



# VIRGINIA

## REGISTER OF REGULATIONS

VOL. 30 ISS. 9

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

DECEMBER 30, 2013

### TABLE OF CONTENTS

<b>Register Information Page</b> .....	1151
<b>Publication Schedule and Deadlines</b> .....	1152
<b>Petitions for Rulemaking</b> .....	1153
<b>Regulations</b> .....	1154
1VAC20-10. Public Participation Guidelines (Final) .....	1154
1VAC20-40. Voter Registration (Proposed) .....	1156
1VAC20-45. Absent Military and Overseas Voters (Proposed) .....	1158
1VAC20-50. Candidate Qualification (Final) .....	1159
1VAC20-60. Election Administration (Proposed) .....	1160
1VAC20-70. Absentee Voting (Proposed) .....	1161
3VAC5-50. Retail Operations (Final) .....	1163
4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (Emergency) .....	1168
9VAC20-160. Voluntary Remediation Regulations (Final) .....	1169
9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (Proposed) .....	1180
9VAC25-740. Water Reclamation and Reuse Regulation (Final) .....	1190
12VAC20-10. Guidelines for Public Participation in Developing Regulations (Fast-Track) .....	1225
12VAC20-20. Regulations for Designating Health Planning Regions (Fast-Track) .....	1226
12VAC20-30. Regulations Governing the Regional Health Planning Boards (Fast-Track) .....	1228
12VAC20-40. Regulations for Designating Regional Health Planning Agencies (Fast-Track) .....	1229
12VAC20-50. Administration of State Funding for Regional Health Planning (Fast-Track) .....	1230
18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (Proposed) .....	1232
<b>General Notices/Errata</b> .....	1277

---

# VIRGINIA REGISTER INFORMATION PAGE

---

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

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

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

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

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

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

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Gregory D. Habeeb**; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Tavenner**; **Christopher R. Nolen**; **J. Jasen Eige**.

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

---

# PUBLICATION SCHEDULE AND DEADLINES

---

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

---

## December 2013 through December 2014

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
30:9	December 11, 2013	December 30, 2013
30:10	December 20, 2013 ( <b>Friday</b> )	January 13, 2014
30:11	January 8, 2014	January 27, 2014
30:12	January 22, 2014	February 10, 2014
30:13	February 5, 2014	February 24, 2014
30:14	February 19, 2014	March 10, 2014
30:15	March 5, 2014	March 24, 2014
30:16	March 19, 2014	April 7, 2014
30:17	April 2, 2014	April 21, 2014
30:18	April 16, 2014	May 5, 2014
30:19	April 30, 2014	May 19, 2014
30:20	May 14, 2014	June 2, 2014
30:21	May 28, 2014	June 16, 2014
30:22	June 11, 2014	June 30, 2014
30:23	June 25, 2014	July 14, 2014
30:24	July 9, 2014	July 28, 2014
30:25	July 23, 2014	August 11, 2014
30:26	August 6, 2014	August 25, 2014
31:1	August 20, 2014	September 8, 2014
31:2	September 3, 2014	September 22, 2014
31:3	September 17, 2014	October 6, 2014
31:4	October 1, 2014	October 20, 2014
31:5	October 15, 2014	November 3, 2014
31:6	October 29, 2014	November 17, 2014
31:7	November 12, 2014	December 1, 2014

\*Filing deadlines are Wednesdays unless otherwise specified.

---

# PETITIONS FOR RULEMAKING

---

## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### Initial Agency Notice

Title of Regulation: **9VAC5-80. Permits for Stationary Sources.**

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

Name of Petitioner: Virginia Manufacturers Association (VMA).

Nature of Petitioner's Request: The petitioner is requesting the board to amend Article 8, Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas (9VAC5-80-1605 et seq.) and Article 9, Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region (9VAC5-80-2000 et seq.) of Part II of 9VAC5-80 as follows:

1. Amend the definition of "baseline actual emissions" in 9VAC5-80-1615 C and 9VAC5-80-2010 C and make any other regulatory changes necessary to make the Virginia regulation conform with the federal definition. This would allow VMA members and other facility owners in Virginia to use a 10-year lookback period, thus making the Virginia regulations no more stringent than federal requirements.
2. Amend subdivision b (4) of the definition of "baseline actual emissions" in 9VAC5-80-1615 C and 9VAC5-80-2010 C, amend 9VAC5-80-1865 E and 9VAC5-80-2144 E, and make any other regulatory changes necessary to make the Virginia regulation conform with the federal definition. This would allow VMA members and other facility owners in Virginia to use different lookback periods for different regulated NSR pollutants, thus making the Virginia regulations no more stringent than federal requirements.
3. Amend 9VAC5-80-1615 C, 9VAC5-80-1865 C 1 f, 9VAC5-80-2010 C, and 9VAC5-80-2144 C 1 f and make any other regulatory changes necessary to make the Virginia regulation conform with the federal definition. This would allow VMA members and other facility owners in Virginia to obtain PALs for 10 years, rather than only five years, thus making the Virginia regulations no more stringent than federal requirements.
4. Amend the definition of "emissions unit" and add a definition of "replacement unit" in 9VAC5-80-1615 C and 9VAC5-80-2010 C and make any other regulatory changes necessary to make the Virginia regulation conform with the federal definition. This would allow VMA members and other facility owners in Virginia to use the baseline actual emissions of the unit being replaced and the projected actual emissions of the replacement unit, thus making the

Virginia regulations no more stringent than federal requirements.

Agency Plan for Disposition of Request: Notice of the petition will appear in the Virginia Register of Regulations on December 30, 2013. The public comment period will begin December 30, 2013, and end January 29, 2014, during which written comments will be accepted. At the first available board meeting following the end of the comment period, the department will present the petition and a summary of comments to the board for it to make a decision on whether to grant the petition request or deny the petition request. The board must make a final decision within 90 days after the end of the comment period. Should there be no board meeting scheduled during this 90-day period, the board's decision must be made at the first available board meeting and forwarded to the Registrar for publication in the Virginia Register within 14 days of the board meeting.

Public Comment Deadline: January 29, 2014.

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, TDD (804) 698-4021, or email [karen.sabasteanski@deq.virginia.gov](mailto:karen.sabasteanski@deq.virginia.gov).

VA.R. Doc. No. R14-03; Filed December 6, 2013, 1:44 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 1. ADMINISTRATION

### STATE BOARD OF ELECTIONS

#### Final Regulation

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

**Title of Regulation:** 1VAC20-10. Public Participation Guidelines (amending 1VAC20-10-10 through 1VAC20-10-120).

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

**Effective Date:** December 30, 2013.

**Agency Contact:** Justin Riemer, Deputy Secretary, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8904, or email justin.riemer@sbe.virginia.gov.

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

#### Summary:

*The amendments (i) provide that the State Board of Elections website, as well as the Virginia Regulatory Town Hall website, can be used at the board's discretion when seeking public comment on regulations; (ii) address the method by which and reduce the time period within which public comment for exempt regulations is received; and (iii) clarify when a regulation becomes effective.*

#### 1VAC20-10-10. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the State Board of Elections.

"Approving authority" means the State Board of Elections established pursuant to § 24.2-103 of the Code of Virginia as the legal authority to adopt regulations.

"Board" means the State Board of Elections, which is the unit of state government empowered by Title 24.2 of the Code of Virginia to make rules and regulations for registration of voters and elections. Actions specified in this

chapter may be fulfilled by state employees as delegated by the agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members of the board will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"State Board of Elections website" means the website operated by the Virginia State Board of Elections at <http://www.sbe.virginia.gov>, which [has may provide] online public comment forums and [displays information about regulatory meetings and public information about] regulatory actions under consideration by the [board and makes this information viewable to the public Virginia State Board of Elections].

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and

Budget at <http://www.townhall.virginia.gov>, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended, and repealed regulations of state agencies, which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

**1VAC20-10-40. Public comment.**

A. Whenever directed by statute or upon its own initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

B. In considering any nonemergency, exempt regulatory action, the board [ ~~shall, in its discretion, will~~ ] afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on [ ~~the~~ ] Town Hall or through the State Board of Elections website.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; any economic impact analysis of the proposed regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

C. [ ~~The agency If the board, in its discretion, affords interested persons an opportunity to submit data, views, and arguments, the board~~ ] shall accept public comments in writing after the publication of a regulatory action either on its website or on Town Hall and ] in the Virginia Register as follows:

1. For a minimum of ~~30~~ [ 14 21 ] calendar days following the publication of the notice of proposed exempt regulatory action.

2. For a minimum of ~~30~~ [ 14 21 ] calendar days following the publication of a repropoed regulation.

3. To the extent reasonably possible following the publication of a proposed emergency regulation.

4. For a minimum of [ ~~21 seven~~ ] calendar days following the publication of a notice of periodic review.

5. Not later than [ ~~21 seven~~ ] calendar days following the publication of a petition for rulemaking.

D. The agency may determine if any of the comment periods listed in subsection C of this section shall be extended or reduced if necessary.

E. If the board finds that one or more changes with substantial impact have been made to a proposed regulation, [ ~~the board, in its discretion,~~ ] may allow an additional [ ~~30~~

~~calendar days period of time~~ ] to solicit additional public comment on the changes.

~~F. If practicable, the board shall send a draft of the board's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation.~~

**1VAC20-10-50. Petition for rulemaking.**

A. Any person may petition the board to consider a regulatory action.

B. A petition shall include sufficient information to understand and evaluate the proposed action and contact the person responsible for presenting it. The following is a noninclusive list of information typically needed to the extent available:

1. The petitioner's name, mailing address, email address, and telephone number;
2. The petitioner's interest in the proposed action;
3. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections;
4. Reference to the legal authority of the agency to take the action requested;
5. Statement of the need and justification for the proposed action;
6. Statement of the impact on the petitioner and other affected persons; and
7. Supporting documents, if applicable.

C. The agency shall receive, consider, and respond to a petition and shall have the sole authority to dispose of the petition. The board may require a petitioner to reimburse copying costs associated with a petition.

D. The petition shall be posted on the State Board of Elections website or [ ~~the on~~ ] Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

**1VAC20-10-60. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if the proposed text of the regulation is posted on the State Board of Elections

---

# Regulations

---

website or on [ ~~the~~ ] Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate.

## **1VAC20-10-80. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory State Board of Elections website or [ ~~the on~~ ] Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with § 2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

## **1VAC20-10-90. Public hearings on regulations.**

A. The board shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The board may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The Governor requests the board to hold a public hearing; or
2. The board receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of proposed regulatory action.

D. Notice of any public hearing shall be posted on the State Board of Elections website or [ ~~the on~~ ] Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The board shall also notify those persons who requested a hearing under subdivision C 2 of this section.

## **1VAC20-10-100. Effective date and posting to agency website.**

Regulations adopted by the board shall be effective [ ~~as of the date stated in the regulation, which may provide conditions, including preclearance required under the federal Voting Rights Act, [ and in no event before they are published in~~ upon approval by the board and compliance with all applicable legal requirements, including filing with ] the Register of Regulations [ ~~and any further conditions the board may specify~~ ]. All adopted regulations shall be posted to ~~the agency website~~ the Internet within three business days after they become effective.

## **1VAC20-10-120. Periodic review of regulations.**

A. Following each presidential election, the board shall conduct a periodic review of its regulations consistent with an executive order issued by the Governor to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the State Board of Elections website or [ ~~the on~~ ] Town Hall and published in the Virginia Register.

VA.R. Doc. No. R14-3850; Filed December 10, 2013, 8:33 a.m.

## **Proposed Regulation**

Title of Regulation: **1VAC20-40. Voter Registration (amending 1VAC20-40-50, 1VAC20-40-70; repealing 1VAC20-40-80).**

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

Public Hearing Information: A public hearing will be scheduled in January or February, 2014.

Public Comment Deadline: January 13, 2014.

Agency Contact: Martha Brissette, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, FAX (804) 371-0194, or email martha.brissette@sbe.virginia.gov.

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

### Summary:

*The proposed amendments (i) clarify language related to application signature and determination of residency; (ii) remove a requirement for the registrar to seek information not material to the application; (iii) update referenced forms; and (iv) remove provisions related to absent military and overseas voters, which are being relocated in a separate regulatory action to a new chapter numbered 1VAC20-45.*

## **1VAC20-40-50. Supplemental questions.**

When warranted by the situations described in 1VAC20-40-40 C and where any other information on the voter registration application is unclear, the general registrar shall ask the following questions on a form prescribed by the board after notifying the applicant that any response he makes is subject to the same oath he took to sign the application:

1. Are you currently registered to vote at another address? The general registrar shall not ask this question unless the applicant failed to provide the information on the voter registration application.
  - a. If yes to subdivision 1 of this section, what is that address, and in what county, city, or state is that address located?
  - b. If yes to subdivision 1 of this section or as indicated on the voter registration application, do you wish to cancel your registration in that county, city, or state and register and establish residence in this county or city in Virginia?
2. Do you have a specific plan to move away from this county or city at a fixed date in the future? If so, when?

**1VAC20-40-70. Applications for voter registration; affirmation of United States citizenship.**

A. Form and signature.

1. Applications for voter registration shall be on a form approved by the State Board of Elections or appropriate federal agency.
2. Applications for voter registration must be signed by the applicant ~~or the name and address of the assistant entered on the signature line for an applicant with. If the applicant is unable to sign due to a physical disability, the name and address of the person assisting the voter shall be entered on the application according to the form instructions.~~

B. Material omissions on applications for voter registration in general. The following omissions are not material if any of the following, or combination thereof, exists:

1. Daytime telephone number;
2. Description of a rural address;
3. Mailing address different from residence address;
4. Date of the application;
5. Whether the applicant is interested in working as an election official;
6. Whether the applicant requests to have his residence address excluded from published lists;
7. Whether the applicant has a disability that requires accommodation in order to vote; or
8. Gender.

~~C. Material omissions from applications for voter registration on a Federal Post Card Application or Federal Write in Absentee Ballot. The following omissions are not material:~~

- ~~1. Service identification number, rank, grade, or rate on an application that declares active duty military status.~~
- ~~2. Employer name and address on an application that declares temporary overseas residence with no date of last residence.~~
- ~~3. Employer name and address on an application that declares temporary overseas residence with a date of last residence. If practicable, the general registrar should inform the applicant that eligibility for full ballots requires providing the name and address of an employer outside the United States.~~
- ~~4. Date of last residence on an application that declares indefinite overseas residence. The date of last residence for an application declaring indefinite overseas residence without indicating a date of last residence in the United States shall be the date the application is signed.~~

~~D. C.~~ Middle name may be material to determining eligibility to vote. If the applicant does not include a middle name the registrar shall:

1. As far as practical, attempt to contact the applicant and obtain his middle name or lack thereof to determine if the application is complete.

~~2. a.~~ If the applicant indicates that he has no middle name, the registrar shall process the application.

~~3. b.~~ If the applicant indicates that he has a middle name, the registrar shall inform the applicant that the middle name is required, deny the application, and send the applicant a new application.

~~4. 2.~~ If the registrar is unable to contact the applicant and therefore unable to determine if the application is incomplete, he shall give the benefit of doubt to the applicant and process the application.

~~E. Except for gender, the general registrar, if practicable, shall attempt to contact the applicant and obtain the missing information requested on an application for voter registration that is not material to determining eligibility to vote. If the general registrar obtains any missing information, he shall write the information, his name, and the date on the reverse side of the application for voter registration to indicate that the alteration was made by the general registrar.~~

~~F. D.~~ A general registrar shall not change information provided by an applicant on an application for voter registration without written authorization signed by the applicant.

~~G. E.~~ Persons identified as noncitizens in reports from the Department of Motor Vehicles shall have the opportunity to affirm United States citizenship status using any approved voter registration application or other form containing the required affirmation. The State Board of Elections shall automate the process for requesting affirmation of United States citizenship prior to cancellation.

~~H. F.~~ For cases not covered by this section, the general registrar in consultation with the electoral board and State Board of Elections staff shall determine materiality on a case-by-case basis that may result in further amendment of this regulation.

**1VAC20-40-80. Application for registration on Federal Post Card Application (FPCA). (Repealed.)**

~~An applicant eligible for registration who applies for registration simultaneously with a request for an absentee ballot on a Federal Post Card Application (FPCA) as authorized by § 24.2-703 of the Code of Virginia may apply for registration as well as request an absentee ballot by facsimile transmission or scanned email attachment. An electronically submitted FPCA shall be sufficient to apply for registration and request an absentee ballot if signed and otherwise complete.~~

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the



---

# Regulations

---

agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (1VAC20-40)

~~Virginia Voter Registration Application Form, VA NVRA-1 (rev. 02/10)~~

[Virginia Voter Registration Application Form, SBE-416.2 \(rev.7/13\)](#)

National Voter Registration Application Form, Register to Vote in Your State by Using this Postcard Form and Guide (rev. 3/06)

~~Federal Post Card Application (FPCA), Voter Registration and Absentee Ballot Request, Standard Form 76 (rev. 08/11)~~

~~Federal Write In Absentee Ballot (FWAB), Voter's Declaration/Affirmation, Standard Form 186 (rev. 08/11)~~

VA.R. Doc. No. R14-3929; Filed December 9, 2013, 12:47 p.m.

## Proposed Regulation

**Title of Regulation:** **1VAC20-45. Absent Military and Overseas Voters (adding 1VAC20-45-10 through 1VAC20-45-40).**

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

**Public Hearing Information:** A public hearing will be scheduled. Contact the agency for details.

**Public Comment Deadline:** January 13, 2014.

**Agency Contact:** Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23228, telephone (804) 864-8925, FAX (804) 371-0194, or email martha.brissette@sbe.virginia.gov.

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

### Summary:

*The State Board of Elections is proposing a new chapter for all regulations regarding absent military and overseas voters, which are currently found in 1VAC20-040 and 1VAC20-70, consistent with Chapter 353 of the 2012 Acts of Assembly establishing the Uniform Military and Overseas Voters Act. The regulations address voter registration, electronic submission of the Federal Post Card Application, and material omissions from federal write-in absentee ballots.*

### CHAPTER 45

#### ABSENT MILITARY AND OVERSEAS VOTERS

#### **1VAC20-45-10. Definitions.**

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

"Application for an absentee ballot" means a Federal Post Card Application (Form SF-76). A Federal Write-In Absentee

Ballot (SF-186) is an absentee ballot application only for the voted ballot being submitted and is not an application for future elections.

"Federal-only ballot overseas voter" means a United States citizen residing outside the United States indefinitely who has not provided his last date of residence in Virginia or employment information showing that he is employed overseas or is the spouse or dependent residing with a person employed overseas. The date the applicant has provided next to his affirmation will serve as his last date of residence.

#### **1VAC20-45-20. Voter registration.**

**A. Presumptions.** As provided in 1VAC20-40-30 B, no presumption in favor of or against residence may arise merely on the basis of a person's presence or absence in the following circumstances:

1. While employed in the service of the Commonwealth or United States, whether military or civilian; or

2. While engaged in the navigation of the waters of the United States or of the high seas.

**B. Material omissions from applications for voter registration on a Federal Post Card Application or Federal Write-in Absentee Ballot.** The following omissions are not material:

1. Service identification number, rank, grade, or rate on an application that declares active duty military status.

2. Employer name and address on an application that declares temporary overseas residence with no date of last residence.

3. Employer name and address on an application that declares temporary overseas residence with a date of last residence. If practicable, the general registrar should inform the applicant that eligibility for full ballots requires providing the name and address of an employer outside the United States.

4. Date of last residence on an application that declares indefinite overseas residence. The date of last residence for an application declaring indefinite overseas residence without indicating a date of last residence in the United States shall be the date the application is signed.

#### **1VAC20-45-30. Electronic submission of Federal Post Card Application.**

An applicant eligible for registration who applies for registration simultaneously with a request for an absentee ballot on a Federal Post Card Application (FPCA) as authorized by §§ 24.2-458 and 24.2-703 of the Code of Virginia may apply for registration as well as request an absentee ballot by facsimile transmission or scanned email attachment. An electronically submitted FPCA shall be sufficient to apply for registration and request an absentee ballot if signed and otherwise complete.

**1VAC20-45-40. Material omissions from Federal Write-In Absentee Ballots.**

A. Pursuant to the requirements of §§ 24.2-467, 24.2-702.1, and 24.2-706 of the Code of Virginia, a timely received write-in absentee ballot on a Federal Write-In Absentee Ballot (FWAB) (Form SF-186) should not be rendered invalid if it contains an error or omission not material to determining the eligibility of the applicant to vote in the election in which he offers to vote.

