- liter
	lb -- pound
	lpm -- liter per minute
	M -- molar
	m -- meter
	m ³ -- cubic meter
	meq -- milliequivalent

Mg -- megagram = 10^6 gram

mg -- milligram = 10^{-3} gram

min -- minute

ml -- milliliter = 10^{-3} liter

mm -- millimeter = 10^{-3} meter

mol -- mole

mol.wt. -- molecular weight

MSA -- Metropolitan Statistical Area

mV -- millivolt = 10^{-3} volt

N -- normal

n -- newton

N₂ -- nitrogen

ng -- nanogram = 10^{-9} gram

nm -- nanometer = 10^{-9} meter

NO -- nitric oxide

NO₂ -- nitrogen dioxide

NO_x -- nitrogen oxides

O₂ -- oxygen

O.D. -- outside diameter

oz -- ounce

Pa -- pascal

PM -- particulate matter: any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

PM₁₀ -- particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers

PM_{2.5} -- particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers

ppb -- parts per billion

ppm -- parts per million

psi -- pounds per square inch

psia -- pounds per square inch absolute

psig -- pounds per square inch gauge

°R -- degree Rankine

s -- second

scf -- cubic feet at standard conditions

scfh -- cubic feet per hour at standard conditions

scm -- cubic meter at standard conditions

sec -- second

SO₂ -- sulfur dioxide

SO₃ -- sulfur trioxide

SO_x -- sulfur oxides

sq ft -- square feet

std -- at standard conditions or standard

µg -- microgram = 10^{-6} gram

µl -- microliter = 10^{-6} liter

USC -- United States Code

V -- volt

v/v -- volume per volume

VOC -- volatile organic compound

W -- watt

w.g. -- water gauge

yd² -- square yard

yr -- year

% -- percent

Ω -- ohm

§ -- section

9VAC5-80-1615. Definitions.

A. As used in this article, all words or terms not defined herein shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

B. For the purpose of this article, 9VAC5-80-280 and applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section:

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9VAC5-80-1865. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The board will allow the use of a different time period upon a

Regulations

determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination shall be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (i) times of visitor use of the federal class I areas, and (ii) the frequency and timing of natural conditions that reduce visibility.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- a. The applicable standards as set forth in 40 CFR Parts 60, 61, and 63;
- b. The applicable implementation plan emissions limitation including those with a future compliance date; or
- c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or § 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.

d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

e. Any limitations and conditions or other requirement 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.

f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

g. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in this article.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the board for a permit required under this article, whichever is earlier, except that the five-year period shall not include any period earlier than November 15, 1990. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation

that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the board has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9VAC5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this subsection.

"Baseline area":

a. Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under ~~§ 107(d)(1)(C)~~ § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact ~~equal to or greater than 1 µg/m³ (annual average) of for the~~

Regulations

pollutant for which the ~~minor source~~ baseline date is established, as follows: (i) for SO₂, NO₂, or PM₁₀, equal to or greater than 1 µg/m³ (annual average); or (ii) for PM_{2.5}, equal to or greater than 0.3 µg/m³ (annual average).

b. Area redesignations under ~~§ 107(d)(3)~~ § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

- (1) Establishes a minor source baseline date; or
- (2) Is subject to this article or 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

c. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that such baseline area shall not remain in effect if the board rescinds the corresponding minor source baseline date in accordance with subdivision d of the definition of "baseline date."

"Baseline concentration"

a. Means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

- (1) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision b of this definition; and
- (2) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

b. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

- (1) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and
- (2) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date"

a. "Major source baseline date" means:

- (1) In the case of ~~particulate matter~~ PM₁₀ and sulfur dioxide, January 6, 1975; ~~and~~
- (2) In the case of nitrogen dioxide, February 8, 1988; ~~and~~
- (3) In the case of PM_{2.5}, October 20, 2010.

b. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to this article submits a complete application under this article. The trigger date is:

- (1) In the case of ~~particulate matter~~ PM₁₀ and sulfur dioxide, August 7, 1977; ~~and~~
- (2) In the case of nitrogen dioxide, February 8, 1988; ~~and~~
- (3) In the case of PM_{2.5}, October 20, 2011.

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

- (1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under ~~§ 107(d)(1)(C)~~ § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act for the pollutant on the date of its complete application under this article or 40 CFR 52.21; and
- (2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the board may rescind any such minor source baseline date where it can be shown, to the satisfaction of the board, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that 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. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. 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 thereof, 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 that achieve equivalent results.

"Building, structure, facility or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., that have the same first two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence" as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

- a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- b. Entered into binding agreements or contractual obligations, that cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all of 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 the purposes of permit processing does not preclude the board from requesting or accepting any additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this article, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this article, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this definition, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit.

"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:

- a. Are permanent;

Regulations

- b. Contain a legal obligation for the owner to adhere to the terms and conditions;
- c. Do not allow a relaxation of a requirement of the implementation plan;
- d. Are technically accurate and quantifiable;
- e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits on a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and
- f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions that 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:

- a. 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.
- b. 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.
- c. All terms and conditions (unless expressly designated as not federally enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.
- d. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act.
- e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review permit issued under regulations approved by the EPA into the implementation plan.
- f. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

(1) The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act;

(2) The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA;

(3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable";

(4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter; and

(5) The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

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

h. Individual consent agreements that the EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

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

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of

the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

"Lowest achievable emission rate" or "LAER" is as defined in 9VAC5-80-2010 C.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"Low terrain" means any area other than high terrain.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant for nonattainment areas in an amount that is equal to or greater than the major source threshold for the PAL pollutant in subdivision a (1) of the definition of "major stationary source" in 9VAC5-80-2010 C.

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant, and a significant net emissions increase of that pollutant from the major stationary source.

b. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NO_x shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include the following:

- (1) Routine maintenance, repair and replacement.
- (2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the federal Power Act.
- (3) Use of an alternative fuel by reason of any order or rule under § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source that:

(a) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter.

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

- (a) The applicable implementation plan; and
- (b) Other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

(9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(10) The reactivation of a very clean coal-fired electric utility steam generating unit.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 9VAC5-80-1865 for a PAL for that pollutant. Instead, the definition of "PAL major modification" shall apply.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

Regulations

"Major stationary source"

a. Means:

(1) Any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:

(a) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(b) Coal cleaning plants (with thermal dryers).

(c) Kraft pulp mills.

(d) Portland cement plants.

(e) Primary zinc smelters.

(f) Iron and steel mill plants.

(g) Primary aluminum ore reduction plants.

(h) Primary copper smelters.

(i) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(j) Hydrofluoric acid plants.

(k) Sulfuric acid plants.

(l) Nitric acid plants.

(m) Petroleum refineries.

(n) Lime plants.

(o) Phosphate rock processing plants.

(p) Coke oven batteries.

(q) Sulfur recovery plants.

(r) Carbon black plants (furnace process).

(s) Primary lead smelters.

(t) Fuel conversion plants.

(u) Sintering plants.

(v) Secondary metal production plants.

(w) Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

(x) Fossil fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(z) Taconite ore processing plants.

(aa) Glass fiber processing plants.

(bb) Charcoal production plants.

(2) Notwithstanding the stationary source size specified in subdivision a (1) of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(3) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision a (1) or a (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric, sulfuric, or nitric acid plants.

(10) Petroleum refineries.

(11) Lime plants.

(12) Phosphate rock processing plants.

(13) Coke oven batteries.

(14) Sulfur recovery plants.

(15) Carbon black plants (furnace process).

(16) Primary lead smelters.

(17) Fuel conversion plants.

(18) Sintering plants.

(19) Secondary metal production plants.

(20) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

- (21) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.
- (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- (23) Taconite ore processing plants.
- (24) Glass fiber processing plants.
- (25) Charcoal production plants.
- (26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
- (27) Any other stationary source category that, as of August 7, 1980, is being regulated under 40 CFR Parts 60 and 61.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits required under NSR programs that are part of the applicable implementation plan.

"Net emissions increase"

a. Means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

- (1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9VAC5-80-1605 G; and
- (2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

- (1) The date five years before construction on the particular change commences; and

(2) The date that the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if (i) it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs; and (ii) the board has not relied on it in issuing a permit for the source under this article (or the administrator under 40 CFR 52.21), which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

f. A decrease in actual emissions is creditable only to the extent that:

- (1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
- (2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;
- (3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

g. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

h. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in

Regulations

Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-1865.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending five years later.

"PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the state operating permit issued by the board that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

"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 if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, 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 the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner of the major stationary source:

a. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved implementation plan;

b. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

c. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or

d. In lieu of using the method set out in subdivisions a through c of this definition, may elect to use the emissions unit's potential to emit, in tons per year.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

a. Has not been in operation for the two-year period prior to the enactment of the federal Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the department's emissions inventory at the time of enactment;

b. Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;

c. Is equipped with low-NOX burners prior to the time of commencement of operations following reactivation; and

d. Is otherwise in compliance with the requirements of the federal Clean Air Act.

"Reasonably available control technology" or "RACT" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

"Regulated NSR pollutant" means:

a. Any pollutant for which an ambient air quality standard has been promulgated and any ~~constituents or precursors for such pollutants identified by the administrator (e.g., volatile organic compounds and NO_x are precursors for ozone)~~; pollutant identified under this subdivision as a constituent or precursor to such pollutant. Precursors identified for the purposes of this article shall be the following:

(1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(2) Sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas.

(3) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas, unless the board determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

(4) Volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment or unclassifiable area, unless the board determines that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations.

b. Any pollutant that is subject to any standard promulgated under § 111 of the federal Clean Air Act;

c. Any class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act; ~~or.~~

d. Particulate matter emissions, PM_{2.5} emissions, and PM₁₀ emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for particulate matter, PM_{2.5} and PM₁₀ in permits issued under this article. Compliance with emissions limitations for particulate matter, PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms

and conditions of the permit. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this article.

e. Any pollutant that otherwise is subject to regulation under the federal Clean Air Act; except that any or all hazardous air pollutants either listed in § 112 of the federal Clean Air Act or added to the list pursuant to § 112(b)(2), which have not been delisted pursuant to § 112(b)(3), are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under § 108 of the federal Clean Air Act.

"Repowering" means:

a. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

b. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

c. The board may give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under § 409 of the federal Clean Air Act.

"Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

Regulations

a. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (TSP)	25 tpy
PM ₁₀	15 tpy
PM _{2.5}	10 tpy of direct PM _{2.5} emissions; 40 tpy of SO ₂ emissions; 40 tpy of NO _x emissions unless demonstrated not to be a PM _{2.5} precursor under the definition of "regulated NSR pollutant"
Ozone	40 tpy of volatile organic compounds or NO _x
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	7 tpy
Hydrogen Sulfide (H ₂ S)	10 tpy
Total Reduced Sulfur (including H ₂ S)	10 tpy
Reduced Sulfur Compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as the sum of SO ₂ and HCl)	40 tpy
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	50 tpy

b. In reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that

subdivision a of this definition does not list, any emissions rate.

c. Notwithstanding subdivision a of this definition, any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than 1 µg/m³ (24-hour average).

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is significant for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

9VAC5-80-1635. Ambient air increments.

In areas designated as class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Class I Area

Particulate matter:

PM ₁₀ -annual arithmetic mean	4
PM ₁₀ -24 hour maximum	8
<u>PM_{2.5}:</u>	
Annual arithmetic mean	<u>1</u>
24 hour maximum	<u>2</u>
<u>PM₁₀:</u>	
Annual arithmetic mean	<u>4</u>
24 hour maximum	<u>8</u>
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
Three-hour maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5

Class II Area

Particulate matter:

PM ₁₀ -annual arithmetic mean	17
PM ₁₀ -24 hour maximum	30
<u>PM_{2.5}:</u>	
Annual arithmetic mean	<u>4</u>
24 hour maximum	<u>9</u>
<u>PM₁₀:</u>	
Annual arithmetic mean	<u>17</u>
24 hour maximum	<u>30</u>
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
Three-hour maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25

Class III Area

Particulate matter:

PM ₁₀ -annual geometric mean	34
PM ₁₀ -24 hour maximum	60
<u>PM_{2.5}:</u>	
Annual arithmetic mean	<u>8</u>
24 hour maximum	<u>18</u>
<u>PM₁₀:</u>	
Annual arithmetic mean	<u>34</u>
24 hour maximum	<u>60</u>

Sulfur dioxide:	
Annual arithmetic mean	40
24-hour maximum	182
Three-hour maximum	700

Nitrogen dioxide:	
Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

9VAC5-80-1695. Exemptions.

A. The requirements of this article shall not apply to a particular major stationary source or major modification; if:

1. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:
 - a. Coal cleaning plants (with thermal dryers).
 - b. Kraft pulp mills.
 - c. Portland cement plants.
 - d. Primary zinc smelters.
 - e. Iron and steel mills.
 - f. Primary aluminum ore reduction plants.
 - g. Primary copper smelters.
 - h. Municipal incinerators capable of charging more than 250 tons of refuse per day.
 - i. Hydrofluoric acid plants.
 - j. Sulfuric acid plants.
 - k. Nitric acid plants.
 - l. Petroleum refineries.
 - m. Lime plants.
 - n. Phosphate rock processing plants.
 - o. Coke oven batteries.
 - p. Sulfur recovery plants.
 - q. Carbon black plants (furnace process).
 - r. Primary lead smelters.
 - s. Fuel conversion plants.
 - t. Sintering plants.
 - u. Secondary metal production plants.

Regulations

v. Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

w. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

x. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

y. Taconite ore processing plants.

z. Glass fiber processing plants.

aa. Charcoal production plants.

bb. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

cc. Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Part 60 or 61; or

2. The source or modification is a portable stationary source that has previously received a permit under this article, and

a. The owner proposes to relocate the source and emissions of the source at the new location would be temporary;

b. The emissions from the source would not exceed its allowable emissions;

c. The emissions from the source would affect no class I area and no area where an applicable increment is known to be violated; and

d. Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

B. The requirements of this article shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9VAC5-20-204.

C. The requirements of 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Would affect no class I area and no area where an applicable increment is known to be violated; and

2. Would be temporary.

D. The requirements of 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 as they relate to any maximum allowable increase for a class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

E. The board may exempt a proposed major stationary source or major modification from the requirements of 9VAC5-80-1735 with respect to monitoring for a particular pollutant if:

1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide -- 575 $\mu\text{g}/\text{m}^3$, 8-hour average

Nitrogen dioxide -- 14 $\mu\text{g}/\text{m}^3$, annual average

~~Particulate matter -- 10 $\mu\text{g}/\text{m}^3$ of PM_{10} , 24-hour average~~

$\text{PM}_{2.5}$ - 4 $\mu\text{g}/\text{m}^3$, 24-hour average

PM_{10} - 10 $\mu\text{g}/\text{m}^3$, 24-hour average

Sulfur dioxide -- 13 $\mu\text{g}/\text{m}^3$, 24-hour average

Ozone*

Lead -- 0.1 $\mu\text{g}/\text{m}^3$, 3-month average

Fluorides -- 0.25 $\mu\text{g}/\text{m}^3$, 24-hour average

Total reduced sulfur -- 10 $\mu\text{g}/\text{m}^3$, 1-hour average

Hydrogen sulfide -- 0.2 $\mu\text{g}/\text{m}^3$, 1-hour average

Reduced sulfur compounds -- 10 $\mu\text{g}/\text{m}^3$, 1-hour average; or

*No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or NO_x subject to this article would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

2. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subdivision 1 of this subsection, or the pollutant is not listed in subdivision 1 of this subsection.

F. The requirements of this article shall not apply to a particular major stationary source with respect to the use of an alternative fuel or raw material if the following conditions are met:

1. The owner demonstrates to the board that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

2. The use of an alternative fuel or raw material would not be subject to review under this article as a major modification.

9VAC5-80-1715. Source impact analysis.

A. The following demonstration is required for any new major stationary source or major modification:

1. The owner of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

~~1- a.~~ Any ambient air quality standard in any air quality control region; or

~~2- b.~~ Any applicable maximum allowable increase over the baseline concentration in any area.

~~B- 2.~~ For purposes of PM_{2.5}, the demonstration required in subdivision 1 of this subsection is deemed to have been made if the emissions increase from the new stationary source alone or from the modification alone would cause, in all areas, air quality impacts less than the following amounts:

<u>Averaging time</u>	<u>Class I area</u>	<u>Class II area</u>	<u>Class III area</u>
<u>Annual</u>	<u>0.06 µg/m³</u>	<u>0.3 µg/m³</u>	<u>0.3 µg/m³</u>
<u>24-hour</u>	<u>0.07 µg/m³</u>	<u>1.2 µg/m³</u>	<u>1.2 µg/m³</u>

B. The following applies to any new major stationary source or major modification if it would cause or contribute to a violation of any ambient air quality standard.

1. A new major stationary source or major modification will be considered to cause or contribute to a violation of an ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable air quality standard:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO ₂	1.0 µg/m ³	5.0 µg/m ³		25.0 µg/m ³	
PM ₁₀	1.0 µg/m ³	5.0 µg/m ³			

PM _{2.5}	0.3 mg/m ³	1.2 mg/m ³			
NO ₂	1.0 µg/m ³				
CO			500 µg/m ³		2000 µg/m ³

2. A proposed new major stationary source or major modification may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the new major stationary source or major modification would otherwise cause or contribute to a violation of any ambient air quality standard. In the absence of such emission reductions, the board will deny the proposed construction.

3. The requirements of this subsection do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9VAC5-20-204.

9VAC5-80-1765. Sources affecting federal class I areas -- additional requirements.

A. The board shall transmit to the administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the administrator of the following actions related to the consideration of such permit:

1. Notification of the permit application status as provided in 9VAC5-80-1773 A.
2. Notification of the public comment period on the application as provided in 9VAC5-80-1775 F 2.
3. Notification of the final determination on the application and issuance of the permit as provided in 9VAC5-80-1773 D.
4. Notification of any other action deemed appropriate by the board.

B. The board shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The board shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under 9VAC5-80-1773 B,

Regulations

and shall make available to them any materials used in making that determination, promptly after the board makes such determination. Finally, the board shall also notify all affected federal land managers within 30 days of receipt of any advance notification of any such permit application.

C. The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the board, whether a proposed source or modification will have an adverse impact on such values.

D. The board shall consider any analysis performed by the federal land manager, provided within 30 days of the notification required by subsection B of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal class I area. Where the board finds that such an analysis does not demonstrate to the satisfaction of the board that an adverse impact on visibility will result in the federal class I area, the board shall, in the notice of public hearing on the permit application, either explain this decision or give notice as to where the explanation can be obtained.

E. The federal land manager of any such lands may demonstrate to the board that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations that would exceed the maximum allowable increases for a class I area. If the board concurs with such demonstration, then it shall not issue the permit.

F. The owner of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations that would exceed the maximum allowable increases for a class I area. If the federal land manager concurs with such demonstration and so certifies, the board may, provided that the applicable requirements of this article are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

MAXIMUM ALLOWABLE INCREASE (micrograms per cubic meter)

Particulate matter:

PM₁₀, annual geometric mean	17
PM₁₀, 24 hour maximum	30

PM_{2.5}:

<u>Annual arithmetic mean</u>	4
<u>24 hour maximum</u>	9

PM₁₀:

<u>Annual arithmetic mean</u>	17
<u>24 hour maximum</u>	30

Sulfur dioxide:

Annual arithmetic mean	20
24-hour maximum	91
Three-hour maximum	325

Nitrogen dioxide:

Annual arithmetic mean	25
------------------------	----

G. The owner of a proposed source or modification that cannot be approved under subsection F of this section may demonstrate to the governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 24 hours or less applicable to any class I area and, in the case of federal mandatory class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to the federal land manager's concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the board shall issue a permit to such source or modification pursuant to the requirements of subsection I of this section, provided that the applicable requirements of this article are otherwise met.

H. In any case whether the governor recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president. The president may approve the governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the board shall issue a permit pursuant to the requirements of subsection I of this section, provided that the applicable requirements of this article are otherwise met.

I. In the case of a permit issued pursuant to subsection G or H of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations that would exceed the following maximum allowable increases over the baseline concentration

and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Period of exposure	Low terrain areas	High terrain areas
24-hour maximum	36	62
3-hour maximum	130	221

9VAC5-80-2010. Definitions.

A. As used in this article, all words or terms not defined here shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

B. For the purpose of this article, 9VAC5-50-270 and any related use, the words or terms shall have the meanings given them in subsection C of this section.

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9VAC5-80-2144. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source, that emit or have the potential to emit the PAL pollutant.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- a. The applicable standards set forth in 40 CFR Parts 60, 61 and 63;
- b. Any applicable implementation plan emissions limitation including those with a future compliance date; or
- c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

- a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or § 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.
- b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.
- c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.
- d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
- e. Any limitations and conditions or other requirement 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.

Regulations

f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

g. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1605 et seq.) of this part.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The board may allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different

pollutant or pollutants is more appropriate due to extenuating circumstances.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the board for a permit required either under this section or under a plan approved by the administrator, whichever is earlier, except that the five-year period shall not include any period earlier than November 15, 1990. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the source shall currently comply, had such source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9VAC5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different

pollutant or pollutants is more appropriate due to extenuating circumstances.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and b (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this definition.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that 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. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. 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 thereof, 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 that achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9VAC5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or nitrogen oxides associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence," as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

- a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"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.

"Construction" means any physical change or change in the method of operation (including fabrication, erection,

Regulations

installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

"Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of this ~~section~~ article, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of this ~~section~~ article, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter values on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatt electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions cap" means any limitation on the rate of emissions of any air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this article, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit.

"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:

- a. Are permanent;
- b. Contain a legal obligation for the owner to adhere to the terms and conditions;
- c. Do not allow a relaxation of a requirement of the implementation plan;

d. Are technically accurate and quantifiable;

e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) 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 this article and other regulations of the board; and

f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"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:

a. 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.

b. 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.

c. All terms and conditions (unless expressly designated as not federally enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.

d. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d), or § 129 of the federal Clean Air Act.

e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA into the implementation plan.

f. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

- (1) The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act.
- (2) The operating permit program imposes a legal obligation that operating permit holders adhere to the

terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.

(3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable."

(4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.

(5) The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

g. Limitations and conditions in a regulation of the board 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.

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

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

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

"Lowest achievable emissions rate (LAER)" means for any source, the more stringent rate of emissions based on the following:

a. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or

b. The most stringent emissions limitation which is achieved in practice by such class or category of stationary

sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant for nonattainment areas in subdivision a (1) of the definition of "major stationary source."

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in (i) a significant emissions increase of a regulated NSR pollutant; and (ii) a significant net emissions increase of that pollutant from the source.

b. Any significant emissions increase from any emissions units or net emissions increase at a source that is considered significant for volatile organic compounds shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include the following:

(1) Routine maintenance, repair and replacement.

(2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

(3) Use of an alternative fuel by reason of an order or rule § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source that:

(a) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter.

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under

Regulations

any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The applicable implementation plan; and

(b) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the source is complying with the requirements under 9VAC5-80-2144 for a PAL for that pollutant. Instead, the definition for "PAL major modification" shall apply.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source"

a. Means:

(1) Any stationary source of air pollutants which emits, or has the potential to emit, (i) 100 tons per year or more of a regulated NSR pollutant, (ii) 50 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as serious in 9VAC5-20-204, (iii) 25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in 9VAC5-20-204, or (iv) 100 tons per year or more of nitrogen oxides or 50 tons per year of volatile organic compounds in the Ozone Transport Region; or

(2) Any physical change that would occur at a stationary source not qualifying under subdivision a (1) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the

source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators (or combinations of them) capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric acid plants.

(10) Sulfuric acid plants.

(11) Nitric acid plants.

(12) Petroleum refineries.

(13) Lime plants.

(14) Phosphate rock processing plants.

(15) Coke oven batteries.

(16) Sulfur recovery plants.

(17) Carbon black plants (furnace process).

(18) Primary lead smelters.

(19) Fuel conversion plants.

(20) Sintering plants.

(21) Secondary metal production plants.

(22) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

(23) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(24) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(25) Taconite ore processing plants.

(26) Glass fiber manufacturing plants.

(27) Charcoal production plants.

(28) Fossil fuel steam electric plants of more than 250 million British thermal units per hour heat input.

(29) Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Part 60, 61 or 63.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits required under the NSR program that are part of the applicable implementation plan.

"Net emissions increase"

a. Means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9VAC5-80-2000 H; and

(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs. For sources located in ozone nonattainment areas classified as serious or severe in 9VAC5-20-204, an increase or decrease in actual emissions of volatile organic compounds or nitrogen oxides is contemporaneous with the increase from the particular change only if it occurs during a period of five consecutive calendar years which includes the calendar year in which the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if:

(1) It occurs between the date five years before construction on the particular change commences and the

date that the increase from the particular change occurs; and

(2) The board has not relied on it in issuing a permit for the source pursuant to this article which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

e. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(3) The board has not relied on it in issuing any permit pursuant to this chapter or the board has not relied on it in demonstrating attainment or reasonable further progress in the implementation plan; and

(4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

f. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

g. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases or after a change.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Nonattainment major new source review (NSR) program" means a preconstruction review and permit program (i) for

Regulations

new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 9 (9VAC5-80-2000 et seq.) of this part. Any permit issued under such a program is a major NSR permit.

"Nonattainment pollutant" means, within a nonattainment area, the pollutant for which such area is designated nonattainment. For ozone nonattainment areas, the nonattainment pollutants shall be volatile organic compounds (including hydrocarbons) and nitrogen oxides.

"Ozone transport region" means the area established by § 184(a) of the federal Clean Air Act or any other area established by the administrator pursuant to § 176A of the federal Clean Air Act for purposes of ozone. For the purposes of this article, the Ozone Transport Region consists of the following localities: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

"Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-2144.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending five years later.

"PAL major modification" means, notwithstanding the definitions for "major modification" and "net emissions increase," any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the state operating permit issued by the board that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

"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 the effect it would have on emissions is federally and state enforceable. Secondary emissions do not

count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, 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 the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Prevention of significant deterioration (PSD) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 165 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 8 (9VAC5-80-1605 et seq.) of this part.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the source. In determining the projected actual emissions before beginning actual construction, the owner shall:

- a. Consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan;
- b. Include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and
- c. Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased

utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or

d. In lieu of using the method set out in subdivisions a through c of this definition, may elect to use the emissions unit's potential to emit, in tons per year, as defined under the definition of potential to emit.

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

"Reasonable further progress" means the annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of an implementation plan and regular reductions thereafter) which are sufficient in the judgment of the board to provide for attainment of the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the implementation plan for such area.

"Regulated NSR pollutant" means any of the following:

- a. Nitrogen oxides or any volatile organic compound; ~~or~~
- b. Any pollutant for which an ambient air quality standard has been promulgated; ~~or~~
- c. Any pollutant that is identified under this subdivision as a constituent or precursor of a general pollutant listed under subdivisions a and b of this definition, provided that a such constituent or precursor pollutant may only be regulated under NSR this article as part of regulation of the general pollutant. Precursors identified for purposes of this article shall be the following:

(1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(2) Sulfur dioxide is a precursor to PM_{2.5} in all PM_{2.5} nonattainment areas.

(3) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5} nonattainment areas, unless the board determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

(4) Volatile organic compounds and ammonia are presumed not to be precursors to PM_{2.5} in any PM_{2.5} nonattainment area, unless the board determines that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations.

d. PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in permits issued under this article. Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this article.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification 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 major stationary source or major modification. 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.

"Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

- a. Ozone nonattainment areas classified as serious or severe in 9VAC5-20-204.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
PM ₁₀	15 tpy
PM _{2.5}	10 tpy of direct PM _{2.5} emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM _{2.5} precursor under the definition of "regulated NSR pollutant"
Ozone	25 tpy of volatile organic compounds
Lead	0.6 py tpy

Regulations

b. Other nonattainment areas.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
PM ₁₀	15 tpy
PM _{2.5}	10 tpy of direct PM _{2.5} emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM _{2.5} precursor under the definition of "regulated NSR pollutant"
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources, (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability, and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

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

"Synthetic minor" means a stationary source whose potential to emit is constrained by state-enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

9VAC5-80-2120. Offsets.

A. Owners shall comply with the offset requirements of this article by obtaining emission reductions from the same source or other sources in the same nonattainment area, except that for ozone precursor pollutants the board may allow the owner to obtain such emission reductions in another nonattainment area if (i) the other area has an equal or higher nonattainment classification than the area in which the source is located and (ii) emissions from such other area contribute to a violation of the ambient air quality standard in the nonattainment area in which the source is located. By the time a new or modified source begins operation, such emission reductions shall (i) be in effect, (ii) be state and federally enforceable and (iii) assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the nonattainment area.

B. The (i) ratio of total emission reductions of volatile organic compounds to total increased emissions of volatile organic compounds or (ii) the ratio of total emission reductions of nitrogen oxides to total increased emissions of nitrogen oxides in ozone nonattainment areas designated in 9VAC5-20-204 shall be at least the following:

- | | |
|---|--------------|
| 1. Nonattainment areas classified as marginal | 1.1 to one. |
| 2. Nonattainment areas classified as moderate | 1.15 to one. |
| 3. Nonattainment areas classified as serious | 1.2 to one. |
| 4. Nonattainment areas classified as severe | 1.3 to one. |
| 5. Nonattainment areas with any other classification or no classification | 1 to one. |

~~The ratio of total emissions reductions of the nonattainment pollutant to total increased emissions of the nonattainment~~

~~pollutant in nonattainment areas (other than ozone nonattainment areas) designated in 9VAC5-20-204 shall be at least 1 to one. The ratio of total actual emissions reductions of the nonattainment pollutant to the emissions increase shall be at least 1 to one unless an alternative ratio is provided above for the applicable nonattainment area designated in 9VAC5-20-204.~~

C. Emission reductions otherwise required by these regulations shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by these regulations shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of subsection A of this section.

D. The board will allow an owner to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

1. Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990.
2. The source demonstrates to the satisfaction of the board that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.
3. The source has obtained a written finding from the U.S. Department of Defense, U.S. Department of Transportation, National Aeronautics and Space Administration or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.
4. The owner will comply with an alternative measure, imposed by the board, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the board may impose an emissions fee to be paid to the board which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that nonattainment area during the previous three years. The board will utilize the fees in a manner that maximizes the emissions reductions in that nonattainment area.

E. For sources subject to the provisions of this article, the baseline for determining credit for emissions reduction is the emissions limit under the applicable implementation plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area; or

2. The applicable implementation plan does not contain an emissions limitation for that source or source category.

F. Where the emissions limit under the applicable implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

G. For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable implementation plan for the type of fuel being burned at the time the application to construct is filed. If the owner of the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The board will ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

H. Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally and state enforceable. In addition, the shutdown or curtailment is creditable only if it occurred on or after January 1, 1991.