B. If the applicant is not registered, the FWAB may not be accepted as timely for registration unless the applicant has met the applicable registration deadline. Section 24.2-419 of the Code of Virginia extends the mail registration deadline for certain military applicants. All applications requesting mailed ballots are subject to the mail absentee application deadline in §§ 24.2-459 and 24.2-701 of the Code of Virginia.

C. The following omissions are always material and any FWAB containing such omissions should be rendered invalid if on the declaration/affirmation any of the following, or combination thereof, exists:

1. The applicant has omitted the signature of the voter or the notation of an assistant in the voter signature box that the voter is unable to sign;
2. The applicant has omitted the signature of the witness;  
or
3. The applicant did not include the declaration/affirmation page.

D. The ballot should not be rendered invalid if on the FWAB any of the following, or combination thereof, exists:

1. The applicant has not listed the names specifically in the order of last, first, and middle name;
2. The applicant has listed a middle initial or maiden name, instead of the full middle name;
3. The applicant has omitted the street identifier, such as the term "road" or "street," when filling in the legal residence;
4. The applicant has omitted the county or city of registration if the county or city is clearly identifiable by the residence address information provided;
5. The applicant has omitted the zip code;
6. The applicant has omitted the date of the signature of the voter;
7. The applicant has omitted the address of the witness;
8. The applicant has omitted the date of signature of the witness;
9. The applicant did not seal the ballot within the security envelope, provided there is substantial compliance with the requirement that the ballot be accompanied by the required voter statement; or
10. The applicant has submitted a ballot containing offices or issues for which he is not eligible.

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (1VAC20-45)

[Federal Post Card Application \(FPCA\), Voter Registration and Absentee Ballot Request, Standard Form 76 \(rev. 8/11\)](#)

[Federal Write-in Absentee Ballot \(FWAB\), Voter's Declaration/Affirmation, Standard Form 186 \(rev. 8/11\)](#)

[Envelope B for Statement of UOCAVA Absentee Voter, 42 USC 1973ff-1 \(rev. 7/13\)](#)

VA.R. Doc. No. R14-3928; Filed December 9, 2013, 12:48 p.m.

**Final Regulation**

**Title of Regulation:** **1VAC20-50. Candidate Qualification (amending 1VAC20-50-30).**

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

**Effective Date:** December 30, 2013.

**Agency Contact:** Myron McClees, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8949, FAX (804) 786-0760, or email myron.mcclees@sbe.virginia.gov.

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

**Summary:**

*The amendments clarify the provision regarding affidavits from persons whose signatures were rejected due to illegibility.*

**1VAC20-50-30. Appeals of petition signature insufficiency.**

A. Pursuant to the requirements of §§ 24.2-506 and 24.2-543 of the Code of Virginia, a candidate for office, other than a party nominee, may appeal a determination that the candidate has failed to provide the required number of valid petition signatures necessary to qualify to appear on the ballot.

B. Any communication or notice required in this section shall be made in writing and delivered by mail or, unless otherwise prohibited by the Code of Virginia, electronically by electronic mail or facsimile. Notice of appeal from candidates must bear a photographically reproducible notary seal and be received by the deadlines established within this section.

C. A candidate for a county, city, or town office shall file his appeal with the local electoral board. A candidate for any other office shall file his appeal with the State Board of Elections.

---

# Regulations

---

D. A candidate for an office other than President of the United States must file his appeal within five calendar days of the issuance of the notice of disqualification.

E. A candidate for President of the United States must file his appeal within seven calendar days of the issuance of the notice of disqualification.

F. The proper body to which the appeal notice was given shall establish the time and place where the appeal will be heard and convey this information immediately to the candidate. Electronic mail will be the preferred method of notifying the candidate if such address has been provided by the candidate; otherwise, notice shall be sent by first-class mail.

G. The candidate bears the burden of proof in establishing that a sufficient number of signatures from qualified voters were timely provided.

1. The candidate must submit a list containing the rejected signatures to be reviewed and the specific reason for each signature's reconsideration at least two business days prior to the date on which the appeal will be heard. If the candidate submits no list, or submits a list that contains an insufficient number of names and reconsideration reasons to make up the number of signatures by which the candidate was deemed deficient, no appeal shall be held and the initial determination that the candidate did not qualify for the ballot will be final.

2. The candidate may submit documents clarifying the status of persons whose signatures were rejected for lacking proper registration status or residence.

3. The candidate may submit documents establishing the age of majority for any signer who was listed as ineligible due to status of being a legal minor.

4. The candidate may submit affidavits from persons whose signatures were rejected due to illegibility that attest to their identity. ~~If possible, the~~ The affidavits should state the person's name, residence address, and, ~~if possible,~~ a reasonable description of the location where approached by the circulator to sign the petition.

5. The candidate may not submit documents establishing that a petition signer became registered or updated his voter registration status to the address provided upon the petition after the established candidate filing deadline for the office sought.

H. Individual signatures reconsidered during the appeal will only count towards the candidate's requisite number if a majority of board members agree that sufficient evidence exists for their inclusion.

I. All determinations of the board before which the appeal is being heard shall be considered final and not subject to further appeal.

V.A.R. Doc. No. R14-3933; Filed December 10, 2013, 8:34 a.m.

## Proposed Regulation

Title of Regulation: **1VAC20-60. Election Administration (amending 1VAC20-60-30, 1VAC20-60-40, 1VAC20-60-50).**

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

Public Hearing Information: A public hearing will be scheduled. Contact the agency for details.

Public Comment Deadline: January 8, 2014.

Agency Contact: Myron McClees, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8949, FAX (804) 786-0760, or email myron.mcclees@sbe.virginia.gov.

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

### Summary:

*The proposed amendments (i) clarify the use of electronic devices in the polling place, (ii) establish that a ballot is cast for provisional ballots when the voter relinquishes possession of a completed provisional ballot envelope containing the ballot to the possession of an officer of election, and (iii) establish the process for emptying an overfull ballot container in a single-party primary election.*

### **1VAC20-60-30. Electronic devices in polling place.**

A. Representatives of candidates and political parties authorized to observe the election may use cell phones or other electronic devices provided that the ~~device contains no camera or video recording capacity~~ camera function is not used within the polling place. The officers of election are responsible to monitor the use of electronic devices for observation of the election and may regulate or prohibit any use the officers determine will hinder or delay a voter or officer of election or otherwise impede the orderly conduct of the election.

Whether a particular call or calls by any authorized representative is deemed to interfere or disrupt the voting process is within the discretion of the officers of election at each ~~precinct~~ polling place as a majority. Any authorized representative may be required to cease the call, make or receive any such calls outside the ~~precinct~~ polling place, or be removed from the polling ~~precinct~~ place.

B. Use of cell phones and other electronic devices by other persons at polling places shall be monitored by the officers of election who may regulate or prohibit any use the officer determines will hinder or delay a voter or officer of election or otherwise impede the orderly conduct of the election. Use of electronic devices may not interfere nor disrupt the voting process, nor attempt to solicit or attempt to influence any person in casting his vote. At no time may any person use a camera or the camera function on an electronic device to film, digitally capture, or take pictures within the polling place

unless such person is an authorized member of the media filming in accordance with § 24.2-604 J of the Code of Virginia. Once a voter enters the prohibited area at the polls as designated in § 24.2-604 of the Code of Virginia, the use of a cell phone or other electronic communication device may be prohibited if deemed a violation of § 24.2-1006 of the Code of Virginia, or if otherwise deemed disruptive to the voting process.

C. Grounds for regulating or prohibiting use of electronic devices include but are not limited to (i) the making or receiving of calls that interfere with or become disruptive to the voting process; (ii) the making or receiving of calls in an attempt to solicit or influence any person in casting his vote; ~~or~~ (iii) the usage of the camera function to film within the polling place or beyond the 40-foot prohibited area; or (iv) the person using the device is conducting himself in a noisy or riotous manner at or about the polls so as to disturb the election.

D. An officer of election may require any individual using an electronic device subject to regulation under subsection C of this section to cease such use, make or receive calls outside the ~~precinct~~ polling place, or remove the use of the device from the polling place.

E. Any action taken pursuant to this section is within the judgment of the officers of election as a majority.

F. The determination of the officers of election of any dispute concerning the use of electronic devices shall be subject to immediate appeal to the local electoral board.

#### **1VAC20-60-40. When ballot cast.**

A. A voter, voting in person on election day or voting absentee in-person, has not voted until a permanent record of the voter's intent is preserved.

B. A permanent record is preserved by a voter (i) pressing the vote or cast button on a direct recording electronic machine, (ii) inserting an optical scan ballot into an electronic counter, ~~or~~ (iii) placing a paper ballot in an official ballot container, or (iv) relinquishing possession of a completed provisional ballot envelope containing the ballot to the possession of an officer of election.

C. A vote has not been cast by the voter unless and until the voter or an officer of election or assistant at the direction of and on behalf of the voter pursuant to § 24.2-649 of the Code of Virginia completes these actions to preserve a permanent record of the vote.

D. If any voter's ballot was not so cast by or at the direction of the voter, then the ballot cannot be cast by any officer of election or other person present. Notwithstanding the previous sentence, if a voter inserts a ballot into an optical scanner and departs prior to the ballot being returned by the scanner due to an undervote or overvote, the officer of election may cast the ballot for the absent voter.

E. An absentee voter who votes other than in person shall be deemed to have cast his ballot at the moment he personally

delivers the ballot to the general registrar or electoral board or relinquishes control over the ballot to the United States Postal Service or other authorized carrier for returning the ballot as required by law.

#### **1VAC20-60-50. Overfull optical scan ballot container.**

If an optical scan reader in use in a registrar's office or a polling place malfunctions because the connected ballot container includes too many ballots, election officials may open the ballot container and empty the ballots with the following safeguards:

1. The optical scan ballot container shall be opened in plain sight of any authorized party representatives or other observers and, once the ballots have been deposited into an auxiliary ballot container, both ballot containers shall remain in plain sight in the polling place.
2. Any such auxiliary ballot container used shall meet the requirements of § 24.2-623 of the Code of Virginia.
3. A minimum of two officers of election, representing both political parties, shall execute such a transfer of ballots. In a single-party primary election, the transfer shall be conducted by a minimum of two officers of election who may be members of the same party.

VA.R. Doc. No. R14-3932; Filed December 9, 2013, 12:50 p.m.

#### **Proposed Regulation**

Title of Regulation: **1VAC20-70. Absentee Voting (amending 1VAC20-70-10; repealing 1VAC20-70-30).**

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

Public Hearing Information: A public hearing will be scheduled. Contact the agency for details.

Public Comment Deadline: January 13, 2014.

Agency Contact: Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, FAX (804) 371-0194, or email martha.brissette@sbe.virginia.gov.

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

#### Summary:

*The proposed amendments remove provisions related to absent military and overseas voters, which are being relocated in a separate regulatory action to a new chapter numbered 1VAC20-45.*

#### **1VAC20-70-10. Definitions.**

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

"Application for an absentee ballot" means an application for an absentee ballot submitted on any form approved for that purpose according to federal and state laws. The term includes a Virginia Absentee Ballot Application (SBE-701);

---

# Regulations

---

~~and a Virginia Annual Absentee Ballot Application (SBE-703.1), and a Federal Post Card Application (SF 76A). A Federal Write In Absentee Ballot (SF 186A) is an absentee ballot application only for the voted ballot being submitted and is not an application for future elections.~~

"Envelope B" means the envelope required by § 24.2-706 of the Code of Virginia which identifies the voter.

~~"Federal only ballot overseas voter" means a United States citizen residing outside the United States indefinitely who has not provided his last date of residence in Virginia. The date the applicant has provided next to his affirmation will serve as his last date of residence.~~

## **1VAC20-70-30. Material omissions from Federal Write In Absentee Ballots. (Repealed.)**

~~A. Pursuant to the requirements of §§ 24.2-702.1 and 24.2-706 of the Code of Virginia, a timely received write in absentee ballot on a Federal Write In Absentee Ballot (FWAB) (Form SF 186A) should not be rendered invalid if it contains an error or omission not material to determining the eligibility of the applicant to vote in the election in which he offers to vote.~~

~~B. If the applicant is not registered, the FWAB may not be accepted as timely for registration unless the applicant has met the applicable registration deadline. Section 24.2-419 of the Code of Virginia extends the mail registration deadline for certain military applicants. All applicants are subject to the absentee application deadline in § 24.2-701 of the Code of Virginia.~~

~~C. The following omissions are always material and any FWAB containing such omissions should be rendered invalid if any of the following, or combination thereof, exists:~~

- ~~1. The applicant has omitted the signature of the voter or the notation of an assistant in the voter signature box that the voter is unable to sign;~~
- ~~2. The applicant has omitted the signature of the witness;~~
- ~~3. The applicant did not include the declaration/affirmation page; or~~
- ~~4. The applicant omitted from the declaration/affirmation information required by § 24.2-702.1 of the Code of Virginia needed to determine eligibility including, but not limited to, current military or overseas address.~~

~~D. The ballot should not be rendered invalid if on the FWAB any of the following, or combination thereof, exists:~~

- ~~1. The applicant has not listed the names specifically in the order of last, first, and middle name;~~
- ~~2. The applicant has listed a middle initial or maiden name, instead of the full middle name;~~
- ~~3. The applicant has omitted the street identifier, such as the term "road" or "street" when filling in the legal residence;~~

- ~~4. The applicant has omitted the county or city of registration if the county or city is clearly identifiable by the residence address information provided;~~
- ~~5. The applicant has omitted the zip code;~~
- ~~6. The applicant has omitted the date of the signature of the voter;~~
- ~~7. The applicant has omitted the address of the witness;~~
- ~~8. The applicant has omitted the date of signature of the witness;~~
- ~~9. The applicant did not seal the ballot within the security envelope, provided there is substantial compliance with the requirement that the ballot be accompanied by the required voter statement; or~~
- ~~10. The applicant has submitted a ballot containing offices or issues for which he is not eligible.~~

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

### FORMS (1VAC20-70)

- ~~Absentee Ballot Application Form, SBE 701 (rev. 7/10)~~
- ~~Annual Absentee Ballot Application, SBE 703.1 (rev. 1/10)~~
- ~~Federal Post Card Application (FPCA), Voter Registration and Absentee Ballot Request, Standard Form 76 (rev. 08/11)~~
- ~~Federal Write in Absentee Ballot (FWAB), Voter's Declaration/Affirmation, Standard Form 186 (rev. 08/11)~~
- ~~Envelope B for Statement of UOCAVA Absentee Voter, 42 USC 1973ff 1(b) (rev. 5/04)~~
- ~~Envelope B for Statement of Absentee Voter, SBE 706-2 (rev. 7/03)~~
- [Annual Absentee Ballot Application, SBE-703.1 \(rev. 7/13\)](#)
- [Virginia Absentee Ballot Application Form, SBE-701 \(rev. 7/13\)](#)
- [Envelope B - Ballot - Statement of Absentee Voter, \(undated\)](#)

V.A.R. Doc. No. R14-3930; Filed December 9, 2013, 12:51 p.m.



## TITLE 3. ALCOHOLIC BEVERAGES

### ALCOHOLIC BEVERAGE CONTROL BOARD

#### Final Regulation

Title of Regulation: **3VAC5-50. Retail Operations (amending 3VAC5-50-10, 3VAC5-50-20, 3VAC5-50-40, 3VAC5-50-60, 3VAC5-50-100, 3VAC5-50-110, 3VAC5-50-160).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Effective Date: January 29, 2014.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov).

Summary:

*The amendments (i) clarify the types of restaurants that are eligible for a wine and beer license and further distinguish restaurants that are eligible for a mixed beverage license; (ii) extend the current statutory provisions for licensees (e.g., ability to read, write, speak, and understand the English language) to managers; (iii) lower the dollar amount of food that must be sold at gourmet shops in order for them to be licensed from \$2,000 to \$1,000; (iv) describe the specific criminal conduct that disqualifies an employee of a business rather than cite specific sections of the Code of Virginia; and (v) expand a restaurant's ability to advertise that drink specials are offered during specific times, without allowing advertising of specific special prices.*

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.

**3VAC5-50-10. Restrictions upon sale [ ~~possession~~ ] and consumption of alcoholic beverages.**

A. Except as may be otherwise permitted under ~~subdivisions 1 through 5~~ subdivision 7 of § 4.1-200 of the Code of Virginia, no licensee shall sell any alcoholic beverage to a person whom he shall know, or have reason at the time to believe, is:

1. Under the age of 21 years;
2. Intoxicated; or
3. An interdicted person.

B. No licensee shall allow the [ ~~possession of~~ ] consumption of any alcoholic beverage upon his licensed premises by any person to whom such alcoholic beverage may not lawfully be sold under this section [ ~~except where possession of the alcoholic beverage by a person younger than 21 years of age is due to such person's making a delivery~~

~~of alcoholic beverages in pursuance of his employment or an order of his parent, or by any state, federal, or local law enforcement officer when possession of an alcoholic beverage is necessary in the performance of his duties ]~~.

**3VAC5-50-20. Determination of legal age of purchaser.**

A. In determining whether a licensee, or his employee or agent, has reason to believe that a purchaser is not of legal age, the board will consider, but is not limited to, the following factors:

1. Whether an ordinary and prudent person would have reason to doubt that the purchaser is of legal age based on the general appearance, facial characteristics, behavior and manner of the purchaser; and
2. Whether the seller demanded, was shown and acted in good faith in reliance upon bona fide evidence of legal age, as defined herein, and that evidence contained a photograph and physical description consistent with the appearance of the purchaser.

B. Such bona fide evidence of legal age shall include a valid motor vehicle driver's license issued by any state of the United States or the District of Columbia, armed forces identification card, United States passport or foreign government visa, valid special identification card issued by the Virginia Department of Motor Vehicles, or any valid identification issued by any other federal or state government agency, excluding student university and college identification cards, provided such identification shall contain a photograph and signature of the subject, with the subject's height, ~~weight~~ and date of birth.

C. It shall be incumbent upon the licensee, or his employee or agent, to scrutinize carefully the identification, if presented, and determine it to be authentic and in proper order. Identification which has been altered so as to be apparent to observation or has expired shall be deemed not in proper order.

**3VAC5-50-40. Designated managers of licensees; appointment generally; disapproval by board; restrictions upon employment.**

A. Each retail licensee, except a licensed individual who is on the premises, shall have a designated manager able to understand and communicate in the English language in a reasonably satisfactory manner present and in actual charge of the business being conducted under the license at any time the licensed establishment is kept open for business, whether or not the privileges of the license are being exercised. The name of the designated manager of every retail licensee shall be kept posted in a conspicuous place in the establishment, in letters not less than one inch in size, during the time he is in charge.

The posting of the name of a designated manager shall qualify such person to act in that capacity until disapproved by the board.

---

# Regulations

---

B. The board reserves the right to disapprove any person as a designated manager if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has committed any act that would justify the board in suspending or revoking a license.

Before disapproving a designated manager, the board shall accord him the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.

C. No licensee of the board shall knowingly permit a person under 21 years of age, nor one who has been disapproved by the board within the preceding 12 months, to act as designated manager of his business.

D. Notwithstanding the provisions of § 4.1-225 (1) (i) of the Code of Virginia, the board will not take action to suspend or revoke a retail license if a licensee knowingly employs a person who has been convicted in any court of a felony or of any crime or offense involving moral turpitude, except in the following two categories:

1. The board may suspend or revoke a license if a licensee knowingly employs in the business conducted under such license, as agent, servant, or employee, in a position that is involved in the selling or serving of alcoholic beverages to customers, any person who has been convicted of a felony violation of ~~Articles 1 (§ 18.2-248 et seq.), 1.1 (§ 18.2-265.1 et seq.), or 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2~~ the laws of the Commonwealth prohibiting the manufacture, sale, distribution, use, or possession of controlled substances, imitation controlled substances, counterfeit controlled substances, marijuana, or synthetic cannabinoids; driving under the influence of alcohol or other self-administered intoxicants; or a similar offense under the laws of any state, or the United States; or

2. The board may suspend or revoke a license if a licensee knowingly employs in the business conducted under such license, as agent, servant, or employee, in a position that is involved in the creation or maintenance of records required to be kept by the licensee under the provisions of Title 4.1 of the Code of Virginia or board regulations, or in the preparation or filing of any tax return or report required under Title 4.1 or Title 58.1 of the Code of Virginia or board regulations, any person who has been convicted of a felony violation of ~~Articles 2 (§ 18.2-89 et seq.), 3 (§ 18.2-97.1 et seq.), 4 (§ 18.2-112.1 et seq.), or 7.1 (§ 18.2-152.2 et seq.) of Chapter 5 of Title 18.2 or Articles 1 (§ 18.2-172.2 et seq.), 3 (§ 18.2-178 et seq.), 4 (§ 18.2-182 et seq.), 5 (§ 18.2-186 et seq.), 6 (§ 18.2-194 et seq.), or 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2~~ the laws of the Commonwealth prohibiting robbery, burglary, larceny, embezzlement, computer crimes, forgery, false pretenses, issuing bad checks, false representations to obtain property or credit, credit card forgery or fraud, or money laundering,

or a similar offense under the laws of any state, or the United States.