I. No emissions credit may be allowed for replacing one volatile organic compound with another of lesser reactivity.

J. Where this article does not adequately address a particular issue, the provisions of Appendix S to 40 CFR Part 51 shall be followed to the extent that they do not conflict with this section. The provisions of Appendix S to 40 CFR Parts 51 apply only to the extent that they are incorporated by reference in 9VAC5-20-21.

K. Credit for an emissions reduction can be claimed to the extent that the board has not relied on it in issuing any permit under this chapter or has not relied on it in demonstrating attainment or reasonable further progress.

L. The total tonnage of increased emissions, in tons per year, resulting from a major modification that shall be offset in accordance with § 173 of the federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

M. In meeting the emissions offset requirements of this section, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is

Regulations

permitted for a particular pollutant as specified in this subsection. The offset requirements in this section for direct PM_{2.5} emissions or emissions of precursors of PM_{2.5} may be satisfied by offsetting reductions in direct PM_{2.5} emissions or emissions of any PM_{2.5} precursor identified under subdivision c of the definition of "regulated NSR pollutant" if such offsets comply with the interprecursor trading hierarchy and ratio established in accordance with subsections N through P of this section for a particular nonattainment area.

N. The board may allow the offset requirement in subsection M of this section for direct PM_{2.5} emissions or precursors of PM_{2.5} to be satisfied by offsetting reductions in direct PM_{2.5} emissions or emissions of any PM_{2.5} precursor using a ratio approved by the board for the nonattainment area after public review and comment as provided in subsections O and P of this section. Prior to making a final determination on the interpollutant trading ratios for a nonattainment area, the board shall submit the interpollutant trading ratios and supporting information to the EPA Regional Office for approval.

O. Prior to the decision of the board, the offsetting ratio will be subject to a public comment period of at least 30 days. The board will notify the public, by notice on the department web page "Public Notices for Air Regulations," of the opportunity for public comment on the offsetting ratio and supporting information as available for public inspection under the provisions of subsection P of this section. The notification shall be published at least 30 days prior to the close of the public comment period.

P. Information on the offsetting ratio and supporting information, as well as the preliminary determination of the board, shall be available for public inspection during the entire public comment period on the department web page "Public Notices for Air Regulations."

VA.R. Doc. No. R11-2833; Filed June 28, 2011, 1:46 p.m.

Final Regulation

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

Titles of Regulations: **9VAC5-40. Existing Stationary Sources (amending 9VAC5-40-5810, 9VAC5-40-5820, 9VAC5-40-5850, 9VAC5-40-5880, 9VAC5-40-5920) (Rev. D-11).**

9VAC5-50. New and Modified Stationary Sources (amending 9VAC5-50-420) (Rev. D-11).

9VAC5-130. Regulation for Open Burning (amending 9VAC5-130-20, 9VAC5-130-40, 9VAC5-130-100) (Rev. D-11).

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

Effective Date: August 17, 2011.

Agency Contact: Debra Miller, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4206, FAX (804) 698-4346, or email debra.miller@deq.virginia.gov.

Summary:

Amendment 7 to the Solid Waste Management Regulations recodified those regulations and created 9VAC20-81, which became effective March 16, 2011. This action updates the citations to the Solid Waste Management Regulations in the State Air Pollution Control Board's regulations.

9VAC5-40-5810. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, 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 9VAC5 Chapter 10 (9VAC5-10), unless otherwise required by context.

C. Terms defined.

"Active collection system" means a gas collection system that uses gas mover equipment.

"Active landfill" means a landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future.

"CERCLA" means the federal Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.).

"Closed landfill" means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification, as prescribed under 40 CFR 60.7(a)(4), with the board. Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed.

"Closure" means that point in time when a landfill becomes a closed landfill.

"Commenced" means that an owner has undertaken a continuous program of construction or modification or that an owner has entered into a contractual obligation to undertake

and complete, within a reasonable time, a continuous program of construction or modification.

"Commercial waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding construction, household, and industrial wastes.

"Construction" means fabrication, erection, or installation of an affected facility.

"Controlled landfill" means any landfill at which collection and control systems are required under this article as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with 9VAC5-40-5820 C 2 a.

"Design capacity" means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the department under ~~Part VII (9VAC20-80-480 et seq.) of 9VAC20 Chapter 80 (Solid Waste Management Regulations)~~ Part V (9VAC20-81-400 et seq.) of the Solid Waste Management Regulations, plus any in-place waste not accounted for in the most recent permit, or as calculated using good engineering practices acceptable to the board. If the owner chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate that its design capacity is less than (i) 1.0 million megagrams or 1.0 million cubic meters in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 2.5 million megagrams or 2.5 million cubic meters in the remaining areas of the Commonwealth, the calculation must include a site-specific density, which must be recalculated annually.

"Disposal facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

"Emission rate cutoff" means the threshold annual emission rate to which a landfill compares its estimated emission rate to determine if control under the regulation is required.

"Enclosed combustor" means an enclosed firebox which maintains a relatively constant limited peak temperature generally using a limited supply of combustion air. An enclosed flare is considered an enclosed combustor.

"Federal operating permit" means a permit issued under Article 1 (9VAC5-80-50 et seq.) of Part II of 9VAC5 Chapter 80.

"Flare" means an open combustor without enclosure or shroud.

"Gas mover equipment" means the equipment (i.e., fan, blower, compressor) used to transport landfill gas through the header system.

"Household waste" mean any solid waste, including garbage, trash and refuse, derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreational areas). For the purposes of determining capacity as required by 9VAC5-40-5820 and NMOC emission rates as required by 9VAC5-40-5860, household waste includes sanitary waste (septage) in septic tanks.

"Industrial solid waste" means any solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C (42 USC § 6921 et seq.) of RCRA (as reflected in 40 CFR Parts 264 and 265) and implemented by the department in 9VAC20 Chapter 60 (9VAC20-60, Virginia Hazardous Waste Management Regulations). Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer and agricultural chemicals; food and related products and byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing and foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Interior well" means any well or similar collection component located inside the perimeter of the landfill waste. A perimeter well located outside the landfilled waste is not an interior well.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under ~~9VAC20-80-10 9VAC20-81~~.

"Landfill gas" means any gas derived from the decomposition of organic waste deposited in an MSW landfill or from the evolution of volatile organic species in the waste. Emissions from MSW landfills is equivalent to landfill gas emissions.

"Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSW landfill. A lateral expansion is not a modification unless it results in an increase in the design capacity of the landfill.

"Modification" means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. Modification does not occur until the owner commences construction on the horizontal or vertical expansion.

Regulations

"Municipal solid waste landfill" or "MSW landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of solid wastes regulated under Subtitle D (42 USC § 6941 et seq.) of RCRA (as reflected in 40 CFR 257.2) and implemented by the department in ~~9VAC20-80-250~~ 9VAC20-81 (Solid Waste Management Regulations) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and nonhazardous industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

"Municipal solid waste landfill emissions" or "MSW landfill emissions" means gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

"NMOC" means nonmethane organic compounds, as measured according to the provisions of 9VAC5-40-5860 B through E.

"Nondegradable waste" means any waste that does not decompose through chemical breakdown or microbiological activity. Examples include, but are not limited to, concrete, municipal waste combustor ash, and metals.

"Passive collection system" means a gas collection system that solely uses positive pressure within the landfill to move the gas rather than using gas mover equipment.

"RCRA" means the federal Resource Conservation and Recovery Act (42 USC § 6901 et seq.).

"Refuse" means trash, rubbish, garbage, and other forms of solid or liquid waste, including, but not limited to, wastes resulting from residential, agricultural, commercial, industrial, institutional, trade, construction, land clearing, forest management, and emergency operations.

"Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"Solid waste" means any garbage, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under 33 USC § 1342, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of

1954 (42 USC § 2011 et seq.). For more detail, see ~~Part III (9VAC20-80-130 et seq.) of 9VAC20 Chapter 80 (Solid Waste Management Regulations)~~ 9VAC20-81-95 of the Solid Waste Management Regulations.

"Sufficient density" means any number, spacing, and combination of collection system components, including vertical wells, horizontal collectors, and surface collectors, necessary to maintain emission and migration control as determined by measures of performance set forth in this part.

"Sufficient extraction rate" means a rate sufficient to maintain a negative pressure at all wellheads in the collection system without causing air infiltration, including any wellheads connected to the system as a result of expansion or excess surface emissions, for the life of the blower.

9VAC5-40-5820. Standard for air emissions.

A. This section shall apply to affected facilities that have accepted waste any time since November 8, 1987, or have additional design capacity available for future waste deposition, and meet the design capacity and emission rate applicability criteria in subdivisions A 1 or A 2 of this section.

1. For affected facilities located in the Northern Virginia Volatile Organic Compound Emissions Control Area as designated in 9VAC5-20-206:

- a. A design capacity greater than or equal to 1.0 million megagrams and 1.0 million cubic meters; and
- b. A nonmethane organic compound emission rate of 23 megagrams per year or more as determined using test procedures under 9VAC5-40-5860.

2. For affected facilities located in the remaining areas of the Commonwealth:

- a. A design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters; and
- b. A nonmethane organic compound emission rate of 50 megagrams per year or more as determined using test procedures under 9VAC5-40-5860.

B. Each owner of an MSW landfill having a design capacity less than (i) 1.0 million megagrams or 1.0 million cubic meters in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 2.5 million megagrams or 2.5 million cubic meters in the remaining areas of the Commonwealth shall submit an initial design capacity report to the board as provided in 9VAC5-40-5880 C no later than June 30, 1999. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the design capacity applicability criteria in subsection A of this section. Any density conversions shall be documented and submitted with the report. Submittal of the initial design capacity report shall fulfill the requirements of this article

except as provided for in subdivisions B 1 and B 2 of this section.

1. The owner shall submit to the board an amended design capacity report, as provided for in 9VAC5-40-5880 C 3. If the design capacity increase is the result of a modification, as defined in 9VAC5-40-5810 C, that was commenced on or after May 30, 1991, the landfill is subject to the new source performance standard in Article 5 of 9VAC5 Chapter 50 (9VAC5-50-410) instead of this article. If the design capacity increase is the result of a change in operating practices, density, or some other change that is not a modification, the landfill remains subject to this article.

2. When an increase in the maximum design capacity of a landfill exempted from the provisions of 9VAC5-40-5820 C, 9VAC5-40-5822, 9VAC5-40-5824, 9VAC5-40-5850, 9VAC5-40-5860, 9VAC5-40-5870, 9VAC5-40-5880, and 9VAC5-40-5890 on the basis of the design capacity applicability criteria in subsection A of this section results in a revised maximum design capacity equal to or greater than (i) 1.0 million megagrams or 1.0 million cubic meters in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 2.5 million megagrams or 2.5 million cubic meters in the remaining areas of the Commonwealth, the owner shall comply with the provisions of subsection C of this section.

C. Each owner of an MSW landfill having a design capacity greater than or equal to (i) 1.0 million megagrams and 1.0 million cubic meters in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 2.5 million megagrams and 2.5 million cubic meters in the remaining areas of the Commonwealth shall either install a collection and control system as provided in subdivision C 2 of this section or calculate an initial NMOC emission rate for the landfill using the procedures specified in 9VAC5-40-5860. The NMOC emission rate shall be recalculated annually, except as provided in 9VAC5-40-5880 D 1 b.

1. If the calculated NMOC emission rate is less than (i) 23 megagrams per year in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 50 megagrams per year in the remaining areas of the Commonwealth, the owner shall:

a. Submit an annual emission report to the board, except as provided for in 9VAC5-40-5880 D 1 b; and

b. Recalculate the NMOC emission rate annually using the procedures specified in 9VAC5-40-5860 B 1 until such time as the calculated NMOC emission rate is greater than or equal to (i) 23 megagrams per year in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 50 megagrams per year in the remaining areas of the Commonwealth, or the landfill is closed.

(1) If the NMOC emission rate, upon initial calculation or annual recalculation required in subdivision C 1 b of this section, is greater than or equal to (i) 23 megagrams per year in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 50 megagrams per year in the remaining areas of the Commonwealth, the owner shall install a collection and control system in compliance with subdivision C 2 of this section.

(2) If the landfill is permanently closed, a closure notification shall be submitted to the board as provided for in 9VAC5-40-5880 F.

2. If the calculated NMOC emission rate is greater than or equal to (i) 23 megagrams per year in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 50 megagrams per year in the remaining areas of the Commonwealth, the owner shall:

a. Submit a collection and control system design plan prepared by a professional engineer to the board within one year:

(1) The collection and control system as described in the plan shall meet the design requirements of subdivision C 2 b of this section.

(2) The collection and control system design plan shall include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions of 9VAC5-40-5822, 9VAC5-40-5850, 9VAC5-40-5860, 9VAC5-40-5870, 9VAC5-40-5880, and 9VAC5-40-5890 proposed by the owner.

(3) The collection and control system design plan shall either conform with specifications for active collection systems in 9VAC5-40-5824 or include a demonstration to the board's satisfaction of the sufficiency of the alternative provisions to 9VAC5-40-5824.

(4) The board will review the information submitted under subdivisions C 2 a (1), (2) and (3) of this section and either approve it, disapprove it, or request that additional information be submitted. Because of the many site-specific factors involved with landfill gas system design, alternative systems may be necessary. A wide variety of system designs are possible, such as vertical wells, combination horizontal and vertical collection systems, or horizontal trenches only, leachate collection components, and passive systems. All design plan changes shall be submitted to the board and may be implemented only upon approval of the board.

b. Install a collection and control system that captures the gas generated within the landfill as required by subdivision C 2 b (1) or (2) of this section within 30 months after the first annual report in which the emission rate equals or exceeds (i) 23 megagrams per year in the

Regulations

Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 50 megagrams per year in the remaining areas of the Commonwealth, unless Tier 2 or Tier 3 sampling demonstrates that the emission rate is less than (a) 23 megagrams per year in the Northern Virginia Volatile Organic Compound Emissions Control Area or (b) 50 megagrams per year in the remaining areas of the Commonwealth, as specified in 9VAC5-40-5880 E 1 or E 2.

(1) An active collection system shall:

(a) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control or treatment system equipment;

(b) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of:

(i) Five years or more if active; or

(ii) Two years or more if closed or at final grade;

(c) Collect gas at a sufficient extraction rate;

(d) Be designed to minimize off-site migration of subsurface gas.

(2) A passive collection system shall:

(a) Comply with the provisions specified in subdivisions C 2 b (1) (a), (b), and (d) of this section.

(b) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners shall be installed as required under ~~9VAC20-80-250-B~~ 9VAC20-81-130.

c. Route all the collected gas to a control system that complies with the requirements in either subdivision C 2 c (1), (2) or (3) of this section.

(1) An open flare designed and operated in accordance with 40 CFR 60.18.

(2) A control system designed and operated to reduce NMOC by 98 weight-percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight-percent or reduce the outlet NMOC concentration to less than 20 parts per million by volume, dry basis as hexane at 3.0% oxygen. The reduction efficiency or parts per million by volume shall be established by an initial compliance test to be completed no later than 180 days after the initial startup of the approved control system using the test methods specified in 9VAC5-40-5860 E.

(a) If a boiler or process heater is used as the control device, the landfill gas stream shall be introduced into the flame zone.

(b) The control device shall be operated within the parameter ranges established during the initial or most recent compliance test. The operating parameters to be monitored are specified in 9VAC5-40-5870.

(3) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or use. All emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of subdivision C 2 c (1) or (2) of this section.

d. Operate the collection and control device installed to comply with this article in accordance with the provisions of 9VAC5-40-5822, 9VAC5-40-5850, and 9VAC5-40-5870.

e. The collection and control system may be capped or removed provided that all the conditions of subdivisions C 2 e (1), (2), and (3) of this section are met:

(1) The landfill shall be a closed landfill as defined in 9VAC5-40-5810 and under the requirements of ~~9VAC20-80-250-E~~ 9VAC20-81-160. A closure report shall be submitted to the board as provided in 9VAC5-40-5880 F;

(2) The collection and control system shall have been in operation a minimum of 15 years; and

(3) Following the procedures specified in 9VAC5-40-5860 C, the calculated NMOC gas produced by the landfill shall be less than (i) 23 megagrams per year in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 50 megagrams per year in the remaining areas of the Commonwealth on three successive test dates. The test dates shall be no less than 90 days apart and no more than 180 days apart.

D. When an MSW landfill subject to this article is closed, the owner is no longer subject to the requirement to maintain a federal operating permit for the landfill if the landfill is not otherwise subject to federal operating permit requirements if either of the following conditions are met:

1. The landfill was never subject to the requirement for a control system under 9VAC5-40-5820 C 2; or

2. The owner meets the conditions for control system removal specified in 9VAC5-40-5820 C 2 e.

9VAC5-40-5850. Compliance.

A. The provisions of 9VAC5-40-20 (Compliance) apply.

B. Owners subject to 9VAC5-40-5820 shall comply with the provisions of ~~Part V (9VAC20-80-240 et seq.)~~ Part III (9VAC20-81-100 et seq.) of 9VAC20 Chapter ~~80~~ 81 (Solid Waste Management Regulations) pertaining to the control of landfill gases.

C. Except as provided in 9VAC5-40-5820 C 2 a (2), the specified methods in subdivisions C 1 through C 6 of this

section shall be used to determine whether the gas collection system is in compliance with 9VAC5-40-5820 C 2 b.

1. For the purposes of calculating the maximum expected gas generation flow rate from the landfill to determine compliance with 9VAC5-40-5820 C 2 b (1) (a), one of the following equations shall be used. The k and L sub0 kinetic factors should be those published in the "Compilation of Air Pollutant Emission Factors (AP-42)" (see 9VAC5-20-21) or other site-specific values demonstrated to be appropriate and approved by the board. If k has been determined as specified in 9VAC5-40-5860 B 4, the value of k determined from the test shall be used. A value of no more than 15 years shall be used for the intended use period of the gas mover equipment. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

a. For sites with unknown year-to-year solid waste acceptance rate:

$$Q_M = 2L_0R(e^{-kc} - e^{-kt})$$

where

Q_M = maximum expected gas generation flow rate, cubic meters per year

L_0 = methane generation potential, cubic meters per megagram solid waste

R = average annual acceptance rate, megagrams per year

k = methane generation rate constant, year⁻¹

t = age of the landfill at equipment installation plus the time the owner or operator intends to use the gas mover equipment or active life of the landfill, whichever is less. If the equipment is installed after closure, t is the age of the landfill at installation, years

c = time since closure, years (for an active landfill c = 0 and e^{-kc} = 1)

b. For sites with known year-to-year solid waste acceptance rate:

$$Q_M = \sum_{i=1}^n 2kL_0M_i(e^{-kt_i})$$

where

Q_M = maximum expected gas generation flow rate, cubic meters per year

k = methane generation rate constant, year⁻¹

L_0 = methane generation potential, cubic meters per megagram solid waste

M_i = mass of solid waste in the ith section, megagrams

t_i = age of the ith section, years

c. If a collection and control system has been installed, actual flow data may be used to project the maximum expected gas generation flow rate instead of, or in conjunction with, the equations in subdivisions C 1 a and b of this section. If the landfill is still accepting waste, the actual measured flow data will not equal the maximum expected gas generation rate, so calculations using the equations in subdivisions C 1 a or b of this section or other methods acceptable to the board shall be used to predict the maximum expected gas generation rate over the intended period of use of the gas control system equipment.

2. For the purposes of determining sufficient density of gas collectors for compliance with 9VAC5-40-5820 C 2 b (1) (b), the owner shall design a system of vertical wells, horizontal collectors, or other collection devices, acceptable to the board, capable of controlling and extracting gas from all portions of the landfill sufficient to meet all operational and performance standards.

3. For the purpose of demonstrating whether the gas collection system flow rate is sufficient to determine compliance with 9VAC5-40-5820 C 2 b (1) (c), the owner shall measure gauge pressure in the gas collection header at each individual well, monthly. If a positive pressure exists, action shall be initiated to correct the exceedance within five calendar days, except for the three conditions allowed under 9VAC5-40-5822 A 2. If negative pressure cannot be achieved without excess air infiltration within 15 calendar days of the first measurement, the gas collection system shall be expanded to correct the exceedance within 120 days of the initial measurement of positive pressure. Any attempted corrective measure shall not cause exceedances of other operational or performance standards. An alternative timeline for correcting the exceedance may be submitted to the board for approval.

4. Owners are not required to expand the system as required in subdivision C 3 of this section during the first 180 days after gas collection system startup.

5. For the purpose of identifying whether excess air infiltration into the landfill is occurring, the owner shall monitor each well monthly for temperature and nitrogen or oxygen as provided in 9VAC5-40-5822 A 3. If a well exceeds one of these operating parameters, action shall be initiated to correct the exceedance within five calendar days. If correction of the exceedance cannot be achieved within 15 calendar days of the first measurement, the gas collection system shall be expanded to correct the exceedance within 120 days of the initial exceedance. Any attempted corrective measure shall not cause exceedances of other operational or performance standards. An alternative timeline for correcting the exceedance may be submitted to the board for approval.

Regulations

6. An owner seeking to demonstrate compliance with 9VAC5-40-5820 C 2 b (1) (d) through the use of a collection system not conforming to the specifications provided in 9VAC5-40-5824 shall provide information acceptable to the board as specified in 9VAC5-40-5820 C 2 a (3) demonstrating that off-site migration is being controlled.

D. For purposes of compliance with 9VAC5-40-5822 A 1, each owner of a controlled landfill shall place each well or design component as specified in the approved design plan as provided in 9VAC5-40-5820 C 2 a. Each well shall be installed no later than 60 days after the date on which the initial solid waste has been in place for a period of:

1. Five years or more if active; or
2. Two years or more if closed or at final grade.

E. The following procedures shall be used for compliance with the surface methane operational standard as provided in 9VAC5-40-5822 A 4.

1. After installation of the collection system, the owner shall monitor surface concentrations of methane along the entire perimeter of the collection area and along a pattern that traverses the landfill at 30-meter intervals (or a site-specific established spacing) for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in subsection F of this section.

2. The background concentration shall be determined by moving the probe inlet upwind and downwind outside the boundary of the landfill at a distance of at least 30 meters from the perimeter wells.

3. Surface emission monitoring shall be performed in accordance with § 4.3.1 of Reference Method 21 of Appendix A of 40 CFR Part 60, except that the probe inlet shall be placed within 5 to 10 centimeters of the ground. Monitoring shall be performed during typical meteorological conditions.

4. Any reading of 500 parts per million or more above background at any location shall be recorded as a monitored exceedance and the actions specified in subdivisions E 4 a through e of this section shall be taken. As long as the specified actions are taken, the exceedance is not a violation of the operational requirements of 9VAC5-40-5822 A 4.

a. The location of each monitored exceedance shall be marked and the location recorded.

b. Cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance shall be made and the location shall be remonitored within 10 calendar days of detecting the exceedance.

c. If the remonitoring of the location shows a second exceedance, additional corrective action shall be taken and the location shall be monitored again within 10 days of the second exceedance. If the remonitoring shows a third exceedance for the same location, the action specified in subdivision E 4 e of this section shall be taken, and no further monitoring of that location is required until the action specified in subdivision E 4 e of this section has been taken.

d. Any location that initially showed an exceedance but has a methane concentration less than 500 parts per million above background at the 10-day remonitoring specified in subdivision E 4 b or c of this section shall be remonitored one month from the initial exceedance. If the one-month remonitoring shows a concentration less than 500 parts per million above background, no further monitoring of that location is required until the next quarterly monitoring period. If the 1-month remonitoring shows an exceedance, the actions specified in subdivision E 4 c or e of this section shall be taken.

e. For any location where monitored methane concentration equals or exceeds 500 parts per million above background three times within a quarterly period, a new well or other collection device shall be installed within 120 calendar days of the initial exceedance. An alternative remedy to the exceedance, such as upgrading the blower, header pipes or control device, and a corresponding timeline for installation may be submitted to the board for approval.

5. The owner shall implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

F. Each owner seeking to comply with the provisions in subsection E of this section shall comply with the following instrumentation specifications and procedures for surface emission monitoring devices:

1. The portable analyzer shall meet the instrument specifications provided in § 3 of Reference Method 21 of Appendix A of 40 CFR Part 60, except that "methane" shall replace all references to VOC.

2. The calibration gas shall be methane, diluted to a nominal concentration of 500 parts per million in air.

3. To meet the performance evaluation requirements in § 3.1.3 of Reference Method 21 of Appendix A of 40 CFR Part 60, the instrument evaluation procedures of § 4.4 of Reference Method 21 of Appendix A of 40 CFR Part 60 shall be used.

4. The calibration procedures provided in § 4.2 of Reference Method 21 of Appendix A of 40 CFR Part 60

shall be followed immediately before commencing a surface monitoring survey.

G. The provisions of this article apply at all times, except during periods of startup, shutdown, or malfunction, provided that the duration of startup, shutdown, or malfunction shall not exceed five days for collection systems and shall not exceed one hour for treatment or control devices. This subsection shall not apply to the emission standards set forth in 9VAC5-40-5830 and 9VAC5-40-5840.

H. With regard to startup, shutdown, and malfunction, the provisions of 9VAC5-40-5850 A and 9VAC5-40-5910 shall apply to the emission standards set forth in 9VAC5-40-5830 and 9VAC5-40-5840.

9VAC5-40-5880. Reporting.

A. The provisions of 9VAC5-40-5840 (Notification, records and reporting) apply.

B. Except as provided in 9VAC5-40-5820 C 2 a (2), the provisions of subsections C through I of this section apply.

C. Each owner subject to the requirements of this article shall submit an initial design capacity report to the board.

1. The initial design capacity report shall be submitted no later than June 30, 1999.

2. The initial design capacity report shall contain the following information:

a. A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the permit issued by the department under ~~Part VII (9VAC20-80-480 et seq.)~~ Part V (9VAC20-81-400 et seq.) of 9VAC20 Chapter ~~80~~ 81 (Solid Waste Management Regulations);

b. The maximum design capacity of the landfill. Where the maximum design capacity is specified in a permit issued by the department under ~~Part VII (9VAC20-80-480 et seq.)~~ Part V (9VAC20-81-400 et seq.) of 9VAC20 Chapter ~~80~~ 81 (Solid Waste Management Regulations), a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity shall be calculated using good engineering practices acceptable to the board. The calculations shall be provided, along with the relevant parameters as part of the report. The board may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

3. An amended design capacity report shall be submitted to the board providing notification of an increase in the design capacity of the landfill within 90 days of an increase in the maximum design capacity of the landfill to or above (i) 1.0 million megagrams and 1.0 million cubic meters in

the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 2.5 million megagrams and 2.5 million cubic meters in the remaining areas of the Commonwealth. This increase in design capacity may result from an increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in 9VAC5-40-5890 H.

D. Each owner subject to the requirements of this article shall submit an NMOC emission rate report to the board initially and annually thereafter, except as provided for in subdivisions D 1 b or D 3 of this section. The board may request such additional information as may be necessary to verify the reported NMOC emission rate.

1. The NMOC emission rate report shall contain an annual or five-year estimate of the NMOC emission rate calculated using the formula and procedures provided in 9VAC5-40-5860 B or C, as applicable.

a. The initial NMOC emission rate report shall be submitted by June 30, 1999, and may be combined with the initial design capacity report required in subsection C of this section. Subsequent NMOC emission rate reports shall be submitted annually thereafter, except as provided for in subdivisions D 1 b and D 3 of this section.

b. If the estimated NMOC emission rate as reported in the annual report to the board is less than (i) 23 megagrams per year in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 50 megagrams per year in the remaining areas of the Commonwealth in each of the next five consecutive years, the owner may elect to submit an estimate of the NMOC emission rate for the next five-year period in lieu of the annual report. This estimate shall include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the five years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based shall be provided to the board. This estimate shall be revised at least once every five years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the five-year estimate, a revised five-year estimate shall be submitted to the board. The revised estimate shall cover the five-year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

2. The NMOC emission rate report shall include all the data, calculations, sample reports and measurements used to estimate the annual or five-year emissions.

3. Each owner subject to the requirements of this article is exempted from the requirements of subdivisions D 1 and 2 of this section, after the installation of a collection and control system in compliance with 9VAC5-40-5820 C 2, during such time as the collection and control system is in

Regulations

operation and in compliance with 9VAC5-40-5822 and 9VAC5-40-5850.

E. Each owner subject to the provisions of 9VAC5-40-5820 C 2 shall submit a collection and control system design plan to the board within one year of the first report, required under subdivision D of this section, in which the emission rate is greater than or equal to (i) 23 megagrams per year in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 50 megagrams per year in the remaining areas of the Commonwealth, except as follows:

1. If the owner elects to recalculate the NMOC emission rate after Tier 2 NMOC sampling and analysis as provided in 9VAC5-40-5860 B 3 and the resulting rate is less than (i) 23 megagrams per year in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 50 megagrams per year in the remaining areas of the Commonwealth, annual periodic reporting shall be resumed, using the Tier 2 determined site-specific NMOC concentration, until the calculated emission rate is greater than or equal to (i) 23 megagrams per year in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 50 megagrams per year in the remaining areas of the Commonwealth, or the landfill is closed. The revised NMOC emission rate report, with the recalculated emission rate based on NMOC sampling and analysis, shall be submitted within 180 days of the first calculated exceedance of the emission rate applicability criteria.

2. If the owner elects to recalculate the NMOC emission rate after determining a site-specific methane generation rate constant (k), as provided in Tier 3 in 9VAC5-40-5860 B 4, and the resulting NMOC emission rate is less than (i) 23 megagrams per year in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 50 megagrams per year in the remaining areas of the Commonwealth, annual periodic reporting shall be resumed. The resulting site-specific methane generation rate constant (k) shall be used in the emission rate calculation until such time as the emissions rate calculation results in an exceedance. The revised NMOC emission rate report based on the provisions of 9VAC5-40-5860 B 4 and the resulting site-specific methane generation rate constant (k) shall be submitted to the board within one year of the first calculated emission rate exceeding (i) 23 megagrams per year in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 50 megagrams per year in the remaining areas of the Commonwealth.

F. Each owner of a controlled landfill shall submit a closure report to the board within 30 days of waste acceptance cessation. The board may request additional information as may be necessary to verify that permanent closure has taken place in accordance with the requirements of ~~9VAC20-80-250 E~~ 9VAC20-81-160. If a closure report has been submitted to the board, no additional wastes may be placed

into the landfill without obtaining a permit issued by the department under ~~Part VII (9VAC20-80-480 et seq.)~~ Part V (9VAC20-81-400 et seq.) of 9VAC20 Chapter ~~80~~ 81 (Solid Waste Management Regulations).