E. If a retail licensee wishes to employ a person whose employment would be covered by subdivisions D 1 or 2 of this section, or who has violated the laws of the Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages, the licensee may apply to the board for approval of such employment. The board will cause the Bureau of Law Enforcement Operations to conduct an investigation into the suitability of the person for employment and recommend approval or disapproval. Before disapproving the employment of a person, the board shall accord him the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.

### **3VAC5-50-60. Procedures for mixed beverage licensees generally; mixed beverage restaurant licensees; sales of spirits in closed containers.**

A. No mixed beverage restaurant or carrier licensee shall:

1. Prepare, other than ~~in frozen drink dispensers of types approved by the board~~ drinks, or sell any mixed beverage except pursuant to a patron's order and immediately preceding delivery to him.
2. Serve as one drink the entire contents of a container of spirits in its original container for on-premises consumption except as provided by subsections C, D, and E [ of this section ].
3. Sell any mixed beverage to which alcohol has been added.

B. No mixed beverage restaurant licensee shall:

1. Allow to be kept upon the licensed premises any container of alcoholic beverages of a type authorized to be purchased under his license that does not bear the required mixed beverage stamp imprinted with his license number and purchase report number.
2. Use in the preparation of a mixed beverage any alcoholic beverage not purchased from the board or a wholesale wine licensee.
3. Fail to obliterate the mixed beverage stamp immediately when any container of spirits is emptied.
4. Allow any patron to possess more than two drinks of mixed beverages at any one time.

C. If a restaurant for which a mixed beverage restaurant license has been issued under § 4.1-210 of the Code of Virginia is located on the premises of a hotel or motel, whether the hotel or motel be under the same or different ownership, sales of mixed beverages, including sales of spirits packaged in original closed containers purchased from the board, as well as other alcoholic beverages, for consumption in bedrooms and private rooms of such hotel or

motel, may be made by the licensee subject to the following conditions in addition to other applicable laws:

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon purchase forms provided by the board;
2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made only in the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function;
3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic beverages, shall be included in the gross receipts from sales of all such merchandise made by the licensee; and
4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

D. Carrier licensees may serve miniatures not in excess of two fluid ounces or 50 milliliters, in their original containers, for on-premises consumption.

E. A mixed beverage restaurant may serve as one drink the entire contents of a container of soju in its original container for on-premises consumption under the following conditions:

1. The container may be no larger than 375 milliliters.
2. Each container of soju served must be served for consumption by at least two patrons legally eligible to consume alcoholic beverages.

**3VAC5-50-100. Definitions and qualifications for retail off-premises wine and beer licenses and off-premises beer licenses; exceptions; further conditions; temporary licenses.**

A. Retail off-premises wine and beer licenses may be issued to persons operating the following types of establishments provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

1. "Delicatessen." An establishment which sells a variety of prepared foods or foods requiring little preparation such as cheeses, salads, cooked meats and related condiments:  
 Monthly sales ..... \$2,000  
 Inventory (cost) ..... \$2,000
2. "Drugstore." An establishment selling medicines prepared by a registered pharmacist according to prescription and other medicines and articles of home and general use [ ~~§~~ ]  
 Monthly sales ..... \$2,000

Inventory (cost) ..... \$2,000

3. "Grocery store." An establishment which sells edible items intended for human consumption, including a variety of staple foodstuffs used in the preparation of meals:

Monthly sales ..... \$2,000  
 Inventory (cost) ..... \$2,000

4. "Convenience grocery store." An establishment which has an enclosed room in a permanent structure where stock is displayed and offered for sale, and which sells edible items intended for human consumption, consisting of a variety of such items of the type normally sold in grocery stores:

Monthly sales ..... \$2,000  
 Inventory (cost) ..... \$2,000

In regard to both grocery stores and convenience grocery stores, "edible items" shall mean such items normally used in the preparation of meals, including liquids.

5. "Gourmet shop." An establishment provided with adequate shelving and storage facilities which [ ~~sell~~ sells ] products such as cheeses and gourmet foods:

Monthly sales ..... ~~\$2,000~~ \$1,000  
 Inventory (cost) ..... ~~\$2,000~~ \$1,000

B. Retail off-premises beer licenses may be issued to persons operating the following types of establishments provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

1. "Delicatessen." An establishment as defined in [ ~~subsection A subdivision A 1 of this section~~ ]:

Monthly sales ..... \$1,000  
 Inventory (cost) ..... \$1,000

2. "Drugstore." An establishment as defined in [ ~~subsection A subdivision A 2 of this section~~ ]:

Monthly sales..... \$1,000  
 Inventory (cost) ..... \$1,000

3. "Grocery store." An establishment as defined in [ ~~subsection A subdivision A 3 of this section~~ ]:

Monthly sales..... \$1,000  
 Inventory (cost) ..... \$1,000

4. "Marina store." An establishment operated by the owner of a marina which sells food and nautical and fishing supplies:

Monthly sales..... \$1,000  
 Inventory (cost) ..... \$1,000

C. The board may grant a license to an establishment not meeting the qualifying figures in subsections A and B [ of this section ] provided it affirmatively appears that there is a substantial public demand for such an establishment and that



---

# Regulations

---

public convenience will be promoted by the issuance of the license.

D. The board in determining the eligibility of an establishment for a license shall give consideration to, but shall not be limited to, the following:

1. The extent to which sales of required commodities are secondary or merely incidental to sales of all products sold in such establishment;
2. The extent to which a variety of edible items of the types normally found in grocery stores are sold; and
3. The extent to which such establishment is constructed, arranged or illuminated to allow reasonable observation of the age and sobriety of purchasers of alcoholic beverages.

E. Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with § 4.1-230 of the Code of Virginia and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to that establishment for a period of one year from the expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

## **3VAC5-50-110. Definitions and qualifications for retail on-premises and on-premises and off-premises licenses generally; mixed beverage licensee requirements; exceptions; temporary licenses.**

A. The following definitions shall apply to retail licensees with on-premises consumption privileges and mixed beverage licensees where appropriate:

1. "Bona fide, full-service restaurant" means an established place of business where meals are regularly sold to persons and that has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises.

2. "Counter" means a long, narrow surface with stools or chairs along one side for the patrons, behind which refreshments or meals are prepared and served.

~~4. "Designated area." A~~ 3. "Designated area" means a room or an area in which a licensee may exercise the privilege of his license, the location, equipment and facilities of which room or area have been approved by the board. The facilities shall be such that patrons may purchase food prepared on the premises for consumption on the premises at substantially all times that alcoholic beverages are offered for sale therein. ~~The seating capacity of such room~~

~~or area shall be included in determining eligibility qualifications for a mixed beverage restaurant.~~

~~2. "Dining car, buffet car or club car." A vehicle operated by a common carrier of passengers by rail, in interstate or intrastate commerce and in which food and refreshments are sold.~~

~~3. "Meals." In determining what constitutes a "meal" as the term is used in this section, the board may consider the following factors, among others:~~

- ~~a. The assortment of foods commonly offered for sale;~~
- ~~b. The method and extent of preparation and service required; and~~
- ~~c. The extent to which the food served would be considered a principal meal of the day as distinguished from a snack.~~

~~4. "Habitual sales." In determining what constitutes "habitual sales" of specific foods, the board may consider the following factors, among others:~~

- ~~a. The business hours observed as compared with similar type businesses;~~
- ~~b. The extent to which such food or other merchandise is regularly sold; and~~
- ~~c. Present and anticipated sales volume in such food or other merchandise.~~

~~5. "Sale" and "sell." The definition of "sale" and "sell" as defined in 3VAC5 70 90 shall apply to this section.~~

4. "Dining area" means a public room or area in which meals are regularly sold at substantially all hours that alcoholic beverages are offered for sale therein.

5. "Meal" means a selection of foods for one individual, served and eaten especially at one of the customary, regular occasions for taking food during the day, such as breakfast, lunch, or dinner, that consists of at least one main dish of meat, fish, poultry, legumes, nuts, seeds, eggs, or other protein sources, accompanied by vegetable, fruit, grain, or starch products.

6. "Table" means an article of furniture supported by one or more vertical legs [ or similar supports ] and having a flat horizontal surface suitable for the service of meals [ , not immediately adjacent to the area where refreshments or meals are prepared ].

B. Wine and beer. Retail on-premises or on-premises and off-premises licenses may be granted to persons operating the following types of establishments provided that meals or other foods are regularly sold at substantially all hours that wine and beer are offered for sale and the total monthly food sales for consumption in dining areas and other designated areas on the premises are not less than those shown:

1. "Boat" (on premises only). A common carrier of passengers for which a certificate as a sight-seeing carrier by boat, or a special or charter party by boat has been

issued by the State Corporation Commission, habitually serving food on the boat:

Monthly sales .....\$2,000

2. "Restaurant." A bona fide dining establishment ~~habitually~~ regularly selling meals with entrees and other foods prepared on the premises:

Monthly sales .....\$2,000

3. "Hotel." Any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, meals ~~with entrees~~ and other food prepared on the premises and lodging are habitually furnished to persons and which has four or more bedrooms:

Monthly sales .....\$2,000

In regard to both restaurants and hotels, at least \$1,000 of the required monthly sales must be in the form of meals ~~with entrees~~.

4. "Gourmet Oyster House." Any duly licensed establishment, located on the premises of a commercial marina and permitted by the Department of Health to serve oysters and other fresh seafood for consumption on the premises, where the licensee also offers to the public events for the purpose of featuring oysters and other seafood products:

Monthly sales of oysters and other seafood.....\$1,000

C. Beer. Retail on-premises or on-premises and off-premises licenses may be granted to persons operating the following types of establishments provided that food is regularly sold at substantially all hours that beer is offered for sale and the total monthly food sales for consumption in dining areas and other designated areas on the premises are not less than those shown:

1. "Boat" (on-premises only). See subdivision B 1 [ of this section ]:

Monthly sales .....\$2,000

2. "Restaurant." An establishment ~~habitually~~ regularly selling food prepared on the premises:

Monthly sales .....\$2,000

3. "Hotel." See subdivision B 3 [ of this section ];

Monthly sales .....\$2,000

D. Mixed beverage licenses. ~~The following shall apply to mixed beverage licenses where appropriate: Mixed beverage restaurant licenses may be granted to persons operating bona fide, full-service restaurants.~~

1. "Bona fide, full service restaurant." ~~An established place of business where meals with substantial entrees are habitually sold to persons and which has adequate facilities and sufficient employees for cooking, preparing and serving such meals for consumption at tables in dining areas on the premises. In determining the qualifications of such restaurant, the board may consider the assortment of entrees and other food sold. Such restaurants shall include~~

~~establishments specializing in full course meals with a single substantial entree.~~

2. ~~"Monetary sales requirements." The monthly sale of food prepared on the premises shall not be less than \$4,000 of which at least \$2,000 shall be in the form of meals with entrees.~~

3. ~~"Dining area." A public room or area in which meals are regularly sold at substantially all hours that mixed beverages are offered for sale therein.~~

4. ~~"Outside terraces or patios." An outside terrace or patio, the location, equipment and facilities of which have been approved by the board may be approved as a "dining area" or as a "designated area" in the discretion of the board. A location adjacent to a public sidewalk, street or alley will not be approved where direct access is permitted from such sidewalk, street or alley by more than one well-defined entrance therefrom. The seating capacity of an outside terrace or patio if used regularly by those operations which are seasonal in nature, shall be included in determining eligibility qualifications. For purposes of this subdivision, the term "seasonal operations" is defined as an establishment that voluntarily surrenders its license to the board for part of its license year.~~

5. ~~"Tables and counters."~~

a. ~~A "table" shall include any article of furniture, fixture or counter generally having a flat top surface supported by legs, a pedestal or a solid base, designed to accommodate the serving of food and refreshments (though such food and refreshments need not necessarily be served together), and to provide seating for customers. If any table is located between two backed benches, commonly known as a booth, at least one end of the structure shall be open permitting an unobstructed view therein. In no event, shall the number of individual seats at free standing tables and in booths be less than the number of individual seats at counters.~~

b. ~~This subdivision shall not be applicable to a room otherwise lawfully in use for private meetings and private parties limited in attendance to members and guests of a particular group.~~

1. Service of food in a bona fide, full-service restaurant shall consist of [ taking a food order at the table, and ] serving the food to the table on plates or appropriate dinnerware, accompanied by appropriate tableware. The board may approve the issuance of a mixed beverage restaurant license to a buffet restaurant if (i) both alcoholic and nonalcoholic beverage service is provided at the table and (ii) actual sales show that the requirements of subdivision D 2 of this section are met.

2. Monthly sales of food prepared on the premises of a mixed beverage restaurant licensee shall not be less than \$4,000, of which at least \$2,000 shall be in the form of meals.

---

# Regulations

---

3. A mixed beverage restaurant licensee must have at least as many seats at tables as at counters.

E. The board may grant a license to an establishment not meeting the qualifying figures in this section, provided the establishment otherwise is qualified under the applicable provisions of the Code of Virginia and this section, if it affirmatively appears that there is a substantial public demand for such an establishment and that the public convenience will be promoted by the issuance of the license.

F. Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with § 4.1-230 of the Code of Virginia, and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to the establishment for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

G. An outside terrace or patio, the location, equipment, and facilities of which have been approved by the board, may be approved as a "dining area" or as a "designated area" in the discretion of the board.

H. Limited mixed beverage licenses may be granted to persons operating restaurants as defined in § 4.1-100 of the Code of Virginia, provided that food is regularly sold at substantially all hours that alcoholic beverages are offered for sale, and the total monthly food sales of food cooked or prepared on the premises for consumption in dining areas and other designated areas on the premises are not less than \$2,000.

### **3VAC5-50-160. Happy hour and related promotions; definitions; exceptions.**

#### A. Definitions:

1. "Happy Hour." A specified period of time during which alcoholic beverages are sold at prices reduced from the customary price established by a retail licensee.
2. "Drink." Any beverage containing the amount of alcoholic beverages customarily served to a patron as a single serving by a retail licensee.

B. No retail licensee shall engage in any of the following practices:

1. Conducting a happy hour between 9 p.m. of each day and 2 a.m. of the following day;
2. Allowing a person to possess more than two drinks at any one time during a happy hour;

3. Increasing the volume of alcoholic beverages contained in a drink without increasing proportionately the customary or established retail price charged for such drink;
4. Selling two or more drinks for one price, such as "two for one" or "three for one";
5. Selling pitchers of mixed beverages;
6. Giving away drinks;
7. Selling an unlimited number of drinks for one price, such as "all you can drink for \$5.00"; ~~or~~
8. Advertising happy hour ~~in the media or on the exterior anywhere other than within the interior~~ of the licensed premises, except that a licensee may use the term "Happy Hour" or "Drink Specials" and the time period within which alcoholic beverages are being sold at reduced prices in any otherwise lawful advertisement; or
9. Establishing a customary retail price for any drink at a markup over cost significantly less than that applied to other beverages of similar type, quality, or volume.

C. This regulation shall not apply to prearranged private parties, functions, or events, not open to the public, where the guests thereof are served in a room or rooms designated and used exclusively for private parties, functions or events.

V.A.R. Doc. No. R12-3239; Filed December 2, 2013; 4:38 p.m.



## **TITLE 4. CONSERVATION AND NATURAL RESOURCES**

### **MARINE RESOURCES COMMISSION**

#### **Emergency Regulation**

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

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

Effective Dates: December 11, 2013, through January 10, 2014.

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

#### Preamble:

*This emergency action clarifies that oysters less than the minimum cull size, which are adhering so closely to the shell of any marketable oyster as to render removal impossible without destroying the oysters less than the minimum cull size and which need not be removed, (i) shall be considered lawful and (ii) shall not be included in the culling tolerances or standards.*

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

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

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

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

D. From the seaside of the Eastern Shore, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found per bushel of clean cull oysters inspected by any police officer, it shall constitute a violation of this chapter.

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

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

VA.R. Doc. No. R14-3942; Filed December 11, 2013, 2:44 p.m.

---

## TITLE 9. ENVIRONMENT

### VIRGINIA WASTE MANAGEMENT BOARD

#### Final Regulation

**Title of Regulation:** 9VAC20-160. Voluntary Remediation Regulations (amending 9VAC20-160-10 through 9VAC20-160-120).

**Statutory Authority:** § 10.1-1232 of the Code of Virginia.

**Effective Date:** January 29, 2014.

**Agency Contact:** Gary E. Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, TTY (804) 698-4021, or email gary.graham@deq.virginia.gov.

#### Summary:

*The regulatory action (i) updates current remediation levels and sampling and analysis methods; (ii) improves reporting and notification requirements; (iii) clarifies eligibility, application, registration fee, and termination requirements; (iv) makes termination and certificate revocation requirements more consistent with a voluntary program; (v) updates program procedures to process contaminated sites more efficiently and reflect changes in technology; and (vi) changes the language for fees so that an affected entity will pay \$5,000 at the start of a remediation project and may apply for a refund of any unowed moneys at the end.*

**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.

#### 9VAC20-160-10. Definitions.

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

"Authorized agent" means any person who is authorized in writing to fulfill the requirements of this program.

"Carcinogen" means a chemical classification for the purpose of risk assessment as an agent that is known or suspected to cause cancer in humans, including but not limited to a known or likely human carcinogen or a probable or possible human carcinogen under an EPA weight-of-evidence classification system.

"Certificate" means a written certification of satisfactory completion of remediation issued by the ~~director~~ department pursuant to § 10.1-1232 of the Code of Virginia.

"Completion" means fulfillment of the commitment agreed to by the participant as part of this program.

"Contaminant" means any man-made or man-induced alteration of the chemical, physical or biological integrity of soils, sediments, air and surface water or groundwater including, but not limited to, such alterations caused by any hazardous substance (as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601(14)), hazardous waste (as defined in 9VAC20-60), solid waste (as defined in 9VAC20-81), petroleum (as defined in Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.)) of the Virginia State Water Control Law, or natural gas.

"Cost of remediation" means all costs incurred by the participant pursuant to activities necessary for completion of voluntary remediation at the site, based on an estimate of the net present value (NPV) of the combined costs of the site investigation, report development, remedial system installation, operation and maintenance, and all other costs associated with participating in the program and addressing the contaminants of concern at the site.

---

# Regulations

---

"Department" means the Department of Environmental Quality of the Commonwealth of Virginia or its successor agency.

~~[ "Director" means the Director of the Department of Environmental Quality. ]~~

"Engineering controls" means physical modification to a site or facility to reduce or eliminate potential for exposure to contaminants. These include, but are not limited to, stormwater conveyance systems, pump and treat systems, slurry walls, vapor mitigation systems, liner systems, caps, monitoring systems, and leachate collection systems.

[ "Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations pursuant to the Uniform Environmental Covenants Act (§ 10.1-1238 et seq. of the Code of Virginia). ]

"Hazard index (HI)" means the sum of more than one hazard quotient for multiple contaminants or multiple exposure pathways or both. The HI is calculated separately for chronic, subchronic, and shorter duration exposures.

"Hazard quotient" means the ratio of a single contaminant exposure level over a specified time period to a reference dose for that contaminant derived from a similar period.

"Incremental upper-bound lifetime cancer ~~[ risk level~~ risk" ] means a conservative estimate of the incremental probability of an individual developing cancer over a lifetime [ as a result of exposure to the potential carcinogen ]. Upper-bound lifetime cancer risk ~~[ level ]~~ is likely to overestimate "true risk."

"Institutional controls" means legal or contractual restrictions on property use that remain effective after remediation is completed [ ; ] and are used to reduce or eliminate the potential for exposure to contaminants. The term may include, but is not limited to, deed [ , land use, ] and water use restrictions [ and environmental covenants ].