G. Each owner of a controlled landfill shall submit an equipment removal report to the board 30 days prior to removal or cessation of operation of the control equipment.

1. The equipment removal report shall contain all of the following items:

- a. A copy of the closure report submitted in accordance with subsection F of this section;
- b. A copy of the initial compliance test report demonstrating that the 15-year minimum control period has expired; and
- c. Dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing (i) 23 megagrams or greater of NMOC per year in the Northern Virginia Volatile Organic Compound Emissions Control Area or (ii) 50 megagrams or greater of NMOC per year in the remaining areas of the Commonwealth.

2. The board may request such additional information as may be necessary to verify that all of the conditions for removal in 9VAC5-40-5820 C 2 e have been met.

H. Each owner of a landfill seeking to comply with 9VAC5-40-5820 C 2 using an active collection system designed in accordance with 9VAC5-40-5820 C 2 b shall submit to the board annual reports of the recorded information in subdivisions H 1 through H 6 of this section. The initial annual report shall be submitted within 180 days of installation and startup of the collection and control system, and shall include the initial compliance test report. For enclosed combustion devices and flares, reportable exceedances are defined under 9VAC5-40-5890 E.

1. Value and length of time for exceedance of applicable parameters monitored under 9VAC5-40-5870 C, D, E, and F.

2. Description and duration of all periods when the gas stream is diverted from the control device through a bypass line or the indication of bypass flow as specified under 9VAC5-40-5870.

3. Description and duration of all periods when the control device was not operating for a period exceeding one hour and length of time the control device was not operating.

4. All periods when the collection system was not operating in excess of five days.

5. The location of each exceedance of the 500 parts per million methane concentration as provided in 9VAC5-40-5822 A 4 and the concentration recorded at each location

for which an exceedance was recorded in the previous month.

6. The date of installation and the location of each well or collection system expansion added pursuant to subdivisions C 3, D, and E 4 of 9VAC5-40-5850.

I. Each owner seeking to comply with 9VAC5-40-5820 C 2 a shall include the following information with the initial compliance test report:

1. A diagram of the collection system showing collection system positioning including all wells, horizontal collectors, surface collectors, or other gas extraction devices, including the locations of any areas excluded from collection and the proposed sites for the future collection system expansion;

2. The data upon which the sufficient density of wells, horizontal collectors, surface collectors, or other gas extraction devices and the gas mover equipment sizing are based;

3. The documentation of the presence of asbestos or nondegradable material for each area from which collection wells have been excluded based on the presence of asbestos or nondegradable material;

4. The sum of the gas generation flow rates for all areas from which collection wells have been excluded based on nonproductivity and the calculations of gas generation flow rate for each excluded area; and

5. The provisions for increasing gas mover equipment capacity with increased gas generation flow rate, if the present gas mover equipment is inadequate to move the maximum flow rate expected over the life of the landfill; and

6. The provisions for the control of off-site migration.

9VAC5-40-5920. Permits.

A. A permit may be required prior to beginning any of the activities specified below if the provisions of 9VAC5 Chapter 50 (9VAC5-50) and 9VAC5 Chapter 60 (9VAC5-60) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.
2. Reconstruction (replacement of more than half) of a facility.
3. Modification (any physical change to equipment) of a facility.
4. Relocation of a facility.
5. Reactivation (restart-up) of a facility.
6. Operation of a facility.

B. MSW landfills required to install a collection and control system according to the provisions of 9VAC5-40-5820 shall apply for a permit amendment in accordance with ~~Part VII (9VAC20-80-480 et seq.)~~ Part V (9VAC20-81-400 et seq.) of 9VAC20 Chapter ~~80~~ 81 (Solid Waste Management Regulations).

C. Physical or operational changes made to an MSW landfill solely to comply with this article are not considered construction, reconstruction, or modification for the purposes of 40 CFR 60 Subpart WWW.

D. The owner of an MSW landfill subject to this article with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters is subject to Article 1 (9VAC5-80-50 et seq.) of Part II of 9VAC5 Chapter 80. When a landfill is closed, and either never needed control or meets the conditions for control system removal specified in 9VAC5-40-5820 C 2 e, an operating permit under Article 1 (9VAC5-80-50 et seq.) of Part II of 9VAC5 Chapter 80 is no longer required.

E. A landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters does not require an operating permit under Article 1 (9VAC5-80-50 et seq.) of Part II of 9VAC5 Chapter 80.

9VAC5-50-420. Word or phrase substitutions.

In the standards designated in 9VAC5-50-410 make the following substitutions:

1. In all the standards, "board" for "administrator."
2. In all the standards, "board" for "U.S. Environmental Protection Agency" (except in references).
3. In subpart WWW, Department of Environmental Quality for state, local, or tribal agency responsible for regulating the landfill. Waste management permits are issued by the department under the authority of the Virginia Waste Management Act (Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia), using the procedures in ~~Part VII (9VAC20-80-480 et seq.)~~ Part V (9VAC20-81-400 et seq.) of 9VAC20 Chapter ~~80~~ 81.

9VAC5-130-20. 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 chapter, all terms not defined here shall have the meaning given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined:

"Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of

Regulations

this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.

"Automobile graveyard" means any lot or place that is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and that it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste that is not prohibited to be burned under this chapter and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes, but is not limited to, byproducts of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials shall be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures, or their foundations, or both, and includes the same materials as construction waste.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Hazardous waste" means a "hazardous waste" as described in 9VAC20-60 (Hazardous Waste Management Regulations).

"Household waste" means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (seepage) that is regulated by other state agencies.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

"Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Part I (~~9VAC20-80-10 et seq.~~) (9VAC20-81-10 et seq.) of ~~9VAC20-80~~ 9VAC20-81 (Solid Waste Management Regulations) for further definitions of these terms.

"Local landfill" means any landfill located within the jurisdiction of a local government.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;
2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
3. Control of the combustion products' emission.

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion byproducts emitted into the atmosphere. The term also includes trench burners, air curtain incinerators and over draft incinerators.

"Refuse" means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See Part I (~~9VAC20-80-10 et seq.~~) (9VAC20-81-10 et seq.) of ~~9VAC20-80~~ 9VAC20-81 (Solid Waste Management Regulations) for further definitions of these terms.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.
2. Construction, renovation, or demolition wastes.
3. Clean lumber.

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

9VAC5-130-40. Permissible open burning.

A. Open burning or the use of special incineration devices is permitted in the following instances provided the provisions of subsections B through E of 9VAC5-130-30 are met:

1. Upon the request of an owner or a responsible civil or military public official, the board may approve open burning or the use of special incineration devices under controlled conditions for the elimination of a hazard that constitutes a threat to the public health, safety or welfare and that cannot be remedied by other means consonant with the circumstances presented by the hazard. Such uses of open burning or the use of special incineration devices may include, but are not limited to, the following:
 - a. Destruction of deteriorated or unused explosives and munitions on government or private property when other means of disposal are not available. Hazardous waste permits may be required under the provisions of 9VAC20-60 (Hazardous Waste Management Regulations).
 - b. Destruction of debris caused by floods, tornadoes, hurricanes or other natural disasters where alternate means of disposal are not economical or practical and when it is in the best interest of the citizens of the Commonwealth. Solid waste management permits may be required under the provisions of ~~9VAC20-80~~ 9VAC20-81 (Solid Waste Management Regulations).
 - c. On-site destruction of animal or plant life that is infested, or reasonably believed to be infested, by a pest or disease in order to (i) suppress, control, or eradicate an infestation or pest; (ii) prevent or retard the spread of an infestation or pest; or (iii) prevent further disease transmission or progression.

2. Open burning is permitted for training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel with clearance from the local firefighting authority. The designated official in charge of the training shall notify and obtain the approval of the

Regulations

regional director prior to conducting the training exercise. Training schools where permanent facilities are installed for firefighting instruction are exempt from this notification requirement. Buildings that have not been demolished may be burned under the provisions of this subdivision only.

3. Open burning or the use of special incineration devices is permitted for the destruction of classified military documents under the supervision of the designated official.

4. Open burning is permitted for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers provided the materials specified in subsections B and C of 9VAC5-130-30 are not burned.

5. In urban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road. In nonurban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.

6. Open burning is permitted for the on-site destruction of household waste by homeowners or tenants, provided that no regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.

7. Open burning is permitted for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack. Use of a flare or flare stack for the destruction of hazardous waste or commercial/industrial waste is allowed provided written approval is obtained from the board and the facility is in compliance with Article 3 (9VAC5-40-160 et seq.) of 9VAC5-40 (Existing Stationary Sources) and Article 3 (9VAC5-50-160 et seq.) of 9VAC5-50 (New and Modified Stationary Sources). Permits issued under 9VAC5-80 (Permits for Stationary Sources) may be used to satisfy the requirement for written approval. This activity must be consistent with the provisions of 9VAC20-60 (Virginia Hazardous Waste Regulations).

8. Open burning or the use of special incineration devices is permitted on site for the destruction of clean burning waste and debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations. Open burning or the use of special incineration

devices for the purpose of such destruction is prohibited in volatile organic compounds emissions control areas (see 9VAC5-20-206) during May, June, July, August, and September.

9. Open burning is permitted for forest management and agriculture practices approved by the board (see 9VAC5-130-50), provided the following conditions are met:

a. The burning shall be at least 1,000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and

b. The burning shall be attended at all times.

10. Open burning or the use of special incineration devices is permitted for the destruction of clean burning waste and debris waste on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited in volatile organic compounds emissions control areas (see 9VAC5-20-206) during May, June, July, August, and September.

B. Open burning or the use of special incineration devices permitted under the provisions of this chapter does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries that may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this chapter. In this regard special attention should be directed to § 10.1-1142 of the Code of Virginia, which is enforced by the Department of Forestry.

C. With regard to the provisions of subsection B of this section, special attention should also be directed to the regulations of the Virginia Waste Management Board. No destruction of waste by open burning or transportation of waste to be destroyed by open burning shall take place in violation of the regulations of the Virginia Waste Management Board.

Part II Local Ordinances

9VAC5-130-100. Local ordinances on open burning.

A. General.

1. If the governing body of any locality wishes to adopt an ordinance relating to air pollution and governing open burning within its jurisdiction, the ordinance must first be approved by the board (see § 10.1-1321 B of the Code of Virginia).

2. In order to assist local governments in the development of ordinances acceptable to the board, the ordinance in subsection C of this section is offered as a model.

3. If a local government wishes to adopt the language of the model ordinance without changing any wording except that enclosed by parentheses, that government's ordinance shall be deemed to be approved by the board on the date of local adoption provided that a copy of the ordinance is filed with the department upon its adoption by the local government.

4. If a local government wishes to change any wording of the model ordinance aside from that enclosed by parentheses in order to construct a local ordinance, that government shall request the approval of the board prior to adoption of the ordinance by the local jurisdiction. A copy of the ordinance shall be filed with the department upon its adoption by the local government.

5. Local ordinances that have been approved by the board prior to April 1, 1996, remain in full force and effect as specified by their promulgating authorities.

B. Establishment and approval of local ordinances varying from the model.

1. Any local governing body proposing to adopt or amend an ordinance relating to open burning that differs from the model local ordinance in subsection C of this section shall first obtain the approval of the board for the ordinance or amendment as specified in subdivision A 4 of this section. The board in approving local ordinances will consider, but will not be limited to, the following criteria:

- a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.
- b. Adequate local resources will be committed to enforcing the proposed local ordinance.
- c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.
- d. If a waiver from any provision of this chapter has been requested under 9VAC5-130-60, the language of the ordinance shall achieve the objective of the provision from which the waiver is requested.

2. Approval of any local ordinance may be withdrawn if the board determines that the local ordinance is less strict than state regulations or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months of the effective date of the amended state regulations.

4. Local ordinances are a supplement to state regulations. Any provisions of local ordinances that have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.

5. A local governing body may grant a variance to any provision of its air pollution control ordinance(s) provided that:

- a. A public hearing is held prior to granting the variance;
- b. The public is notified of the application for a variance by notice in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and
- c. The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.

6. 9VAC5-170-150 shall not apply to local ordinances concerned solely with open burning.

C. Model ordinance.

ORDINANCE NO. (000)

Section (000-1). Title.

This chapter shall be known as the (local jurisdiction) Ordinance for the Regulation of Open Burning.

Section (000-2). Purpose.

The purpose of this chapter is to protect public health, safety, and welfare by regulating open burning within (local jurisdiction) to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This chapter is intended to supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws.

Section (000-3). Definitions.

For the purpose of this chapter and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the meaning given them in this section.

"Automobile graveyard" means any lot or place that is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and that it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

Regulations

"Clean burning waste" means waste that is not prohibited to be burned under this ordinance and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes, but is not limited to, byproducts of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.

"Construction waste" means solid waste that is produced or generated during construction remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials must be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures, or their foundations, or both, and includes the same materials as construction waste.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Hazardous waste" means a "hazardous waste" as described in 9VAC20-60 (Hazardous Waste Management Regulations).

"Household waste" means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by state agencies.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See ~~9VAC20-80~~ 9VAC20-81 (Solid Waste Management Regulations) for further definitions of these terms.

"Local landfill" means any landfill located within the jurisdiction of a local government.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;
2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
3. Control of the combustion products' emission.

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion byproducts emitted into the atmosphere. The term also includes trench burners, air curtain incinerators and over draft incinerators.

"Refuse" means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals,

shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See ~~9VAC20-80~~ 9VAC20-81 (Solid Waste Management Regulations) for further definitions of these terms.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.
2. Construction, renovation, or demolition wastes.
3. Clean lumber.

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

Section (000-4). Prohibitions on open burning.

A. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of refuse except as provided in this ordinance.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide firefighting instruction at firefighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the destruction of commercial/industrial waste.

E. Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries that may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § 10.1-1142 of the Forest Fire Law of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.

F. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9VAC5-70 (Air Pollution Episode Prevention) or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

Section (000-5). Exemptions.

The following activities are exempted to the extent covered by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

A. Open burning for training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel;

B. Open burning for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers;

C. Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;

D. Open burning for forest management and agriculture practices approved by the State Air Pollution Control Board; and

E. Open burning for the destruction of classified military documents.

Regulations

Section (000-6). Permissible open burning.

A. Open burning is permitted on site for the destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that the following conditions are met:

1. The burning takes place on the premises of the private property; (and)
2. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted(; and
3. No regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road¹).

B. Open burning is permitted on-site for the destruction of household waste by homeowners or tenants, provided that the following conditions are met:

1. The burning takes place on the premises of the dwelling;
2. Animal carcasses or animal wastes are not burned;
3. Garbage is not burned; (and)
4. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted (; and
5. No regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road²).

C. Open burning is permitted on site for destruction of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations that may be approved by (designated local official), provided the following conditions are met:

1. All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by (designated local official);
2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;
3. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;
4. The burning shall be conducted at the greatest distance practicable from highways and air fields,

5. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced;

6. The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and

7. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

D. Open burning is permitted for destruction of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas, provided that the following conditions are met:

1. The burning shall take place on the premises of a local sanitary landfill that meets the provisions of the regulations of the Virginia Waste Management Board;
2. The burning shall be attended at all times;
3. The material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning waste, clean burning debris waste, or clean burning demolition waste;
4. All reasonable effort shall be made to minimize the amount of material that is burned;
5. No materials may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board. The exact site of the burning on a local landfill shall be established in coordination with the regional director and (designated local official); no other site shall be used without the approval of these officials. (Designated local official) shall be notified of the days during which the burning will occur.

(E. Sections 000-6 A through D notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device during May, June, July, August, or September.³)

Section (000-7). Permits.

A. When open burning of debris waste (Section 000-6 C) or open burning of debris on the site of a local landfill (Section 000-6 D) is to occur within (local jurisdiction), the person responsible for the burning shall obtain a permit from (designated local official) prior to the burning. Such a permit may be granted only after confirmation by (designated local official) that the burning can and will comply with the provisions of this ordinance and any other conditions that are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for

each occasion of burning or for a specific period of time deemed appropriate by (designated local official).

B. Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from (designated local official), such permits to be granted only after confirmation by (designated local official) that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that any conditions are met that are deemed necessary by (designated local official) to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

1. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.
2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material.
3. The burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If (designated local official) determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.
4. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.
5. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.
6. The use of special incineration devices shall be allowed only for the destruction of debris waste, clean burning construction waste, and clean burning demolition waste.
7. Permits issued under this subsection shall be limited to a specific period of time deemed appropriate by (designated local official).

(C. An application for a permit under Section 000-7 A or 000-7 B shall be accompanied by a processing fee of \$----.⁴)

Section (000-8). Penalties for violation.

- A. Any violation of this ordinance is punishable as a Class 1 misdemeanor. (See § 15.2-1429 of the Code of Virginia.)
- B. Each separate incident may be considered a new violation.

¹ This provision shall be included in ordinances for urban areas. It may be included in ordinances for nonurban areas.

² This provision shall be included in ordinances for urban areas. It may be included in ordinances for nonurban areas.

³ This provision shall be included in ordinances for jurisdictions within volatile organic compound emissions control areas. It may be included in ordinances for jurisdictions outside these areas.

⁴ The fee stipulation in this section is optional at the discretion of the jurisdiction.

VA.R. Doc. No. R11-2834; Filed June 28, 2011, 1:52 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Air Pollution Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Air Pollution Control Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: 9VAC5-530. Electric Generator Voluntary Demand Response General Permit (adding 9VAC5-530-10 through 9VAC5-530-290) (Rev. Dg).

Statutory Authority: §§ 10.1-1307.02 and 10.1-1308 of the Code of Virginia.

Effective Date: August 17, 2011.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Summary:

Chapters 752 and 855 of the 2009 Acts of Assembly mandate that the board develop a general permit for the construction, installation, and operation of distillate oil, natural gas, liquid propane gas, and biodiesel fired electric generating facilities that participate in a voluntary demand response program (i.e., load curtailment, demand response, peak shaving, or like program) and that qualify as nonmajor facilities under the federal Clean Air Act.

Regulations

The general permit regulation includes emissions limits for both compression ignition and spark ignition electric generating units and limits for units located in attainment and nonattainment areas. Compliance determinations can be made by either monitoring fuel throughput or by monitoring hours of operation.

The regulation does not require any owner to apply for coverage under the general permit but provides the opportunity for an owner to apply for coverage if the source meets the requirements of the regulation.

The only substantive change to the regulation since publication of the proposed regulation is a modification of the definition of "demand response" to clarify that demand response participants do not include affected units that are participating in an Independent System Operator's Manual 13 Emergency Operations program.

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.

CHAPTER 530

ELECTRIC GENERATOR VOLUNTARY DEMAND RESPONSE GENERAL PERMIT

Part I Definitions

9VAC5-530-10. General.

A. For the purpose of this chapter or any orders issued by the board the words or terms used shall have the meanings given them in 9VAC5-530-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in this chapter, terms used shall have the meaning given them by 9VAC5-80-1110 (definitions, Permits for New and Modified Stationary Sources), 9VAC5-10-20 (general definitions, Regulations for the Control and Abatement of Air Pollution), 9VAC5-170-20 (definitions, Regulation for General Administration), or commonly ascribed to them by recognized authorities, in that order of priority.

9VAC5-530-20. Terms defined.

"Affected unit" means one or more electric generating units subject to the provisions of this chapter.

"Aggregate rated electrical power output" means (i) the sum or total rated electrical power output for all affected units involved in the application or (ii) in nonattainment areas, the sum or total rated electrical output for all electric generating units, permitted or exempt, located at the facility.

"Attainment area" means any area (other than an area identified as a nonattainment area) that meets the national primary or secondary ambient air quality standards for any

pollutant pursuant to § 107 of the federal Clean Air Act (42 USC § 7401 et seq.).

"Biodiesel fuel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable or animal fats, designated B100, and meeting the requirements of ASTM D6751-09.

"Biodiesel blends" means a blend of biodiesel and petroleum diesel fuel meeting either the requirements of ASTM D975-10b (blends up to 5.0%) or ASTM D7467-09 (blends between 6.0% and 20% biodiesel) and designated Bxx where xx represents the biodiesel content of the blend, e.g., B20 for a blend of 20% biodiesel and 80% petroleum diesel fuel.

"Compression ignition unit" or "CI unit" means a type of stationary internal combustion engine that is not a spark ignition engine.

"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid. Demand response actions are typically undertaken by the source owner in response to a request from a utility or electrical grid system operator or in response to market prices. [Demand response participants do not include affected units that are participating in an ISO's Manual 13 Emergency Operations program.]

"Diesel fuel" means any liquid obtained from the distillation of petroleum with a boiling point of approximately 150°C to 360°C and that complies with the specifications for S15 diesel fuel oil as defined by the American Society for Testing and Materials in ASTM D975-10b.

"Electric generating unit" means a stationary internal combustion engine that participates in a nonemergency voluntary demand response program (i.e., load curtailment, demand response, peak shaving or like program).

"Emergency" means a condition that arises from sudden and reasonably unforeseeable events where the primary energy or power source is disrupted or disconnected due to conditions beyond the control of an owner or operator of a source including any of the following:

1. A failure of the electrical grid.
2. On-site disaster or equipment failure.
3. Public service emergencies such as flood, fire, natural disaster, or severe weather conditions.
4. An ISO-declared emergency where an ISO emergency is any of the following:
 - a. An abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the

reliability of an electric system or the safety of persons or property.

b. Capacity deficiency or capacity excess conditions.

c. A fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel.

d. Abnormal natural events or man-made threats that would require conservative operations to posture the system in a more reliable state.

e. An abnormal event external to the ISO service territory that may require ISO action.

"Emergency generator or generation source" means a stationary internal combustion engine that operates only during an emergency, required maintenance or operability and emissions testing.

"General permit" means, for an electric generating unit or units, the terms and conditions in either Part IV (9VAC5-530-140 et seq.) or Part V (9VAC5-530-220) of this chapter that meet the requirements of Part II (9VAC5-530-30 et seq.) and Part III (9VAC5-530-90 et seq.) of this chapter and issued under the provisions of 9VAC5-80-1250.

"Identical affected units" means electric generating units that have the same make, manufacturer, model, year, size, and fuel specifications.

"Independent system operator" or "ISO" means a person who may receive or has received by transfer pursuant to § 56-576 of the Code of Virginia, any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

"Integration operational period" means that period of time beginning with the first time the affected unit is started on-site and ending when the affected unit is fully integrated with the source's electrical system. In no case shall this period exceed 30 days.

"Kilowatt (kW) to brake horsepower (bhp)" means the conversion of 1 kW = 1.341 bhp.

"Load curtailment" means an action similar to demand response, with the specific removal or reduction of electrical loads for a limited period of time from a utility grid system in response to a request from the utility or electrical grid system operator.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act (42 USC § 7401 et seq.) and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-

80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of Part II (Permit Procedures) of 9VAC5-80 (Permits for Stationary Sources).

"Manufacturer certified emissions" means the emission levels from a stationary compression ignition engine as identified according to the manufacturers' specifications applicable to that engine's family and model year.

"Model year" means either (i) the calendar year in which the engine was originally produced, or (ii) the annual new model production period of the engine manufacturer if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year. For an engine that is converted to a stationary engine after being placed into service as a nonroad or other nonstationary engine, model year means the calendar year or new model production period in which the engine was originally produced.

"Nonattainment area" means any area that does not meet the national ambient air quality standards for any pollutant pursuant to § 107 of the federal Clean Air Act (42 USC § 7401 et seq.) and listed in 9VAC5-20-204.

"Operation" means the burning of fuel regardless of whether electricity is generated.

"Peak shaving" means measures aimed solely at shifting time of use of electricity from peak use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid. Peak shaving is typically undertaken at a source owner's discretion in order to reduce maximum electrical usage and, therefore, cost of electrical service to the source owner.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in 9VAC5-30 (Ambient Air Quality Standards): the applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16;
2. For emission standards in 9VAC5-40 (Existing Stationary Sources) and 9VAC5-50 (New and Modified Stationary Sources): Appendix M of 40 CFR Part 51 or Appendix A of 40 CFR Part 60; or
3. For emission standards in 9VAC5-60 (Hazardous Air Pollutant Sources): Appendix B of 40 CFR Part 61 or Appendix A of 40 CFR Part 63.

Regulations

"Spark ignition unit" or "SI unit" means a natural gas or liquefied petroleum gas fueled engine or any other type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark ignition engines usually use a throttle to regulate intake air flow to control power during normal operation. Dual-fuel engines in which a liquid fuel (typically diesel fuel) is used for compression ignition and gaseous fuel (typically natural gas) is used as the primary fuel at an annual average ratio of less than two parts diesel fuel to 100 parts total fuel on an energy equivalent basis are spark ignition engines.

"Startup" means the date on which each affected unit completes the integration period, unless an extension for start-up notification as stated in 9VAC5-530-210 A 4 or 9VAC5-530-290 A 4 is approved by the department. An extension request must be submitted seven days prior to the end of the 30-day integration operational period.

"Tier 4 engine or equivalent" means a compression ignition electric generating unit that meets Tier 4 standards of 40 CFR Part 1039 or, for engines greater than 10 liters per cylinder, 40 CFR Part 1042, whether by Tier 4 certification or by add-on controls to meet the applicable emission standards for the model year and size of the engine.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

Part II General Provisions

9VAC5-530-30. [Basis Purpose].

[~~This~~ The purpose of this] general permit is [~~being issued under the authority of~~ to establish requirements covering an emissions unit category pursuant to] § 10.1-1308 of the Code of Virginia and 9VAC5-80-1250.

9VAC5-530-40. Applicability and designation of affected emissions unit.

A. This chapter applies to each affected unit (i) for which construction, modification, or operation is commenced on or after [~~insert effective date of this chapter~~ August 17, 2011], (ii) that does not meet the permit exemption thresholds of 9VAC5-80-1105 C 1 or D 1 and (iii) that meets the requirements stated below:

1. For CI units located in either an attainment or nonattainment area with an aggregate rated electrical power output less than or equal to 58,886 kW (78,966 bhp).

2. For SI units located in an attainment area with an aggregate rated electrical power output less than or equal to 60,970kW (81,761 bhp).

3. For SI units located in a nonattainment area with an aggregate rated electrical power output less than or equal to 37,750 kW (50,623 bhp).

B. This chapter applies throughout the Commonwealth of Virginia.

C. The following affected units shall not be eligible for this general permit:

1. Any electric generating unit that is subject to the provisions of the major new source review program as defined in this chapter.

2. Any electric generating unit that is an emergency generator.

9VAC5-530-50. General.

A. Any owner requesting authority to operate an affected unit shall comply with the requirements of 9VAC5-80 (Permits for Stationary Sources) and register with the department as required under 9VAC5-20-160. Not all parts of the general permit will apply to every owner. The determination of which parts apply will be based on where the unit is located and method of compliance determination. Parts I, II, and III of this chapter apply to all owners. Part IV of this chapter applies to affected units using fuel throughput for compliance determination. Part V of this chapter applies to affected units using hours of operation for compliance determination.

B. The existence of a permit under this chapter shall not constitute a defense of 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.

C. Upon request of the department, the owner shall reduce the level of operation or shut down an affected unit as necessary to avoid violating any primary ambient air quality standard and shall not return to normal operation until such time as the ambient air quality standard will not be violated.

D. This general permit to construct or modify each affected unit shall become invalid, unless an extension is granted by the department, if:

1. A program of continuous construction or modification is not commenced within 18 months from the date that this general permit is issued to the owner; or

2. A program of construction or modification is discontinued for a period of 18 months or more, or is not completed within a reasonable time, except for a department-approved period between phases of a phased construction project.

E. At all times, including periods of startup, shutdown, and malfunction, the owner shall, to the extent practicable,

maintain and operate the affected unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

F. The owner shall develop a maintenance schedule and maintain records of all scheduled and nonscheduled maintenance.

G. The owner shall have available written operating procedures for equipment. These procedures shall be based on the manufacturer's recommendations, at a minimum.

H. The owner shall train operators in the proper operation of all such equipment and familiarize the operators with the written operating procedures prior to their first operation of such equipment and shall maintain records of the training provided including the names of trainees, the date of training, and the nature of the training.

I. Records of maintenance and training shall be maintained on-site for a period of five years and shall be made available to department personnel upon request. If the site is remotely operated, the maintenance and training records may be kept off-site but shall be made available to the department within three business days of a department request.

J. The owner shall keep a copy of this general permit on the premises of the affected unit to which it applies.

9VAC5-530-60. Circumvention, suspension, or revocation.

A. No owner shall cause or permit the installation or use of any device or any means that, without resulting in reduction in the total amount of air pollutants emitted, conceals or dilutes an emission of air pollutants that would otherwise violate this chapter.

B. This general permit may be suspended or revoked if the owner:

1. Knowingly makes material misstatements in the general permit application or any amendments to it.
2. Fails to comply with the conditions of this general permit.
3. Fails to comply with any emission standards applicable to an affected unit.
4. Causes emissions from the stationary source that result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard.
5. Fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, or applicable regulations of the board in effect at the time an application for this general permit is submitted.

9VAC5-530-70. Compliance.

A. Whenever it is necessary for the purpose of the regulations of the board, the board or an agent authorized by

the board may at reasonable times enter an establishment or upon property, public or private, for the purpose of obtaining information or conducting surveys or investigations as authorized by § 10.1-1315 or 46.2-1187.1 of the Code of Virginia.

B. The time for inspection shall be deemed reasonable during regular business hours or whenever the source is in operation. Nothing contained herein shall make an inspection time unreasonable during an emergency.

C. Upon presentation of credentials and other documents as may be required by law, the owner shall allow the department to perform the following:

1. Enter upon the premises where the source is located or emissions-related activity is conducted or where records must be kept under the terms and conditions of this general permit.
2. Have access to and copy at reasonable times any records that must be kept under the terms and conditions of this general permit.
3. Inspect at reasonable times any facilities, equipment (including monitoring equipment), practices, or operations regulated or required under this general permit.
4. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with this general permit or applicable requirements.

9VAC5-530-80. Enforcement of a general permit.

A. The following general requirements apply:

1. Pursuant to § 10.1-1322 of the Virginia Air Pollution Control Law, failure to comply with any term or condition of the general permit shall be considered a violation of the Virginia Air Pollution Control Law.
2. An owner who (i) violates or fails, neglects, or refuses to obey any provision of this chapter or the Virginia Air Pollution Control Law, any applicable requirement, or any permit term or condition; (ii) knowingly makes any false statement, representation or certification in any form, in any notice or report required by a permit; or (iii) knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of §§ 10.1-1307, 10.1-1309, 10.1-1316, 10.1-1318, and 10.1-1320 of the Virginia Air Pollution Control Law.

B. Violation of this permit is subject to the enforcement provisions including, but not limited to, those contained in 9VAC5-170 (Regulation for General Administration) and §§ 10.1-1309, 10.1-1309.1, 10.1-1311, and 10.1-1316 of the Virginia Air Pollution Control Law.

C. If any condition, requirement, or portion of this general permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the

Regulations

remaining conditions, requirements, or portions of this general permit.

D. The owner shall comply with all applicable conditions of this general permit. Any noncompliance with this general permit constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) suspension or revocation of the authorization to operate under this general permit.

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

F. The authorization to operate under this general permit may be suspended or revoked for cause as specified in 9VAC5-530-80. The filing by an owner of a (i) request for reauthorization to operate under this general permit or (ii) notification of termination, planned changes, or anticipated noncompliance does not stay any condition of this general permit.

G. This general permit does not convey any property rights of any sort or any exclusive privilege.

H. Within 30 days of notification, the owner shall furnish to the department any information that the department may request in writing to determine whether cause exists for suspending or revoking the authorization to operate under this general permit or to determine compliance with this general permit. Upon request, the owner shall also furnish to the department copies of records required to be kept by this general permit and, for information claimed to be confidential, the owner shall furnish such records to the department along with a claim of confidentiality meeting the requirements of 9VAC5-170-60.

Part III

General Permit Administrative Procedures

9VAC5-530-90. Requirements for granting an authorization to operate under the general permit.

A. The department may grant an authorization to operate under the general permit for an affected unit that meets the applicability criteria in 9VAC5-530-40 and the operating limitations in 9VAC5-530-170 or 9VAC5-530-250.

B. The general permit will be issued in accordance with § 2.2-4006 A 8 of the Administrative Process Act.

9VAC5-530-100. Applications for coverage under the general permit.

A. The application for an affected unit shall meet the requirements of this chapter and include all information necessary to determine qualification for and to assure compliance with the general permit.

B. Any application form, report, compliance certification, or other document required to be submitted to the department under this chapter shall meet the requirements of 9VAC5-20-230.

C. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in an application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

9VAC5-530-110. Required information for initial applications.

A. The department will make application forms available to applicants. The information required by this section shall be determined and submitted according to procedures and methods acceptable to the department.

B. Each initial application for coverage under the general permit shall include, but not be limited to, the following:

1. Information specified in the appropriate air permit application form for an affected unit as determined by the department.

2. A document certification signed by a responsible official.

9VAC5-530-120. Granting an authorization to operate under the general permit.

A. The department may grant authorization to operate under the conditions and terms of the general permit to sources that meet the applicability criteria set forth in 9VAC5-530-40.

B. Granting an authorization to operate under the general permit to an affected unit covered by the general permit is not subject to the public participation procedures of 9VAC5-80-1170.

9VAC5-530-130. Transfer of authorizations to operate under the general permit.

A. No person shall transfer an authorization to operate under the general permit from one affected unit to another or from one piece of equipment to another.

B. In the case of a transfer of ownership of an affected unit, the new owner shall comply with any permit issued or authorization to operate under the general permit granted to the previous owner. The new owner shall notify the department of the change in ownership within 30 days of the transfer.

C. In the case of a name change of an affected unit, the owner shall comply with any permit issued or authorization to operate under the general permit granted under the previous source name. The owner shall notify the department of the change in source name within 30 days of the name change.

Part IV

General Permit Terms and Conditions for an Affected Unit Using Fuel Throughput for Compliance Demonstration**9VAC5-530-140. General permit.**

A. Any owner whose application is approved by the director shall receive the following general permit and shall comply with the requirements in it and be subject to all requirements of this chapter and the regulations of the board.

B. In compliance with the provisions of the Virginia Air Pollution Control Law and regulations adopted pursuant to it, owners of affected units are authorized to operate under the authority of this general permit, except those where board regulations or policies prohibit such operation.

C. The authorization to operate under this general permit shall be in accordance with the cover letter to this general permit, 9VAC5-530-150 (General terms and conditions), 9VAC5-530-160 (Monitoring requirements) 9VAC5-530-170 (Operating limits), 9VAC5-530-180 (Emissions limits), 9VAC5-530-190 (Testing requirements), 9VAC5-530-200 (Recordkeeping requirements), and 9VAC5-530-210 (Reporting requirements).

9VAC5-530-150. General terms and conditions.

A. The owner is authorized to operate an affected unit located within the boundaries of the Commonwealth of Virginia in accordance with the approved general permit application and conditions of this general permit except where board regulations or policies prohibit such activities.

B. The owner shall comply with the terms and conditions of this general permit prior to commencing any physical or operational change or activity that will result in making the source subject to the new source review program.

9VAC5-530-160. Monitoring requirements.

A. The owner shall install and use a fuel flow meter to monitor the fuel throughput for each affected unit, calculated monthly as the sum of each consecutive 12-month period.

B. Each fuel flow meter shall be installed, maintained, calibrated, and operated in accordance with approved procedures which shall include, as a minimum, the manufacturer's written requirements or recommendations.

C. The fuel flow meter used to continuously measure the fuel throughput for each affected unit shall be observed by the owner with a frequency of not less than once per month. The owner shall keep a log of the observations from the fuel flow meter.

9VAC5-530-170. Operating limits.

A. The approved fuels for each CI affected unit are diesel fuel, biodiesel fuel, and biodiesel blends. These fuels shall meet the following specifications:

1. Diesel fuel that meets the ASTM D975-10b specification for S15 diesel fuel oil; maximum sulfur content per shipment, 0.0015%.

2. Biodiesel fuel that meets ASTM specification D6751-09; maximum sulfur content per shipment, 0.0015%.

B. The approved fuels for each SI affected unit are natural gas and liquid petroleum gas (LPG). These fuels shall meet the following specifications:

1. Natural gas with a minimum heat content of 1,000 Btu/scf HHV as determined by ASTM D1826-94 (Reapproved 2010), ASTM D4809-09a, or an equivalent method approved by the department.

2. LPG, including butane and propane, that meets ASTM specification D1835-05, or an equivalent method approved by the department.

C. The combined CI affected unit or units located in either an attainment or nonattainment area, shall consume no more than 502,766 gallons of diesel fuel or 554,230 gallons of biodiesel fuel per year, calculated monthly as the sum of each consecutive 12-month period.

1. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. For affected units using any combination of the two fuels, the quantities of diesel oil and biodiesel, calculated monthly as the sum of each consecutive 12-month period, shall not exceed values that will allow the following equation to hold true:

$$A \times (140,000 \text{ Btu/gal}) + B \times (127,000 \text{ Btu/gal}) \leq 70,387 \times 10^6 \text{ Btu/yr}$$

where:

A = Number of gallons of diesel fuel burned during any consecutive 12-month period.

B = Number of gallons of biodiesel burned during any consecutive 12-month period.

D. The combined SI affected unit or units located in an attainment area shall consume no more than 775,300 gallons of LPG or 72.88×10^6 cubic feet of natural gas per year, calculated monthly as the sum of each consecutive 12-month period.

1. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. For affected units using any combination of the two fuels, the quantities of natural gas and LPG, calculated monthly as the sum of each consecutive 12-month period,

Regulations

shall not exceed values that will allow the following equation to hold true:

$$A \times (1,000 \text{ Btu/ft}^3) + B \times (94,000 \text{ Btu/gal}) \leq 72,878 \times 10^6 \text{ Btu/yr}$$

where:

A = Number of cubic feet of natural gas burned during any consecutive 12-month period.

B = Number of gallons of LPG burned during any consecutive 12-month period.

E. The combined SI affected unit or units located in a nonattainment area shall consume no more than 480,032 gallons of LPG or 45.12 x 10⁶ cubic feet of natural gas per year, calculated monthly as the sum of each consecutive 12-month period.

1. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. For affected units using any combination of the two fuels, the quantities of natural gas and LPG, calculated monthly as the sum of each consecutive 12-month period, shall not exceed values that will allow the following equation to hold true:

$$A \times (1,000 \text{ Btu/ft}^3) + B \times (94,000 \text{ Btu/gal}) \leq 45,123 \times 10^6 \text{ Btu/yr}$$

where:

A = Number of cubic feet of natural gas burned during any consecutive 12-month period.

B = Number of gallons of LPG burned during any consecutive 12-month period.

F. For affected units using diesel fuel or biodiesel fuel, the owner shall obtain a certification from the fuel supplier with each shipment of diesel fuel or biodiesel fuel. Each fuel supplier certification shall include the following:

1. The name of the fuel supplier;
2. The date on which the diesel fuel or biodiesel was received;
3. The quantity of diesel fuel or biodiesel delivered in the shipment;
4. A statement that the diesel fuel complies with the American Society for Testing and Materials specifications (ASTM D975-10b);
5. A statement that the biodiesel fuel complies with the American Society for Testing and Materials specifications (ASTM D6751-09) [~~for S15 diesel fuel oil~~]; and
6. The sulfur content of the diesel fuel or biodiesel fuel.

9VAC5-530-180. Emissions limits.

A. Manufacturer certified emissions of each CI affected unit located in either an attainment or nonattainment area shall not exceed the limits specified in Table IV-1.

Table IV-1 Emissions Limits for CI Units Located in Either an Attainment or Nonattainment Area						
Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM ₁₀	PM _{2.5}	CO	VOC	NO _x
Pre 2011	<u>0.10</u> (0.075)	<u>0.10</u> (0.075)	<u>0.10</u> (0.075)	<u>3.5</u> (2.6)	<u>0.40</u> (0.30)	<u>0.67</u> (0.50)
2011-2014	<u>0.10</u> (0.075)	<u>0.10</u> (0.075)	<u>0.10</u> (0.075)	<u>3.5</u> (2.6)	<u>0.40</u> (0.30)	<u>0.67</u> (0.50)
2015+	<u>0.03</u> (0.022)	<u>0.03</u> (0.022)	<u>0.03</u> (0.022)	<u>3.5</u> (2.6)	<u>0.19</u> (0.14)	<u>0.67</u> (0.50)

B. Emissions from the operation of each CI affected unit located in either an attainment or nonattainment area during testing shall not exceed the limits specified in Table IV-2.

Table IV-2 [Emission Emissions] Limits During Testing for CI Units Located in Either an Attainment or Nonattainment Area						
Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM ₁₀	PM _{2.5}	CO	VOC	NO _x
Pre 2011	0.13 (0.097)	0.13 (0.097)	0.13 (0.097)	4.4 (3.3)	0.50 (0.37)	0.84 (0.63)
2011-2014	0.13 (0.097)	0.13 (0.097)	0.13 (0.097)	4.4 (3.3)	0.50 (0.37)	0.84 (0.63)
2015+	0.04 (0.030)	0.04 (0.030)	0.04 (0.030)	4.4 (3.3)	0.24 (0.18)	0.84 (0.63)

C. Manufacturer tested emissions limits for each SI affected unit located in either an attainment or nonattainment area shall not exceed the limits specified in Table IV-3.

Table IV-3 Emissions Limits for SI Engines Located in Either an Attainment or Nonattainment Area						
Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM ₁₀	PM _{2.5}	CO	VOC	NO _x
Pre 2011 [±]	0.015 (0.011)	0.015 (0.011)	0.015 (0.011)	2.68 (2.0)	0.94 (0.7)	1.34 (1.0)
2011+	0.015 (0.011)	0.015 (0.011)	0.015 (0.011)	2.68 (2.0)	0.94 (0.7)	1.34 (1.0)

D. Emissions from the operation of each SI affected unit located in either an attainment or nonattainment area during testing shall not exceed the limits specified in Table IV-4.

Table IV-4 [Emission Emissions] Limits During Testing for SI Units Located in Either an Attainment or Nonattainment Area						
Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM ₁₀	PM _{2.5}	CO	VOC	NO _x
Pre 2011 [+]	0.019 (0.014)	0.019 (0.014)	0.019 (0.014)	3.35 (2.5)	1.18 (0.88)	1.68 (1.25)
2011+	0.019 (0.014)	0.019 (0.014)	0.019 (0.014)	3.35 (2.5)	1.18 (0.88)	1.68 (1.25)

E. Combined source-wide emissions from the operation of affected units shall not exceed the limits specified in Table IV-5.

Table IV-5 Combined Source-Wide Emissions Limits for Affected Units		
Pollutant	Nonattainment Areas Emissions (tons/year)	Attainment Areas Emissions (tons/year)
PM	2.8	2.8
PM ₁₀	2.8	2.8
PM _{2.5}	2.8	2.8
NO _x	24.4	39.4
CO	99.4	99.4
VOC	17.1	27.6

Regulations

F. Visible emissions from each affected unit shall not exceed 5.0% opacity as determined by Reference Method 9. This condition applies at all times except during startup, shutdown, and malfunction.

9VAC5-530-190. Testing requirements.

A. Each affected unit shall be constructed and installed so as to allow for emissions testing upon reasonable notice at any time using appropriate methods. Sampling ports shall be provided when requested at the appropriate locations and safe sampling platforms and access shall be provided.

B. No affected unit shall be used for the purposes of preventative maintenance purposes between the hours of 7 a.m. to 5 p.m. any day during the ozone season of May 1 through September 30.

C. Initial performance tests shall be conducted for NO_x, CO, PM₁₀, and PM_{2.5} from the affected unit using EPA-approved reference methods to determine compliance with the emission limits contained in 9VAC5-530-180.

1. The tests shall be performed and demonstrate compliance within 60 days after achieving the maximum production rate at which the affected unit or units will be operated, but in no event later than 180 days after startup of the permitted source.

2. Tests shall be conducted in accordance with EPA methods or an alternative method approved by department.

3. The details of the tests are to be arranged with the regional office and the owner shall submit a test protocol at least 30 days prior to testing.

4. One copy of the test results shall be submitted to the department regional office within 45 days after test completion and shall conform to the test report format in subsection D of this section.

5. Testing for multiple identical affected units located at the source shall be conducted as follows:

a. 50% of CI affected units shall be tested.

b. 100% of SI affected units over 500 bhp shall be tested.

6. The owner shall conduct additional performance testing every three years for NO_x, CO, PM₁₀, and PM_{2.5} to demonstrate compliance with the testing emission limits contained in 9VAC5-530-180. The details of the tests shall be arranged with the regional office. Additional performance testing for multiple identical affected units located at the source shall be conducted as follows:

a. 20% of CI affected units shall be tested.

b. 100% of SI affected units over 500 bhp shall be tested.

D. The test report format for performance testing shall include the following:

1. A report cover containing:

a. The plant name;

b. The plant location;

c. Units tested (including unit reference number if assigned);

d. Test dates;

e. The name of the individual conducting the test;

f. The address of the individual conducting the test; and

g. The report date.

2. A certification, including the date certified, that has been signed by:

a. A test team leader or a certified observer;

b. The test reviewer; and

c. A responsible company official.

3. A copy of approved test protocol.

4. A summary including:

a. The reason for testing;

b. Test dates;

c. Identification of the unit tested including the maximum rated capacity for each unit;

d. For each emission unit, a table showing:

(1) The operating rate;

(2) Test methods;

(3) The pollutants tested; and

(4) Test results for each run, including the run average;

e. Process and control equipment data for each run and the average as required by the test protocol;

f. A statement that the test was conducted in accordance with the test protocol, or identification and discussion of deviations, including the likely impact on results; and

g. Any other important information as determined by the regional office.

5. A description of source operation including:

a. A description of the process;

b. A description of control devices, if necessary;

c. A process and control equipment flow diagram; and

d. A description of sampling port location and a dimensioned cross section. A protocol shall be attached that includes a sketch of the stack (elevation view) showing sampling port locations, upstream and downstream flow disturbances and their distances from

ports; and a sketch of stack (plan view) showing sampling ports, ducts entering the stack, and stack diameter or dimensions.

6. Test results, including:

- a. Detailed test results for each run;
- b. Sample calculations; and
- c. A description of collected samples, including audits, when applicable.

7. An appendix, including:

- a. Raw production data;
- b. Raw field data;
- c. Laboratory reports;
- d. Chain of custody records for laboratory samples;
- e. Calibration procedures and results;
- f. Project participants and contact information;
- g. Observers' names, including their industry and agency affiliation;
- h. Related correspondence; and
- i. Standard procedures.

E. Initial Visible Emission Evaluations (VEE) in accordance with Reference Method 9 shall be conducted on each affected unit.

1. The evaluation shall be performed and demonstrate compliance within 60 days after achieving the maximum production rate at which the affected unit or units will be operated, but in no event later than 180 days after startup of the permitted source.
2. Should conditions prevent concurrent opacity observations, the regional office shall be notified in writing within seven days and visible emissions testing shall be rescheduled within 30 days.
3. Rescheduled testing shall be conducted under the same conditions (as possible) as the initial performance tests.
4. Each test shall consist of 30 sets of 24 consecutive observations (at 15 second intervals) to yield a six-minute average.
5. The details of the tests are to be arranged with the regional office and the owner shall submit a test protocol at least 30 days prior to initial testing.
6. One copy of the test results shall be submitted to the department regional office within 45 days after test completion and shall conform to the test report format in 9VAC5-530-190 F.

7. Initial VEE testing for multiple identical affected units located at the source shall be conducted as follows:

- a. 50% of CI affected units shall be tested.
- b. 100% of SI affected units over 500 bhp shall be tested.

8. The owner shall conduct additional VEE testing every three years to demonstrate compliance with the opacity limit contained in 9VAC5-530-180 F. The details of the tests shall be arranged with the regional office. Additional VEE testing for multiple identical affected units located at the source shall be conducted as follows:

- a. 20% of CI affected units shall be tested.
- b. 100% of SI affected units over 500 bhp shall be tested.

F. The test report format for visible emissions evaluations shall include the following.

1. A report cover containing:

- a. The plant name;
- b. The plant location;
- c. Units tested at the source identified by the department that have been issued reference numbers;
- d. Test dates;
- e. The name of the individual conducting the test;
- f. The address of individual conducting the test; and
- g. The report date.

2. A certification, including the date certified, that has been signed by:

- a. A test team leader or a certified observer; and
- b. A responsible company official.

3. Copy of the approved test protocol.

4. A summary including:

- a. The reason for testing;
- b. Test dates;
- c. Identification of the unit tested, including the maximum rated capacity for each unit;
- d. Summarized process and control equipment data for each run and the average as required by the test protocol;
- e. A statement certifying that the test was conducted in accordance with the test protocol or, if not conducted according to protocol, identification and discussion of deviations, including the likely impact on results; and
- f. Any other important information.

5. A description of source operation including:

Regulations

- a. A description of the process;
 - b. A description of control devices, if necessary;
 - c. A process and control equipment flow diagram; and
 - d. A description of sampling port location and a dimensioned cross section. A protocol shall be attached that includes a sketch of the stack (elevation view) showing sampling port locations, upstream and downstream flow disturbances and their distances from ports; and a sketch of stack (plan view) showing sampling ports, ducts entering the stack, and stack diameter or dimensions.
6. The detailed test results for each run.
7. An appendix including:
- a. Names of project participants and their titles;
 - b. Observers' names, including their industry and agency affiliation;
 - c. Related correspondence; and
 - d. Standard procedures.

9VAC5-530-200. Recordkeeping requirements.

A. The owner shall maintain records of emission data and operating parameters as necessary and, if requested, provide them to the department within three business days to demonstrate compliance with this general permit.

B. The owner shall maintain records of the occurrence and duration of any bypass, malfunction, shutdown, or failure of the affected unit or its associated air pollution control equipment that results in excess emissions for more than one hour. Records shall include the following: (i) date, (ii) time, (iii) duration, (iv) description (emission unit, pollutant affected, cause), (v) corrective action, (vi) preventive measures taken, and (vii) name of person generating the record.

C. The content and format of such records shall be arranged with the regional office. These records shall include, but are not limited to:

1. Total combined annual throughput of fuel consumed for the affected unit or units, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.
2. Total annual heat input values to show compliance with subsections C, D, and E of 9VAC5-530-170.
3. All fuel supplier certifications.

4. Engine information including make, model, serial number, model year, maximum engine power, and engine displacement for each affected unit.

5. Written manufacturer specifications or written standard operating procedures prepared by the owner for each affected unit. The written standard operating procedures prepared by the owner cannot be less stringent than the written manufacturer specifications.

6. Results of all stack tests, VEE, and performance evaluations.

7. Operation and control device monitoring records for the fuel flow meter.

8. Scheduled and unscheduled maintenance, testing, and operator training.

D. These records shall be available for inspection by the department and shall be current for the most recent five years.

9VAC5-530-210. Reporting requirements.

A. The owner shall furnish written notification to the regional office of the following:

1. The actual date on which construction of each affected unit commenced within 30 days after such date.

2. If necessary, the actual date on which the integration operational period of each affected unit commenced within 15 days after such date.

3. The anticipated startup date of each affected unit postmarked not more than 60 days nor less than 30 days prior to such date.

4. The actual startup date of each affected unit within 15 days after such date.

5. The anticipated date of performance tests of each affected unit postmarked at least 30 days prior to such date.

B. The owner shall furnish notification to the regional office of malfunctions of the affected unit or related air pollution control equipment that may cause excess emissions for more than one hour.

1. Such notification shall be made as soon as practicable but no later than four daytime business hours after the malfunction is discovered.

2. The owner shall provide a written statement giving all pertinent facts, including the estimated duration of the breakdown, within two weeks of discovery of the malfunction.

3. When the condition causing the failure or malfunction has been corrected and the equipment is again in operation, the owner shall notify the regional office.

Part V

General Permit Terms and Conditions for Electric Generating Units Using Hours of Operation for Compliance Demonstration**9VAC5-530-220. General permit.**

A. Any owner whose application is approved by the director shall receive the following general permit and shall comply with the requirements in it and be subject to all requirements of this chapter and the regulations of the board.

B. In compliance with the provisions of the Virginia Air Pollution Control Law and regulations adopted pursuant to it, owners of affected units are authorized to operate under the authority of this general permit except those where board regulations or policies prohibit such operation.

C. The authorization to operate under this general permit shall be in accordance with the cover letter to this general permit, 9VAC5-530-2300 (General terms and conditions), 9VAC5-530-240 (Monitoring requirements) 9VAC5-530-250 (Operating limits), 9VAC5-530-260 (Emissions limits), 9VAC5-530-270 (Testing requirements), 9VAC5-530-280 (Recordkeeping requirements), and 9VAC5-530-290 (Reporting requirements).

9VAC5-530-230. General terms and conditions.

A. The owner is authorized to operate an affected unit located within the boundaries of the Commonwealth of Virginia in accordance with the approved general permit application and conditions of this general permit except where board regulations or policies prohibit such activities.

B. The owner shall comply with the terms and conditions of this general permit prior to commencing any physical or operational change or activity that will result in making the source subject to the new source review program.

9VAC5-530-240. Monitoring requirements.

A. The owner shall install and use a nonresettable hour metering device to monitor the monthly and yearly operating hours for each affected unit, calculated monthly as the sum of each consecutive 12-month period. Each nonresettable hour meter shall be installed, maintained, calibrated, and operated in accordance with approved procedures that shall include, as a minimum, the manufacturer's written requirements or recommendations.

B. The hour meter used to continuously measure the hours of operation for each affected unit shall be observed by the owner with a frequency of not less than once per month. The owner shall keep a log of the observations from the hour meter.

9VAC5-530-250. Operating limits.

A. The approved fuels for each CI affected unit are diesel fuel, biodiesel fuel, and biodiesel blends. These fuels shall meet the following specifications:

1. Diesel fuel that meets the ASTM D975-10b specification for S15 diesel fuel oil; maximum sulfur content per shipment, 0.0015%.

2. Biodiesel fuel that meets ASTM specification D6751-09; maximum sulfur content per shipment, 0.0015%.

B. The approved fuels for each SI affected unit are natural gas and liquid petroleum gas (LPG). These fuels shall meet the following specifications.

1. Natural gas with a minimum heat content of 1,000 Btu/scf HHV as determined by ASTM D1826-94 (Reapproved 2010), D4809-09a, or an equivalent method approved by the department.

2. LPG, including butane and propane, that meets ASTM specification D1835-05 or an equivalent method approved by the department.

C. Each affected unit shall not operate more than 350 hours per year, calculated monthly as the sum of each consecutive 12-month period.

1. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. Total emissions for any consecutive 12-month period, calculated as the sum of all emissions from operations under this condition, shall not exceed the limits stated in 9VAC5-530-260 E.

D. For affected units using diesel fuel or biodiesel fuel the owner shall obtain a certification from the fuel supplier with each shipment of diesel fuel or biodiesel fuel. Each fuel supplier certification shall include the following:

1. The name of the fuel supplier;

2. The date on which the diesel fuel or biodiesel was received;

3. The quantity of diesel fuel or biodiesel delivered in the shipment;

4. A statement that the diesel fuel complies with the American Society for Testing and Materials specifications (ASTM D975-10b) for S15 diesel fuel oil;

5. A statement that the biodiesel fuel complies with the American Society for Testing and Materials specifications (ASTM D6751-09); and

6. The sulfur content of the diesel fuel or biodiesel fuel.

Regulations

9VAC5-530-260. Emissions limits.

A. Manufacturer certified emissions of each CI affected unit located in either an attainment or nonattainment area shall not exceed the limits specified in Table V-1.

Table V-1 Emissions Limits for CI Units Located in Either an Attainment or Nonattainment Area						
Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM ₁₀	PM _{2.5}	CO	VOC	NO _x
Pre 2011	<u>0.10</u> (0.075)	<u>0.10</u> (0.075)	<u>0.10</u> (0.075)	<u>3.5</u> (2.6)	<u>0.40</u> (0.30)	<u>0.67</u> (0.50)
2011-2014	<u>0.10</u> (0.075)	<u>0.10</u> (0.075)	<u>0.10</u> (0.075)	<u>3.5</u> (2.6)	<u>0.40</u> (0.30)	<u>0.67</u> (0.50)
2015+	<u>0.03</u> (0.022)	<u>0.03</u> (0.022)	<u>0.03</u> (0.022)	<u>3.5</u> (2.6)	<u>0.19</u> (0.14)	<u>0.67</u> (0.50)

B. Emissions from the operation of each CI affected unit located in either an attainment or nonattainment area during testing shall not exceed the limits specified in Table V-2.

Table V-2 [Emission Emissions] Limits During Testing for CI Units Located in Either an Attainment or Nonattainment Area						
Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM ₁₀	PM _{2.5}	CO	VOC	NO _x
Pre 2011	<u>0.13</u> (0.097)	<u>0.13</u> (0.097)	<u>0.13</u> (0.097)	<u>4.4</u> (3.3)	<u>0.50</u> (0.37)	<u>0.84</u> (0.63)
2011-2014	<u>0.13</u> (0.097)	<u>0.13</u> (0.097)	<u>0.13</u> (0.097)	<u>4.4</u> (3.3)	<u>0.50</u> (0.37)	<u>0.84</u> (0.63)
2015+	<u>0.04</u> (0.030)	<u>0.04</u> (0.030)	<u>0.04</u> (0.030)	<u>4.4</u> (3.3)	<u>0.24</u> (0.18)	<u>0.84</u> (0.63)

C. Manufacturer certified emissions of each SI affected unit located in either an attainment or nonattainment area shall not exceed the limits specified in Table V-3.

Table V-3 Emissions Limits for SI Engines Located in Either an Attainment or Nonattainment Area						
Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM ₁₀	PM _{2.5}	CO	VOC	NO _x
Pre 2011 [±]	<u>0.015</u> (0.011)	<u>0.015</u> (0.011)	<u>0.015</u> (0.011)	<u>2.68</u> (2.0)	<u>0.94</u> (0.7)	<u>1.34</u> (1.0)
2011+	<u>0.015</u> (0.011)	<u>0.015</u> (0.011)	<u>0.015</u> (0.011)	<u>2.68</u> (2.0)	<u>0.94</u> (0.7)	<u>1.34</u> (1.0)

D. Emissions from the operation of each SI affected unit located in either an attainment or nonattainment area during testing shall not exceed the limits specified in Table V-4.

Table V-4 [Emission Emissions] Limits During Testing for SI Units Located in Either an Attainment or Nonattainment Area						
Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
	PM	PM ₁₀	PM _{2.5}	CO	VOC	NO _x
Pre 2011 [±]	0.019 (0.014)	0.019 (0.014)	0.019 (0.014)	3.35 (2.5)	1.18 (0.88)	1.68 (1.25)
2011+	0.019 (0.014)	0.019 (0.014)	0.019 (0.014)	3.35 (2.5)	1.18 (0.88)	1.68 (1.25)

E. Combined emissions from the operation of affected units shall not exceed the limits specified in Table V-5.

Table V-5 Combined Source-Wide Emissions Limits for Affected Units		
Pollutant	Nonattainment Areas Emissions (tons/year)	Attainment Areas Emissions (tons/year)
PM	2.8	2.8
PM ₁₀	2.8	2.8
PM _{2.5}	2.8	2.8
NO _x	24.4	39.4
CO	99.4	99.4
VOC	17.1	27.6

F. Visible emissions from each affected unit shall not exceed 5.0% opacity as determined by Reference Method 9. This condition applies at all times except during startup, shutdown, and malfunction.

9VAC5-530-270. Testing requirements.

A. Each affected unit shall be constructed and installed so as to allow for emissions testing upon reasonable notice at any time using appropriate methods. Sampling ports shall be provided when requested at the appropriate locations and safe sampling platforms and access shall be provided.

B. No affected unit shall be used for the purposes of preventative maintenance purposes between the hours of 7 a.m. to 5 p.m. during the ozone season of May 1 through September 30.

C. Initial performance tests shall be conducted for NO_x, CO, PM₁₀, and PM_{2.5} from the affected unit using EPA-approved reference methods to determine compliance with the emission limits contained in 9VAC5-530-260.

1. The tests shall be performed and demonstrate compliance within 60 days after achieving the maximum production rate at which the affected unit will be operated but in no event later than 180 days after startup of the permitted affected unit.

2. Tests shall be conducted in accordance with EPA methods or an alternative method approved by the department.

3. The details of the tests are to be arranged with the regional office and the owner shall submit a test protocol at least 30 days prior to testing.

4. One copy of the test results shall be submitted to the department regional office within 45 days after test completion and shall conform to the test report format in 9VAC5-530-270 D.

5. Testing for multiple identical affected units located at the source shall be conducted as follows:

- a. 50% of CI affected units shall be tested.
- b. 100% of SI affected units over 500 bhp shall be tested.

6. The owner shall conduct additional performance testing every three years for NO_x, CO, PM₁₀, and PM_{2.5} to demonstrate compliance with the testing emission limits contained in 9VAC5-530-260. The details of the tests shall be arranged with the regional office. Additional performance testing for multiple identical affected units located at the source shall be conducted as follows:

- a. 20% of CI affected units shall be tested.
- b. 100% of SI affected units over 500 bhp shall be tested.