"Land use controls" means legal or physical restrictions on the use of, or access to, a site to reduce or eliminate potential for exposure to contaminants [ ; ] or prevent activities that could interfere with the effectiveness of remediation. Land use controls include but are not limited to engineering and institutional controls.

"Monitored natural attenuation" means a remediation process that [ ~~closely~~ ] monitors the natural or enhanced attenuation process.

"Natural attenuation" means [ ~~a process through which contaminants breakdown~~ the processes by which contaminants break down ] naturally in the environment. Natural attenuation [ ~~may be enhanced by the addition of nutrients, bacteria, oxygen, or other substances~~ processes include a variety of physical, chemical, or biological processes that, under favorable conditions, act without human intervention to reduce the mass, toxicity, mobility, volume, or concentrations of contaminants in soil or groundwater ].

"Noncarcinogen" means a chemical classification for the purposes of risk assessment as an agent for which there is either inadequate toxicological data or is not likely to be a carcinogen based on an EPA weight-of-evidence classification system.

~~[ "Operator" means the person currently responsible for the overall operations at a site, or any person responsible for operations at a site at the time of, or following, the release. ]~~

"Owner" means any person currently owning or holding legal or equitable title or possessory interest in a property, including the Commonwealth of Virginia, or a political subdivision thereof, including title or control of a property conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means.

"Participant" means a person who has received confirmation of eligibility and has remitted payment of the registration fee.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation [ , ] or any other legal entity.

"Post-certificate monitoring" means monitoring of environmental or site conditions stipulated as a condition of issuance of the [ ~~Certificate of Satisfactory Completion of Remediation~~ certificate ].

"Program" means the Virginia Voluntary Remediation Program.

"Property" means a parcel of land defined by the boundaries in the deed.

"Reference dose" means an estimate of a daily exposure level for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of deleterious effects during a lifetime.

"Registration fee" means the fee paid to enroll in the Voluntary Remediation Program, based on 1.0% of the total cost of remediation at a site, not to exceed the statutory maximum.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping [ , ] or disposing of any contaminant into the environment.

"Remediation" means actions taken to [ ~~cleanup~~ clean up ], mitigate, correct, abate, minimize, eliminate, control [ , and ] contain [ , ] or prevent a release of a contaminant into the environment in order to protect human health and the environment, ~~including actions to investigate, study or assess any actual or suspected release~~. Remediation may include, when appropriate and approved by the department, land use controls [ ; ] natural attenuation [ ; as well as ], [ and ] monitored natural attenuation.

"Remediation level" means the concentration of a contaminant with applicable land use controls [ ; ] that is protective of human health and the environment.

"Report" means the Voluntary Remediation Report required by 9VAC20-160-70.

"Restricted use" means any use other than residential.

"Risk" means the probability that a contaminant will cause an adverse effect in exposed humans or to the environment.

"Risk assessment" means the process used to determine the risk posed by contaminants released into the environment. Elements include identification of the contaminants present in the environmental media, assessment of exposure and exposure pathways, assessment of the toxicity of the contaminants present at the site, characterization of human health risks, and characterization of the impacts or risks to the environment.

"Site" means any property or portion thereof, as agreed to and defined by the participant and the department, which contains or may contain contaminants being addressed under this program.

"Termination" means the formal discontinuation of participation in the Voluntary Remediation Program without obtaining a [ ~~certification of satisfactory completion certificate~~ ].

"Unrestricted use" means the designation of acceptable future use for a site at which the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site in all media.

**9VAC20-160-20. Purpose, applicability, and compliance with other regulations.**

A. The purpose of this chapter is to establish standards and procedures pertaining to the eligibility, enrollment, reporting, characterization, remediation, and termination criteria for the Virginia Voluntary Remediation Program in order to protect human health and the environment.

B. This chapter shall apply to all persons who elect to and are eligible to participate in the Virginia Voluntary Remediation Program.

C. Participation in the program does not relieve a participant from the obligation to comply with all applicable federal, state and local laws, ordinances and regulations related to the investigation and remediation (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) undertaken by the participant pursuant to this chapter.

**9VAC20-160-30. Eligibility criteria.**

A. ~~Candidate~~ Applicants and proposed sites shall meet eligibility criteria as defined in this section.

B. ~~Any~~ Eligible applicants are any persons who own, operate, have a security interest in [  ] or enter into a contract for the purchase or use of an eligible site. Those who wish to voluntarily remediate ~~that~~ a site may apply to participate in the program. Any person who is an authorized agent of any of

the parties identified in this subsection may apply to participate in the program.

[ ~~1. Access:~~ ] Applicants who are not the site owner must demonstrate that they have access to the property at the time of [ application, during the investigation, and throughout the remedial activities payment of the registration fee in accordance with 9VAC20-160-60 and must maintain such right of access ] until [ the remediation is completed a certificate is issued or participation in the program is terminated pursuant to 9VAC20-160-100 ].

[ ~~2. Change in ownership: The department shall be notified if there is a change in property ownership.~~

~~3. Change in agent: The department shall be notified if there is a change in agent for the property owner or the participant. ]~~

C. Sites are eligible for participation in the program if (i) remediation has not been clearly mandated by the United States Environmental Protection Agency, the department [  ] or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), or other applicable statutory or common law; or (ii) jurisdiction of the statutes listed in clause (i) has been waived.

1. A site on which an eligible party has ~~completed~~ performed remediation of a release is potentially eligible for the program if the actions can be documented in a way which are equivalent to the requirements for ~~prospective remediation~~ this chapter, and provided the site meets applicable remediation levels.

2. Petroleum or oil releases not mandated for remediation under Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.) of the Virginia State Water Control Law may be eligible for participation in the program.

3. Where an applicant raises a genuine issue based on documented evidence as to the applicability of regulatory programs in subsection D of this section, the site may be eligible for the program. Such evidence may include a demonstration that:

- ~~1. a.~~ It is not clear whether the release involved a waste material or a virgin material;
- ~~2. b.~~ It is not clear that the release occurred after the relevant regulations became effective; or
- ~~3. c.~~ It is not clear that the release occurred at a regulated unit.

D. For the purposes of this chapter, remediation has been clearly mandated if any of the following conditions exist, unless jurisdiction for such mandate has been waived:

1. Remediation of the release is the subject of a permit issued by the U.S. Environmental Protection Agency or the

---

# Regulations

---

department, a ~~pending or existing~~ closure plan, a ~~pending or existing~~ administrative order, a ~~pending or existing~~ court order, [ or ] a ~~pending or existing~~ consent order, or the site is on the National Priorities List;

2. The site at which the release occurred is subject to the Virginia Hazardous Waste Management Regulations (9VAC20-60) (VHWMR), is a permitted facility, is applying for or should have applied for a permit, is under interim status or should have applied for interim status, or was previously under interim status, and is thereby subject to requirements of the VHWMR;

3. The site at which the release occurred ~~constitutes~~ has been determined [ by the department prior to the application submittal date ] to be an open dump or unpermitted solid waste management facility under 9VAC20-81-45 of the Solid Waste Management Regulations [ and such conditions still exist that made the site an open dump or unpermitted solid waste management facility ];

4. The ~~director~~ department determines that the release poses an imminent and substantial threat to human health or the environment; or

5. Remediation of the release is otherwise the subject of a response action or investigation required by local, state, or federal law or regulation.

E. The [ ~~director~~ department ] may determine that a site under subdivision D 3 of this section may participate in the program provided that such participation complies with the substantive requirements of the applicable regulations.

## **9VAC20-160-40. Application for participation.**

A. The application for participation in the Voluntary Remediation Program shall, ~~at a minimum,~~ provide the elements listed below:

1. ~~[ A written notice of intent to participate in the program and an An ]~~ overview of the project [ ;, transaction, or other reason for application for participation in the program. ]

2. A statement of the applicant's eligibility to participate in the program (e.g., proof of ownership, security interest, etc.) [ ; ]

3. For authorized agents, a letter of authorization from an eligible party [ ; ]

4. ~~A legal description of the site [ plat or ] map [ and that indicates the approximate ]~~ acreage [ of the property and the and ] boundaries of the site [ if not the entire property; If the site is a portion of a larger property, then the plat or map shall show the approximate boundaries of both the site and the associated larger property. ]

5. ~~The~~ A general operational history of the site [ ; ]

6. A general description of information known to or ascertainable by the applicant pertaining to (i) the nature and extent of any contamination; and (ii) past or present

releases, both at the site and immediately contiguous to the site [ ; ]

7. A discussion of the potential jurisdiction of other existing environmental regulatory programs [ requiring clean up of the release being proposed for admittance to the program ], or documentation of a waiver thereof [ ; and. ]

8. ~~A notarized certification by the applicant that to the best of his knowledge all the information as set forth in this subsection is true and accurate. An application signed by the applicant [ and the owner of the property ] attesting that to the best of [ their the applicant's ] knowledge [ that ] all of the information as set forth in this subsection is true and accurate.~~

[ 9. If the applicant is not the owner of the property, the applicant shall provide written documentation that the owner of the property:

a. Consents in writing to the submission of the application; and

b. Agrees in writing that the information set forth in the application is substantially correct to the best of the owner's knowledge. ]

~~B. Within 60 days of the department's receipt of an application, the director shall review the application to verify that (i) the application is complete and (ii) the applicant and the site meet the eligibility criteria set forth in 9VAC20-160-30. The department shall review the application for completeness and notify the applicant within 15 days of the application's receipt whether the application is administratively [ complete or ] incomplete. Within 60 days of the department's receipt of a complete application, the department shall verify whether [ or not ] the applicant and the site meet the eligibility criteria set forth in 9VAC20-160-30. The department reserves the right to conduct eligibility verification inspections of the candidate site during the eligibility verification review.~~

C. If the ~~director~~ department makes a tentative decision to reject the application, ~~he it~~ shall notify the applicant in writing that the application has been tentatively rejected and provide an explanation of the reasons for the proposed rejection. Within 30 days of the applicant's receipt of notice of rejection the applicant may (i) submit additional information to correct the inadequacies of the rejected application or (ii) accept the rejection. The ~~director's~~ department's tentative decision to reject an application will become a final agency action under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) upon receipt of an applicant's written acceptance of the ~~director's department's~~ decision to reject an application, or in the event an applicant fails to respond within the 30 days specified in this subsection, upon expiration of the [ 30 ] ~~days~~ specified [ day 30-day ] period. If within 30 days an applicant submits additional information to correct the inadequacies of

an application, the review process ~~begins~~ shall begin again in accordance with this section.

**9VAC20-160-60. Registration fee.**

A. In accordance with § 10.1-1232 A 5 of the Code of Virginia, the applicant shall submit a registration fee to defray the cost of the program.

B. The ~~[ initial preliminary ]~~ registration fee shall be ~~at least 1.0% of the estimated cost of the remediation at the site, not to exceed [ the statutory maximum \$5,000 ]~~. Payment shall be required after eligibility has been verified by the department and prior to technical review of submittals pursuant to 9VAC20-160-80. Payment shall be made payable to the Commonwealth of Virginia and remitted to Virginia Department of Environmental Quality, P.O. Box 1104, Receipts Control, Richmond, VA 23218.

~~C. To determine the appropriate registration fee, the applicant may provide an estimate of the anticipated total cost of remediation.~~

~~Remediation costs shall be based on site investigation activities; report development; remedial system installation, operation and maintenance; and all other costs associated with participating in the program and addressing the contaminants of concern at the subject site.~~

~~Departmental concurrence with an estimate of the cost of remediation does not constitute approval of the remedial approach assumed in the cost estimate.~~

~~The participant may elect to remit the statutory maximum registration fee to the department as an alternative to providing an estimate of the total cost of remediation at the time of eligibility verification.~~

~~D. If the participant does not elect to submit the statutory maximum registration fee, the participant shall provide the department with the actual total cost of the remediation prior to issuance of a certificate. The department shall calculate any balance adjustments to be made to the initial registration fee. Any negative balance owed to the department shall be paid by the participant prior to the issuance of a certificate. Any costs to be refunded shall be remitted by the department with issuance of the certificate.~~

~~E. If the participant elected to remit the statutory maximum registration fee, the department shall refund any balance owed to the participant after receiving the actual total cost of remediation. If no remedial cost summary is provided to the department within 60 days of the participant's receipt of the certificate, the participant will have waived the right to a refund.~~

~~C. Failure to remit the required registration fee within 90 days of the date of eligibility [ verification determination ] shall result in the loss of eligibility status of the applicant. The applicant must reestablish his eligibility for participation in the program [ and the eligibility of the site ], unless [ alternate provisions are proposed and deemed acceptable~~

~~to ] the department [ agrees to extend the period for remitting the registration fee ].~~

~~D. Upon completion of remediation and issuance of the [ Certificate of Satisfactory Completion of Remediation certificate pursuant to 9VAC20-160-110 ], the participant [ is entitled to whose final cost of remediation is less than \$500,000 may ] seek a [ partial ] refund [ of a portion ] of the [ preliminary ] registration fee. The refund [ will be amount shall be ] reconciled as [ 1.0% of the final cost of remediation as compared to the initial registration fee the difference between the preliminary registration fee and the final registration fee amounts ].~~

~~1. [ The In order to receive a refund, the ] participant shall provide the department with a summary of the final cost of remediation within 60 days of issuance of a certificate. [ The department shall calculate the balance adjustment to be made to the initial registration fee and refund the difference. The final registration fee amount for such projects shall be calculated as 1.0% of the final cost of remediation. The department shall review the summary, calculate the refund amount due, and issue a refund to the participant. ]~~

~~2. If no summary of the final cost of remediation is provided to the department within 60 days of issuance of the certificate, the [ participant will have waived the right to a refund final registration fee amount shall be equal to the preliminary registration fee amount, and no portion of the preliminary registration fee shall be refunded ].~~

~~3. Concurrence with the summary of the final cost of remediation does not constitute department verification of the actual cost incurred.~~

~~E. [ Except for termination pursuant to 9VAC20-160-100 A 4, no No ] portion of the [ preliminary ] registration fee will be refunded if participation [ in the program ] is terminated [ pursuant to the provisions of 9VAC20-160-100 ].~~

**9VAC20-160-70. Work to be performed.**

~~A. The Voluntary Remediation Report serves as the archive for all documentation pertaining to remedial activities at the site. Each component of the report shall be submitted by the participant to the department. As various components are received, they shall be inserted into the report. The report shall consist of the following components: a site characterization Site Characterization, a risk assessment including an assessment of risk to surrounding properties (as appropriate) Risk Assessment, a remedial action work plan Remedial Action Plan, a demonstration of completion Demonstration of Completion, and [ documentation of public notice Documentation of Public Notice ]. [ A Each ] separate [ report shall be submitted for each ] component of the Voluntary Remediation Report [ shall be submitted as ] listed below:~~

~~1. The site characterization shall contain a delineation of Site Characterization [ Report component ] shall provide~~



---

# Regulations

---

an understanding of the site conditions including the identification and description of each area of concern (or source); the nature and extent of releases to all media, including [ a map of ] the [ onsite and offsite ] vertical and horizontal extent of the contaminants [ ~~on the site, including off site areas as applicable; and a preliminary screening of the~~ above levels consistent with 9VAC20-160-90; and a discussion of the potential ] risk or risks posed by the release. [ ~~If remedial activities have occurred prior to enrollment, this information shall be included.~~ ]

2. The ~~risk assessment~~ Risk Assessment [ ~~Report component~~ ] shall contain an evaluation of the risks to human health and the environment posed by the release, including an assessment of risk to [ ~~off-site~~ offsite ] properties [ ~~;~~ ] a proposed set of remediation [ ~~levels level objectives~~ ] consistent with 9VAC20-160-90 that are protective of human health and the environment [ ~~;~~ ] and [ a either ] recommended remediation [ ~~actions~~ ] to achieve the proposed objectives [ ~~;~~ ] or a demonstration that no action is necessary.

3. The ~~remedial action work plan~~ Remedial Action Plan [ ~~Report component~~ ] shall propose the [ ~~specific~~ ] activities, [ a ] schedule [ ~~for those activities~~ ], any permits required to initiate and complete the remediation [ ~~;~~ ] and specific design plans for implementing remediation that will achieve the remediation [ ~~levels level objectives~~ ] specified in the [ ~~risk assessment~~ Risk Assessment component of the report ]. Control or elimination of continuing onsite source or sources of releases to the environment shall be discussed. Land use controls [ ~~and any permits required for the remediation process~~ ] should be discussed as appropriate. If no remedial action is necessary, the Remedial Action Plan shall discuss the reasoning for no action. [ ~~When remedial activities have occurred prior to enrolling in the Voluntary Remediation Program, this information shall be included in the Site Characterization Report. The Remedial Action Plan Report shall describe the remedial activities that occurred, to include as applicable: how releases (or sources) have been eliminated or controlled; the remediation system or systems installed; site restrictions imposed; permits required; and how remediation levels have been achieved.~~ ]

4. Demonstration of completion. [ ~~A Demonstration of Completion Report is required whenever remedial action has occurred as part of participation in the Voluntary Remediation Program.~~ ] The Demonstration of Completion [ ~~Report component~~ ] shall include [ ~~the following, as applicable~~ ]:

[ a. A ] detailed summary [ ~~of the performance~~ ] of the remediation implemented at the site, [ ~~the total cost of the remediation, and including a discussion of the remediation systems installed and a description of the remediation activities that occurred at the site.~~ ]

b. A detailed summary of how the established site-specific objectives have been achieved, including (i) a description of how onsite releases (or sources) of contamination have been eliminated or controlled, and (ii) confirmational sampling results demonstrating that the [ ~~established site specific remedial remediation level~~ ] objectives have been achieved [ ~~, or that and that the migration of contamination has been stabilized.~~ ]

c. A description of any site restrictions including, but not limited to [ ~~;~~ ] land use controls that are proposed for the certificate.

d. A demonstration that all [ ~~]~~ other criteria for completion of remediation have been satisfied. [ ~~As part of the demonstration of completion, the participant shall certify compliance with applicable regulations pertaining to activities performed at the site pursuant to this chapter.~~ ]

e. Certification by the participant that activities performed at the site pursuant to the chapter have been in compliance with all applicable regulations. ]

~~a. The demonstration of completion should, when applicable, include a detailed summary of the performance of the remediation implemented at the site, the total cost of the remediation, and confirmational sampling results demonstrating that the established site-specific remedial objectives have been achieved, or that other criteria for completion of remediation have been satisfied. If the participant elected to remit the statutory maximum registration fee and is not seeking a refund of any portion of the registration fee, the total cost of remediation need not be provided.~~

~~b. As part of the demonstration of completion, the participant shall certify compliance with applicable regulations pertaining to activities performed at the site pursuant to this chapter.~~

5. The participant shall provide documentation [ ~~The~~ ] Documentation of [ ~~public notice~~ Public Notice component ] is required to demonstrate that public notice has been provided in accordance with 9VAC20-160-120. Such documentation shall include copies of comments received during the public comment period, all acknowledgements of receipt of comments, as well as the participant's responses to comments, if any are made. [ ~~Such documentation shall, at a minimum, consist of copies of all of the documents required pursuant to the provisions of subsection E of 9VAC20-160-120.~~ ]

B. It is the participant's responsibility to ensure that the investigation and remediation activities (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) comply with all applicable federal, state, and local laws and regulations and ~~any appropriate regulations that are not required by state or federal law but are necessary to ensure that the activities do not result in a further release of contaminants to the~~

~~environment and are protective of human health and the environment.~~

C. All work, to include sampling and analysis, shall be performed in accordance with Test Methods for Evaluating Solid Waste, USEPA SW-846, revised ~~April 1998~~ March 2009, or other [ ~~media-specific~~ media-specific ] methods approved by the department and completed using appropriate quality assurance/quality control protocols. All analyses shall be performed by laboratories certified by the Virginia Environmental Laboratory Accreditation Program (VELAP). Laboratory certificates of analysis shall be included with applicable reports.

D. [ ~~Until certificate issuance, all participants shall submit an annual report to the department containing a brief summary of any actions ongoing or completed as well as any planned future actions for the next reporting period. This report shall be submitted by July 1 using the "VRP Site Status Reporting Form." Failure to submit within 60 days may result in the site's Voluntary Remediation Program eligibility status being terminated. While participating in the program, the participant shall notify the department in writing within 30 days of any change in property ownership.~~ ]

E. While participating in the program, the participant shall notify the department in writing within 30 days of any change in agent for the property owner or the participant. ]

**9VAC20-160-80. Review of submittals.**

A. ~~Upon receipt of submittals, the~~ The department shall review and evaluate the submittals components of the Voluntary Remediation Report submitted by the participant. The department may request additional information, including sampling data ~~of~~ from the site or [ potentially affected offsite ] areas [ ~~adjacent to the site~~ ] to verify the extent of the release, ~~in order to render a decision and move the participant towards expeditious issuance of the certificate.~~

B. ~~The director~~ department may [ waive or ] expedite, as appropriate, issuance of any permits required to initiate and complete a voluntary remediation. ~~The director~~ department shall, within 120 days of a complete submittal, expedite issuance of such permit in accordance with applicable regulations.

C. After receiving a complete and adequate report, ~~the director~~ department shall make a determination regarding the issuance of the certificate to the participant. The determination shall be a final agency action pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

**9VAC20-160-90. Remediation levels.**

A. The participant, with the concurrence of the department, shall consider impacts to human health and the environment in establishing remediation levels.

~~B. Remediation levels shall be based upon a risk assessment of the site and surrounding areas that may be impacted, reflecting the current and future use scenarios.~~

~~1. A site shall be deemed to have met the requirements for unrestricted use if the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site and in all media. Attainment of these levels will allow the site to be given an unrestricted use classification. No remediation techniques or land use controls that require ongoing management may be employed to achieve this classification.~~

~~2. For sites that do not achieve the unrestricted use classification, land use controls shall be applied. The restrictions imposed upon a site may be media specific, may vary according to site specific conditions, and may be applied to limit present and future use. All controls necessary to attain the restricted use classification shall be described in the certificate as provided in 9VAC20-160-110. Land use controls approved by the department for use at the site are considered remediation.~~

~~C. B.~~ Remediation levels based on human health shall be developed after appropriate site characterization data have been gathered as provided in 9VAC20-160-70. Remediation levels may be derived from the three-tiered approach provided in this subsection. Any tier or combination of tiers may be applied to establish remediation levels for contaminants present at a given site, ~~with consideration of site use restrictions specified in subsection B of this section.~~

~~1. Under Tier I the participant shall collect appropriate samples from background and from the area of contamination for all media of concern~~ remediation levels are based on media backgrounds levels. These background levels shall be determined from a portion of the property or a nearby property or other areas as approved by the department that have not been impacted by the contaminants of concern.

~~a. Background levels shall be determined from a portion of the property or a nearby property that has not been impacted by the contaminants of concern.~~

~~b. The participant shall compare concentrations from the area of contamination against background concentrations. If the concentrations from the area of contamination exceed established background levels, the participant may consider Tier II or Tier III methodologies, as applicable. If concentrations are at or below background levels, no further assessment is necessary.~~

2. Tier II ~~generic~~ remediation levels are media specific values, derived using unrestricted use default assumptions assuming that there will be no restrictions on the use of groundwater, surface water, and soil on the site. Use of Tier II shall be limited to the following:

a. Tier II ~~generic~~ groundwater remediation levels shall be based on the most beneficial use of groundwater. The most beneficial use of groundwater is for a potable water source, unless demonstrated otherwise by the participant and accepted by the department. Therefore, they shall be based on (i) federal Maximum Contaminant Levels

---

# Regulations

---

(MCLs) or action levels for lead and copper as established by the Safe Drinking Water Act (42 USC § 300 (f)) and the National Primary Drinking Water Regulations (40 CFR Part 141) or, in the absence of a MCL, (ii) tap water values derived using the methodology provided in the EPA Region III Risk Based Concentration Table current at the time of the assessment Regional Screening Level Table, Region III, VI, and IX, United States Environmental Protection Agency, December 2009, using an acceptable individual carcinogenic risk of  $1 \times 10^{-5}$  and an individual noncarcinogen hazard quotient of 0.1. For contaminants that do not have values available under clauses (i) or (ii) above, a remediation level shall be calculated using criteria set forth under Tier III remediation levels.

b. Soil Tier II soil remediation levels shall insure that migration of contaminants shall not cause the cleanup levels established for groundwater and surface water to be exceeded. Soil remediation levels shall be determined as the lower of either the ingestion or cross-media transfer values, according to the following:

(1) For ingestion, values derived using the methodology provided in the EPA Region III Risk Based Concentration Table current at the time of assessment. Regional Screening Level Table, Region III, VI, and IX, United States Environmental Protection Agency, December 2009.

(a) For carcinogens, the soil ingestion concentration for each contaminant, reflecting an individual upper-bound lifetime cancer risk of  $1 \times 10^{-6}$   $10^{-5}$ .

(b) For noncarcinogens,  $1/40$  (i.e., Hazard Quotient =  $0.1$ )  $0.1$  of the soil ingestion concentration, to account for multiple systemic toxicants at the site. For sites where there are fewer than 10 contaminants exceeding  $1/40$   $0.1$  of the soil ingestion concentration, the soil ingestion concentration may be divided by the number of contaminants such that the resulting hazard index does not exceed ~~one~~ 1.0.

(2) For cross-media transfer, values derived from the USEPA Soil Screening Guidance (OSWER, July 1996, Document 9355.4-23, EPA/540/R-96/018) and USEPA Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites (OSWER, December 2002, Document 9355.4-24) shall be used as follows:

(a) The soil screening level for transfer to groundwater, with adjustment to a hazard quotient of 0.1 for noncarcinogens, if the value is not based on a MCL; or

(b) The soil screening level for transfer to air, with adjustment to a hazard quotient of 0.1 for noncarcinogens and a risk level of  $1 \times 10^{-5}$  for carcinogens, using default residential exposure assumptions.

~~(3)~~ (c) For noncarcinogens, for sites where there are fewer than 10 contaminants exceeding  $1/40$   $0.1$  of the

soil screening level, the soil screening level may be divided by the number of contaminants such that the resulting hazard index does not exceed ~~one~~ 1.0.

~~(4)~~ (3) Values derived under [ 9VAC20-160-90 C-2 b subdivisions 2 b ] (1) and (2) [ of this subsection ] may be adjusted to allow for updates in approved toxicity factors as necessary.

~~e. At sites where ecological receptors are of concern and there are complete exposure pathways, the participant shall perform a screening level ecological evaluation to show that remediation levels developed under Tier II are also protective of ecological receptors of concern.~~

~~d. For unrestricted future use, where a contaminant of concern exists for which c. Tier II remediation levels for surface water quality standards shall be based on the Virginia Water Quality Standards (WQS) have been adopted as established by the State Water Control Board for a specific use, the participant shall demonstrate that concentrations in other media will not result in concentrations that exceed the WQS in adjacent surface water bodies. (9VAC25-260), according to the following:~~

(1) The chronic aquatic life criteria shall be compared to the appropriate human health criteria and the lower of the two values selected as the Tier II remediation level.

(2) For contaminants that do not have a Virginia WQS, the federal Water Quality Criteria (WQC) may be used if available. The chronic federal criterion continuous concentration (CCC) for aquatic life shall be compared to the appropriate human health based criteria and the lower of the two values selected as the Tier II remediation level.

(3) If neither a Virginia WQS nor a federal WQC is available for a particular contaminant detected in surface water, the participant should perform a literature search to determine if alternative values are available. If alternative values are not available, the detected contaminants shall be evaluated through a site-specific risk assessment.

~~3. Tier III remediation levels are based upon a site specific risk assessment considering site-specific assumptions about current and potential exposure scenarios for the population or populations of concern, including ecological receptors, and characteristics of the affected media and can be based upon a site-specific risk assessment. Land-use controls can be considered.~~

a. In developing Tier III remediation levels, and unless the participant proposes other guidance that is acceptable to the department, the participant shall use, for all media and exposure routes, the methodology specified in Risk Assessment Guidance for Superfund, Volume 1, Human Health Evaluation Manual (Part A), Interim Final, USEPA, December 1989 (EPA/540/1-89/002) and (Part B, Development of Preliminary Remediation Goals)

Interim, USEPA, December 1991 (Publication 9285.7-01B) with modifications as appropriate to allow for site-specific conditions. The participant may use other methodologies approved by the department.

b. For a site with carcinogenic contaminants, the remediation goal for individual carcinogenic contaminants shall be an incremental upper-bound lifetime cancer risk of  $1 \times 10^{-6}$  to  $10^{-5}$ . The remediation levels for the site shall not result in an incremental upper-bound lifetime cancer risk exceeding  $1 \times 10^{-4}$  considering multiple contaminants and multiple exposure pathways, unless the use of a MCL for groundwater that has been promulgated under 42 USC § 300g-1 of the Safe Drinking Water Act and the National Primary Drinking Water Regulations (40 CFR Part 141) results in a cumulative risk greater than  $1 \times 10^{-4}$ .

c. For noncarcinogens, the hazard index shall not exceed a combined value of 1.0.

d. In setting remediation levels, the department may consider risk assessment methodologies approved by another regulatory agency and current at the time of the Voluntary Remediation Program site characterization.

~~e. Groundwater cleanup levels shall be based on the most beneficial use of the groundwater. The most beneficial use of the groundwater is for a potable water source, unless demonstrated otherwise by the participant and approved by the department.~~

~~f. For sites where a screening level ecological evaluation has shown that there is a potential for ecological risks, the participant shall perform an ecological risk assessment to show that remediation levels developed under Tier III are also protective of ecological receptors of concern. If the Tier III remediation levels developed for human health are not protective of ecological receptors of concern, the remediation levels shall be adjusted accordingly.~~

C. The participant shall determine if ecological receptors are present at the site or in the vicinity of the site and if they are impacted by releases from the site.

1. At sites where ecological receptors are of concern and there are complete exposure pathways, the participant shall perform a screening level ecological evaluation [ ~~to show demonstrating~~ ] that remediation levels developed under the three-tiered approach described in this section are also protective of such ecological receptors.

2. For sites where a screening level ecological evaluation has shown that there is a potential for ecological risks, the participant shall perform an ecological risk assessment [ ~~to show demonstrating~~ ] that remediation levels developed under the three-tiered approach described in this section are also protective of ecological receptors. If the remediation levels developed for human health are not

protective of ecological receptors, the remediation levels shall be adjusted accordingly.

**9VAC20-160-100. Termination.**

A. Participation in the program shall be terminated:

1. When evaluation of new information obtained during participation in the program results in a determination by the ~~director~~ department that the site is ineligible or that a participant has taken an action to render the site ineligible for participation in the program. If such a determination is made, the ~~director~~ department shall notify the participant that participation has been terminated and provide an explanation of the reasons for the determination. Within 30 days, the participant may submit additional information, or accept the ~~director's~~ department's determination.

2. Upon 30 days written notice of ~~termination~~ withdrawal by ~~either party~~ the participant.

3. Upon [ the ] participant's failure to make reasonable progress towards completion of the program, as determined by the department [ , and the participant's subsequent failure to respond appropriately within 30 days to the department's written request for an update of program-related activities and a projected timeline to fulfill the program requirements ].

~~[ 4. Upon fulfillment of all program requirements and issuance of the Certification of Satisfactory Completion of Remediation as described in 9VAC20-160-110, notwithstanding any conditions of issuance specified in the Certificate. ]~~

B. The department shall be entitled to receive and use, upon request, copies of any and all information developed by or on behalf of the participant as a result of work performed pursuant to participation in the program, after application has been made to the program whether the program is satisfactorily completed or terminated.

~~[ C. ] No [ Except for termination pursuant to subsection A 4, no portion of the registration fee will be refunded if participation is terminated by any method as described in 9VAC20-160-100. ]~~

**9VAC20-160-110. Certification of satisfactory completion of remediation.**

A. The ~~director~~ department shall issue a [ ~~certification of satisfactory completion of remediation certificate~~ ] when:

1. The participant has demonstrated that migration of contamination has been stabilized;

2. The participant has demonstrated that the site has met the applicable remediation levels and will continue to meet the applicable remediation levels in the future for both [ ~~on site and off-site~~ onsite and offsite ] receptors; ~~and~~

3. All provisions of the approved remedial action plan as applicable have been completed;

4. All applicable requirements of the regulations have been completed; and

---

# Regulations

---

~~3.~~ 5. The department ~~concurs with~~ accepts all work submitted, as set forth in ~~9VAC20-160-80~~ 9VAC20-160-70.

B. The issuance of the certificate shall constitute immunity to an enforcement action under the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia), or other applicable Virginia law for the [ ~~release or releases~~ ~~addressed~~ releases described in the certificate ].

C. A site shall be deemed to have met the requirements for unrestricted use if the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site and in all media. Attainment of these levels will allow the site to be given an unrestricted use classification. No remediation techniques or land use controls that require ongoing management may be employed to achieve this classification.

D. For sites that do not achieve the unrestricted use classification, land use controls may be proffered in order to develop remediation levels based on restricted use. The restrictions imposed upon a site may be media-specific, may vary according to site-specific conditions, and may be applied to limit present and future use. All controls necessary to attain the restricted use classification shall be described in the certificate as provided in this section. Land use controls accepted by the department for use at the site are considered remediation for the [ ~~purpose~~ purposes ] of this chapter.

~~C.~~ E. ~~If a use restriction is specified in the certificate, such restriction must be attached to the deed to the property with an explanation for the restriction, subject to concurrence by the director, and shall the participant shall cause the certificate to be recorded by the participant with among the land records for the site in the office of the clerk of the circuit court for the jurisdiction in which the site is located within 90 days of execution of the certificate by the department, unless [ a longer period is ] specified in the certificate. The participant may also record the certificate itself. If the certificate does not include any use restriction, recordation of the certificate is at the option of the participant. The immunity accorded by the [ ~~certification~~ certificate ] shall apply to the participant and shall run with the land identified as the site.~~

~~D.~~ F. ~~The immunity granted by issuance of the certificate shall be limited to [ site conditions at the time of issuance as those conditions are described the known releases as described ] in the [ Voluntary Remediation Report certificate ]. The immunity is further conditioned upon satisfactory performance by the participant of all obligations required by the director department under the program and upon the veracity, accuracy, and completeness of the information submitted to the director department by the participant relating to the site. Specific limitations of the certificate shall be enumerated in the certificate. The immunity granted by the~~

certificate shall be dependent upon the identification of the nature and extent of contamination as presented in the [ ~~report~~ Voluntary Remediation Report ].

~~E.~~ G. The certificate shall specify the conditions for which immunity is being accorded, including, but not limited to:

1. A summary of the information that was considered;
2. Any restrictions on future use;
3. Any local land use controls on surrounding properties that were taken into account; ~~and~~
4. Any required ~~proffered~~ land use controls including: ~~and~~
  - a. ~~Engineering controls and their maintenance;~~ and
  - b. ~~Institutional controls.~~
5. Any post-certificate monitoring.

~~F.~~ H. ~~The certificate may be revoked by the director department [ at any time ] in [ any of the following situations, provided that (i) the department has given the owner written notice of the deficiency and (ii) the owner has failed to cure the deficiency within 60 days of the date of the written notice or some longer period granted by the department.~~

1. In ] the event that conditions at the site, unknown at the time of issuance of the certificate, pose a risk to human health or the environment [ ~~or in:~~

2. In ] the event that the certificate was based on information that was false, inaccurate, or misleading [ - ~~The certificate may also be revoked for the failure to meet or maintain the conditions of the certificate. Any and all claims may be pursued by the Commonwealth for liability for failure to meet a requirement of the program, criminal liability, or liability arising from future activities at the site that may cause contamination by pollutants. By issuance of the certificate the director department does not waive sovereign immunity. Failure to implement and maintain land use controls may result in revocation of the certificate.;~~ or

3. In the event that the conditions of the certificate have not been met or maintained. ]

~~G.~~ I. ~~The certificate is not and shall not be interpreted to be a permit or a modification of an existing permit or administrative order issued pursuant to state law, nor shall it in any way relieve the participant of its obligation to comply with any other federal or state law, regulation or administrative order. Any new permit or administrative order, or modification of an existing permit or administrative order, must be accomplished in accordance with applicable federal and state laws and regulations.~~

J. [ ~~Change in ownership: For properties that received a Certificate of Satisfactory Completion and are subject to use restrictions, the new property owner shall register with the department within 60 days of the acquisition. The issuance of the certificate shall not preclude the department from taking any action authorized by law for failure to meet a requirement~~

of the program or for liability arising from future activities at the site that result in the release of contaminants.

K. The issuance of the certificate by the department shall not constitute a waiver of the Commonwealth's sovereign immunity unless otherwise provided by law. ]

**9VAC20-160-120. Public notice.**

A. The participant shall give public notice of ~~either~~ the proposed voluntary remediation ~~or the completed voluntary remediation~~. The notice shall be made after the department ~~concurs with~~ accepts the [ ~~site characterization report Site Characterization component of the Voluntary Remediation Report~~ ] and the proposed ~~or completed~~ remediation [ ; ] and shall occur prior to the department's issuing a certificate. Such notice shall be paid for by the participant.

B. The participant shall:

1. Provide written notice to the local government in which the facility is located;
2. Provide written notice to all adjacent property owners and other owners whose property has been [ impacted by the release being addressed under the VRP project affected by contaminants as determined pursuant to the provisions of subdivision A 1 of 9VAC20-160-70 ]; and
3. Publish a notice once in a newspaper of general circulation in the area affected by the voluntary action.

~~B. C.~~ A comment period of at least 30 days must follow issuance of the notices pursuant to this section. The department, at its discretion, may increase the duration of the comment period [ to 60 days ]. The contents of each public notice required pursuant to [ ~~9VAC20-160-120-A subsection B of this section~~ ] shall include:

1. The name and address of the participant and the location of the proposed voluntary remediation;
2. A brief description of ~~the remediation~~, the general nature of the release, any remediation, and any proposed land use controls;
3. The address and telephone number of a specific person familiar with the remediation from whom information regarding the voluntary remediation may be obtained; and
4. A brief description of how to submit comments.

D. The participant shall send all commenters a letter acknowledging receipt of written comments and providing responses to the same.

~~C. E.~~ The participant shall provide [ ~~to the department~~ ] a [ the following as documentation of public notice required in subdivision A 5 of 9VAC20-160-70 ]:

1. A signed statement that [ ~~he the participant~~ ] has sent a [ written copy of the public ] notice [ ~~to all adjacent property owners and the local government, a~~ as required by subsection B of this section];

2. A ] copy of the [ public ] notice [ ; ] and a list of [ ~~all~~ ] names and addresses [ of all persons ] to whom the notice was sent; and

[ ~~2. 3.~~ ] Copies of all written comments received during the public comment period, copies of acknowledgement letters, and copies of any response to comments, as well as an evaluation of the comment's impact on the planned or completed action or actions.

~~D. The participant shall send all commenters a letter acknowledging receipt of comments.~~

~~E. The participant shall provide to the department copies of all written comments received during the public comment period, copies of acknowledgement letters, a discussion of how those comments were considered, a copy of any response to comments, and a discussion of their impact on the proposed or completed remediation.~~

DOCUMENTS INCORPORATED BY REFERENCE (9VAC20-160)

[ U.S. Environmental Protection Agency publications:

~~Test Methods for Evaluating Solid Waste: Physical/Chemical Methods; EPA Publication SW 846, Third Edition (1986) as amended by Final Update I, Final Update II, Final Update IIA, Final Update IIB, Final Update III, and Final Update IIIA, PB 99-115-891, revised April 1998~~ March 2009

~~U.S. EPA Soil Screening Guidance, EPA/540/R-96/018, Publication 9355.4-23, July 1996~~

Test Methods for Evaluating Solid Waste: Physical/Chemical Methods; EPA Publication SW-846, Third Edition (1986) as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, and IV, PB 99-115 891, revised March 2009

(<http://www.epa.gov/osw/hazard/testmethods/sw846/online/index.htm>)

Soil Screening Guidance: User's Guide, EPA/540/R-96/018, Publication 9355.4-23, July 1996 ]

[ ~~U.S. EPA~~ ] Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites [OSWER December 2002, Document 9355.4-24), OSWER 9355.4-24, December 2002 ]

Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation Manual (Part A) Interim Final, EPA/540/1-89/002, Office of Emergency and Remedial Response, [ U.S. Environmental Protection Agency, ] December 1989

[ (<http://www.epa.gov/oswer/riskassessment/ragsa>) ]

Risk Assessment Guidance for Superfund: Volume I, Human Health Evaluation Manual (Part B, Development of Risk-Based Preliminary Remediation Goals) Interim, Publication 9285.7-01B, Office of Emergency and Remedial Response, [ U.S. Environmental Protection Agency, ] December 1991

---

# Regulations

---

~~Risk Based Concentration Table, Region III, United States Environmental Protection Agency, April 2, 2002~~

~~[Regional Screening Level \[ \(RSL\) Master \] Table, Region III, VI, and IX \[ United States Environmental Protection Agency \], December 2009](#)~~

VA.R. Doc. No. R08-1271; Filed December 2, 2013, 12:36 p.m.