Regulations

D. The test report format for performance testing shall include the following:

1. A report cover containing:

- a. The plant name;
- b. The plant location;
- c. Units tested (including unit reference number if assigned);
- d. Test dates;
- e. The name of the individual conducting the test;
- f. The address of the individual conducting the test; and
- g. The report date.

2. A certification, including the date certified, that has been signed by:

- a. A test team leader or a certified observer;
- b. The test reviewer; and
- c. A responsible company official.

3. A copy of approved test protocol.

4. A summary including:

- a. The reason for testing;
- b. Test dates;
- c. Identification of the unit tested including the maximum rated capacity for each unit;
- d. For each emission unit, a table showing:
 - (1) The operating rate;
 - (2) Test methods;
 - (3) The pollutants tested; and
 - (4) Test results for each run, including the run average;
- e. Process and control equipment data for each run and the average, as required by the test protocol;
- f. A statement that the test was conducted in accordance with the test protocol, or identification and discussion of deviations, including the likely impact on results; and
- g. Any other important information as determined by the regional office.

5. A description of source operation including:

- a. A description of the process;
- b. A description of control devices, if necessary;
- c. A process and control equipment flow diagram; and
- d. A description of sampling port location and a dimensioned cross section. A protocol shall be attached

that includes a sketch of the stack (elevation view) showing sampling port locations, upstream and downstream flow disturbances and their distances from ports; and a sketch of stack (plan view) showing sampling ports, ducts entering the stack and stack diameter or dimensions.

6. Test results, including:

- a. Detailed test results for each run;
- b. Sample calculations; and
- c. A description of collected samples, including audits, when applicable.

7. An appendix, including:

- a. Raw production data;
- b. Raw field data;
- c. Laboratory reports;
- d. Chain of custody records for laboratory samples;
- e. Calibration procedures and results;
- f. Project participants and contact information;
- g. Observers' names including their industry and agency affiliation;
- h. Related correspondence; and
- i. Standard procedures.

E. Visible Emission Evaluations (VEE) in accordance with Reference Method 9 shall be conducted on each affected unit.

1. The evaluation shall be performed and demonstrate compliance within 60 days after achieving the maximum production rate at which the affected unit will be operated, but in no event later than 180 days after startup of the permitted affected unit.

2. Should conditions prevent concurrent opacity observations, the regional office shall be notified in writing within seven days and visible emissions testing shall be rescheduled within 30 days.

3. Rescheduled testing shall be conducted under the same conditions (as possible) as the initial performance tests.

4. Each test shall consist of 30 sets of 24 consecutive observations (at 15 second intervals) to yield a six-minute average.

5. The details of the tests are to be arranged with the regional office and the owner shall submit a test protocol at least 30 days prior to testing.

6. One copy of the test results shall be submitted to the regional office within 45 days after test completion and shall conform to the test report format in 9VAC5-530-270 F.

7. Initial VEE testing for multiple identical affected units located at the source shall be conducted as follows:

- a. 50% of CI affected units shall be tested.
- b. 100% of SI affected units over 500 bhp shall be tested.

8. The owner shall conduct additional VEE testing every three years to demonstrate compliance with the opacity limit contained in 9VAC5-530-260 F. The details of the tests shall be arranged with the regional office. Additional VEE testing for multiple identical affected units located at the source shall be conducted as follows:

- a. 20% of CI affected units shall be tested.
- b. 100% of SI affected units over 500 bhp shall be tested.

F. The test report format for visible emissions evaluations shall include the following.

1. A report cover containing:

- a. The plant name;
- b. The plant location;
- c. Units tested at the source identified by the department that have been issued reference numbers;
- d. Test dates;
- e. The name of the individual conducting the test;
- f. The address of individual conducting the test; and
- g. The report date.

2. A certification, including the date certified, that has been signed by:

- a. A test team leader or a certified observer; and
- b. A responsible company official.

3. Copy of approved test protocol.

4. A summary including:

- a. The reason for testing;
- b. Test dates;
- c. Identification of the unit tested, including the maximum rated capacity for each unit;
- d. Summarized process and control equipment data for each run and the average as required by the test protocol;
- e. A statement certifying that the test was conducted in accordance with the test protocol or, if not conducted according to protocol, identification and discussion of deviations, including the likely impact on results; and
- f. Any other important information.

5. A description of source operation including:

a. A description of the process;

b. A description of control devices, if necessary;

c. A process and control equipment flow diagram; and

d. A description of sampling port location and a dimensioned cross section. A protocol shall be attached that includes a sketch of the stack (elevation view) showing sampling port locations, upstream and downstream flow disturbances and their distances from ports; and a sketch of stack (plan view) showing sampling ports, ducts entering the stack and stack diameter or dimensions.

6. The detailed test results for each run.

7. An appendix including:

- a. The names of project participants and their titles;
- b. The observers' names, including their industry and agency affiliation;
- c. Related correspondence; and
- d. Standard procedures.

9VAC5-530-280. Recordkeeping requirements.

A. The owner shall maintain records of emission data and operating parameters as necessary and, if requested, provide them to the department within three business days to demonstrate compliance with this general permit.

B. The owner shall maintain records of the occurrence and duration of any bypass, malfunction, shutdown, or failure of the affected unit or its associated air pollution control equipment that results in excess emissions for more than one hour. Records shall include the date, time, duration, description (emission unit, pollutant affected, cause), corrective action, preventive measures taken, and name of person generating the record.

C. The content and format of such records shall be arranged with the regional office. These records shall include, but are not limited to:

1. Total combined annual hours of operation for the affected unit or units, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. All fuel supplier certifications.

3. Engine information including make, model, serial number, model year, maximum engine power, and engine displacement for each affected unit.

4. Written manufacturer specifications or written standard operating procedures prepared by the owner for each

Regulations

affected unit. The written standard operating procedures prepared by the owner cannot be less stringent than the written manufacturer specifications.

5. Results of all stack tests, VEE, and performance evaluations.

6. Operation and control device monitoring records for the nonresettable hour meter.

7. Scheduled and unscheduled maintenance, testing, and operator training.

D. These records shall be available for inspection by the department and shall be current for the most recent five years.

9VAC5-530-290. Reporting requirements.

A. The owner shall furnish written notification to the regional office of the following:

1. The actual date on which construction of each affected unit commenced within 30 days after such date.

2. If necessary, the actual date on which the integration operational period of each affected unit commenced within 15 days after such date.

3. The anticipated startup date of each affected unit postmarked not more than 60 days nor less than 30 days prior to such date.

4. The actual startup date of each affected unit within 15 days after such date.

5. The anticipated date of performance tests of each affected unit postmarked at least 30 days prior to such date.

B. The owner shall furnish notification to the regional office of malfunctions of the affected unit or related air pollution control equipment that may cause excess emissions for more than one hour.

1. Such notification shall be made as soon as practicable, but no later than four daytime business hours after the malfunction is discovered.

2. The owner shall provide a written statement giving all pertinent facts, including the estimated duration of the breakdown, within two weeks of discovery of the malfunction.

3. When the condition causing the failure or malfunction has been corrected and the equipment is again in operation, the owner shall notify the regional office.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access the form. The form is also available through the agency contact

or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC5-530)

[[Air Permit Application Form, Electric Generator Voluntary Demand Response General Permit, Form 530 \(Draft\).](#)]

[[Air Permit Application Form, Electric Generator Voluntary Demand Response General Permit, Form 530 \(eff. 8/11\).](#)]

DOCUMENTS INCORPORATED BY REFERENCE (9VAC5-530)

Standards of the American Society for Testing and Materials (ASTM) listed below are copyrighted materials and may be obtained from ASTM International, P.O. Box C-700, West Conshohocken, PA 19428-2959:

D975-10b, Standard Specification for Diesel Fuel Oils, 2009.

D1826-94 (Reapproved 2010), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, 2010.

D1835-05, Standard Specification for Liquefied Petroleum (LP) Gases, 2005.

D4809-09a, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), 2009.

D6751-09, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, 2009.

D7467-10, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20), 2010.

VA.R. Doc. No. R10-2295; Filed June 28, 2011, 1:57 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Air Pollution Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: 9VAC5-540. Emergency Generator General Permit (adding 9VAC5-540-10 through 9VAC5-540-220) (Rev. Eg).

Statutory Authority: §§ 10.1-1307.2 and 10.1-1308 of the Code of Virginia.

Effective Date: August 17, 2011.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Summary:

Section 10.1-1307.02 B of the Code of Virginia mandates that the board develop a general permit for the use of back-up generation to authorize the construction, installation, reconstruction, modification, and operation of emergency generation sources during independent service operator (ISO) declared emergencies. It includes the definition of "emergency generation source" as a stationary internal combustion engine that operates according to the procedures in the ISO's emergency operations manual during an ISO-declared emergency. It includes emissions limits for both compression ignition (CI) and spark ignition (SI) emergency generation sources and provides more stringent emission limits for those sources operating in nonattainment areas (i.e., Northern Virginia) than for sources operating in attainment areas.

The regulation does not require any owner to apply for coverage under the general permit but provides the opportunity for an owner to apply for coverage if the source meets the requirements of the regulation.

The only substantive change to the regulation since publication of the proposed regulation was a modification of the definition of "demand response" to clarify that demand response participants do not include affected units that are participating in an ISO's Manual 13 Emergency Operations program.

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.

CHAPTER 540

EMERGENCY GENERATOR GENERAL PERMIT

Part I

Definitions

9VAC5-540-10. General.

A. For the purpose of applying this chapter in the context of regulations of the board and related uses, the words or terms shall have the meanings given them in 9VAC5-540-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in this chapter, terms used shall have the meaning given them by 9VAC5-80-1110 (definitions, Permits for New and Modified Stationary Sources), 9VAC5-10-20 (general definitions, Regulations for the Control and Abatement of Air Pollution), 9VAC5-170-20 (definitions, Regulation for General Administration), or commonly ascribed to them by recognized authorities, in that order of priority.

9VAC5-540-20. Terms defined.

"Affected unit" means one or more emergency generation units subject to the provisions of this chapter.

"Aggregate rated electrical power output" means (i) the sum or total rated electrical power output for all affected units involved in the application or (ii) in nonattainment areas, the sum or total rated electrical output for all affected units, permitted or exempt, located at the facility.

"Attainment area" means any area (other than an area identified as a nonattainment area) that meets the national ambient air quality standards for any pollutant pursuant to § 107 of the federal Clean Air Act (42 USC § 7401 et seq.).

"Biodiesel fuel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable or animal fats, designated B100, and meeting the requirements of ASTM D6751-09.

"Biodiesel blends" means a blend of biodiesel and petroleum diesel fuel meeting either the requirements of ASTM D975-10b (blends up to 5.0%) or ASTM D7467 (blends between 6.0% and 20% biodiesel) and designated Bxx where xx represents the biodiesel content of the blend, e.g., B20 for a blend of 20% biodiesel and 80% petroleum diesel fuel.

"Compression ignition unit" or "CI unit" means a type of stationary internal combustion engine that is not a spark ignition engine.

"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid. Demand response actions are typically undertaken by the source owner in response to a request from a utility or electrical grid system operator or in response to market prices. [Demand response participants do not include affected units that are participating in an ISO's Manual 13 Emergency Operations program.]

"Diesel fuel" means any liquid obtained from the distillation of petroleum with a boiling point of approximately 150°C to 360°C and that complies with the specifications for S15 diesel fuel oil, as defined by the American Society for Testing and Materials in ASTM D975-10b.

Regulations

"Emergency" means a condition that arises from sudden and reasonably unforeseeable events where the primary energy or power source is disrupted or disconnected due to conditions beyond the control of an owner of a source including any of the following:

1. A failure of the electrical grid.
2. On-site disaster or equipment failure.
3. Public service emergencies such as flood, fire, natural disaster, or severe weather conditions.
4. An ISO-declared emergency, where an ISO emergency is any of the following:
 - a. An abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property.
 - b. Capacity deficiency or capacity excess conditions.
 - c. A fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel.
 - d. Abnormal natural events or man-made threats that would require conservative operations to posture the system in a more reliable state.
 - e. An abnormal event external to the ISO service territory that may require ISO action.

"Emergency generation unit or source" means a stationary internal combustion engine that operates only during an emergency, required maintenance, or operability and emissions testing.

"General permit" means, for an emergency generation unit, the terms and conditions in Part IV (9VAC5-540-140 et seq.) of this chapter that meet the requirements of Part II (9VAC5-540-30 et seq.) and Part III (9VAC5-540-90 et seq.) of this chapter and issued under the provisions of 9VAC5-80-1250.

"Identical affected unit" means electric generating units that have the same make, manufacturer, model, year, size, and fuel specifications.

"Integration operational period" means that period of time beginning with the first time the affected unit is started on-site and ending when the affected unit is fully integrated with the source's electrical system. In no case shall this period exceed 30 days.

"ISO-declared emergency" means a condition that exists when the independent system operator, as defined in § 56-576 of the Code of Virginia, notifies electric utilities that an emergency exists or may occur and that complies with the definition of "emergency" adopted by the board.

"Kilowatt (kW) to brake horsepower (bhp)" means the conversion of 1 kW = 1.341 bhp.

"Load curtailment" means an action similar to demand response, with the specific removal or reduction of electrical loads for a limited period of time from a utility grid system in response to a request from the utility or electrical grid system operator.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165, and 173 of the federal Clean Air Act (42 USC §§ 7401 et seq.) and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of Part II (Permit Procedures) of 9VAC5-80 (Permits for Stationary Sources).

"Manufacturer certified emissions" means the emission levels from a stationary compression ignition engine as identified according to the manufacturers' specifications applicable to that engine's family and model year.

"Model year" means either (i) the calendar year in which the engine was originally produced or (ii) the annual new model production period of the engine manufacturer if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year. For an engine that is converted to a stationary engine after being placed into service as a nonroad or other nonstationary engine, model year means the calendar year or new model production period in which the engine was originally produced.

"Nonattainment area" means any area that does not meet the national ambient air quality standards for any pollutant pursuant to § 107 of the federal Clean Air Act (42 USC § 7401 et seq.) and listed in 9VAC5-20-204.

"Operation" means the burning of fuel regardless of whether electricity is generated.

"Peak shaving" means measures aimed solely at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid. Peak shaving is typically undertaken at a source owner's discretion in order to reduce maximum electrical usage and, therefore, cost of electrical service to the source owner.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in 9VAC5-30 (Ambient Air Quality Standards): the applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16;

2. For emission standards in 9VAC5-40 (Existing Stationary Sources) and 9VAC5-50 (New and Modified Stationary Sources): Appendix M of 40 CFR Part 51 or Appendix A of 40 CFR Part 60; or

3. For emission standards in 9VAC5-60 (Hazardous Air Pollutant Sources): Appendix B of 40 CFR Part 61 or Appendix A of 40 CFR Part 63.

"Spark ignition unit" or "SI unit" means a natural gas or liquefied petroleum gas fueled engine or any other type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark ignition engines usually use a throttle to regulate intake air flow to control power during normal operation. Dual-fuel engines in which a liquid fuel (typically diesel fuel) is used for compression ignition and gaseous fuel (typically natural gas) is used as the primary fuel at an annual average ratio of less than 2 parts diesel fuel to 100 parts total fuel on an energy equivalent basis are spark ignition engines.

"Startup" means the date on which each affected unit completes the integration operational period, unless an extension for start-up notification as stated in subdivision 4 of 9VAC5-540-210 is approved by the department. An extension request must be submitted seven days prior to the end of the 30-day integration operational period.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

Part II
General Provisions

9VAC5-540-30. [Basis Purpose].

[~~This~~ The purpose of this] general permit is [~~being issued under the authority of~~ to establish requirements covering an emissions unity category pursuant to] § 10.1-1308 of the Code of Virginia and 9VAC5-80-1250.

9VAC5-540-40. Applicability.

A. This chapter applies to each affected unit (i) for which construction, modification, or operation is commenced on or after [insert effective date of this chapter]; (ii) that does not meet the permit exemption thresholds of 9VAC5-80-1105 B 2 b, 9VAC5-80-1105 C 1, or 9VAC5-1105 D 1; and (iii) that meets the requirements stated below:

1. For CI units, located in an attainment area with an aggregate rated electrical power output identified in Table I below:

<u>Table I</u> <u>Aggregate Rated Electrical Power Output For CI Units in an Attainment Area</u>		
<u>Affected Unit Size</u> <u>kW (bhp)</u>	<u>With a Displacement of:</u> <u>(liters/cylinder)</u>	<u>With a Model</u> <u>Year of:</u>
<u>x < 6,906 (9,261)</u>	<u>Less than 10</u>	<u>2010</u>
<u>x < 8,472 (11,361)</u>	<u>Less than 10</u>	<u>2011+</u>
<u>x < 8,146 (10,924)</u>	<u>10.0 < x < 15.0</u>	<u>2010+</u>

2. For CI units, located in a nonattainment area with an aggregate rated electrical power output identified in Table II:

<u>Table II</u> <u>Aggregate Rated Electrical Power Output For CI Units in a Nonattainment Area</u>		
<u>Affected Unit Size</u> <u>kW (bhp)</u>	<u>With a Displacement of:</u> <u>(liters/cylinder)</u>	<u>With a Model</u> <u>Year of:</u>
<u>x < 3,850 (5,163)</u>	<u>Less than 10</u>	<u>2010</u>
<u>x < 4,722 (6,332)</u>	<u>Less than 10</u>	<u>2011+</u>
<u>x < 4,540 (6,088)</u>	<u>10.0 < x < 15.0</u>	<u>2010+</u>

3. For SI units located in an attainment area with an aggregate rated electrical power output less than or equal to 23,535 kW (31,560 bhp).

4. For SI units located in a nonattainment area with an aggregate rated electrical power output less than or equal to 13,115 kW (17,587 bhp).

B. This chapter applies throughout the Commonwealth of Virginia.

C. The following affected unit or units shall not be eligible for this general permit:

1. Any affected unit that is subject to the provisions of the major new source review program as defined in this chapter.

2. Any affected unit that operates during nonemergency conditions for purposes other than required maintenance and operability testing (including but not limited to peak shaving, demand response, or as part of any other interruptible power supply arrangement with a power provider, other market participant, or system operator).

Regulations

9VAC5-540-50. General.

A. Any owner requesting authority to operate an affected unit shall comply with the requirements of 9VAC5-80 (Permits for Stationary Sources) and register with the department as required under 9VAC5-20-160.

B. The existence of a permit under this chapter shall not constitute a defense of 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.

C. Upon request of the department, the owner shall reduce the level of operation or shut down an affected unit as necessary to avoid violating any primary ambient air quality standard and shall not return to normal operation until such time as the ambient air quality standard will not be violated.

D. This general permit to construct or modify each affected unit shall become invalid, unless an extension is granted by the department, if:

1. A program of continuous construction or modification is not commenced within 18 months from the date that this general permit is issued to the owner; or

2. A program of construction or modification is discontinued for a period of 18 months or more or is not completed within a reasonable time, except for a department-approved period between phases of a phased construction project.

E. At all times, including periods of startup, shutdown, and malfunction, the owner shall, to the extent practicable, maintain and operate the affected unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

F. The owner shall develop a maintenance schedule and maintain records of all scheduled and nonscheduled maintenance.

G. The owner shall have available written operating procedures for equipment. These procedures shall be based on the manufacturer's recommendations, at a minimum.

H. The owner shall train operators in the proper operation of all such equipment and familiarize the operators with the written operating procedures prior to their first operation of such equipment. The owner shall maintain records of the training provided including the names of trainees, the date of training, and the nature of the training.

I. Records of maintenance and training shall be maintained on-site for a period of five years and shall be made available to department personnel upon request. If the site is remotely operated, the maintenance and training records may be kept

off-site but shall be made available to the department within three business days of a department request.

J. The owner shall keep a copy of this general permit on the premises of the affected unit to which it applies

9VAC5-540-60. Circumvention, suspension, or revocation.

A. No owner shall cause or permit the installation or use of any device or any means that, without resulting in reduction in the total amount of air pollutants emitted, conceals or dilutes an emission of air pollutants that would otherwise violate this chapter.

B. This general permit may be suspended or revoked if the owner:

1. Knowingly makes material misstatements in the general permit application or any amendments to it.

2. Fails to comply with the conditions of this general permit.

3. Fails to comply with any emission standards applicable to an affected unit.

4. Causes emissions from the stationary source that result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard.

5. Fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, or applicable regulations of the board in effect at the time an application for this general permit is submitted.

9VAC5-540-70. Compliance.

A. Whenever it is necessary for the purpose of the regulations of the board, the board or an agent authorized by the board may at reasonable times enter an establishment or upon property, public or private, for the purpose of obtaining information or conducting surveys or investigations as authorized by § 10.1-1315 or 46.2-1187.1 of the Code of Virginia.

B. The time for inspection shall be deemed reasonable during regular business hours or whenever the source is in operation. Nothing contained herein shall make an inspection time unreasonable during an emergency.

C. Upon presentation of credentials and other documents as may be required by law, the owner shall allow the department to perform the following:

1. Enter upon the premises where the source is located or emissions-related activity is conducted, or where records must be kept under the terms and conditions of this general permit.

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

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

4. Sample or monitor at reasonable times substances or parameters for the purpose of ensuring compliance with this general permit or applicable requirements.

9VAC5-540-80. Enforcement of a general permit.

A. The following general requirements apply:

1. Pursuant to § 10.1-1322 of the Virginia Air Pollution Control Law, failure to comply with any term or condition of the general permit shall be considered a violation of the Virginia Air Pollution Control Law.

2. An owner who (i) violates or fails, neglects, or refuses to obey any provision of this chapter or the Virginia Air Pollution Control Law, any applicable requirement, or any permit term or condition; (ii) knowingly makes any false statement, representation, or certification in any form, in any notice or report required by a general permit; or (iii) knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of §§ 10.1-1307, 10.1-1309, 10.1-1316, 10.1-1318, and 10.1-1320 of the Virginia Air Pollution Control Law.

B. Violation of this general permit is subject to the enforcement provisions including, but not limited to, those contained in 9VAC5-170 (Regulation for General Administration) and §§ 10.1-1309, 10.1-1309.1, 10.1-1311, and 10.1-1316 of the Virginia Air Pollution Control Law.

C. If any condition, requirement, or portion of this general permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of this general permit.

D. The owner shall comply with all conditions of this general permit. Any noncompliance with this general permit constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) suspension or revocation of the authorization to operate under this general permit.

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

F. The authorization to operate under this general permit may be suspended or revoked for cause as specified in 9VAC5-530-80. The filing by an owner of a (i) request for reauthorization to operate under this general permit or (ii) notification of termination, planned changes, or anticipated

noncompliance does not stay any condition of this general permit.

G. This general permit does not convey any property rights of any sort or any exclusive privilege.

H. Within 30 days of notification, the owner shall furnish to the department any information that the department may request in writing to determine whether cause exists for suspending or revoking the authorization to operate under this general permit or to determine compliance with this general permit. Upon request, the owner shall also furnish to the department copies of records required to be kept by this general permit and, for information claimed to be confidential, the owner shall furnish such records to the department along with a claim of confidentiality meeting the requirements of 9VAC5-170-60.

Part III

General Permit Administrative Procedures

9VAC5-540-90. Requirements for granting an authorization to operate under the general permit.

A. The department may grant an authorization to operate under the general permit for an affected unit that meets the applicability criteria in 9VAC5-540-40 and the operating limitations in 9VAC5-540-170.

B. The general permit will be issued in accordance with § 2.2-4006 A 8 of the Administrative Process Act.

9VAC5-540-100. Applications for coverage under the general permit.

A. The application for an affected unit shall meet the requirements of this chapter and include all information necessary to determine qualification for and to ensure compliance with the general permit.

B. Any application form, report, compliance certification, or other document required to be submitted to the department under this chapter shall meet the requirements of 9VAC5-20-230.

C. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in an application, upon becoming aware of such failure or incorrect submittal, shall promptly submit such supplementary facts or corrected information.

9VAC5-540-110. Required information for initial applications.

A. The department will make application forms available to applicants. The information required by this section shall be determined and submitted according to procedures and methods acceptable to the department.

B. Each initial application for coverage under the general permit shall include, but not be limited to, the following:

Regulations

1. Information specified in the appropriate air permit application form for an affected unit as determined by the regional office.

2. A document certification signed by a responsible official.

9VAC5-540-120. Granting an authorization to operate under the general permit.

A. The department may grant authorization to operate under the conditions and terms of the general permit to sources that meet the applicability criteria set forth in 9VAC5-540-40.

B. Granting an authorization to operate under the general permit to an affected unit covered by the general permit is not subject to the public participation procedures of 9VAC5-80-1170.

9VAC5-540-130. Transfer of authorizations to operate under the general permit.

A. No person shall transfer an authorization to operate under the general permit from one affected unit to another or from one piece of equipment to another.

B. In the case of a transfer of ownership of an affected unit, the new owner shall comply with any permit issued or authorization to operate under the general permit granted to the previous owner. The new owner shall notify the department of the change in ownership within 30 days of the transfer.

C. In the case of a name change of an affected unit, the owner shall comply with any permit issued or authorization to operate under the general permit granted under the previous source name. The owner shall notify the department of the change in source name within 30 days of the name change.

Part IV

General Permit Terms and Conditions

9VAC5-540-140. General permit.

A. Any owner whose application is approved by the director shall receive the following general permit and shall comply with the requirements in it and be subject to all requirements of this chapter and the regulations of the board.

B. In compliance with the provisions of the Virginia Air Pollution Control Law and regulations adopted pursuant to it, owners of affected units are authorized to operate under the authority of this general permit, except those where board regulations or policies prohibit such operation.

C. The authorization to operate under this general permit shall be in accordance with the cover letter to this permit, 9VAC5-540-150 (General terms and conditions), 9VAC5-540-160 (Monitoring requirements) 9VAC5-540-170 (Operating limits), 9VAC5-540-180 (Emissions limits), 9VAC5-540-190 (Testing requirements), 9VAC5-540-200

(Recordkeeping requirements), 9VAC5-540-210 (Reporting requirements), and 9VAC5-540-220 (Enforcement).

9VAC5-540-150. General terms and conditions.

A. The owner is authorized to operate an affected unit located within the boundaries of the Commonwealth of Virginia in accordance with the approved permit application and conditions of this general permit except where board regulations or policies prohibit such activities.

B. The owner shall comply with the terms and conditions of this general permit prior to commencing any physical or operational change or activity that will result in making the source subject to the new source review program.

9VAC5-540-160. Monitoring requirements.

A. The owner shall install and use a nonresettable hour metering device to monitor the operating hours for each affected unit, calculated monthly as the sum of each consecutive 12-month period.

B. Each monitoring device shall be installed, maintained, calibrated, and operated in accordance with approved procedures, which shall include, as a minimum, the manufacturer's written requirements or recommendations.

C. The hour meter used to continuously measure the hours of operation for each affected unit shall be observed by the owner with a frequency of not less than once per month. The owner shall keep a log of the observations from the hour meter.

9VAC5-540-170. Operating limits.

A. Each affected unit located in an attainment area shall not operate more than 450 hours per year, calculated monthly as the sum of each consecutive 12-month period.

1. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. Total emissions for any consecutive 12-month period, calculated as the sum of all emissions from operations under this condition, shall not exceed the limits stated in of 9VAC5-540-180 F.

B. Each affected unit located in a nonattainment area shall not operate more than 500 hours per year, calculated monthly as the sum of each consecutive 12-month period.

1. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

2. Total emissions for any consecutive 12-month period, calculated as the sum of all emissions from operations

under this condition, shall not exceed the limits stated in 9VAC5-540-180 F.

C. The approved fuels for each CI affected unit are diesel fuel, biodiesel fuel, and biodiesel blends. These fuels shall meet the following specifications:

1. Diesel fuel that meets the ASTM D975-10b specification for S15 fuel oil; maximum sulfur content per shipment, 0.0015%.

2. Biodiesel fuel which meets ASTM specification D6751-09; maximum sulfur content per shipment, 0.0015%.

D. The approved fuels for each SI affected unit are natural gas and liquid petroleum gas (LPG). These fuels shall meet the following specifications.

1. Natural gas with a minimum heat content of 1,000 Btu/scf HHV as determined by ASTM D1826-94 (Reapproved 2010), ASTM D4809-09a, or an equivalent method approved by the department.

2. LPG, including butane and propane, that meets ASTM D1835-05, or an equivalent method approved by the department.

E. For affected units using diesel fuel or biodiesel fuel, the owner shall obtain a certification from the fuel supplier with each shipment of diesel fuel or biodiesel fuel. Each fuel supplier certification shall include the following:

1. The name of the fuel supplier.

2. The date on which the diesel fuel or biodiesel was received.

3. The quantity of diesel fuel or biodiesel delivered in the shipment.

4. A statement that the diesel fuel complies with the American Society for Testing and Materials specifications (ASTM D975-10b) for S15 fuel oil.

5. A statement that the biodiesel fuel complies with the American Society for Testing and Materials specifications (ASTM D6751-09), and

6. The sulfur content of the diesel fuel or biodiesel fuel.

9VAC5-540-180. Emissions limits.

A. Manufacturer certified emissions of each CI affected unit located in an attainment area shall not exceed the limits specified in Table III.