## STATE WATER CONTROL BOARD

### Proposed Regulation

Title of Regulation: **9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (amending 9VAC25-32-10, 9VAC25-32-140, 9VAC25-32-250; adding 9VAC25-32-255).**

Statutory Authority: § 62.1-44.15 and 62.1-44.18 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 28, 2014.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4116, or email [betsy.bowles@deq.virginia.gov](mailto:betsy.bowles@deq.virginia.gov).

Basis: Section 62.1-44.15 of the Code of Virginia authorizes the State Water Control Board to permit the management and discharge of sewage, industrial wastes, and other wastes into or adjacent to state waters and the alteration otherwise of the physical, chemical, or biological properties of state waters. The Virginia Pollution Abatement (VPA) Regulation defines the procedures and requirements to be followed in connection with VPA permits issued by the board pursuant to the State Water Control Law.

Purpose: The VPA permit regulation, 9VAC25-32, contains obsolete definitions that are inconsistent with the existing general permit for animal feeding operations (AFOs) as well as related federal definitions. The primary purpose of this action is to amend the VPA permit regulation in order to facilitate consistency with the other regulations that govern the pollutant management activities of animal wastes at AFOs. Proper management of animal wastes is necessary to protect water quality, which is essential to public health, safety, and welfare.

Substance: The proposed action includes amendments to definitions, terms, and procedures in the VPA permit regulation in order to bring consistency to the regulations governing AFOs. Additionally, the proposed amendments include language to establish technical requirements for end-users of animal waste that is transferred off the farm. The language specifies that the technical requirements for end-users will address proper storage, appropriate land application practices, and recordkeeping.

Issues: The primary advantage of the proposed regulatory action is to bring consistency to the regulations governing

AFOs. Establishing and maintaining consistency among these regulations is an advantage for the public, the regulated community, and the Commonwealth. There are no disadvantages of the proposed regulatory action.

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

Summary of the Proposed Amendments to Regulation. The Virginia Pollution Abatement (VPA) Permit Regulation governs the pollutant management activities of animal wastes at animal feeding operations (AFOs). The State Water Control Board (Board) proposes to amend this regulation to: 1) permit non-poultry animal waste to be transferred from AFOs to end users, and 2) amend and introduce definitions for consistency with the existing general permit for AFOs as well as related federal definitions.

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

Estimated Economic Impact. Under specified conditions, the current regulation permits AFOs to transfer poultry waste to end users, but not other animal waste. End users are typically farms that use the waste for fertilizer. The Board proposes to permit non-poultry animal waste to be transferred to end users. According to the Department of Environmental Quality, waste from dairy, beef, and swine feeding operations are the most likely to be newly utilized if this proposed change is approved. AFOs with animals other than poultry will benefit both from having new destinations to legally rid themselves of waste, and from potential revenue from selling the waste to farmers for use as fertilizer. Some farmers will benefit from having an increase in the potential supply of fertilizer. Environmental safeguards remain under the proposed regulations. Thus, the proposed amendments should provide a net benefit.

Businesses and Entities Affected. The proposed amendments will affect the approximate 150+ animal feeding operations<sup>1</sup> in the Commonwealth, as well as farms which use or potentially could use animal waste from the AFOs as fertilizer. All or most of the AFOs would qualify as small businesses.

Localities Particularly Affected. The proposed amendments apply to all localities, but would particularly affect agriculturally oriented localities with relatively more animal feeding operations.

Projected Impact on Employment. The proposed amendments will not likely have a large impact on employment. The proposal to permit the transfer of non-poultry animal waste to end users may lead to a small increase in employment related to the selling and transporting of the waste.

Effects on the Use and Value of Private Property. The proposal to permit the transfer of non-poultry animal waste to end users will very likely lead to AFOs selling non-poultry waste to farmers for fertilizer. This would have a positive impact on the value of such AFOs.

Small Businesses: Costs and Other Effects. The proposed amendments will likely reduce net costs of dealing with animal waste for small non-poultry AFOs, and may reduce the cost of obtaining quality fertilizer for some small farmers.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs. The proposed amendment will not significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

<sup>1</sup> Data source: Department of Environmental Quality

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

Summary:

*The proposed amendments (i) add definitions for clarification or consistency with other regulations governing the pollutant management activities at animal feeding operations (AFOs); (ii) delete the term "concentrated animal feeding operations" and modify the term "confined animal feeding operations"; (iii) establish technical requirements for end-users of animal waste transferred off the farm; (iv) specify that the technical requirements for end-users will address proper storage, appropriate land application practices, and recordkeeping; and (v) modify the public notice provisions*

*for consistency with the Virginia Pollutant Discharge Elimination System regulation governing AFOs.*

Part I  
General

**9VAC25-32-10. Definitions.**

A. The following words and terms, when used in this chapter and in VPA permits issued under this chapter shall have the meanings defined in the State Water Control Law, unless the context clearly indicates otherwise and as follows:

"Active sewage sludge unit" means a sewage sludge unit that has not closed.

"Aerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

"Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

"Agricultural storm water discharge" means a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation or under the control of an animal waste end-user in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

"Agronomic rate" means, in regard to biosolids, the whole sludge application rate (dry weight basis) designed: (i) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land and (ii) to minimize the amount of nitrogen in the biosolids that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

"Anaerobic digestion" means the biochemical decomposition of organic matter in sewage sludge or biosolids into methane gas and carbon dioxide by microorganisms in the absence of air.

"Animal feeding operation" means a lot or facility where the following conditions are met:

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of wastes.



---

# Regulations

---

"Animal waste" means liquid, semi-solid, and solid animal manure, poultry waste, and process wastewater, compost, or sludges associated with livestock and poultry animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.

"Animal waste end-user" means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an operation under his control.

"Animal waste fact sheet" means the document that details the requirements regarding utilization, storage, and management of animal waste by end-users. The fact sheet is approved by the department.

"Annual pollutant loading rate" or "APLR" means the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

"Annual whole sludge application rate" or "AWSAR" means the maximum amount of biosolids (dry weight basis) that can be applied to a unit area of land during a 365-day period.

"Apply biosolids" or "biosolids applied to the land" means land application of biosolids.

"Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment.

"Best Management Practices (BMP)" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of state waters. BMP's include treatment requirements, operating and maintenance procedures, schedule of activities, prohibition of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

"Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-32-660, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this regulation. Liquid biosolids contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry residue by weight.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Bulk biosolids" means biosolids that are not sold or given away in a bag or other container for application to the land.

"Bypass" means intentional diversion of waste streams from any portion of a treatment works.

~~"Concentrated confined animal feeding operation" means an animal feeding operation at which:~~

~~1. At least the following number and types of animals are confined:~~

- ~~a. 300 slaughter and feeder cattle;~~
- ~~b. 200 mature dairy cattle (whether milked or dry cows);~~
- ~~c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);~~
- ~~d. 150 horses;~~
- ~~e. 3,000 sheep or lambs;~~
- ~~f. 16,500 turkeys;~~
- ~~g. 30,000 laying hens or broilers; or~~
- ~~h. 300 animal units; and~~

~~2. Treatment works are required to store wastewater, or otherwise prevent a point source discharge of wastewater pollutants to state waters from the animal feeding operation except in the case of a storm event greater than the 25 year, 24 hour storm.~~

~~"Confined animal feeding operation" means a lot or facility together with any associated treatment works where the following conditions are met: for the purposes of this regulation, has the same meaning as an "animal feeding operation."~~

~~1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period; and~~

~~2. Crops, vegetation forage growth, or post harvest residues are not sustained over any portion of the operation of the lot or facility.~~

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys regardless of animal age or sex.

"Critical areas" and "critical waters" mean areas and waters in proximity to shellfish waters, a public water supply, or recreation or other waters where health or water quality concerns are identified by the Department of Health.

"Cumulative pollutant loading rate" means the maximum amount of an inorganic pollutant that can be applied to an area of land.

"Density of microorganisms" means the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality, or an authorized representative.

"Discharge" means, when used without qualification, a discharge of a pollutant

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to state waters or waters of the contiguous zone or ocean other than discharge

from a vessel or other floating craft when being used as a means of transportation.

"Domestic septage" means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

"Domestic sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

"Draft VPA permit" means a document indicating the board's tentative decision to issue, deny, modify, revoke and reissue, terminate or reissue a VPA permit. A notice of intent to terminate a VPA permit and a notice of intent to deny a VPA permit are types of draft VPA permits. A denial of a request for modification, revocation and reissuance or termination is not a draft VPA permit.

"Dry tons" means dry weight established as representative of land applied biosolids and expressed in units of English tons.

"Dry weight" means the measured weight of a sample of sewage sludge or biosolids after all moisture has been removed in accordance with the standard methods of testing and often represented as percent solids.

"Dry weight basis" means calculated on the basis of having been dried at 105°C until reaching a constant mass (i.e., essentially 100% solids content).

"Exceptional quality biosolids" means biosolids that have received an established level of treatment for pathogen control and vector attraction reduction and contain known levels of pollutants, such that they may be marketed or distributed for public use in accordance with this regulation.

"Facilities" means, in regard to biosolids, processes, equipment, storage devices and dedicated sites, located or operated separately from a treatment works, utilized for sewage sludge management including, but not limited to, handling, treatment, transport, and storage of biosolids.

"Fact sheet" means the document that details the requirements regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers. The fact sheet is approved by the department in consultation with the Department of Conservation and Recreation.

"Feed crops" means crops produced primarily for consumption by animals.

"Fiber crops" means crops produced primarily for the manufacture of textiles, such as flax and cotton.

"Field" means an area of land within a site where land application is proposed or permitted.

"Food crops" means crops produced primarily for consumption by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

"Forest" means a tract of land thick with trees and underbrush.

"General VPA permit" means a VPA permit issued by the board authorizing a category of pollutant management activities.

"Generator" means the owner of a sewage treatment works that produces sewage sludge and biosolids.

"Groundwater" means water below the land surface in the saturated zone.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resources.

"Land application" means, in regard to biosolids, the distribution of either treated wastewater, referred to as "effluent," or stabilized sewage sludge, referred to as "biosolids," by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing the crops and vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with this regulation are not to be considered to be treatment works. Bulk disposal of stabilized sludge in a confined area, such as in landfills, is not land application. For the purpose of this regulation, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application.

"Land application area" means, in regard to biosolids, the area in the permitted field, excluding the setback areas, where biosolids may be applied.

"Land applier" means someone who land applies biosolids pursuant to a valid permit from the department as set forth in this regulation.

"Land with a high potential for public exposure" means land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

"Land with a low potential for public exposure" means land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

"Limitation" means any restriction imposed on quantities, rates or concentration of pollutants which are managed by pollutant management activities.

"Liner" means soil or synthetic material that has a hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second or less.

"Local monitor" means a person or persons employed by a local government to perform the duties of monitoring the operations of land appliers pursuant to a local ordinance.

---

# Regulations

---

"Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance with § 62.1-44.19:3 of the Code of Virginia.

"Malodor" means an unusually strong or offensive odor associated with biosolids or sewage sludge as distinguished from odors commonly associated with biosolids or sewage sludge.

"Monitoring report" means forms supplied by the department for use in reporting of self-monitoring results of the permittee.

"Monthly average" means the arithmetic mean of all measurements taken during the month.

"Municipality" means a city, county, town, district association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge or biosolids management; or a designated and approved management agency under § 208 of the federal Clean Water Act, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity; or an integrated waste management facility as defined in § 201(e) of the federal Clean Water Act, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge or biosolids.

"Nonpoint source" means a source of pollution, such as a farm or forest land runoff, urban storm water runoff or mine runoff that is not collected or discharged as a point source.

"Odor sensitive receptor" means, in the context of land application of biosolids, any health care facility, such as hospitals, convalescent homes, etc. or a building or outdoor facility regularly used to host or serve large groups of people such as schools, dormitories, or athletic and other recreational facilities.

"Operate" means the act of any person who may have an impact on either the finished water quality at a waterworks or the final effluent at a sewage treatment works, such as to (i) place into or take out of service a unit process or unit processes, (ii) make or cause adjustments in the operation of a unit process or unit processes at a treatment works, or (iii) manage sewage sludge or biosolids.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks or wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Other container" means either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

"Overflow" means the unintentional discharge of wastes from any portion of a treatment works.

"Owner" means the Commonwealth or any of its political subdivisions including sanitary districts, sanitation district commissions and authorities; federal agencies; any individual; any group of individuals acting individually or as a group; or any public or private institution, corporation, company, partnership, firm, or association that owns or proposes to own a sewerage system or treatment works as defined in § 62.1-44.3 of the Code of Virginia.

"Pasture" means land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

"Pathogenic organisms" means disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

"Permittee" means an owner or operator who has a currently effective VPA permit issued by the board or the department.

"Person who prepares biosolids" means either the person who generates biosolids during the treatment of domestic sewage in a treatment works or the person who derives the material from sewage sludge.

"pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25°C or measured at another temperature and then converted to an equivalent value at 25°C.

"Place sewage sludge" or "sewage sludge placed" means disposal of sewage sludge on a surface disposal site.

"Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agricultural land.

"Pollutant" means, in regard to wastewater, any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the board determines that such injection or disposal will result in the degradation of ground or surface water resources.

"Pollutant" means, in regard to sewage sludge or biosolids, an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly

from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the board, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

"Pollutant limit" means a numerical value that describes the amount of a pollutant allowed per unit amount of biosolids (e.g., milligrams per kilogram of total solids), the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare), or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

"Pollutant management activity" means a treatment works with a potential or actual discharge to state waters, but which does not have a point source discharge to surface waters.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters or soil as will, or is likely to, create a nuisance or render such waters or soil: (i) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (ii) unsuitable despite reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses. Such alteration is also deemed to be pollution, if there occurs: (a) an alteration of the physical, chemical, or biological property of state waters or soil, or a discharge or a deposit of sewage, industrial wastes, or other wastes to state waters or soil by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of, or discharge, or deposit, to state waters or soil by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters or soil; or (c) the contravention of standards of air or water quality duly established by the board.

"Poultry grower" or "grower" means any person who owns or operates a confined poultry feeding operation.

"Poultry waste" means dry poultry litter and composted dead poultry.

"Poultry waste broker" or "broker" means a person who possesses or controls poultry waste that is not generated on an animal feeding operation under his operational control and transfers or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined as a hauler for the purposes of this regulation.

"Poultry waste end-user" means any recipient of transferred poultry waste who stores or utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an operation under his control.

"Poultry waste hauler" or "hauler" means a person who provides transportation of transferred poultry waste from one entity to another and is not otherwise involved in the transfer or transaction of the waste nor responsible for determining the recipient of the waste. The responsibility of the recordkeeping

and reporting remains with the entities to which the service was provided: grower, broker, and end-user.

"Primary sludge" means sewage sludge removed from primary settling tanks that is readily thickened by gravity thickeners.

"Privately owned treatment works (PVOTW)" means any sewage treatment works not publicly owned.

"Process" means a system, or an arrangement of equipment or other devices that remove from waste materials pollutants including, but not limited to, a treatment works or portions thereof.

"Public contact site" means land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, and golf courses.

"Publicly owned treatment works (POTW)" means any sewage treatment works that is owned by a state or municipality. Sewers, pipes, or other conveyances are included in this definition only if they convey wastewater to a POTW providing treatment.

"Public hearing" means a fact-finding proceeding held to afford interested persons an opportunity to submit factual data, views, and arguments to the board.

"Reclamation site" means drastically disturbed land that is reclaimed using biosolids. This includes, but is not limited to, strip mines and construction sites.

"Reimbursement application" means forms approved by the department to be used to apply for reimbursement of local monitoring costs for land application of biosolids in accordance with a local ordinance.

"Run-off" means rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the federal Clean Water Act (33 USC 1251 et seq.), the law, and board regulations, standards and policies.

"Setback area" means the area of land between the boundary of the land application area and adjacent features where biosolids or other managed pollutants may not be land applied.

"Sewage" means the water-carried and nonwater-carried human excrement, kitchen, laundry, shower, bath, or lavatory wastes, separately or together with such underground, surface, storm, and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments, or other places.

"Sewage sludge" means any solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and

---

# Regulations

---

a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

"Sewage sludge unit" means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include surface waters.

"Sewage sludge use or disposal" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

"Site" means the area of land within a defined boundary where an activity is proposed or permitted.

"Sludge" means solids, residues, and precipitates separated from or created by the unit processes of a treatment works.

"Sludge management" means the treatment, handling, transportation, storage, use, distribution, or disposal of sewage sludge.

"Specific oxygen uptake rate" or "SOUR" means the mass of oxygen consumed per unit time per mass of total solids (dry weight basis) in the sewage sludge.

"State waters" means all water on the surface or under the ground wholly or partially within or bordering the state or within its jurisdiction.

"State Water Control Law (law)" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"Store sewage sludge" or "storage of sewage sludge" means the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

"Substantial compliance" means designs and practices that do not exactly conform to the standards set forth in this chapter as contained in documents submitted pursuant to 9VAC25-32-340, but whose construction or implementation will not substantially affect health considerations or performance.

"Supernatant" means a liquid obtained from separation of suspended matter during sludge treatment or storage.

"Surface disposal site" means an area of land that contains one or more active sewage sludge units.

"Surface water" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate "wetlands";
3. All other waters such as inter/intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use,

degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

- a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters of the United States under this definition;
  5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
  6. The territorial sea; and
  7. "Wetlands" adjacent to waters, other than waters that are themselves wetlands, identified in subdivisions 1 through 6 of this definition.

"Total solids" means the materials in sewage sludge that remain as residue when the sewage sludge is dried to 103°C to 105°C.

"Toxic pollutant" means any pollutant listed as toxic under § 307 (a)(1) of the CWA or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing § 405 (d) of the CWA.

"Toxicity" means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health, or other adverse environmental effects.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treat sewage sludge" or "treatment of sewage sludge" means the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

"Treatment works" means either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature. Treatment works may include but are not limited to pumping, power, and other equipment and their appurtenances; septic tanks; and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment. "Treatment works" does not include biosolids use on privately owned agricultural land.

"Twenty-five-year, 24-hour storm event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the

National Weather Service or appropriate regional or state rainfall probability information.

"Unstabilized solids" means organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit limitations because of factors beyond the permittee's reasonable control. An upset does not include noncompliance caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Use" means to manage or recycle a processed waste product in a manner so as to derive a measurable benefit as a result of such management.

"Variance" means a conditional approval based on a waiver of specific regulations to a specific owner relative to a specific situation under documented conditions for a specified period of time.

"Vector attraction" means the characteristic of biosolids or sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

"Virginia Pollution Abatement (VPA) permit" means a document issued by the board, pursuant to this chapter, authorizing pollutant management activities under prescribed conditions.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued by the board pursuant to 9VAC25-31-10 et seq., authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

"Volatile solids" means the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550°C in the presence of excess air.

"VPA application" means the standard form or forms approved by the board for applying for a VPA permit.

"Waste storage facility" means a (i) waste holding pond or tank used to store manure prior to land application or (ii) a lagoon or treatment facility used to digest or reduce the solids or nutrients.

"300 animal units" means 300,000 pounds of live animal weight or the following numbers and types of animals:

- a. 300 slaughter and feeder cattle;
- b. 200 mature dairy cattle (whether milked or dry cows);

c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);

d. 150 horses;

e. 3,000 sheep or lambs;

f. 16,500 turkeys;

g. 30,000 laying hens or broilers.

"Water quality standards" means the narrative statements for general requirements and numeric limits for specific requirements that describe the water quality necessary to meet and maintain reasonable and beneficial uses. Such standards are established by the board under § 62.1-44.15 (3a) of the Code of Virginia.

B. Generally used technical terms not defined in subsection A of this section or the department's latest definitions of technical terms as used to implement § 62.1-44.15 of the Code of Virginia shall be defined in accordance with "Glossary-Water and Wastewater Control Engineering" published by the American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and the Water Environment Federation (WEF).

Part III  
Public Involvement

**9VAC25-32-140. Public notice of VPA permit action and public comment period.**

A. Draft VPA permits.

1. Every draft VPA permit shall be given public notice, paid for by the owner, by publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the pollutant management activity except for animal feeding operations as defined in 9VAC25-32-10, when the modifications are to the nutrient management plan.

2. Interested persons shall have a period of at least 30 days following the date of the initial newspaper public notice to submit written comments on the tentative decision and to request a public hearing.

3. The contents of the public notice of an application for a VPA permit shall include:

- a. The name and address of the applicant. If the location of the pollutant management activity differs from the address of the applicant the notice shall also state the location of the pollutant management activity including storage and land application sites;
- b. A brief description of the business or activity conducted at the facility;
- c. A statement of the tentative determination to issue or deny a VPA permit;
- d. A brief description of the final determination procedure;

---

# Regulations

---

- e. The address and phone number of a specific person at the state office from whom further information may be obtained; and
- f. A brief description of how to submit comments and request a hearing.

## B. VPA permit application.

1. Upon receipt of an application for the issuance of a new or modified permit, the department shall notify in writing the locality wherein the pollutant management activity does or is proposed to take place. This notification shall, at a minimum, include:

- a. The name of the applicant;
- b. The nature of the application and proposed pollutant management activity;
- c. The availability and timing of any comment period; and
- d. Upon request, any other information known to, or in the possession of, the board or the department regarding the application except as restricted by 9VAC25-32-150.

2. Whenever the department receives an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, or an application to reissue with the addition of sites increasing acreage by 50% or more of that authorized in the initial permit, the department shall establish a date for a public meeting to discuss technical issues relating to proposals for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven nor more than 14 days prior to the meeting. The department shall not issue the permit until the public meeting has been held and comment has been received from the local governing body or until 30 days have lapsed from the date of the public meeting.

3. Following the submission of an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, the department shall make a good faith effort to notify or cause to be notified persons residing on property bordering the sites that contain the proposed land application fields. This notification shall be in a manner selected by the department. For the purposes of this subsection, "site" means all contiguous land under common ownership, but which may contain more than one tax parcel.

4. Public notice shall not be required for submission or approval of plans and specifications or conceptual

engineering reports not required to be submitted as part of the application.

C. Following the submission of an application to add a site that is not contiguous to sites included in an existing permit authorizing the land application of biosolids:

1. The department shall notify persons residing on property bordering such site and shall receive written comments from those persons for a period of 30 days. Based upon written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application at the site.

2. An application for any permit amendment to increase the acreage authorized by the initial permit by 50% or more shall be considered a major modification and shall be treated as a new application for purposes of public notice and public hearings. The increase in acreage for the purpose of determining the need for the public meeting is the sum of all acreage that has been added to the permit since the last public meeting, plus that proposed to be added.

D. Before issuing any permit, if the board finds that there are localities particularly affected by the permit, the board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged; and

2. Mail, by electronic or postal delivery, the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the board for at least 15 days after any public hearing on the permit, unless the board votes to shorten the period. For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material water quality impact which would not be experienced by other localities.

## **9VAC25-32-250. ~~Confined—animal~~ Animal feeding operations.**

A. All ~~confined~~ animal feeding operations shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm. ~~Concentrated—confined—animal~~ Animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system or having 200 or more animal units of poultry are pollutant management activities subject to the VPA permit program. Two or more ~~confined~~ animal feeding operations under common ownership are ~~considered, for the purposes of this regulation, to be~~ a single

~~confined~~ animal feeding operation for the purpose of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. Case-by-case ~~designation of concentrated confined animal feeding operations~~ determination.

1. The board may ~~designate~~ determine that any ~~confined animal feeding operation which that~~ does not ~~fall under the definition of concentrated confined animal feeding operation as defined in 9VAC25-20-10~~ otherwise qualify for coverage under the VPA general permit and has not been required to obtain a VPDES permit be required to obtain an individual VPA permit upon determining that it is a potential or actual contributor of pollution to state waters. In making this ~~designation~~ determination the following factors shall be considered:

- a. The size of the operation;
- b. The location of the operation relative to state waters;
- c. The means of conveyance of animal wastes and process waters into state waters;
- d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into state waters;
- e. The compliance history and the ability to make corrections in order to comply with the VPA general permit conditions;
- e. ~~f.~~ The means of storage, treatment, or disposal of animal wastes; and
- f. ~~g.~~ Other relevant factors.

2. A VPA permit application shall not be required for a ~~concentrated confined~~ an animal feeding operation ~~designated under~~ subject to subdivision 1 of this subsection until the board has conducted an on-site inspection of the operation and determined that the operation shall be regulated under the VPA permit program.

**9VAC25-32-255. Requirements for end-users of animal waste and poultry waste.**

A. Technical requirements for end-users of animal waste or poultry waste will be established in general permit regulations or individual permits. Technical requirements for end-users of animal waste or poultry waste shall address but not be limited to the following:

1. Proper waste storage;
2. Appropriate land application practices; and
3. Recordkeeping.

B. End-users of animal waste or poultry waste shall comply with technical requirements established as set forth by subsection A of this section.

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia

Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-32)

[Virginia Pollution Abatement Permit Application, General Instructions \(rev. 4/09\)](#)

[Virginia Pollution Abatement Permit Application, Form A, All Applicants \(rev. 4/09\)](#)

~~[Virginia Pollution Abatement Permit Application, Form B, Animal Waste \(rev. 10/95\)](#)~~

[Virginia Pollution Abatement \(VPA\) Permit Application, Form B, Animal Feeding Operations \(AFOs\) \(rev. 2/13\)](#)

[Virginia Pollution Abatement Permit Application, Form C, Industrial Waste \(rev. 10/95\)](#)

[Virginia Pollution Abatement Permit Application, Form D, Municipal Effluent and Biosolids Cover Page \(rev. 6/13\):](#)

[Part D-I: Land Application of Municipal Effluent \(rev. 4/09\)](#)

[Part D-II: Land Application of Biosolids \(rev. 10/13\)](#)

[Part D-III: Effluent Characterization Form \(rev.4/09\)](#)

[Part D-IV: Biosolids Characterization Form \(rev. 6/13\)](#)

[Part D-V: Non-Hazardous Waste Declaration \(rev. 6/13\)](#)

[Part D-VI: Land Application Agreement - Biosolids and Industrial Residuals \(rev. 9/12\)](#)

[Part D-VII: Request for Extended Setback from Biosolids Land Application Field \(rev. 10/11\)](#)

[Application for Land Application Supervisor Certification \(rev. 2/11\)](#)

[Application for Renewal of Land Application Supervisor Certification \(rev. 2/11\)](#)

[Sludge Disposal Site Dedication Form, Form A-1 \(rev. 11/09\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form I, Insurance Liability Endorsement \(rev. 10/13\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form II, Certificate of Liability Insurance \(rev. 10/13\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form III, Corporate Letter \(rev. 11/09\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form IV, Corporate Guarantee \(rev. 11/09\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form V, Letter of Credit \(rev. 11/09\)](#)



---

# Regulations

---

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VI, Trust Agreement \(rev. 11/09\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VII, Local Government Financial Test \(rev. 10/13\)](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VIII, Local Government Guarantee \(rev. 10/13\)](#)

VA.R. Doc. No. R12-3345; Filed December 6, 2013; 1:29 p.m.

## Final Regulation

**Title of Regulation:** **9VAC25-740. Water Reclamation and Reuse Regulation (amending 9VAC25-740-10, 9VAC25-740-30 through 9VAC25-740-180, 9VAC25-740-200; adding 9VAC25-740-45, 9VAC25-740-55, 9VAC25-740-105).**

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

**Effective Date:** January 29, 2014.

**Agency Contact:** William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, or email [william.norris@deq.virginia.gov](mailto:william.norris@deq.virginia.gov).

### Summary:

*The amendments (i) allow design or operational deviations for facilities still capable of producing or distributing reclaimed water in a manner protective of the environment and public health; (ii) allow temporary authorization of water reclamation and reuse without a permit during periods of significant drought; (iii) clarify that a VPDES permit modification will be required where diversion of source water from the VPDES permitted discharge to water reclamation and reuse has the potential to cause a significant adverse impact to other beneficial uses of the receiving state water for the discharge; and (iv) improve clarity, reduce redundancies, and correct references throughout the 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 I

#### Definitions and General Program Requirements

#### 9VAC25-740-10. Definitions.

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

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation,

maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, [ ~~or~~ ] cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses.

[ "~~Biological nutrient removal (BNR)~~" "Biological nutrient removal" or "BNR" ] means treatment that achieves [ ~~an~~ ] annual average [ ~~of concentrations less than or equal to~~ ] 8.0 mg/l total nitrogen (N) and 1.0 mg/l total phosphorus (P).

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Bulk irrigation reuse" means reuse of reclaimed water for irrigation of an area greater than five acres on one contiguous property.

"Class I reliability" means a measure of reliability that requires a treatment works design to provide continuous satisfactory operation during power failures, flooding, peak loads, equipment failure, and maintenance shut-down. This class includes design features, such as additional electrical power sources, additional flow storage capacity, and additional treatment units that provide operation in accordance with the issued certificate or permit requirements.

"Conjunctive system" means a system consisting of a wastewater treatment works and reclamation system having no or minimal separation of treatment processes between the treatment works and the reclamation system.

"Controlled use" means a use of reclaimed water authorized in accordance with this chapter.

"Corrective action threshold" or "CAT" means a bacterial, turbidity [  ~~]~~ or total residual chlorine standard for reclaimed water at which measures shall be implemented to correct operational problems of the reclamation system within a specified period, or divert flow from the reclamation treatment process in accordance with this chapter.

"Design flow" means the capacity at which a treatment works is designed to reliably treat an average 24-hour influent flow rate, assessed over a period of a month for all months of operation within a year, including appropriate peak factors provided to meet applicable reliability and redundancy requirements. The average 24-hour influent flow rate shall be based on projected estimates of influent flow to be received by the treatment works.

"Designated design flow" means the design flow of a reclamation system that may be some percentage of or equal to the design flow of a treatment works providing [ ~~wastewater or partially treated wastewater source water~~ ] to the reclamation system to produce reclaimed water.

"Direct beneficial use" means the use of reclaimed water in a manner protective of the environment and public health that involves transport of the reclaimed water from the point of

reclamation treatment and production to the point of use without an intervening discharge to waters of the state.

"Direct injection" means the discharge of reclaimed water directly into groundwater.

"Direct potable reuse" means the discharge of reclaimed water directly into a drinking water treatment facility or into a drinking water distribution system. This includes storage facilities associated with the drinking water treatment facility or drinking water distribution system that are not surface or ground waters of the state.

"Director" means the Director of the Department of Environmental Quality or an authorized representative.

"Disinfection" means the destruction, inactivation, or removal of pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants; UV radiation; or other processes.

"Disposal" means the discharge of effluent to injection wells, effluent outfalls, subsurface drain fields, or other facilities utilized primarily for the release of effluents into the environment without deriving a direct beneficial use.

"Domestic sewage" means sewage derived from the normal family or household activities, including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets.

"Drip irrigation" means the slow and uniform above-ground application of water to individual plants and vegetated cover using tubing and drip devices or emitters. Drip irrigation may include below-ground applications of reclaimed water as specified in 9VAC25-740-90 B.

"Effluent," unless specifically stated otherwise, means treated wastewater that is not reused after flowing out of any treatment works.

"End user" means a person or entity that directly uses reclaimed water.

"Filtration" means the passing of wastewater through a conventional technology, such as sand, anthracite or cloth; or an advanced technology, such as microfiltration, ultrafiltration, nanofiltration or reverse osmosis membrane.

"Food crops commercially processed" means food crops that, prior to sale to the public or others, have undergone chemical or physical processing sufficient to remove or destroy pathogens.

"Food crops not commercially processed" means food crops that, prior to sale to the public or others, have not undergone chemical or physical processing sufficient to remove or destroy pathogens.

"Gray water" means untreated wastewater from bathtubs, showers, lavatory fixtures, wash basins, washing machines, and laundry tubs. It does not include wastewater from toilets, urinals, kitchen sinks, dishwashers, or laundry water from soiled diapers.

~~"Ground water"~~ "Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Harvested rainwater" means rainwater that has been collected off of a rooftop through a system that concentrates the rooftop flow and conveys this to a storage device, container, or vessel with the intention of using this water before discharge to waterways via sanitary sewer systems, septic tank or other onsite treatment and disposal systems, or a land based discharge.

"Indirect nonpotable reuse" means the discharge of reclaimed water to a receiving surface water for the purpose of intentionally augmenting a water source, followed by withdrawal from the water source with or without mixing and transport to the withdrawal location, for reuse or distribution for reuse other than indirect potable reuse.

"Indirect potable reuse" or "IPR" means the discharge of reclaimed water to a receiving surface water for the purpose of intentionally augmenting a water supply source, with subsequent withdrawal after mixing with the ambient surface water and transport to the withdrawal location, followed by treatment and distribution for drinking water and other potable water purposes.

~~"Indirect reuse" means the use of reclaimed water subsequent to discharge to surface waters of the state, including wetlands, pursuant to a VPDES permit.~~

"Industrial wastewater" means wastewater resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

"Irrigation" means the application of water to land for plant use at a rate that undesirable plant water stress does not occur.

"Landscape impoundment" means a body of water that contains reclaimed water, is not intended for public contact, and is used primarily for aesthetic enjoyment. Landscape impoundments include, but are not limited to, decorative pools, fountains, ponds and lagoons; located outdoors or indoors.

"Level 1" means a degree of treatment at which reclaimed water has received, at a minimum, secondary treatment with filtration and higher-level disinfection, and meets all other applicable standards specified in 9VAC25-740-70.

"Level 2" means a degree of treatment at which reclaimed water has received, at a minimum, secondary treatment and standard disinfection, and meets all other applicable standards specified in 9VAC25-740-70.

"Municipal wastewater" means sewage.

"Nonbulk irrigation reuse" means the reuse of reclaimed water for irrigation of individual areas less than or equal to five acres.

---

# Regulations

---

"Nonpotable water" means any water, including reclaimed water, not meeting the definition of potable water.

"Nonsystem storage" means storage for reclaimed water that is other than system storage and is used at a location downstream of the service connection to the reclaimed water distribution system to equalize flow to end users.

~~"Nutrient management plan (NMP)"~~ "Nutrient management plan" or "NMP" means a plan prepared by a nutrient management planner certified by the Department of Conservation and Recreation to manage the amount, placement, timing, and application of plant nutrients from liquid, solid or semisolid manures, fertilizers, biosolids, or other materials, for the purpose of producing crops and reducing nutrient loss to the environment.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for the production or distribution of reclaimed water, or any facility or operation that produces or distributes reclaimed water.

"Permit" means an authorization, certificate, license, or equivalent control document issued by the board to implement the requirements of this chapter.

"Point of compliance" or "POC" means a point at which compliance with the standards of this chapter is required.

"Pollutants of concern" means any pollutants that might reasonably be expected to be discharged to a publicly or privately owned treatment works in sufficient amounts to pass through or interfere with the works, contaminate sludge generated by the works, cause problems in the collection system of the works, or jeopardize the health of employees at the works and the public.

"Potable water" means water fit for human consumption and domestic use that is sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts for domestic usage in the area served and normally adequate in quantity and quality for the minimum health requirements of the persons served.

"Public access area" means an area that is intended to be accessible to the general public, such as golf courses, cemeteries, parks, athletic fields, school yards, and landscape areas. Public access areas include private property that is not open to the public at large, but is intended for frequent use by many persons. Presence of authorized farm personnel or other authorized treatment plant, utilities system, or reuse system personnel does not constitute public access.

~~"Reclamation" means the treatment of domestic, municipal or industrial wastewater or sewage to produce reclaimed water for a water reuse that would not otherwise occur.~~

~~"Reclamation system" means a treatment works that treats domestic, municipal or industrial wastewater or sewage to produce reclaimed water for a water reuse that would not otherwise occur.~~

"Reclaimed water" means water resulting from the treatment of domestic, municipal or industrial wastewater that is suitable for a water reuse that would not otherwise occur. Specifically excluded from this definition is "gray water." For the purposes of this chapter, "harvested rainwater" and "stormwater" are also excluded from this definition.

"Reclaimed water agent" means a person or entity that holds a permit to distribute reclaimed water to one or more end users.

"Reclaimed water distribution system" means a network of pipes, pumping facilities, storage facilities, and appurtenances designed to convey and distribute reclaimed water from one or more reclamation systems to [ ~~one or more~~ ] end [ ~~users~~ uses ].

~~"Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage to produce reclaimed water for a water reuse that would not otherwise occur.~~

~~"Reclamation system" means a treatment works that treats domestic, municipal, or industrial wastewater or sewage to produce reclaimed water for a water reuse that would not otherwise occur.~~

"Reject water storage" means storage for water diverted by a reclamation system or satellite reclamation system that does not meet applicable reclaimed water standards.

"Reliability Class I" means a measure of reliability that requires a treatment works design to provide continuous satisfactory operation during power failures, flooding, peak loads, equipment failure, and maintenance shut-down. This class includes design features, such as additional electrical power sources, additional flow storage capacity, and additional treatment units that provide operation in accordance with the issued certificate or permit requirements. The definition of Reliability Class I contained in this chapter is in addition to but does not supersede the definition of Reliability Class I contained in the Sewage Collection and Treatment Regulations (9VAC25-790).

"Reuse" or "water reuse" means the use of reclaimed water for a direct beneficial use, an indirect potable reuse, an indirect nonpotable reuse, or a controlled use in accordance with this chapter.

"Reuse system" means an installation or method of operation that uses reclaimed water for a water reuse in accordance with this chapter.

"Restricted access" means limited access by humans to areas where [  ] nonpotable water, including reclaimed water, is used, resulting in minimal or no potential for human contact.

"Satellite reclamation system" or "SRS" means a conjunctive ~~wastewater treatment works and reclamation~~ system that operates within or parallel to a sewage collection system to treat a portion of the available wastewater flow in the collection system to produce reclaimed water for reuse. Satellite reclamation systems do not have a discharge to surface waters, but may return their treatment process wastewater and residuals to the sewage collection system.

"Secondary treatment" means a biological treatment process for wastewater that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation in 40 CFR § 133.102 (2001).

"Service area" means a geographic area that receives reclaimed water from a reclaimed water distribution system or directly from a reclamation system for approved reuses within that area.

"Sewage" means the water-carried human wastes and nonwater-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes, separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Significant industrial user" or "SIU" shall have the meaning set forth in the VPDES Permit Regulation (9VAC25-31-10).

"Source water" means untreated or partially treated wastewater supplied for reclamation.

"State waters" or "waters of the state" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"State Water Control [ ~~Law or Law~~ "Law" or "Law" ] means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Supplemental irrigation" means irrigation, which in combination with rainfall, meets but does not exceed the water necessary to maximize production or optimize growth of the irrigated vegetation.

"Surface waters" means all waters in the Commonwealth, except ~~ground water~~ groundwater as defined in § 62.1-255 of the Code of Virginia.

"System storage" means storage on or off the site and considered part of a reclamation system, ~~satellite reclamation system~~ SRS, or reclaimed water distribution system that is used to store reclaimed water produced by the reclamation system or ~~satellite reclamation system~~ SRS and to equalize flow to or within a reclaimed water distribution system.

"Total maximum daily load" or "TMDL" shall have the meaning set forth in the Water Quality [ Management ] Planning Regulation (9VAC25-720).

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste, or that are necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances, extensions, improvements, remodeling, additions, or alterations thereof; or any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Underground aquifer" means an aquifer or portion of an aquifer that supplies any public water system or that contains a sufficient quantity of groundwater to supply a public water system, and currently supplies drinking water for human consumption, or that contains fewer than 10,000 mg/l total dissolved solids and is not an exempted aquifer.

"Unintentional reuse" means the unintentional or unplanned use of reclaimed water subsequent to discharge to surface waters of the state, including wetlands, pursuant to a VPDES permit.

"Unrestricted access" means unlimited or minimally limited access by humans to areas where nonpotable water, including reclaimed water, is used, resulting in a high potential for human contact.

"User" means end user.