Table III Emissions Limits for CI Units Located in Attainment Areas								
Generator Size (kW)	Displacement liters/cylinder	Model Year	Emission Limits g/kW-hr (g/bhp-hr)					NO _x
			PM	PM ₁₀	PM _{2.5}	CO	VOC	
<u>x < 8 kW (x < 11 bhp)</u>	<u>Less than 10</u>	<u>2010+</u>	<u>0.4 (0.30)</u>	<u>0.4 (0.30)</u>	<u>0.4 (0.30)</u>	<u>8.0 (6.0)</u>	<u>7.5* (5.6*)</u>	
<u>8 kW < x < 19 kW (11 bhp ≤ x < 25 bhp)</u>	<u>Less than 10</u>	<u>2010+</u>	<u>0.4 (0.30)</u>	<u>0.4 (0.30)</u>	<u>0.4 (0.30)</u>	<u>6.6 (4.9)</u>	<u>7.5* (5.6*)</u>	
<u>19 kW ≤ x < 37 kW (25 bhp ≤ x < 50 bhp)</u>	<u>Less than 10</u>	<u>2010+</u>	<u>0.3 (0.22)</u>	<u>0.3 (0.22)</u>	<u>0.3 (0.22)</u>	<u>5.5 (4.1)</u>	<u>7.5* (5.6*)</u>	
<u>37 kW ≤ x < 75 kW (50 bhp ≤ x < 100 bhp)</u>	<u>Less than 10</u>	<u>2010+</u>	<u>0.4 (0.30)</u>	<u>0.4 (0.30)</u>	<u>0.4 (0.30)</u>	<u>5.0 (3.7)</u>	<u>4.7* (3.5*)</u>	
<u>75 kW < x < 130 kW (100 bhp ≤ x < 174 bhp)</u>	<u>Less than 10</u>	<u>2010+</u>	<u>0.3 (0.22)</u>	<u>0.3 (0.22)</u>	<u>0.3 (0.22)</u>	<u>5.0 (3.7)</u>	<u>4.0* (3.0*)</u>	
<u>130 kW ≤ x < 560 kW (174 bhp ≤ x < 751 bhp)</u>	<u>Less than 10</u>	<u>2010+</u>	<u>0.2 (0.15)</u>	<u>0.2 (0.15)</u>	<u>0.2 (0.15)</u>	<u>3.5 (2.6)</u>	<u>4.0* (3.0*)</u>	
<u>560 kW ≤ x < 2,237 kW (751 bhp ≤ x < 3,000</u>	<u>Less than 10</u>	<u>2010+</u>	<u>0.2 (0.15)</u>	<u>0.2 (0.15)</u>	<u>0.2 (0.15)</u>	<u>3.5 (2.6)</u>	<u>6.4* (4.8*)</u>	

Regulations

<u>bhp)</u> <u>$x > 2,237 \text{ kW}$</u> <u>$(x > 3,000 \text{ bhp})$</u>	<u>Less than 10</u>	<u>2010</u>	<u>0.54</u> <u>(0.40)</u>	<u>0.54</u> <u>(0.40)</u>	<u>0.54</u> <u>(0.40)</u>	<u>11.4</u> <u>(8.5)</u>	<u>1.3</u> <u>(1.0)</u>	<u>9.2</u> <u>(6.9)</u>
		<u>2011+</u>	<u>0.2</u> <u>(0.15)</u>	<u>0.2</u> <u>(0.15)</u>	<u>0.2</u> <u>(0.15)</u>	<u>3.5</u> <u>(2.6)</u>	<u>6.4*</u> <u>(4.8*)</u>	
<u>$x > 2,237 \text{ kW}$</u> <u>$(x > 3,000 \text{ bhp})$</u>	<u>$10.0 \leq x < 15.0$</u>	<u>2010+</u>	<u>0.27</u> <u>(0.20)</u>	<u>0.27</u> <u>(0.20)</u>	<u>0.27</u> <u>(0.20)</u>	<u>5.0</u> <u>(3.7)</u>	<u>7.8*</u> <u>(5.8*)</u>	

*Combined limit for VOC and NO_x

B. Emissions of each CI affected unit located in an attainment area during testing shall not exceed the limits specified in Table IV.

Generator Size (kW)	Displacement liters/cylinder	Model Year	Emission Limits (g/kW-hr (g/bhp-hr))					
			PM	PM10	PM _{2.5}	CO	VOC	NO _x
<u>$x < 8 \text{ kW}$</u> <u>$(x < 11 \text{ bhp})$</u>	<u>Less than 10</u>	<u>2010+</u>	<u>0.5</u> <u>(0.4)</u>	<u>0.5</u> <u>(0.4)</u>	<u>0.5</u> <u>(0.4)</u>	<u>10.0</u> <u>(7.5)</u>	<u>9.4*</u> <u>(7.0*)</u>	
<u>$8 \text{ kW} \leq x < 19 \text{ kW}$</u> <u>$(11 \text{ bhp} \leq x < 25 \text{ bhp})$</u>	<u>Less than 10</u>	<u>2010+</u>	<u>0.5</u> <u>(0.4)</u>	<u>0.5</u> <u>(0.4)</u>	<u>0.5</u> <u>(0.4)</u>	<u>8.3</u> <u>(6.2)</u>	<u>9.4*</u> <u>(7.0*)</u>	
<u>$19 \text{ kW} \leq x < 37 \text{ kW}$</u> <u>$(25 \text{ bhp} \leq x < 50 \text{ bhp})$</u>	<u>Less than 10</u>	<u>2010+</u>	<u>0.38</u> <u>(0.28)</u>	<u>0.38</u> <u>(0.28)</u>	<u>0.38</u> <u>(0.28)</u>	<u>6.9</u> <u>(5.1)</u>	<u>9.4*</u> <u>(7.0*)</u>	
<u>$37 \text{ kW} \leq x < 75 \text{ kW}$</u> <u>$(50 \text{ bhp} \leq x < 100 \text{ bhp})$</u>	<u>Less than 10</u>	<u>2010+</u>	<u>0.5</u> <u>(0.4)</u>	<u>0.5</u> <u>(0.4)</u>	<u>0.5</u> <u>(0.4)</u>	<u>6.3</u> <u>(4.7)</u>	<u>5.9*</u> <u>(4.4*)</u>	
<u>$75 \text{ kW} \leq x < 130 \text{ kW}$</u> <u>$(100 \text{ bhp} \leq x < 174 \text{ bhp})$</u>	<u>Less than 10</u>	<u>2010+</u>	<u>0.38</u> <u>(0.28)</u>	<u>0.38</u> <u>(0.28)</u>	<u>0.38</u> <u>(0.28)</u>	<u>6.3</u> <u>(4.7)</u>	<u>5.0*</u> <u>(3.7*)</u>	
<u>$130 \text{ kW} \leq x < 560 \text{ kW}$</u> <u>$(174 \text{ bhp} \leq x < 751 \text{ bhp})$</u>	<u>Less than 10</u>	<u>2010+</u>	<u>0.25</u> <u>(0.19)</u>	<u>0.25</u> <u>(0.19)</u>	<u>0.25</u> <u>(0.19)</u>	<u>4.4</u> <u>(3.3)</u>	<u>5.0*</u> <u>(3.7*)</u>	
<u>$560 \text{ kW} \leq x < 2,237 \text{ kW}$</u> <u>$(751 \text{ bhp} \leq x < 3,000$</u> <u>$\text{bhp})$</u>	<u>Less than 10</u>	<u>2010+</u>	<u>0.25</u> <u>(0.19)</u>	<u>0.25</u> <u>(0.19)</u>	<u>0.25</u> <u>(0.19)</u>	<u>4.4</u> <u>(3.3)</u>	<u>8.0*</u> <u>(6.0*)</u>	
<u>$x > 2,237 \text{ kW}$</u> <u>$(x > 3,000 \text{ bhp})$</u>	<u>Less than 10</u>	<u>2010</u>	<u>0.68</u> <u>(0.51)</u>	<u>0.68</u> <u>(0.51)</u>	<u>0.68</u> <u>(0.51)</u>	<u>14.3</u> <u>(10.7)</u>	<u>1.6</u> <u>(1.2)</u>	<u>11.5</u> <u>(8.6)</u>
		<u>2011+</u>	<u>0.25</u> <u>(0.19)</u>	<u>0.25</u> <u>(0.19)</u>	<u>0.25</u> <u>(0.19)</u>	<u>4.4</u> <u>(3.3)</u>	<u>8.0*</u> <u>(6.0*)</u>	
<u>$x > 2,237 \text{ kW}$</u> <u>$(x \geq 3,000 \text{ bhp})$</u>	<u>$10.0 \leq x < 15.0$</u>	<u>2010+</u>	<u>0.34</u> <u>(0.25)</u>	<u>0.34</u> <u>(0.25)</u>	<u>0.34</u> <u>(0.25)</u>	<u>6.3</u> <u>(4.7)</u>	<u>9.8*</u> <u>(7.3*)</u>	

*Combined limit for VOC and NO_x

C. Manufacturer certified emissions of each CI affected unit located in a nonattainment attainment area shall not exceed the limits specified in Table V.

Table V
Emissions Limits for CI Units Located in Nonattainment Areas

Generator Size (kW)	Displacement liters/cylinder	Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
			PM	PM ₁₀	PM _{2.5}	CO	VOC	NO _x
<u>x < 8 kW</u> (x < 11 bhp)	<u>Less than 10</u>	<u>2010+</u>	<u>0.4</u> (0.30)	<u>0.4</u> (0.30)	<u>0.4</u> (0.30)	<u>8.0</u> (6.0)	<u>6.4*</u> (4.8*)	
<u>8 kW ≤ x < 19 kW</u> (11 bhp ≤ x < 25 bhp)	<u>Less than 10</u>	<u>2010+</u>	<u>0.4</u> (0.30)	<u>0.4</u> (0.30)	<u>0.4</u> (0.30)	<u>6.6</u> (4.9)	<u>6.4*</u> (4.8*)	
<u>19 kW ≤ x < 37 kW</u> (25 bhp ≤ x < 50 bhp)	<u>Less than 10</u>	<u>2010+</u>	<u>0.3</u> (0.22)	<u>0.3</u> (0.22)	<u>0.3</u> (0.22)	<u>5.5</u> (4.1)	<u>6.4*</u> (4.8*)	
<u>37 kW ≤ x < 75 kW</u> (50 bhp ≤ x < 100 bhp)	<u>Less than 10</u>	<u>2010+</u>	<u>0.4</u> (0.30)	<u>0.4</u> (0.30)	<u>0.4</u> (0.30)	<u>5.0</u> (3.7)	<u>4.7*</u> (3.5*)	
<u>75 kW ≤ x < 130 kW</u> (100 bhp ≤ x < 174 bhp)	<u>Less than 10</u>	<u>2010+</u>	<u>0.3</u> (0.22)	<u>0.3</u> (0.22)	<u>0.3</u> (0.22)	<u>5.0</u> (3.7)	<u>4.0*</u> (3.0*)	
<u>130 kW ≤ x < 560 kW</u> (174 bhp ≤ x < 751 bhp)	<u>Less than 10</u>	<u>2010+</u>	<u>0.2</u> (0.15)	<u>0.2</u> (0.15)	<u>0.2</u> (0.15)	<u>3.5</u> (2.6)	<u>4.0*</u> (3.0*)	
<u>560 kW ≤ x < 2,237 kW</u> (751 bhp ≤ x < 3,000 bhp)	<u>Less than 10</u>	<u>2010+</u>	<u>0.2</u> (0.15)	<u>0.2</u> (0.15)	<u>0.2</u> (0.15)	<u>3.5</u> (2.6)	<u>6.4*</u> (4.8*)	
<u>x ≥ 2,237 kW</u> (x ≥ 3,000 bhp)	<u>Less than 10</u>	<u>2010</u>	<u>0.54</u> (0.40)	<u>0.54</u> (0.40)	<u>0.54</u> (0.40)	<u>11.4</u> (8.5)	<u>1.3</u> (1.0)	<u>6.4</u> (4.8)
		<u>2011+</u>	<u>0.2</u> (0.15)	<u>0.2</u> (0.15)	<u>0.2</u> (0.15)	<u>3.5</u> (2.6)	<u>6.4*</u> (4.8*)	
<u>x ≥ 2,237 kW</u> (x ≥ 3,000 bhp)	<u>10.0 ≤ x < 15.0</u>	<u>2010+</u>	<u>0.27</u> (0.20)	<u>0.27</u> (0.20)	<u>0.27</u> (0.20)	<u>5.0</u> (3.7)	<u>6.4*</u> (4.8*)	

*Combined limit for VOC and NO_x

D. Emissions from the operation of each CI affected unit located in a nonattainment area during testing shall not exceed the limits specified in Table VI.

Table VI
Emissions Limits During Testing for CI Units Located in Nonattainment Areas

Generator Size (kW)	Displacement liters/cylinder	Model Year	Emission Limits g/kW-hr (g/bhp-hr)					
			PM	PM ₁₀	PM _{2.5}	CO	VOC	NO _x
<u>x < 8 kW</u> (x < 11 bhp)	<u>Less than 10</u>	<u>2010+</u>	<u>0.5</u> (0.4)	<u>0.5</u> (0.4)	<u>0.5</u> (0.4)	<u>10.0</u> (7.5)	<u>8.0*</u> (6.0*)	
<u>8 kW ≤ x < 19 kW</u> (11 bhp ≤ x < 25 bhp)	<u>Less than 10</u>	<u>2010+</u>	<u>0.5</u> (0.4)	<u>0.5</u> (0.4)	<u>0.5</u> (0.4)	<u>8.3</u> (6.2)	<u>8.0*</u> (6.0*)	

Regulations

$19 \text{ kW} < x < 37 \text{ kW}$ ($25 \text{ bhp} < x < 50 \text{ bhp}$)	Less than 10	2010+	<u>0.38</u> (0.28)	<u>0.38</u> (0.28)	<u>0.38</u> (0.28)	<u>6.9</u> (5.1)	<u>8.0*</u> (6.0*)
$37 \text{ kW} < x < 75 \text{ kW}$ ($50 \text{ bhp} < x < 100 \text{ bhp}$)	Less than 10	2010+	<u>0.5</u> (0.4)	<u>0.5</u> (0.4)	<u>0.5</u> (0.4)	<u>6.3</u> (4.7)	<u>5.9*</u> (4.4*)
$75 \text{ kW} < x < 130 \text{ kW}$ ($100 \text{ bhp} < x < 174 \text{ bhp}$)	Less than 10	2010+	<u>0.38</u> (0.28)	<u>0.38</u> (0.28)	<u>0.38</u> (0.28)	<u>6.3</u> (4.7)	<u>5.0*</u> (3.7*)
$130 \text{ kW} < x < 560 \text{ kW}$ ($174 \text{ bhp} < x < 751 \text{ bhp}$)	Less than 10	2010+	<u>0.25</u> (0.19)	<u>0.25</u> (0.19)	<u>0.25</u> (0.19)	<u>4.4</u> (3.3)	<u>5.0*</u> (3.7*)
$560 \text{ kW} < x < 2,237 \text{ kW}$ ($751 \text{ bhp} < x < 3,000 \text{ bhp}$)	Less than 10	2010+	<u>0.25</u> (0.19)	<u>0.25</u> (0.19)	<u>0.25</u> (0.19)	<u>4.4</u> (3.3)	<u>8.0*</u> (6.0*)
$x \geq 2,237 \text{ kW}$ ($x \geq 3,000 \text{ bhp}$)	Less than 10	2010	<u>0.68</u> (0.51)	<u>0.68</u> (0.51)	<u>0.68</u> (0.51)	<u>14.3</u> (10.7)	<u>1.6</u> (1.2)
		2011+	<u>0.25</u> (0.19)	<u>0.25</u> (0.19)	<u>0.25</u> (0.19)	<u>4.4</u> (3.3)	<u>8.0*</u> (6.0*)
$x \geq 2,237 \text{ kW}$ ($x \geq 3,000 \text{ bhp}$)	$10.0 \leq x < 15.0$	2010+	<u>0.34</u> (0.25)	<u>0.34</u> (0.25)	<u>0.34</u> (0.25)	<u>6.3</u> (4.7)	<u>8.0*</u> (6.0*)

*Combined limit for VOC and NO_x

E. Emissions from the operation of each SI affected unit shall not exceed the limits specified in Table VII.

Table VII Emissions Limits for SI Units						
Model Year	Emissions Limits g/kW-hr (g/bhp-hr)					
	PM	PM ₁₀	PM _{2.5}	CO	VOC	NO _x
2010+	<u>0.015</u> (0.011)	<u>0.015</u> (0.011)	<u>0.015</u> (0.011)	<u>5.3</u> (4.0)	<u>1.3</u> (1.0)	<u>2.7</u> (2.0)
				Instead of meeting the limits stated above, the owner may meet the alternative standards below: ([ppm ppmvd] at 15% O ₂)		
				<u>540</u>	<u>86</u>	<u>160</u>

F. Combined source-wide emissions from the operation of affected units shall not exceed the limits specified in Table VIII.

Table VIII Combined Source-Wide Emissions Limits for Affected Units		
Pollutant	Nonattainment Area Emissions (tons/year)	Attainment Area Emissions (tons/year)
PM	<u>1.4</u>	<u>2.3</u>
PM ₁₀	<u>1.4</u>	<u>2.3</u>
PM _{2.5}	<u>1.4</u>	<u>2.3</u>
NOX	<u>24.4</u>	<u>39.4</u>

<u>SO₂</u>	<u>0.5</u>	<u>0.5</u>
<u>CO</u>	<u>48.0</u>	<u>77.4</u>
<u>VOC</u>	<u>11.8</u>	<u>19.0</u>

G. Visible emissions from each affected unit located in an attainment area shall not exceed 10% opacity except during one six-minute period in any one hour in which visible emissions shall not exceed 20% opacity as determined by Reference Method 9. This condition applies at all times except during startup, shutdown, and malfunction.

H. Visible emissions from each affected unit located in a nonattainment area shall not exceed 5.0% opacity except during one six-minute period in any one hour in which visible emissions shall not exceed 10% opacity as determined by the Reference Method 9. This condition applies at all times except during startup, shutdown, and malfunction.

9VAC5-540-190. Testing requirements.

Each affected unit shall be constructed, or modified and installed so as to allow for emissions testing upon reasonable notice at any time, using appropriate methods.

1. Sampling ports shall be provided when requested at the appropriate locations.
2. Safe sampling platforms and access shall be provided.

9VAC5-540-200. Recordkeeping requirements.

A. The owner shall maintain on-site records of emission data and operating parameters as necessary to demonstrate compliance with this general permit.

B. The owner shall maintain records of the occurrence and duration of any bypass, malfunction, shutdown, or failure of the source or its associated air pollution control equipment that results in excess emissions for more than one hour. Records shall include the following: (i) date, (ii) time, (iii) duration, (iv) description (affected unit, pollutant affected, cause), (v) corrective action, (vi) preventive measures taken, and (vii) name of person generating the record.

C. The content and format of such records shall be arranged with the regional office. These records shall include, but are not limited to:

1. Total annual hours of operation for each affected unit, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.
2. Records when each affected unit is used for an ISO-declared emergency including, but not limited to, the date, cause of the emergency, the ISO-declared emergency notification, and the hours of operation.
3. Records when each affected unit is used for an emergency that is not an ISO-declared emergency including, but not limited to, the date, cause of the emergency, and the hours of operation.
4. All fuel supplier certifications.

5. Engine information including make, model, serial number, model year, maximum engine power, and engine displacement for each affected unit.

6. Written manufacturer specifications or written standard operating procedures prepared by the owner for each affected unit. The written standard operating procedures prepared by the owner cannot be less stringent than the written manufacturer specifications.

7. Scheduled and unscheduled maintenance, testing, and operator training.

D. These records shall be available for inspection by the department and shall be current for the most recent five years.

9VAC5-540-210. Reporting requirements.

The owner shall furnish written notification to the regional office of the following:

1. The actual date on which construction or modification of each affected unit commenced within 30 days after such date.
2. If necessary, the actual date on which the integration operational period of each affected unit commenced within 15 days after such date.
3. The anticipated start-up date of each affected unit postmarked not more than 60 days nor less than 30 days prior to such date.
4. The actual start-up date of each affected unit within 15 days after such date.

9VAC5-540-220. Enforcement.

A Violation of this general permit is subject to the enforcement provisions including, but not limited to, those contained in 9VAC5-170 (Regulation for General Administration) and §§ 10.1-1309, 10.1-1309.1, 10.1-1311 and 10.1-1316 of the Virginia Air Pollution Control Law.

B. If any condition, requirement or portion of this general permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of this permit.

Regulations

C. The owner shall comply with all conditions of this general permit. Any noncompliance with this permit constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) suspension or revocation of the authorization to operate under this permit.

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

E. The authorization to operate under this permit may be suspended or revoked for cause as specified in 9VAC5-540-80. The filing by an owner of a (i) request for reauthorization to operate under this general permit or (ii) notification of termination, planned changes, or anticipated noncompliance does not stay any condition of this general permit.

F. This general permit does not convey any property rights of any sort, or any exclusive privilege.

G. Within 30 days of notification, the owner shall furnish to the department any information that the department may request in writing to determine whether cause exists for suspending or revoking the authorization to operate under this general permit or to determine compliance with this general permit. Upon request, the owner shall also furnish to the department copies of records required to be kept by this permit and, for information claimed to be confidential, the owner shall furnish such records to the department along with a claim of confidentiality meeting the requirements of 9VAC5-170-60.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access the form. The form is also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC5-540)

[[Air Permit Application Form, Emergency Generator General Permit, Form 540 \(Draft\)](#).

[Air Permit Application Form, Emergency Generator General Permit, Form 540 \(eff. 8/11\)](#).]

DOCUMENTS INCORPORATED BY REFERENCE (9VAC5-540)

Standards of the American Society for Testing and Materials (ASTM) listed below are copyrighted materials and may be obtained from ASTM International, P.O. Box C-700, West Conshohocken, PA 19428-2959:

D975-10b, Standard Specification for Diesel Fuel Oils, ASTM, 2009.

D1826-94 (Reapproved 2010), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, ASTM, 2010.

D1835-05, Standard Specification for Liquefied Petroleum (LP) Gases, ASTM, 2005.

D4809-09a, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), 2009, ASTM.

D6751-09, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, 2009, ASTM.

D7467-10, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20), ASTM, 2010.

VA.R. Doc. No. R10-2296; Filed June 28, 2011, 2:28 p.m.

◆ ————— ◆

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **10VAC5-210. Motor Vehicle Title Lending (amending 10VAC5-210-30, 10VAC5-210-50, 10VAC5-210-60, 10VAC5-210-90; adding 10VAC5-210-95).**

Statutory Authority: §§ 6.2-2214 and 12.1-13 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Gerald Fallen, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9699, FAX (804) 371-9416, or email gerald.fallen@scc.virginia.gov.

Summary:

The State Corporation Commission is adopting changes to 10VAC5-210, which apply to motor vehicle title lenders licensed under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia. Effective July 1, 2011, Chapter 418 of the 2011 Acts of Assembly eliminates various provisions in Chapter 22 that currently prohibit motor vehicle title lenders from making loans secured by motor vehicles registered outside of Virginia. Accordingly, the

commission is adopting conforming amendments. The commission is also adopting a regulation prescribing the annual fees to be paid by motor vehicle title lenders licensed under Chapter 22 that will defray the costs of the examination, supervision, and regulation of licensees. Lastly, the commission is adding clarification regarding motor vehicle title loans that have been arranged or brokered by another person. The regulations have an effective date of July 1, 2011, to coincide with the effective date of Chapter 418.

AT RICHMOND, JUNE 24, 2011

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2011-00025

Ex Parte: In re: amendments to
motor vehicle title lending regulations

ORDER ADOPTING REGULATIONS

On April 29, 2011, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to amend the Commission's motor vehicle title lending regulations, which are set forth in Chapter 210 of Title 10 of the Virginia Administrative Code. The Order and proposed regulations were published in the Virginia Register of Regulations on May 23, 2011, posted on the Commission's website, and mailed to all licensed motor vehicle title lenders and other interested parties. Licensed motor vehicle title lenders and other interested parties were afforded the opportunity to file written comments or request a hearing on or before June 6, 2011.

Comments on the proposed regulations were timely filed by Ms. Katie L. Grove on behalf of TitleMax of Virginia, Inc. ("TitleMax"). In its comment letter, TitleMax contended that the proposed assessment schedule for motor vehicle title lenders is not consistent with the Commission's assessment schedule for payday lenders, and that virtually every state in which motor vehicle title lending is permitted charges a flat fee per location as an annual fee.

The Bureau considered the comments filed by TitleMax and responded to them in its Statements of Position, which the Bureau filed in this case on June 22, 2011. In response to TitleMax's comments, the Bureau reported that the annual assessment generated by licensed payday lenders has become inadequate, and that the Bureau will soon be proposing amendments to 10 VAC 5-200-90 of the Virginia Administrative Code. Furthermore, because motor vehicle title lenders appear to make significantly fewer loans than payday lenders, the amount assessed per motor vehicle title loan must be considerably higher than the amount assessed per payday loan in order to generate a comparable total assessment. With regard to fees charged by other states, the

Bureau pointed out that many of the states referenced by TitleMax impose examination charges in addition to a flat fee per location. The Bureau also noted that the flat fee per location approach advocated by TitleMax is not viable in light of the requirement in § 6.2-2213 of the Code of Virginia that the schedule of annual fees bear a reasonable relationship to the business volume of motor vehicle title lenders.

NOW THE COMMISSION, having considered the proposed regulations, the comments filed, the Bureau's Statements of Position, the record herein, and applicable law, concludes that the proposed regulations should be adopted as proposed.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations, as attached hereto, are adopted effective July 1, 2011.

(2) This Order and the attached regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof, together with a copy of the attached regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall send a copy of this Order and the attached regulations to all licensed motor vehicle title lenders and other interested parties designated by the Bureau.

10VAC5-210-30. Notice and pamphlet.

A. Prior to furnishing a prospective borrower with a loan application or receiving any information relating to loan qualification, a licensee shall provide the prospective borrower with (i) a written notice that complies with subsection B of this section; and (ii) a borrower rights and responsibilities pamphlet that complies with subsections C and D of this section.

B. 1. The required text of the written notice shall be as follows: "WARNING: A motor vehicle title loan is not intended to meet your long-term financial needs. The interest rate on a motor vehicle title loan is high and you are pledging your motor vehicle as collateral for the loan. If you fail to repay your loan in accordance with your loan agreement, we may repossess and sell your motor vehicle. You should consider whether there are other lower cost loans available to you. If you obtain a motor vehicle title loan, you should request the minimum loan amount required to meet your

Regulations

immediate needs." A licensee shall not modify or supplement the required text of the written notice.

2. The written notice shall be printed on a single 8-1/2 x 11 sheet of paper and be separate from all other papers, documents, or notices obtained or furnished by the licensee. The notice shall be printed in at least 24-point bold type and contain an acknowledgment that is signed and dated by each prospective borrower. The acknowledgement shall state the following: "I acknowledge that I have received a copy of this notice and the pamphlet entitled "Motor Vehicle Title Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities."

3. A duplicate original of the acknowledged notice shall be kept by a licensee in the separate file maintained with respect to the loan for the period specified in § 6.2-2209 of the Code of Virginia.

C. The borrower rights and responsibilities pamphlet shall be printed in at least 12-point type and be separate from all other papers, documents, or notices obtained or furnished by the licensee. The pamphlet shall contain the exact language prescribed in subsection D of this section. A licensee shall not modify or supplement the required text of the pamphlet. The title of the pamphlet ("Motor Vehicle Title Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities") and the headings for the individual sections of the pamphlet (e.g., "In General," "Notice from Lender," etc.) shall be printed in bold type.

D. The required text of the borrower rights and responsibilities pamphlet shall be as follows:

MOTOR VEHICLE TITLE LENDING IN THE COMMONWEALTH OF VIRGINIA

BORROWER RIGHTS AND RESPONSIBILITIES

Please take the time to carefully review the information contained in this pamphlet. It is designed to advise you of your rights and responsibilities in connection with obtaining a motor vehicle title loan in Virginia under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia.

If you have any questions about motor vehicle title lending or want additional information, you may contact the Virginia State Corporation Commission's Bureau of Financial Institutions toll-free at (800) 552-7945 or on the Internet at <http://www.scc.virginia.gov/bfi>.

In General: You are responsible for evaluating whether a motor vehicle title loan is right for you. Alternatives may include among other things less expensive short-term financing from another financial institution, family, or friends, a cash advance on a credit card, or an account with overdraft protection.

Notice from Lender: A motor vehicle title lender is required to provide you with a clear and conspicuous printed notice advising you that a motor vehicle title loan is not intended to meet your long-term financial needs; that the interest rate on a motor vehicle title loan is high; and that if you fail to repay your loan in accordance with your loan agreement, the motor vehicle title lender may repossess and sell your motor vehicle.

Prohibition on Obtaining Loan if Motor Vehicle has Existing Lien / One Loan at a Time: Virginia law prohibits a motor vehicle title lender from making a motor vehicle title loan to you if (i) your certificate of title indicates that your motor vehicle is security for another loan or has an existing lien; or (ii) you currently have another motor vehicle title loan from either the same motor vehicle title lender or any other motor vehicle title lender conducting a motor vehicle title lending business in Virginia.

Prohibition on Obtaining Loan on Same Day Another Loan was Repaid: Virginia law prohibits a motor vehicle title lender from making a motor vehicle title loan to you on the same day that you repaid or satisfied in full a motor vehicle title loan from either the same motor vehicle title lender or any other motor vehicle title lender conducting a motor vehicle title lending business in Virginia.

Prohibition on Loans to Covered Members of the Armed Forces and their Dependents: Virginia law prohibits a motor vehicle title lender from making motor vehicle title loans to covered members of the armed forces and their dependents. If you are (i) on active duty under a call or order that does not specify a period of 30 days or less; or (ii) on active guard and reserve duty, then you are a covered member of the armed forces and a motor vehicle title lender is prohibited from making a motor vehicle title loan to you. A motor vehicle title lender is also prohibited from making a motor vehicle title loan to you if (i) you are married to a covered member of the armed forces; (ii) you are the child, as defined in 38 USC § 101(4), of a covered member of the armed forces; or (iii) more than one-half of your support during the past 180 days was provided by a covered member of the armed forces.

Certificate of Title / Other Security Interests: Prior to obtaining a motor vehicle title loan, you will be required to give a motor vehicle title lender the certificate of title for your motor vehicle. The motor vehicle title lender is required to record its lien with the ~~Virginia Department of Motor Vehicles~~ motor vehicle department in the state where your motor vehicle is registered and hold the certificate of title until your loan is repaid or satisfied in full. The motor vehicle title lender cannot take an interest in more than one motor vehicle as security for a motor vehicle title loan. Apart from your motor vehicle and any accessories that are attached to it, the motor vehicle title lender cannot take an interest in any

other property you own as security for a motor vehicle title loan.

Maximum Loan Amount: A motor vehicle title lender cannot loan you more than 50% of the fair market value of your motor vehicle. The fair market value is generally based on the loan value for your motor vehicle according to a recognized pricing guide.

Minimum and Maximum Loan Term / Monthly Payments: Under Virginia law, your loan term cannot be either less than 120 days or more than 12 months. Your motor vehicle title loan will be repayable in substantially equal monthly installments of principal and interest. However, if you have a longer first payment period, your first monthly payment may be larger than your remaining monthly payments.

Interest and Other Loan Costs: The following are the maximum interest rates that a motor vehicle title lender is permitted to charge you PER MONTH on the principal amount of your loan that remains outstanding: (i) 22% per month on the portion of the outstanding balance up to and including \$700; (ii) 18% per month on the portion of the outstanding balance between ~~\$701~~ \$700.01 and \$1,400; and (iii) 15% per month on the portion of the outstanding balance of ~~\$1,401~~ \$1,400.01 and higher. As long as these maximum rates are not exceeded, a motor vehicle title lender is allowed to accrue interest using a single blended interest rate if the initial principal is higher than \$700. In addition to interest, a motor vehicle title lender may charge you for the actual cost of recording its lien with the ~~Virginia Department of Motor Vehicles~~ motor vehicle department in the state where your motor vehicle is registered.

If you make a payment more than seven calendar days after its due date, a motor vehicle title lender may impose a late charge of up to five percent of the amount of the payment.

A motor vehicle title lender is prohibited from accruing or charging you interest on or after (i) the date the motor vehicle title lender repossesses your motor vehicle; or (ii) 60 days after you fail to make a monthly payment on your loan, unless you are hiding your motor vehicle.

Other than interest and the costs specifically mentioned in this section and the section below ("Costs of Repossession and Sale"), no additional amounts may be directly or indirectly charged, contracted for, collected, received, or recovered by a motor vehicle title lender.

Costs of Repossession and Sale: A motor vehicle title lender may charge you for any reasonable costs that it incurs in repossessing, preparing for sale, and selling your motor vehicle if (i) you default on your motor vehicle title loan; (ii) the motor vehicle title lender sends you a written notice at least 10 days prior to repossession advising you that your motor vehicle title loan is in default and that your motor vehicle may be repossessed unless you pay the outstanding

principal and interest; and (iii) you fail to pay the amount owed prior to the date of repossession. A motor vehicle title lender is prohibited from charging you for any storage costs if the motor vehicle title lender takes possession of your motor vehicle.

Written Loan Agreement: A motor vehicle title lender must provide you with a written loan agreement, which must be signed by both you and an authorized representative of the motor vehicle title lender. Your motor vehicle title loan agreement is a binding, legal document that requires you to repay your loan. Make sure you read the entire loan agreement carefully before signing and dating it. A motor vehicle title lender must provide you with a duplicate original of your loan agreement at the time you sign it. If any provision of your loan agreement violates Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia, the provision will not be enforceable against you.

Property Insurance: A motor vehicle title lender may require you to purchase or maintain property insurance for your motor vehicle. However, a motor vehicle title lender cannot require you to purchase or maintain property insurance from or through a particular provider or list of providers.

Prohibition on Obtaining Funds Electronically: A motor vehicle title lender is prohibited from electronically debiting your deposit account or obtaining any of your funds by electronic means.

Loan Proceeds: You will receive your loan proceeds in the form of (i) cash; (ii) a check from the motor vehicle title lender; or (iii) a debit card. If you receive a check, the motor vehicle title lender is prohibited from charging you a fee for cashing the check. Similarly, a check casher located in the same office as the motor vehicle title lender is prohibited from charging you a fee for cashing the motor vehicle title lender's check. If you receive a debit card, the motor vehicle title lender is prohibited from charging you an additional fee when you withdraw or use the loan proceeds.

Other Businesses: A motor vehicle title lender is prohibited from engaging in any other businesses in its motor vehicle title loan offices unless permitted by order of the State Corporation Commission. A motor vehicle title lender is also prohibited by statute from selling you any type of insurance coverage.

Using Motor Vehicle Title Loan to Purchase Products or Services or Repay Other Loans: A motor vehicle title lender is prohibited from making you a motor vehicle title loan so that you can purchase another product or service sold at the motor vehicle title lender's business location. A motor vehicle title lender is also prohibited from making you a motor vehicle title loan so that you can repay another loan you may have from either the motor vehicle title lender or an affiliate of the motor vehicle title lender.

Regulations

Right to Cancel: You have the right to cancel your motor vehicle title loan at any time prior to the close of business on the next day the motor vehicle title lender is open following the date your loan is made by either returning the original loan proceeds check or paying the motor vehicle title lender the amount advanced to you in cash or by certified check, cashier's check, money order or, if the motor vehicle title lender is equipped to handle and willing to accept such payments, by using a credit card. If you cancel your motor vehicle title loan, the motor vehicle title lender must mark your original loan agreement with the word "canceled" and return it to you along with your certificate of title.

Cash Payments / Partial Payments / Prepayments: You have the right to receive a signed, dated receipt for each cash payment made in person, which will show the balance remaining on your motor vehicle title loan.

Additionally, you have the right to make a partial payment on your motor vehicle title loan at any time prior to its specified due date without penalty. However, a motor vehicle title lender may apply a partial payment first to any amounts that are due and unpaid at the time of such payment. If your motor vehicle title loan is current, a partial payment will reduce your outstanding balance as well as the total amount of interest that you will be required to pay.

You also have the right to prepay your motor vehicle title loan in full before its specified maturity date without penalty by paying the motor vehicle title lender the total outstanding balance on your loan, including any accrued and unpaid interest and other charges that you may owe on your motor vehicle title loan.

Lender to Return Original Loan Agreement and Certificate of Title: Within 10 days after the date that you repay your motor vehicle title loan in full, the motor vehicle title lender must (i) mark your original loan agreement with the word "paid" or "canceled" and return it to you; (ii) take any action necessary to reflect the termination of its lien on your motor vehicle's certificate of title; and (iii) return the certificate of title to you. If you have any questions or concerns regarding your certificate of title, you should contact the Virginia Department of Motor Vehicles motor vehicle department in the state where your motor vehicle is registered.

No Rollovers, Extensions, Etc.: A motor vehicle title lender cannot refinance, renew, extend, or rollover your motor vehicle title loan.

Failure to Repay: Pay back your motor vehicle title loan! Know when your payments are due and be sure to repay your motor vehicle title loan on time and in full. IF YOU DO NOT REPAY YOUR MOTOR VEHICLE TITLE LOAN IN ACCORDANCE WITH YOUR LOAN AGREEMENT, THE MOTOR VEHICLE TITLE LENDER MAY REPOSSESS

AND SELL YOUR MOTOR VEHICLE (see section below on "Repossession and Sale of your Motor Vehicle").

In general, a motor vehicle title lender cannot seek a personal money judgment against you if you fail to pay any amount owed in accordance with your loan agreement. However, a motor vehicle title lender may seek a personal money judgment against you if you impair the motor vehicle title lender's security interest by (i) intentionally damaging or destroying your motor vehicle; (ii) intentionally hiding your motor vehicle; (iii) giving the motor vehicle title lender a lien on a motor vehicle that has an undisclosed prior lien; (iv) selling your motor vehicle without the motor vehicle title lender's written consent; or (v) securing another loan or obligation with a security interest in your motor vehicle without the motor vehicle title lender's written consent.

In collecting or attempting to collect a motor vehicle title loan, a motor vehicle title lender is required to comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act, 15 USC § 1692 et seq., regarding harassment or abuse; false, misleading or deceptive statements or representations; and unfair practices in collections. A motor vehicle title lender is also prohibited from threatening or beginning criminal proceedings against you if you fail to pay any amount owed in accordance with your loan agreement.

Repossession and Sale of your Motor Vehicle: If you do not repay your motor vehicle title loan in accordance with your loan agreement, the motor vehicle title lender may repossess and sell your motor vehicle in order to recover any outstanding amounts that you owe.

If a motor vehicle title lender repossesses your motor vehicle, the motor vehicle title lender must send you a written notice at least 15 days prior to the sale of your motor vehicle. The notice will contain (i) the date and time after which your motor vehicle may be sold; and (ii) a written accounting of the outstanding balance on your motor vehicle title loan, the amount of interest accrued through the date the motor vehicle title lender took possession of your motor vehicle, and any reasonable costs incurred to date by the motor vehicle title lender in connection with repossessing, preparing for sale, and selling your motor vehicle. At any time prior to the sale of your motor vehicle, you may obtain your motor vehicle by paying the motor vehicle title lender the total amount specified in the notice. Payment must be made in cash or by certified check, cashier's check, money order or, if the motor vehicle title lender is equipped to handle and willing to accept such payments, by using a credit card.

Within 30 days of a motor vehicle title lender receiving funds from the sale of your motor vehicle, you are entitled to receive any surplus from the sale in excess of the sum of the following: (i) the outstanding balance on your motor vehicle title loan; (ii) the amount of interest accrued on your motor vehicle title loan through the date the motor vehicle title

lender repossessed your motor vehicle; and (iii) any reasonable costs incurred by the motor vehicle title lender in repossessing, preparing for sale, and selling your motor vehicle.

See section above on "Costs of Repossession and Sale" for additional information regarding the conditions that must be met in order for a motor vehicle title lender to collect the reasonable costs of repossessing, preparing for sale, and selling your motor vehicle.

Violation of the Virginia Consumer Protection Act: Losses suffered as the result of a motor vehicle title lender's violation of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia may be pursued under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia), which in some cases permits consumers to recover actual and punitive damages.

Complaints and Contacting the Bureau of Financial Institutions: For assistance with any complaints you may have against a motor vehicle title lender, please contact the Bureau of Financial Institutions toll-free at (800) 552-7945 or on the Internet at <http://www.scc.virginia.gov/bfi>. Complaints must be filed in writing with the Bureau of Financial Institutions. Complaints should be mailed to the Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to the Bureau of Financial Institutions, Attn: Complaints, at (804) 371-9416.

10VAC5-210-50. Additional business requirements and restrictions.

A. Each original license shall be prominently posted in each place of business of the licensee.

B. A licensee shall post in or on its licensed locations the days and hours during which it is open for business so that the posting is legible from outside.

C. A licensee shall endeavor to provide the loan documents, printed notice, and pamphlet required by 10VAC5-210-30, in a language other than English when a prospective borrower is unable to read the materials printed in English.

D. A licensee shall not knowingly make a motor vehicle title loan to (i) a person who has an outstanding motor vehicle title loan from the same licensee or another licensee; (ii) a covered member of the armed forces; or (iii) a dependent of a covered member of the armed forces. To enable a licensee to make these determinations and the determination in subsection F of this section, a licensee shall clearly and conspicuously include the following questions in its written loan application, which the licensee shall require each applicant to answer before obtaining a motor vehicle title loan. A licensee shall not make a motor vehicle title loan to an applicant unless the applicant answers "no" to all of these questions:

1. Do you currently have a motor vehicle title loan from any motor vehicle title lender?

2. At any time today, did you repay or satisfy in full a motor vehicle title loan from any motor vehicle title lender?

3. Are you (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

4. Are you married to an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

5. Are you the child, as defined in 38 USC § 101(4), of an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

6. Was more than one-half of your support during the past 180 days provided by an individual who is either (i) on active duty in the armed forces under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

E. A licensee shall not require a borrower to purchase or maintain property insurance for a motor vehicle from or through a particular provider or list of providers.

F. A licensee shall not knowingly make a motor vehicle title loan to a borrower on the same day that the borrower repaid or satisfied in full a motor vehicle title loan from the same licensee or another licensee. Any motor vehicle title loan made in violation of this subsection shall for purposes of subdivision 17 of § 6.2-2215 of the Code of Virginia be deemed an evasion of the prohibition on refinancing a motor vehicle title loan agreement set forth in § 6.2-2216 F of the Code of Virginia.

G. The maturity date of a motor vehicle title loan shall not be earlier than 120 days from the date a motor vehicle title loan agreement is executed by a borrower or later than 12 months from the date a motor vehicle title loan agreement is executed by a borrower.

H. A licensee shall not electronically debit a borrower's deposit account or otherwise obtain any funds from a borrower by electronic means, including the use of the Automated Clearing House network, electronic funds transfers, electronic check conversions, or re-presented check entries.

I. If a licensee disburses loan proceeds by means of a check, the licensee shall not (i) charge the borrower a fee for cashing the check or (ii) permit either a check casher located in the same office as the licensee or any affiliated check casher to charge the borrower a fee for cashing the check.

J. A borrower shall have the right to cancel a motor vehicle title loan agreement at any time before the close of business on the next business day following the date that the loan

Regulations

agreement is executed by the borrower by returning the original loan proceeds check or paying to the licensee, in the form of cash or good funds instrument, the principal amount advanced to the borrower. If a borrower cancels a loan agreement in accordance with this subsection, the licensee shall upon receipt of the loan proceeds check, cash, or good funds instrument (i) mark the original loan agreement with the word "canceled," return it to the borrower, and retain a copy in its records; and (ii) return the certificate of title to the borrower. Furthermore, the licensee shall not be entitled to charge, contract for, collect, receive, recover, or require a borrower to pay any interest, fees, or other amounts otherwise permitted by § 6.2-2216 of the Code of Virginia.

K. A licensee shall give a borrower a signed, dated receipt for each cash payment made in person, which shall state the balance due on the loan.

L. A borrower shall be permitted to prepay a motor vehicle title loan either in whole or in part without charge. Partial prepayments shall reduce the outstanding loan balance upon which interest is calculated. A licensee may apply a payment first to any amounts that are due and unpaid at the time of such payment.

M. ~~Pursuant to §§ 6.2-2215 and 46.2-643 of the Code of Virginia, a~~ A licensee shall release its security interest and perform the following acts within 10 days after the date that a borrower's obligations under a motor vehicle title loan agreement are satisfied in full: (i) mark the original loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records; (ii) take any action necessary to reflect the termination of its lien on the motor vehicle's certificate of title; and (iii) return the certificate of title to the borrower.

N. When sending the written notices and accounting specified by § 6.2-2217 of the Code of Virginia, a licensee shall obtain proof of mailing from the United States Postal Service or other common carrier.

O. A licensee may impose a late charge for failure to make timely payment of any amount due under a motor vehicle title loan agreement provided that (i) the late charge is specified in the loan agreement and (ii) the amount of the late charge does not exceed 5.0% of the amount of the payment. A payment shall be considered to be timely if it is made no later than seven calendar days after the due date specified in the loan agreement.

P. Nothing in the Act or this chapter shall be construed to prohibit a licensee from (i) voluntarily accepting a payment on an outstanding motor vehicle title loan from a borrower after the date that such payment was due to the licensee or (ii) considering a payment to be timely if it is made more than seven calendar days after its due date. However, except as otherwise permitted by the Act and this chapter, the licensee shall not charge, contract for, collect, receive, recover, or

require a borrower to pay any additional interest, fees, or other amounts.

Q. Pursuant to subdivision 2 of § 6.2-2201 of the Code of Virginia and subdivision 17 of § 6.2-2215 of the Code of Virginia, a licensee shall not make a motor vehicle title loan that has been arranged or brokered by another person. This provision shall not be construed to prohibit a licensee from originating motor vehicle title loans through its own employees.

10VAC5-210-60. Annual reporting requirements.

When making the annual report required by § 6.2-2210 of the Code of Virginia, in addition to other information required by the commissioner, a licensee shall provide the following data regarding motor vehicle title loans made ~~to~~ Virginia residents under the Act:

1. The total number and dollar amount of motor vehicle title loans made by the licensee.
2. The total number of individual borrowers to whom motor vehicle title loans were made by the licensee.
3. The minimum, maximum, and average loan amount of motor vehicle title loans made by the licensee.
4. The minimum, maximum, and average Annual Percentage Rate of motor vehicle title loans made by the licensee.
5. The minimum, maximum, and average term (in days) of motor vehicle title loans made by the licensee.
6. The total number of individual borrowers that failed to make a monthly payment on a motor vehicle title loan for at least 60 days.
7. The total number of motor vehicles that were repossessed by or on behalf of the licensee.
8. The total number of repossessed motor vehicles that were sold by or on behalf of the licensee.
9. The total number of personal money judgments against borrowers that were obtained by or on behalf of the licensee along with a breakdown of this total that identifies the number of judgments the licensee pursued based on each of the following borrower actions: (i) intentionally damaging or destroying a motor vehicle that secures a title loan; (ii) intentionally concealing a motor vehicle that secures a title loan; (iii) giving the licensee a lien on a motor vehicle that is already encumbered by an undisclosed prior lien; and (iv) subsequently giving a security interest in, or selling, a motor vehicle that secures a title loan to a third party, without the licensee's written consent.

10VAC5-210-90. Books, accounts, and records; responding to requests from the bureau.

A. A licensee shall maintain in its licensed offices such books, accounts, and records as the bureau may reasonably require in order to determine whether the licensee is complying with the Act and this chapter. Such books, accounts, and records shall be maintained apart and separate from those relating to any other business in which the licensee is involved.

B. In addition to any other books, accounts, and records as the bureau may reasonably require, a licensee shall maintain copies of the following records for at least three years after final payment is made on any motor vehicle title loan:

1. The loan application.
2. The motor vehicle title loan agreement. If a loan has been repaid or satisfied in full, a licensee shall maintain a copy of the motor vehicle title loan agreement with the word "paid" or "canceled" along with documentation showing that the licensee released its security interest in the borrower's motor vehicle.
3. A record of the fair market value of the motor vehicle securing the loan along with supporting documentation from a recognized pricing guide. Supporting documentation shall include any factors used to determine the value of the motor vehicle, including the motor vehicle's condition, features, mileage, as well as the name of the pricing guide that the licensee relied upon in making the loan.
4. Any disclosures that were given to a borrower pursuant to the Truth in Lending Act (15 USC § 1601 et seq.) or any other federal or state laws.
5. The certificate of title for the motor vehicle, which shall reflect the licensee's security interest unless the borrower canceled or fully satisfied the motor vehicle title loan prior to the licensee recording its security interest with the ~~Virginia Department of Motor Vehicles~~ motor vehicle department in the state where the motor vehicle is registered.

C. A licensee shall maintain a repossession log or similar record of all motor vehicles that have been repossessed by or on behalf of the licensee, including motor vehicles that are voluntarily surrendered by borrowers. The log or record shall include the following information: (i) the borrower's first and last name; (ii) the make, model, year, and vehicle identification number of the motor vehicle; (iii) the date the motor vehicle was repossessed; (iv) the date the motor vehicle was sold; (v) the name of the purchaser; and (vi) the sale price of the motor vehicle. Furthermore, in addition to any other books, accounts, and records as the bureau may reasonably require, a licensee shall maintain copies of the following records for at least three years after a motor vehicle

used to secure a loan is repossessed and sold by or on behalf of the licensee:

1. The written notices and accounting sent by the licensee to a borrower pursuant to § 6.2-2217 of the Code of Virginia along with the proof of mailing from the United States Postal Service or other common carrier.
2. Supporting documentation of the sale of the motor vehicle and the proceeds derived from the sale.
3. The check or other method of payment used to deliver any excess proceeds from the sale of the motor vehicle to a borrower.

D. A motor vehicle title lender shall retain for at least three years after it is last published, delivered, transmitted, or made available, an example of every advertisement used, including but not limited to solicitation letters, commercial scripts, and recordings of all radio and television broadcasts, but excluding copies of Internet web pages.

E. When the bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information, and such other factors as the bureau determines to be relevant under the circumstances. Requests made by the bureau pursuant to this subsection are deemed to be in furtherance of the investigation and examination authority provided for in § 6.2-2212 of the Code of Virginia.

F. If a licensee disposes of records containing a consumer's personal financial information following the expiration of any applicable record retention periods, such records shall be shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may arrange for service from a business record destruction vendor.

10VAC5-210-95. Schedule of annual fees for the examination, supervision, and regulation of motor vehicle title lenders.

Pursuant to § 6.2-2213 of the Code of Virginia, the commission sets the following schedule of annual fees to be paid by persons licensed under the Act. The assessment defrays the costs of the examination, supervision, and regulation of licensees by the bureau.

Regulations

The annual fee shall be \$500 per office plus \$2.85 per motor vehicle title loan made by each licensee. The annual fee shall be computed on the basis of (i) the number of offices, authorized and opened, as of December 31 of the year preceding the year of the assessment, and (ii) the number of motor vehicle title loans made under the Act during the calendar year preceding the year of the assessment.

The amount calculated using the above schedule shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before September 15 for the current calendar year. The assessment shall be paid by licensees on or before October 15.

The annual report, due March 25 each year, of each licensee provides the basis for its assessment (i.e., the number of offices and motor vehicle title loans made). In cases where a license has been granted between January 1 and September 15 of the year of the assessment, the licensee shall pay \$250 per office, authorized and opened, as of September 15 of that year.

Fees prescribed and assessed pursuant to this schedule are apart from, and do not include, the reimbursement for expenses authorized by subsection B of § 6.2-2213 of the Code of Virginia.

VA.R. Doc. No. R11-2826; Filed June 24, 2011, 2:00 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Forms

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The form is also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: 12VAC5-66. Regulations Governing Durable Do Not Resuscitate Orders.

Agency Contact: Michael D. Berg, Manager, Regulation and Compliance, Office of Emergency Medical Services, Department of Health, 1041 Technology Park Drive, Glen Allen, VA 23059, telephone (804) 888-9131, FAX (804) 317-3409, or email michael.berg@vdh.virginia.gov.

FORMS (12VAC5-66)

~~Durable Do Not Resuscitate Order Form, eff. 3/02.~~

[Durable Do Not Resuscitate Order - Virginia Department of Health, EMS-7105 \(eff. 6/11\).](#)

VA.R. Doc. No. R11-2902; Filed June 28, 2011, 3:20 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

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

Title of Regulation: 12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-540).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: August 17, 2011.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Summary:

The amendments (i) require a provider who is appealing the termination or denial of his Medicaid agreement to file a written notice of informal appeal to the department within 15 days of receiving the notice of termination or denial and (ii) provide for dismissal of a provider's appeal if the notice of appeal is not filed within the 15-day timeframe.

12VAC30-20-540. Informal appeals.

A. Providers appealing a DMAS decision shall file a written notice of informal appeal with the DMAS Appeals Division within 30 days of the provider's receipt of the decision. Providers appealing the termination or denial of their Medicaid agreement pursuant to § 32.1-325 D of the Code of Virginia shall file a written notice of appeal with the DMAS Appeals Division within 15 days of the provider's receipt of the notice of termination or denial. Providers appealing adjustments to a cost report shall file a written notice of informal appeal with the DMAS Appeals Division within 90 days of the provider's receipt of the notice of program reimbursement. The notice of informal appeal shall identify the issues being appealed. Failure to file a written notice of informal appeal within 30 days of receipt of the decision or within 90 days of receipt of the notice of program reimbursement shall result in dismissal of the appeal. Failure

to file a written notice of informal appeal for termination or denial of a Medicaid agreement pursuant to § 32.1-325 D of the Code of Virginia within 15 days of receipt of the notice of termination or denial shall result in dismissal of the appeal.

B. DMAS shall file a written case summary with the DMAS Appeals Division within 30 days of the filing of the provider's notice of informal appeal. DMAS shall mail a complete copy of the case summary to the provider on the same day that the case summary is filed with the DMAS Appeals Division. The case summary shall address each adjustment, patient, service date, or other disputed matter and shall state DMAS' position for each adjustment, patient, service date, or other disputed matter. The case summary shall contain the factual basis for each adjustment, patient, service date, or other disputed matter and any other information, authority, or documentation DMAS relied upon in taking its action or making its decision. Failure to file a written case summary with the Appeals Division in the detail specified within 30 days of the filing of the provider's notice of informal appeal shall result in dismissal in favor of the provider on those issues not addressed in the detail specified.

C. The informal appeals agent shall conduct the conference within 90 days from the filing of the notice of informal appeal. If DMAS and the provider and the informal appeals agent agree, the conference may be conducted by way of written submissions. If the conference is conducted by way of written submissions, the informal appeals agent shall specify the time within which the provider may file written submissions, not to exceed 90 days from the filing of the notice of informal appeal. Only written submissions filed within the time specified by the informal appeals agent shall be considered.

D. The conference may be recorded for the convenience of the informal appeals agent. Since the conference is not an adversarial or evidentiary proceeding, recordings shall not be made part of the administrative record and shall not be made available to anyone other than the informal appeals agent.

E. Upon completion of the conference, the informal appeals agent shall specify the time within which the provider may file additional documentation or information, if any, not to exceed 30 days. Only documentation or information filed within the time specified by the informal appeals agent shall be considered.

F. The informal appeal decision shall be issued within 180 days of receipt of the notice of informal appeal.

VA.R. Doc. No. R11-2806; Filed June 16, 2011, 2:43 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Final Regulation

Title of Regulation: 18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-140).

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

Effective Date: September 1, 2011.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Summary:

The amendments increase various licensure fees for barbers; cosmetologists; nail technicians; barber shops; cosmetology and nail salons; and barber, cosmetology, and nail schools; and increase various certification fees for barber, cosmetology, and nail technician instructors regulated by the Board of Barbers and Cosmetology to ensure that revenues are sufficient, but not excessive, to cover the board's operating expenses as provided in the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia.

The final amendments reflect additional fee increases since publication of the proposed regulation.

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.

**Part III
Fees**

18VAC41-20-140. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	\$55 [\$75 \$140]	With application
License by Endorsement	\$55 [\$75 \$140]	With application
Renewal:		
Barber	\$55 [\$75 \$140]	With renewal card prior to expiration date
Cosmetologist	\$55 [\$75 \$140]	With renewal card prior to expiration date

Regulations

Nail technician	\$55 [\$75 \$140]	With renewal card prior to expiration date
Reinstatement	\$55 [\$150* \$280*] *includes [\$75 \$140] renewal fee and [\$75 \$140] reinstatement fee	With reinstatement application
Instructors:		
Application	\$60 [\$85 \$150]	With application
License by Endorsement	\$60 [\$85 \$150]	With application
Renewal	\$60 [\$85 \$150]	With renewal card prior to expiration date
Reinstatement	\$60 [\$170* \$300*] *includes [\$85 \$150] renewal fee and [\$85 \$150] reinstatement fee	With reinstatement application
Facilities:		
Application	\$90 [\$115 \$225]	With application
Renewal	\$90 [\$115 \$225]	With renewal card prior to expiration date
Reinstatement	\$90 [\$230* \$450*] *includes [\$115 \$225] renewal fee and [\$115 \$225] reinstatement fee	With reinstatement application
Schools:		
Application	\$120 [\$145 \$255]	With application
Add Program	\$60 [\$85 \$125]	With application
Renewal	\$120 [\$145 \$255]	With reinstatement application renewal card prior to expiration date
Reinstatement	\$120 [\$290* \$510*] *includes [\$145 \$255] renewal fee and [\$145 \$255] reinstatement fee	With renewal card prior to expiration date reinstatement application

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (18VAC41-20)

[~~Cosmetology and Nail Technician Examination Application, 12EX/EXAM APP (eff. 12/02).~~]

~~Cosmetology and Nail Technician License Application, 12LIC/COSMO LIC APP (eff. 8/02).~~

[~~Barber Examination Application, 13EX/BAR EXAM APP (eff. 12/02).~~]

~~Barber License Application, 13LIC/BAR LIC APP (eff. 7/9/02).~~

~~Endorsement Application, 1213END/END APP (eff. 7/2/02).~~

~~Reinstatement Application, 1213REI/REINSTATE APP (eff. 7/2/02).~~

~~Salon or Shop License Application, 1213SLSH/SALON OR SHOP LIC APP (eff. 9/02).~~

~~Cosmetology School License Application, 12SCHL/COSMO SCHOOL LIC APP (eff. 9/02).~~

~~Barber School License Application, 13SCHL/BAR SCHL LIC APP (eff. 9/02).~~

[[License by Endorsement Application, 1213END \(rev. 10/10\).](#)

[[Reinstatement Application, 1213REI \(rev. 10/10\).](#)

[[Salon, Shop, Spa & Parlor License Applications, 1213BUS \(rev. 10/10\).](#)

~~Cosmetology Training and Experience Verification Form, 12ETREXP/COSMO TRAIN & EXP FORM (eff. 9/02).~~

~~Cosmetology Temporary Permit Application, 12ETP/COSMO TEMP PERMIT APP (eff. 7/9/02).~~]

~~Wax Technician License Application, 1214LIC/WAX TECH LIC APP (eff. 7/02).~~

[[Instructor Certification Application, 1213INST \(rev. 10/10\).](#)

[[School License Application, 1213SCHL \(rev. 10/10\).](#)

[[Licensure Fee Notice, 1213FEE \(rev. 10/10\).](#)

[[Barber – Barber Instructor Examination & Instructor Application, A425-1301_02EXLIC \(eff. 9/11\).](#)

[Cosmetology – Cosmetology Instructor Examination & License Application, A425-1201_04EXLIC \(eff. 9/11\).](#)

Part III
Fees

[Nail Technician – Nail Technician Instructor Examination & License Application, A425-1206_07EXLIC \(eff. 9/11\).](#)

[Temporary Permit Application, A425-1213TP \(eff. 9/11\).](#)

[License by Endorsement Application, A425-1213END \(eff. 9/11\).](#)

[Training & Experience Verification Form, A425-1213TREXP \(eff. 9/11\).](#)

[Reinstatement Application, A425-1213REI \(eff. 9/11\).](#)

[Salon, Shop, Spa & Parlor License Application A425-1213BUS \(eff. 9/11\).](#)

[Salon, Shop & Spa Self Inspection Form, A425-1213 SSS INSP \(eff. 9/11\).](#)

[Instructor Certification Application, A425-1213INST \(eff. 9/11\).](#)

[School License Application, A425-1213SCHL \(eff. 9/11\).](#)

[School Self Inspection Form, A425-1213SCH_INSP \(eff. 9/11\).](#)

[Licensure Fee Notice, A425-1213FEE \(eff. 9/11\). \]](#)

VA.R. Doc. No. R09-1831; Filed June 29, 2011, 11:24 a.m.

Final Regulation

Title of Regulation: 18VAC41-30. Hair Braiding Regulations (amending 18VAC41-30-110).

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

Effective Date: September 1, 2011.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Summary:

The amendments increase various licensure fees for hair braiders and hair braiding salons and schools regulated by the Board of Barbers and Cosmetology to ensure that revenues are sufficient, but not excessive, to cover the board's operating expenses as provided in the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia.

The final amendments reflect additional fee increases from the proposed regulations.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC41-30-110. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	\$55 [\$75 \$140]	With application
License by Endorsement	\$55 [\$75 \$140]	With application
Renewal	\$55 [\$75 \$140]	With renewal card prior to expiration date
Reinstatement	\$55 [\$150* \$280*] *includes [\$75 \$140] renewal fee and [\$75 \$140] reinstatement fee	With reinstatement application
Salons:		
Application	\$90 [\$115 \$225]	With application
Renewal	\$90 [\$115 \$225]	With renewal card prior to expiration date
Reinstatement	\$90 [\$230* \$450*] *includes [\$115 \$225] renewal fee and [\$115 \$225] reinstatement fee	With reinstatement application
Schools:		
Application	\$120 [\$145 \$255]	With application
Renewal	\$120 [\$145 \$255]	With renewal card prior to expiration date
Reinstatement	\$120 [\$290* \$510*] includes [\$145 \$255] renewal fee and [\$145 \$255] reinstatement fee	With reinstatement application

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Regulations

FORMS (18VAC41-30)

[~~Hair Braiding Examination and License Application, 1222_26EX (eff. 08/04).~~

~~Training and Experience Verification Form, 1213ETREXP (eff. 08/04).~~

~~Temporary Permit Application, 1213TP (eff. 07/04).]~~

~~License by Endorsement Application, 1213END (eff. 07/04).~~

~~Salon, Shop and Parlor License Application, 1213SLSH (eff. 07/04).~~

[[License by Endorsement Application, 1213END \(rev. 10/10\).](#)

[Salon, Shop, Spa & Parlor License Application, 1213BUS \(rev. 10/10\).](#)

[Reinstatement Application, 1213REI \(rev. 10/10\).](#)

[School License Application, 1213SCHL \(rev 10/10\).](#)

[Licensure Fee Notice, 1213FEE \(rev. 10/10\).](#)

[Hair Braiding Examination & License Application, A425-1222EXLIC \(eff. 9/11\).](#)

[Temporary Permit Application, A425-1213TP \(eff. 9/11\).](#)

[License by Endorsement Application, A425-1213END \(eff. 9/11\).](#)

[Training & Experience Verification Form, A425-1213TREXP \(eff. 9/11\).](#)

[Reinstatement Application, A425-1213REI \(eff. 9/11\).](#)

[Salon, Shop, Spa & Parlor License Application A425-1213BUS \(eff. 9/11\).](#)

[Salon, Shop & Spa Self Inspection Form, A425-1213 SSS INSP \(eff. 9/11\).](#)

[School License Application, A425-1213SCHL \(eff. 9/11\).](#)

[School Self Inspection Form, A425-1213SCH_INSP \(eff. 9/11\).](#)

[Licensure Fee Notice, A425-1213FEE-v2 \(eff. 9/11\). \]](#)

VA.R. Doc. No. R09-1833; Filed June 29, 2011, 11:24 a.m.

Final Regulation

Title of Regulation: 18VAC41-40. Wax Technician Regulations (amending 18VAC41-40-120).

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

Effective Date: September 1, 2011.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-

8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Summary:

The amendments increase various licensure fees for wax technicians and waxing salons and schools and add various certification fees for wax technician instructors regulated by the Board of Barbers and Cosmetology to ensure that revenues are sufficient, but not excessive, to cover the board's operating expenses as provided in the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia.

The final amendments reflect additional fee increases from the proposed regulations.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part III Fees

18VAC41-40-120. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	\$55 [\$75 \$140]	With application
License by Endorsement	\$55 [\$75 \$140]	With application
Renewal	\$55 [\$75 \$140]	With renewal card prior to expiration date
Reinstatement	\$55 [\$150* \$280*] *includes [\$75 \$140] renewal fee and [\$75 \$140] reinstatement fee	With reinstatement application
Instructors:		
Application	[\$85 \$150]	With application
License by Endorsement	[\$85 \$150]	With application
Renewal	[\$85 \$150]	With renewal card prior to expiration date
Reinstatement	[\$170* \$300*] *includes [\$85 \$150] renewal fee and [\$85 \$150] reinstatement fee	With reinstatement application
Facilities:		

Application	\$90 [\$115 \$225]	With application
Renewal	\$90 [\$115 \$225]	With renewal card prior to expiration date
Reinstatement	\$90 [\$230* \$450*] *includes [\$115 \$225] renewal fee and [\$115 \$225] reinstatement fee	With reinstatement application
Schools:		
Application	\$120 [\$145 \$255]	With application
Renewal	\$120 [\$145 \$255]	With renewal card prior to expiration date
Reinstatement	\$120 [\$290* \$510*] *includes [\$145 \$255] renewal fee and [\$145 \$255] reinstatement fee	With reinstatement application

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

FORMS (18VAC41-40)

[~~Cosmetology, Nail Technician & Wax Technician Examination Application, 12EX (eff. 7/03).~~

~~Training and Experience Verification Form, 12TREXP (eff. 7/03).~~

~~Cosmetology Temporary Permit Application, 12TP (eff. 7/03).]~~

~~Cosmetology, Nail Technician & Wax Technician License Application, 12LIC (eff. 7/03).~~

~~Endorsement Application, 1213END (eff. 7/03).~~

~~Salon & Shop License Application, 1213SLSH (eff. 7/03).~~

~~School License Application, 12SCHL (eff. 7/03).~~

[[License by Endorsement Application, 1213END \(rev.10/10\).](#)

[Salon, Shop, Spa & Parlor License Applications, 1213BUS \(rev.10/10\).](#)

[School License Application, 1213SCHL \(rev.10/10\).](#)

- [Instructor Certification Application, 1213INST \(rev. 10/10\).](#)
- [Reinstatement Application, 1213REI, \(rev.10/10\).](#)
- [Licensure Fee Notice, 1213FEE, \(rev.10/10\).](#)
- [Wax Technician – Wax Technician Instructor Examination & License Application, A425-1214_15EXLIC \(eff. 9/11\).](#)
- [Temporary Permit Application, A425-1213TP \(eff. 9/11\).](#)
- [License by Endorsement Application, A425-1213END \(eff. 9/11\).](#)
- [Training & Experience Verification Form, A425-1213TREXP \(eff. 9/11\).](#)
- [Reinstatement Application, A425-1213REI \(eff. 9/11\).](#)
- [Salon, Shop, Spa & Parlor License Application, A425-1213BUS \(eff. 9/11\).](#)
- [Salon, Shop & Spa Self Inspection Form, A425-1213_SSS_INSP \(eff. 9/11\).](#)
- [Instructor Certification Application, A425-1213INST \(eff. 9/11\).](#)
- [School License Application, A425-1213SCHL \(eff. 9/11\).](#)
- [School Self Inspection Form, A425-1213SCH_INSP \(eff. 9/11\).](#)
- [Licensure Fee Notice, A425-1213FEE-v2 \(eff. 9/11\). \]](#)

VA.R. Doc. No. R09-1834; Filed June 29, 2011, 11:25 a.m.

Final Regulation

Title of Regulation: 18VAC41-50. Tattooing Regulations (amending 18VAC41-50-130).

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

Effective Date: September 1, 2011.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Summary:

The amendments increase various licensure fees for tattooers, limited term tattooers, permanent cosmetic tattooers, master permanent cosmetic tattooers, tattooing instructors, permanent cosmetic tattooing instructors, and tattooing salons and schools regulated by the Board of Barbers and Cosmetology to ensure that revenues are sufficient, but not excessive, to cover the board's operating expenses as provided in the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia.

Regulations

The final amendments reflect additional fee increases from the proposed regulations.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part III Fees

18VAC41-50-130. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	\$55 [\$75 \$140]	With application
License by Endorsement	\$55 [\$75 \$140]	With application
Renewal	\$55 [\$75 \$140]	With renewal card prior to expiration date
Reinstatement	\$110* [\$150* \$280*]*includes \$55 [\$75 \$140] renewal fee and \$55 [\$75 \$140] reinstatement fee	With reinstatement application
Instructors:		
Application	\$60 [\$85 \$150]	With application
License by Endorsement	\$60 [\$85 \$150]	With application
Renewal	\$60 [\$85 \$150]	With renewal card prior to expiration date
Reinstatement	\$120* [\$170* \$300*] *includes \$60 [\$85 \$150] renewal fee and \$60 [\$85 \$150] reinstatement fee	With reinstatement application
Parlors or salons:		
Application	\$90 [\$115 \$225]	With application
Renewal	\$90 [\$115 \$225]	With renewal card prior to expiration date
Reinstatement	\$180* [\$230* \$450*] *includes \$90 [\$115 \$225] renewal fee and \$90 [\$115 \$225] reinstatement fee	With reinstatement application

Schools:		
Application	\$120 [\$145 \$255]	With application
Renewal	\$120 [\$145 \$255]	With renewal card prior to expiration date
Reinstatement	\$240* [\$290* \$510*] *includes \$120 [\$145 \$255] renewal fee and \$120 [\$145 \$255] reinstatement fee	With reinstatement application

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

FORMS (18VAC41-50)

~~Salon, Shop and Parlor License Application, 12SLSHP (10/06).~~

[[Salon, Shop, Spa & Parlor License Applications, 1213BUS \(rev.10/10\).](#)

~~Tattooer License Application, 1231_50LIC (10/06).~~

~~Tattooer Apprentice Certification Application, 1234TAC (10/06).~~

~~School License Application, 12SCHL (10/06).~~

~~Limited Term Tattooer License Application, 1233LIC (10/06).~~

~~Limited Term Tattoo Parlor License Application, 1235LTP (10/06).~~

[[School License Application, 12SCHL \(10/10\).](#)

[[Limited Term Tattooer License Application, 1233LIC \(rev.10/10\).](#)

[[Limited Term Tattoo Parlor License Application, 1235LTPAR \(rev. 10/10\).](#)

~~Permanent Cosmetic Tattooer License Application, 1236_37LIC (10/06).~~

~~Permanent Cosmetic Tattooer Examination and License Application, 1236EX (10/06).~~

~~Master Permanent Cosmetic Tattooer Examination and License Application, 1237EX (10/06).~~

[[License by Endorsement Application, 1213END \(rev. 10/10\).](#)

- [Reinstatement Application, 1213REI \(rev. 10/10\).](#)
- [Instructor Certification Application, 1213INST \(rev.10/10\).](#)
- [Licensure Fee Notice, 1213FEE \(rev. 10/10\).](#)
- [Tattooer Examination & License Application, A425-1231EXLIC \(eff. 9/11\).](#)
- [Tattoo Training & Experience Verification Form, A425-12TATTREXP \(eff. 9/11\).](#)
- [Tattooing Apprenticeship Sponsor Application, A425-12TATSPON \(eff. 9/11\).](#)
- [Tattooer Apprenticeship Certification Application, A425-1234TAC \(eff. 9/11\).](#)
- [Tattoo Apprenticeship Completion Form, A425-12TAC \(eff. 9/11\).](#)
- [Tattoo Client Disclosure Form, A425-12DIS, A425-12TDIS \(eff. 9/11\).](#)
- [Limited Term Tattooer License Application, A425-1233LIC \(eff. 9/11\).](#)
- [Limited Term Tattoo Parlor License Application, A425-1235LTPAR \(eff. 9/11\).](#)
- [Permanent Cosmetic Tattooer Examination & License Application, A425-1236EXLIC \(eff. 9/11\).](#)
- [Master Permanent Cosmetic Tattooer Examination & License Application, A425-1237EXLIC \(eff. 9/11\).](#)
- [License by Endorsement Application, A425-1213END \(eff. 9/11\).](#)
- [Training & Experience Verification Form, A425-1213TREXP \(eff. 9/11\).](#)
- [Reinstatement Application, A425-1213REI \(eff. 9/11\).](#)
- [Salon, Shop, Spa & Parlor License Application A425-1213BUS \(eff. 9/11\).](#)
- [Instructor Certification Application, A425-1213INST \(eff. 9/11\).](#)
- [School License Application, A425-1213SCHL \(eff. 9/11\).](#)
- [Licensure Fee Notice, A425-1213FEE-v2 \(eff. 9/11\). \]](#)

VA.R. Doc. No. R09-1835; Filed June 29, 2011, 11:25 a.m.

Final Regulation

Title of Regulation: 18VAC41-60. **Body-Piercing Regulations (amending 18VAC41-60-90).**

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

Effective Date: September 1, 2011.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-

8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Summary:

The amendments increase various licensure fees for body piercers and body piercing salons regulated by the Board of Barbers and Cosmetology to ensure that revenues are sufficient, but not excessive, to cover the board's operating expenses as provided in the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia.

The final amendments reflect additional fee increases from the proposed regulations.

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.

Part III Fees

18VAC41-60-90. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	\$55 [\$75 \$140]	With application
License by endorsement	\$55 [\$75 \$140]	With application
Renewal:	\$55 [\$75 \$140]	With renewal card prior to expiration date
Reinstatement	\$110* [\$150* \$280*] *includes \$55 [\$75 \$140] renewal fee and \$55 [\$75 \$140] reinstatement fee	With reinstatement application
Salons:		
Application	\$90 [\$115 \$225]	With application
Renewal	\$90 [\$115 \$225]	With renewal card prior to expiration date
Reinstatement	\$180* [\$230* \$450*] *includes \$90 [\$115 \$225] renewal fee and \$90 [\$115 \$225] reinstatement fee	With reinstatement application

Regulations

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (18VAC41-60)

~~Salon, Shop & Parlor License Application, 12SLSHP (eff. 4/07).~~

~~[Salon, Shop, Spa & Parlor License Applications, 1213BUS (rev. 10/10).]~~

~~Body Piercer License Application, 1241LIC (eff. 4/07).~~

~~[Body Piercer Examination & License Application, 1241EX (eff. 4/07).]~~

~~Body Piercer Ear Only License Application, 1245LIC (eff. 4/07).~~

~~[Body Piercer (Ear Only) License Application, 1245LIC (rev. 10/10).]~~

~~Body Piercing Apprentice Certification Application, 1244BPAC (eff. 4/07).~~

~~License by Endorsement Application, 1213END (rev. 10/10).~~

~~Reinstatement Application, 1213REI (rev. 10/10).~~

~~License Fee Notice, 1213FEE (rev. 10/10).~~

[Body Piercer Examination & License Application, A425-1241EXLIC \(eff. 9/11\).](#)

[Body-Piercing Training & Experience Verification Form, A425-12BPTREXP \(eff. 9/11\).](#)

[Body-Piercing Apprenticeship Sponsor Application, A425-12BPSPON \(eff. 9/11\).](#)

[Body-Piercing Apprentice Certification Application, A425-1244BPAC \(eff. 9/11\).](#)

[Body-Piercing Apprenticeship Completion Form, A425-12BPAC \(eff. 9/11\).](#)

[Body-Piercing Client Disclosure Form, A425-12BPDIS \(eff. 9/11\).](#)

[Body Piercer Ear Only License Application, A425-1245LIC \(eff. 9/11\).](#)

[License by Endorsement Application, A425-1213END \(eff. 9/11\).](#)

[Training & Experience Verification Form, A425-1213TREXP \(eff. 9/11\).](#)

[Reinstatement Application, A425-1213REI \(eff. 9/11\).](#)

[Salon, Shop, Spa & Parlor License Application A425-1213BUS \(eff. 9/11\).](#)

[License Fee Notice, A425-1213FEE-v2 \(eff. 9/11\). \]](#)

VA.R. Doc. No. R09-1836; Filed June 29, 2011, 11:26 a.m.

Final Regulation

Title of Regulation: **18VAC41-70. Board for Barbers and Cosmetology Esthetics Regulations (amending 18VAC41-70-120).**

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

Effective Date: September 1, 2011.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Summary:

The amendments increase various licensure fees for estheticians, master estheticians, esthetician and master esthetician instructors, and esthetics spas and schools regulated by the Board of Barbers and Cosmetology to ensure that revenues are sufficient, but not excessive, to cover the board's operating expenses as provided in the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia.

The final amendments reflect additional fee increases from the proposed regulations.

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.

CHAPTER 70

[BOARD FOR BARBERS AND COSMETOLOGY] ESTHETICS REGULATIONS

Part III Fees

18VAC41-70-120. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	\$55 [\$75 \$140]	With application
License by Endorsement	\$55 [\$75 \$140]	With application
Renewal	\$55 [\$75 \$140]	With renewal card prior to expiration date

Reinstatement	\$110* [\$150* \$280*] *includes \$55 [\$75 \$140] renewal fee and \$55 [\$75 \$140] reinstatement fee	With reinstatement application
Instructors:		
Application	\$60 [\$85 \$150]	With application
License by Endorsement	\$60 [\$85 \$150]	With application
Renewal	\$60 [\$85 \$150]	With renewal card prior to expiration date
Reinstatement	\$120* [\$170* \$300*] *includes \$60 [\$85 \$150] renewal fee and \$60 [\$85 \$150] reinstatement fee	With reinstatement application
Spas:		
Application	\$90 [\$115 \$225]	With application
Renewal	\$90 [\$115 \$225]	With renewal card prior to expiration date
Reinstatement	\$180* [\$230* \$450*] *includes \$90 [\$115 \$225] renewal fee and \$90 [\$115 \$225] reinstatement fee	With reinstatement application
Schools:		
Application	\$120 [\$145 \$255]	With application
Renewal	\$120 [\$145 \$255]	With renewal card prior to expiration date
Reinstatement	\$240* [\$290* \$510*] *includes \$120 [\$145 \$255] renewal fee and \$120 [\$145 \$255] reinstatement fee	With reinstatement application

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (18VAC41-70)

~~Salon, Shop, Spa, and Parlor License Application, 12SSSP (eff. 9/07).~~

~~School License Application, 12SCHL (eff. 9/07).~~

~~Instructor License Application, 1213INST (eff. 9/07).~~

~~Esthetician License Application, 1261 65LIC (eff. 9/07).~~

~~[Salon, Shop, Spa and Parlor License Applications, 1213BUS (rev. 10/10).~~

~~School License Application, 1213SCHL (rev. 10/10).~~

~~Instructor Certification Application, 1213INST (rev. 10/10).~~

~~Esthetician/Esthetics Instructor Examination and License Application, 1261 62 EX (eff. 9/07).~~

~~Master Esthetician/Master Esthetics Instructor Examination and License Application, 1264 65EX (eff. 9/07).~~

~~License by Endorsement Application, 1213END (rev. 10/10).~~

~~Reinstatement Application, 1213REI (rev. 10/10).~~

~~Licensure Fee Notice, A425 1213FEE (eff. 10/10).~~

[Esthetician – Esthetics Instructor Examination & License Application, A425-1261 62EXLIC \(eff. 9/11\).](#)

[Master Esthetician – Master Esthetics Instructor Examination & License Application, A425-1264 65EXLIC \(eff. 9/11\).](#)

[Temporary Permit Application, A425-1213TP \(eff. 9/11\).](#)

[License by Endorsement Application, A425-1213END \(eff. 9/11\).](#)

[Training & Experience Verification Form, A425-1213TREXP \(eff. 9/11\).](#)

[Reinstatement Application, A425-1213REI \(eff. 9/11\).](#)

[Salon, Shop, Spa & Parlor License Application A425-1213BUS \(eff. 9/11\).](#)

[Salon, Shop & Spa Self Inspection Form, A425-1213 SSS INSP \(eff. 9/11\).](#)

[Instructor Certification Application, A425-1213INST \(eff. 9/11\).](#)

[School License Application, A425-1213SCHL \(eff. 9/11\).](#)

[School Self Inspection Form, A425-1213SCH_INSP \(eff. 9/11\).](#)

[Licensure Fee Notice, A425-1213FEE \(eff. 9/11\). \]](#)

VA.R. Doc. No. R09-1837; Filed June 29, 2011, 11:26 a.m.

Regulations

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

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

Title of Regulation: **22VAC40-780. Elimination of Financial Eligibility Criteria for Direct Social Services (amending 22VAC40-780-40, 22VAC40-780-60).**

Statutory Authority: §§ 63.2-217 and 63.2-614 of the Code of Virginia.

Effective Date: August 17, 2011.

Agency Contact: Phyl Parrish, Department of Social Services, Division of Family Services, 801 East Main Street, Richmond, VA 23219-2901, telephone (804) 726-7926, FAX (804) 726-7499, TTY (800) 828-1849, or email phyl.parrish@dss.virginia.gov.

Summary:

This regulation provides authority for the provision of direct services to clients and clarifies that some services are provided without regard to income. The amendments make changes in terminology that are technical in nature and that are necessary to comply with statutory changes enacted over the past several years.

Part I
Definitions

Part II
Introduction

Part III
Eligibility Determination Process

22VAC40-780-40. Income maintenance.

Persons or families are eligible for service in this category because they receive ~~Aid to Dependent Children~~ Temporary Assistance for Needy Families, Supplemental Security Income, or Auxiliary Grants.

22VAC40-780-60. Universal access.

Local ~~social service agencies~~ departments of social services may choose one of two options in providing direct services on a universal access basis:

1. All persons needing direct services may be served on a universal access basis except for services delivered as a part of ~~the Employment Services Program~~ employment services programs; or

2. Only persons needing the following services may be served on a universal access basis:

a. Intake services;

b. Family services (services provided to prevent child abuse and neglect, independent adoptions, and court activities);

c. Adult protective services;

d. Child protective services;

e. Foster care or adoption services; or

f. Adult services (services provided to elderly and incapacitated adults at risk of abuse, neglect, or exploitation).

VA.R. Doc. No. R11-2838; Filed June 17, 2011, 1:55 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Title of Regulation: **24VAC30-281. Revenue-Sharing Program Policy (repealing 24VAC30-281-10).**

Statutory Authority: §§ 33.1-23.05 and 33.1-72.1 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: William R. Dandridge, Transportation Engineer Senior, Department of Transportation, Local Assistance Division, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-2743, FAX (804) 786-2603, or email william.dandridge@vdot.virginia.gov.

Summary:

Chapters 830 and 868 of the 2011 Acts of Assembly provide that the revenue-sharing funds allocated by the Commonwealth Transportation Board for state highway systems in certain counties, cities, and towns be distributed in accordance with revenue-sharing guidelines established by the board. Consequently, 24VAC30-281, Revenue

Sharing Program Policy, is in conflict with the statute and is repealed.

VA.R. Doc. No. R11-2861; Filed June 20, 2011, 9:37 a.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 35 (2011)

CONTINUING THE GOVERNOR'S ADVISORY BOARD ON VOLUNTEERISM AND NATIONAL SERVICE

Continuation of Executive Order

Pursuant to the authority granted to me as Governor, including but not limited to Article V of the Constitution of Virginia and § 2.2-135 of the Code of Virginia, I hereby continue the following executive order previously issued for an additional year. This renewal shall be effective for one year from the initial issuance date:

- Executive Order Twenty (2010), creating the Governor's Advisory Board on Volunteerism and National Service, issued July 6, 2010.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in force for one year from its signing, unless amended or rescinded by further executive order.

Given under my hand and under the seal of the Commonwealth of Virginia this 28th day of June 2011.

/s/ Robert F. McDonnell
Governor

GENERAL NOTICES/ERRATA

AIR POLLUTION CONTROL BOARD

Public Comment Period - State Implementation Plan Revision - Air Quality Plan, Permits for Major Stationary Sources

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation to EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulations of the board affected by this action are as follows: 9VAC5-10-30 of 9VAC5-10 (General Definitions); and Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas (Article 8) and Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region (Article 9) of 9VAC5-80 (Permits for Stationary Sources).

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: July 18, 2011, to August 17, 2011.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: In essence, the proposed revision will consist of amendments to existing regulation provisions concerning permits for major stationary sources. The major

provisions of the proposal are summarized as follows: On May 16, 2008 (73 FR 28321), EPA promulgated a final rule revising the new source review (NSR) permitting program for prevention of significant deterioration (PSD) and nonattainment areas. The new rule includes the major source threshold, significant emissions rate, and offset ratios for particulate matter less than 2.5 micrometers (PM_{2.5}), interpollutant trading for offsets, and applicability of NSR to PM_{2.5} precursors. On October 20, 2010 (75 FR 64864), EPA promulgated a final rule revising the federal NSR permitting program for PSD. The new rule amends the requirements for PM_{2.5} under the PSD program by adding maximum allowable increases in ambient pollutant concentrations (increments) and two screening tools, known as the significant impact levels (SILs) and a significant monitoring concentration (SMC) for PM_{2.5}. In Virginia, where the state is administering the NSR program under an approved SIP, the state may adopt and submit revisions to the SIP to reflect the rule revisions. The revised SIP should be the same as or equivalent to the revised federal program.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits and documents received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.state.va.us/air/permitting/planotes.html>). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070,
- 2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (540) 676-4800,
- 3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,

General Notices/Errata

4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (804) 582-5120,

5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,

6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,

7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and

8) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order for Fluvanna County School Board

An enforcement action has been proposed for the Fluvanna County School Board for violations in Fluvanna County. A proposed consent order describes a settlement to resolve effluent limitation violations from the Fluvanna County High School sewage treatment plant. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Steven W. Hetrick will accept comments by email steven.hetrick@deq.virginia.gov, FAX (540) 574-7878, or postal mail Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from July 18, 2011, to August 17, 2011.

Proposed Consent Order for Route 240, LLC

An enforcement action has been proposed for the Route 240, LLC for violations in Albemarle County. A proposed consent order describes a settlement to resolve an unpermitted discharge violation from the Starr Hill Brewery building. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Steven W. Hetrick will accept comments by email steven.hetrick@deq.virginia.gov, FAX (540) 574-7878, or postal mail Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from July 18, 2011, to August 17, 2011.

Notice of Periodic Review of the Wetlands Policy

The Department of Environmental Quality will conduct a periodic review of the Wetlands Policy, 9VAC25-380-10 et seq. The purpose of the review is to determine whether the

regulations should be terminated, amended, or retained in their current form. The review of the regulations will be guided by the principles listed in Executive Order Number Fourteen (2010) and § 2.2-4007.1 of the Code of Virginia. The department and the board are seeking public comments on the review of any issue relating to the regulations, including whether (i) the regulations are effective in achieving their goals; (ii) the regulations are essential to protect the health, safety, or welfare of citizens or for the economical performance of important governmental functions; (iii) there are available alternatives for achieving the purpose of the regulations; (iv) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations; and (v) the regulations are clearly written and easily understandable by the affected persons. In addition, the department and the board are seeking public comments on ways to minimize the economic impact on small businesses in a manner consistent with the purpose of the regulations. The purpose of the regulations is to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to establish a policy to preserve wetland ecosystems and protect them from destruction. Section 62.1-44.15 of the Code of Virginia provides the board with the authority to promulgate the regulations. These regulations are designed to provide the necessary procedures and rules by which the statute may be administered. To view the full text of the regulation, go to: <http://leg1.state.va.us/000/reg/TOC09025.HTM.HTM#C0380>. Comments on the above regulations are welcome and will be accepted until August 8, 2011. Comments should be sent to David L. Davis, Director, Office of Wetlands & Water Protection, at P.O. Box 1105, Richmond, VA 23218 (deliveries can be made to 629 East Main Street, 9th Floor, Richmond, VA 23219), telephone (804) 698-4105, FAX (804) 698-4032, or email dave.davis@deq.virginia.gov. Please include your full name and mailing address when providing public comment.

Water Quality Restoration Study (TMDL) for the Chickahominy River and Tributaries Impaired for Bacteria

Public meeting: Mechanicsville Branch Library, 7461 Sherwood Crossing Place, Mechanicsville, Virginia 23111. Public meetings will be held on Wednesday, August 3, 2011, at 2 p.m. and 6 p.m. Both meetings are open to the public.

Purpose of notice: The Virginia Department of Environmental Quality and study consultant, MapTech Inc, are presenting preliminary data for the initiation of a total maximum daily load (TMDL) study to restore water quality at two public meetings, an opportunity for the public to share their knowledge of the watershed, and a public comment period following the meetings.

Meeting description: Public meetings on a study to restore water quality along the Chickahominy River and tributaries in

Hanover, Henrico and Charles City Counties. Meeting will feature information gathered for the watershed including land use, water quality monitoring, and suspected sources of bacteria. Those attending the meeting are invited to ask questions and to contribute their knowledge of the watershed.

Description of study: Virginia agencies have been working to identify sources of the bacterial contamination in the waters of the Chickahominy River and its tributaries in the following impaired waterways:

Stream	County/City	Length (mi.)	Impairment
Stony Run	Hanover	0.21	Bacteria (Primary Contact/Swimming Use)
Beaverdam Creek	Hanover	6.69	
Chickahominy River	Henrico, Hanover	7.54	
Boatswain Creek	Hanover	3.76	
Collins Run	Charles City County	4.50	

These streams are impaired for failure to meet the primary contact (recreational or swimming) designated use because of bacteria standard violations. The study reports on the sources of bacterial contamination and recommends TMDLs for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels need to be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes two sets of public meetings and comment periods; one to initiate the study and another to present the final draft TMDL report. This meeting is the first for the Chickahominy River and tributaries project. After the final public meeting and all public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency and the State Water Control Board for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will begin on August 4, 2011, and end on September 2, 2011.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Virginia Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email margaret.smigo@deq.virginia.gov. DEQ TMDL website: www.deq.virginia.gov/tmdl.

Restore Water Quality in Bull Creek, Levisa Fork, North and South Fork Pound River, and Powell River

Announcement of an effort to restore water quality in Bull Creek, Buchanan County; Levisa Fork, Buchanan County; North and South Fork Pound River, Wise County; and Powell River, Lee and Wise Counties, Virginia.

Public meeting location: Virginia Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, Abingdon, Virginia, on July 26, 2011, from 6 p.m. to 8 p.m.

Purpose of notice: To seek public comment and announce a public meeting on phased revisions and monitoring plans for water quality improvement studies by the Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Mines, Minerals and Energy (DMME) for the four coalfield streams.

Meeting description: First public meeting on the phased revisions to the total maximum daily loads (TMDLs) including monitoring plans.

Description of study: DEQ and DMME have been working to identify sources pollutants affecting the aquatic organisms in the waters of Bull Creek, Levisa Fork, North and South Pound River, and the Powell River. During the development of the studies the pollutants impairing the aquatic community were identified and TMDLs were developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The phased revision of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the revised TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, July 26, 2011, to August 26, 2011. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review the draft monitoring plan: The draft monitoring plan, the phased TMDL reports, and the presentation from the public meeting are available from the contact below or on the DEQ website at www.deq.virginia.gov/tmdl.

Contact for additional information: Martha Chapman, Regional TMDL Coordinator, Virginia Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-

General Notices/Errata

1688, telephone (276) 676-4800, FAX (276) 676-4899, or email martha.chapman@deq.virginia.gov.

DEPARTMENT OF LABOR AND INDUSTRY

Notices of Periodic Review

Pursuant to Executive Order 14 (2011) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Labor and Industry is conducting a periodic review of and invites public comment on 16VAC15-40, Virginia Hours of Work for Minors, and 16VAC15-50, Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form.

The review of the regulations will be guided by the principles in Executive Order 14 (2011) (<http://www.governor.virginia.gov/Issues/ExecutiveOrders/2010/EO-14.cfm>) and § 2.2-4007.1 (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4007.1>) of the Code of Virginia, including whether the regulations (i) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; (ii) are necessary for the protection of public health, safety, and welfare; and (iii) are clearly written and easily understandable.

The comment period begins July 18, 2011, and ends at 5 p.m. on August 8, 2011. Comments may be submitted online to the Virginia Regulatory Town Hall website (www.townhall.virginia.gov). Comments may be mailed to Reba O'Connor, Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, or emailed to reba.oconnor@doli.virginia.gov. Commenters should include full name and address.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/cumultab.htm>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the *Virginia Register of Regulations*. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.