~~"Virginia Pollution Abatement (VPA) Permit"~~ "Virginia Pollution Abatement [ Permit" permit" ] or "VPA [ Permit" permit" ] means a document issued by the board, pursuant to the Virginia Pollution Abatement [ (VPA) ] Permit Regulation (9VAC25-32), authorizing pollutant management activities under prescribed conditions.

~~"Virginia Pollutant Discharge Elimination System (VPDES) Permit"~~ "Virginia Pollutant Discharge Elimination System [ Permit" permit" ] or "VPDES [ Permit" permit" ] means a document issued by the board, pursuant to the Virginia Pollutant Discharge Elimination System [ (VPDES) ] Permit Regulation (9VAC25-31), authorizing, under prescribed conditions the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

"Wastewater" means untreated liquid and ~~water-carried~~ water-carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions.

---

# Regulations

---

"Water reclamation" means the reclamation of wastewater or treated effluent for reuse.

"Waterworks" means a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least 15 connections, or (iii) an average of 25 individuals for at least 60 days out of the year. The term "waterworks" shall include all structures, equipment, and appurtenances used in the storage, collection, purification, treatment, and distribution of pure water, except the piping and fixtures inside the building where such water is delivered.

## **9VAC25-740-30. Applicability and transition.**

A. The requirements of this chapter shall apply to water reclamation systems, reclaimed water distribution systems, and water reuse unless specifically excluded under 9VAC25-740-50 A. The requirements shall apply to all new water reclamation systems, reclaimed water distribution systems and, as applicable, water reuses for which Virginia Pollution Abatement (VPA) or Virginia Pollutant Discharge Elimination System (VPDES) permit applications are received after October 1, 2008. The requirements may also be applied to all existing permitted facilities producing, distributing or using reclaimed water through a permit modification or reissuance procedure and shall be applied when such facilities are to be modified or expanded unless specifically excluded under 9VAC25-740-50 A. The owners of existing water reclamation systems, reclaimed water distribution systems and, as applicable, water reuses that do not have a VPA or VPDES permit shall submit a complete VPA or VPDES permit application or other necessary information as prescribed under 9VAC25-740-40 within 180 days of being requested by the board.

B. For the purposes of this chapter:

1. The incorporation of standards, monitoring requirements and special conditions for water reclamation and reuse into a VPA permit shall be considered a minor modification unless they alter other conditions of the permit specifically related to the pollutant management activity for which the permit was originally issued.

2. Standards, monitoring requirements and special conditions for water reclamation and reuse may be [~~administratively~~] authorized for a VPDES permit [~~without a through:~~

a. A modification of the ] permit [~~modification unless they~~ where such standards, monitoring requirements, and special conditions would ] effectively alter other conditions of the permit specifically related to the effluent discharge for which the permit was originally issued [ , or where the diversion of source water from the VPDES permitted discharge to water reclamation and reuse has the potential to cause a significant adverse impact to other beneficial uses of the receiving state water, or both; or

b. An administrative authorization where such standards, monitoring requirements, and special conditions would not alter other conditions of the permit specifically related to the effluent discharge for which the permit was originally issued, and where the diversion of source water from the VPDES permitted discharge to water reclamation and reuse does not have the potential to cause a significant adverse impact to other beneficial uses of the receiving state water ]. The administrative authorization shall have the full effect of the VPDES permit until such time that it is incorporated into the VPDES permit through reissuance or [~~major~~] modification.

3. ~~Minor modification~~ Modification of a VPA or VPDES permit or the issuance of an administrative authorization associated with a VPDES permit described in subdivisions 1 and 2 of this subsection shall require an application ~~for a water reclamation and reuse project~~ in accordance with 9VAC25-740-100.

## **9VAC25-740-40. Permitting requirements.**

A. The owner of the reclamation system and the owner of the reclaimed water distribution system or the reclaimed water agent shall obtain a VPDES or VPA permit to produce and distribute reclaimed water, unless otherwise excluded from the requirements of this chapter under 9VAC25-740-50 A. Where both the reclamation system and the reclaimed water distribution system are under common ownership and management, one permit may be issued to the owner. Permit coverage may be provided through modification or reissuance of an existing VPA permit, or reissuance of or administrative authorization for an existing VPDES permit to include standards, monitoring requirements and special conditions that address water reclamation and reuse.

B. The owner of a satellite reclamation system (SRS) shall obtain a VPA permit. Alternatively and at the discretion of the board, a ~~satellite reclamation system~~ SRS may be authorized under a VPA or VPDES permit issued to a wastewater treatment works that is under common ownership or management with the ~~satellite reclamation system~~ SRS and receives wastewater and residuals discharged by the ~~satellite reclamation system~~ SRS.

C. Each end user shall enter into a service agreement or contract with all reclaimed water agents from which the end user receives reclaimed water prior to receipt of such water. Monitoring and management of individual end users of ~~reclaimed water~~ shall be by the ~~permittee~~ reclaimed water agents with whom the end users have a service connection, and through the service agreements or contracts between the ~~permittee~~ reclaimed water agents and the individual end users unless affected by a permit issued to an end user as described in subsection F of this section.

D. Where a reclamation system and a reclaimed water distribution system that receives reclaimed water from the reclamation system are under separate ownership and

management, and the reclaimed water distribution system does not distribute reclaimed water to end users other than to the owner or management of that system, the reclaimed water distribution system ~~shall~~ may not require a permit provided a service agreement or contract is established between the reclamation system and the reclaimed water distribution system.

E. A separate permit may be required for end users receiving reclaimed water directly from more than one reclamation system, ~~satellite reclamation system SRS~~, reclaimed water distribution system, or a combination thereof. An end user may be authorized under the permit issued to one of the reclamation systems, ~~satellite reclamation systems SRSs~~, or reclaimed water distribution systems that supply reclaimed water to the end user, provided the end user is under common ownership or management with the permitted system.

F. Property irrigated with reclaimed water from a reclamation system, ~~satellite reclamation system SRS~~, or reclaimed water distribution system under common ownership or management with that property, shall be regulated by the permit issued to the reclamation system, ~~satellite reclamation system SRS~~, or reclaimed water distribution system providing reclaimed water to the irrigated property.

G. A reclamation system shall not discharge reclaimed or reject water to surface waters of the state in lieu of providing storage, discharging to another permitted reuse system, if applicable; returning reclaimed or reject water to a wastewater treatment works; or suspending production of reclaimed water; without authorization to discharge under a VPDES [ Permit permit ].

**9VAC25-740-45. Emergency authorization for the production, distribution, or reuse of reclaimed water.**

A. The board may issue an emergency authorization for the production, distribution, or reuse of reclaimed water when it finds that due to drought there is an insufficient public water supply that may result in a substantial threat to public safety. The emergency authorization may be issued only after:

1. Conservation measures mandated by local or state authorities have failed to protect public safety, and
2. The Virginia Department of Health has been notified of the application to issue an emergency authorization and has been provided not less than 14 days to submit comments or recommendations to the board on the application.

B. An emergency authorization may be issued in addition to an Emergency Virginia Water Protection Permit ( [ as provided in ] 9VAC25-210) for a new or increased public water supply withdrawal.

C. An emergency authorization may be issued to only existing VPDES or VPA permitted municipal treatment works that:

1. Are not currently authorized to produce, distribute, or reuse reclaimed water in accordance with 9VAC25-740-40;
2. Are currently capable of producing reclaimed water meeting minimum standard requirements of 9VAC25-740-90 for proposed reuses listed in the application for an emergency authorization; and
3. Do not have significant industrial users (SIUs), or do have SIUs and a pretreatment program developed, approved, and maintained in accordance with Part VII (9VAC25-31-730 [ ~~through 9VAC25-31-900~~ et seq. ] ) of the VPDES Permit Regulation.

D. An emergency authorization may be issued for only reuses of reclaimed water deemed necessary by the board. In no case shall an emergency authorization be issued in lieu of a VPDES permit action for a reuse that involves a discharge of reclaimed water to surface waters.

E. An application for an emergency authorization issued pursuant to this section shall provide the information specified in 9VAC25-740-105. No later than 180 days after the issuance of an emergency authorization, the holder of the authorization shall apply for coverage under a VPDES or VPA permit in accordance with 9VAC25-740-40. Thereafter, the emergency authorization shall remain in effect until the board acts upon the application for the VPDES or VPA permit in accordance with 9VAC25-740-30 B.

F. There shall be no public comment period for the issuance of an emergency authorization.

**9VAC25-740-50. Exclusions and prohibitions.**

A. Exclusions. Exclusion from the requirements of this chapter does not relieve any owner of the operations identified in this section of the responsibility to comply with any other applicable federal, state, or local statutes, regulations, or ordinances. The following are excluded from the requirements of this chapter:

1. Activities permitted by the Virginia Department of Health (VDH), such as, but not limited to, septic tank drainfield systems and other [ ~~on-site~~ onsite ] sewage treatment and disposal systems, and water treatment plant recycle flows. This exclusion does not apply to alternative onsite sewage systems as defined in 12VAC5-613 (Regulations for Alternative Onsite Sewage Systems) with an average daily sewage flow in excess of 1,000 gallons per day that are concurrently permitted by the board and VDH to allow sewage reclamation and reuse in addition to onsite sewage treatment and disposal.
2. Utilization of gray water, harvested rainwater, or stormwater.
3. Nonpotable water produced and utilized on-site by the same treatment works for facilities permitted through a VPDES or VPA permit. This includes the use of nonpotable water at the treatment works site for incidental landscape irrigation that is not identified as land treatment

---

# Regulations

---

defined in the Sewage Collection and Treatment Regulations (9VAC25-790). The treatment works site shall include property that is either contiguous to or in the immediate vicinity of the parcel of land upon which the treatment works is located, provided such property is under common ownership or management with the treatment works. This exclusion does not apply to nonpotable water produced by treatment works authorized by the VPDES General Permit for Domestic Sewage Discharges Less Than or Equal to 1,000 Gallons Per Day (9VAC25-110).

4. Recycle flows within a treatment works.

5. Industrial effluents or other industrial water streams created prior to final treatment and used for water recirculation, recycle, or reuse systems located on the same property as the industrial facility, provided:

- a. The water used in these systems does not contain or is not expected to contain pathogens or other constituents in sufficient quantities and with a potential for human contact as may be harmful to human health;
- b. These systems are closed or isolated to prevent worker contact with the water of the systems; or
- c. Other measures are in place, including but not limited to, applicable federal and state occupational safety and health standards and requirements, to adequately inform and protect employees from pathogens or other constituents that may be harmful to human health in the water to be re-circulated, recycled or reused at the facility.

6. Land treatment systems [~~defined~~ described] in the Sewage Collection and Treatment Regulations (9VAC25-790). Such use of wastewater effluent, either existing or proposed, must be authorized by a VPA or VPDES permit and must be on land owned or under the direct long-term control of the permittee.

7. ~~Indirect Unintentional~~ reuse [~~with the exception of indirect potable reuse projects proposed after October 1, 2008 and~~

8. Existing ] indirect nonpotable reuse projects [ proposed after (effective date of amended regulation) that as of January 29, 2014, are authorized by a VPDES permit to discharge to surface waters of the state ].

[ ~~8. 9.~~ ] Existing indirect potable reuse projects that upon October 1, 2008, are authorized by a VPDES permit to discharge to surface waters of the state, and future expansions of these projects.

[ ~~9. 10.~~ ] Direct injection of reclaimed water into any underground aquifer authorized by EPA under the Safe Drinking Water Act, Underground Injection Control Program (UIC), 40 CFR Part 144; or other applicable federal and state laws and regulations.

~~Exclusion from the requirements of this chapter does not relieve any owner of the above operations of the~~

~~responsibility to comply with any other applicable federal, state or local statute, ordinance or regulations.~~

B. Prohibitions. The following are prohibited under this chapter:

1. Direct potable reuse;

2. ~~The reuse of reclaimed water for any purpose inside a residential or domestic dwelling or a building containing a residential or domestic unit distributed to [ one or two family one-family or two-family ] dwellings. This prohibition does not apply to reuses of reclaimed water outside of and on the same property as [ one or two family one-family or two-family ] dwellings where the reclaimed water is not distributed to such reuses by way of plumbing within the dwellings;~~

3. The reuse of reclaimed water to fill residential swimming pools, hot tubs or wading pools;

4. The reuse of reclaimed water for food preparation or incorporation as an ingredient into food or beverage for human consumption;

5. Bypass of untreated or partially treated wastewater from the reclamation system or any intermediate unit process to the point of reuse unless the bypass complies with standards and requirements specified in 9VAC25-740-70 and is for essential maintenance to assure efficient operation; ~~and~~

6. The return of reclaimed water to the reclaimed water distribution system after the reclaimed water has been delivered to an end user; ~~and~~

7. Reduction of the discharge from a VPDES permitted treatment works due to diversion of source water flow for reclamation and reuse such that the physical, chemical, or biological properties of the receiving state waters are affected in a manner that would cause a significant adverse impact to other beneficial uses.

## 9VAC25-740-55. Variances.

A. The board may grant a variance to this chapter for design, construction, operation, or maintenance requirements contained in the chapter by following the appropriate procedures set forth in this section.

B. Any person or entity wishing to initiate a project for the production, distribution, or reuse of reclaimed water that is not excluded from the provisions of this chapter by 9VAC25-740-50 may apply for a variance to the design, construction, operation, or maintenance requirements of this chapter where requiring the project to comply with such requirements would be contrary to the purpose of State Water Control Law, specifically § 62.1-44.2 of the Code of Virginia. The board may grant a variance if it finds that the hardship imposed, which may be economic, outweighs the benefits of the project and that the granting of such variance would not adversely impact public health or the environment.

C. An application for a variance shall be made in writing and shall include the following:

1. A citation of the regulation from which a variance is requested;
2. The nature and duration of variance requested;
3. A statement of the hardship to the applicant and the anticipated impacts to public health and welfare or the environment if a variance were granted;
4. Suggested conditions that might be imposed on the granting of a variance that would limit any anticipated detrimental impacts on public health or the environment;
5. Other information, if any, believed to be pertinent by the applicant; and
6. Such other information as may be required to make the determination in accordance with subsection B of this section.

D. The board shall act on any application for a variance submitted pursuant to this section within 60 days of application receipt. In the board's decision to grant or deny a variance for a project to produce, distribute, or reuse reclaimed water, the board shall consider, at a minimum, the following:

1. The effect that such a variance would have on the adequate operation of the project, including operator safety (in accordance with the requirements of the Virginia Department of Labor and Industry, Occupation Safety and Health Administration);
2. The cost and other economic considerations imposed by the regulatory requirement for which the variance has been requested; and
3. The effect that such a variance would have on the protection of public health or the environment.

E. Disposition of a variance request.

1. If the board proposes to deny a variance request submitted pursuant to this section, the board shall provide the applicant an opportunity to an informal fact-finding proceeding in accordance with § 2.2-4019 of the Code of Virginia. Thereafter, the board may reject any application for a variance and shall notify the applicant in writing of this decision and the basis for the rejection. The board's notice, in this case, constitutes a case decision.
2. If the board proposes to grant a variance request submitted pursuant to this section, the applicant shall be notified in writing of this decision. Such notice shall:
  - a. Identify the project for which the variance has been granted;
  - b. Describe the variance;
  - c. Specify the period of time for which the variance will be effective; and
  - d. State that the variance shall be terminated when the project comes into compliance with the applicable

design, construction, operation, or maintenance requirements of this chapter and may be terminated upon a finding by the board that the project has failed to comply with any requirements or schedules issued in conjunction with the variance.

3. The effective date of a variance described in subdivision 2 of this subsection shall be 15 days following the date of notice to the applicant.

F. All variances granted for the design, construction, operation, or maintenance of a project to produce, distribute, or reuse reclaimed water are nontransferable. Any requirements of the variance shall become part of the permit for the project subsequently issued, reissued, or modified by the board.

G. Where this chapter references the Sewage Collection and Treatment Regulations (9VAC25-790) for design, construction, operation, or maintenance requirements affecting components of a project to produce, distribute, or reuse reclaimed water, an application for a variance to such requirements shall be in accordance with variance procedures described in 9VAC25-790.

## **9VAC25-740-60. Relationship to other board regulations.**

A. Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32). The VPA Permit Regulation delineates the procedures and requirements to be followed in connection with the VPA permits issued by the board pursuant to the State Water Control Law. ~~While any~~ Any treatment works treating domestic, municipal or industrial wastewater that produces reclaimed water or a facility that distributes reclaimed water in a manner that does not result in a discharge to surface waters ~~is required to~~ shall obtain a VPA permit, ~~this chapter prescribes design,~~ Design, operation, and maintenance standards prescribed by this chapter for water reclamation and water reuse. ~~These requirements~~ shall be incorporated into the VPA permit application and the VPA permit when applicable. Water reclamation and reuse requirements contained in a VPA permit shall be enforced through existing enforcement mechanisms of the VPA permit.

B. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). The VPDES Permit Regulation delineates the procedures and requirements to be followed in connection with VPDES permits issued by the board pursuant to the Clean Water Act and the State Water Control Law. ~~While any~~ Any treatment works treating domestic, municipal, or industrial wastewater that produces reclaimed water and has a discharge to [ a ] surface [ waters ] or a facility that distributes reclaimed water ~~in a manner that results in~~ distribution system that has a discharge to surface waters ~~is required to~~ shall obtain a VPDES permit, ~~this chapter prescribes design,~~ Design, operation, and maintenance standards for water reclamation and reuse. ~~These requirements~~ shall be incorporated into the VPDES permit application and the VPDES permit when applicable. Water reclamation and reuse requirements contained in a VPDES



---

# Regulations

---

permit shall be enforced through existing enforcement mechanisms of the ~~VPDES~~ permit.

C. Sewage Collection and Treatment Regulations (9VAC25-790). The Sewage Collection and Treatment Regulations establish standards for the operation, construction, or modification of a sewerage system or treatment works, including land treatment systems. This chapter prescribes design, operation and maintenance standards for water reclamation and reuse.

D. Regulation for Nutrient Enriched Waters and [~~Discharges~~ Dischargers] within the Chesapeake Bay Watershed (9VAC25-40). Sections 62.1-44.19:12 through 62.1-44.19:19 of the Code of Virginia, which establishes the Regulation for Nutrient Enriched Waters and [~~Discharges~~ Dischargers] within the Chesapeake Bay Watershed (9VAC25-40), allows for credit to be given for reductions in total nitrogen and total phosphorus discharged loads through recycle or reuse of wastewater when determining technology requirements associated with new or expanded discharges.

E. General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820). The General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia regulates point sources of nutrients and establishes a framework for nutrient credit trading and offsets. Water reclamation and reuse provides an opportunity to reduce point source nutrient loads.

F. Local and Regional Water Supply Planning [~~Regulation~~] (9VAC25-780). The Local and Regional Water Supply Planning [~~Regulation~~ regulation] requires every county, city, and town to develop a water plan in accordance with established planning criteria. Where appropriate, the plan may consider nontraditional means of increasing supplies such as interconnection, desalination, recycling and reuse.

G. Water Withdrawal Reporting [~~Regulation~~] (9VAC25-200). The Water Withdrawal Reporting [~~Regulation~~ regulation] requires industrial VPDES permittees to annually report to the board the source and location of water withdrawals and the type of use information specified by 9VAC25-200. Where the VPDES permitted discharge volume deviates by greater than  $\pm$  10% of the water withdrawal volume, the permittee is required to report the deviation.

## Part II

### Reclaimed Water Treatment, Standards, Monitoring Requirements and Reuses

#### **9VAC25-740-70. Standards Treatment and standards for reclaimed water.**

A. ~~Standards~~ Treatment and standards for reclaimed water are as follows: provided in Table 70-A.

##### 1. Level 1:

~~a. Secondary treatment with filtration and higher level disinfection.~~

~~b. Bacterial standards:~~

~~(1) Fecal coliform\*: monthly geometric mean\*\* less than or equal to 14 colonies/100 ml; corrective action threshold at greater than 49 colonies/100 ml; or~~

~~(2) E. coli\*: monthly geometric mean\*\* less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 35 colonies/100 ml; or~~

~~(3) Enterococci\*: monthly geometric mean\*\* less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 24 colonies/100 ml.~~

~~e. Total Residual Chlorine (TRC)\*\*\*: corrective action threshold at less than 1.0 mg/l\*\*\*\* after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow~~

~~d. pH 6.0-9.0 standard units.~~

~~e. Five day Biochemical Oxygen Demand (BOD<sub>5</sub>): monthly average less than or equal to 10 mg/l; or Carbonaceous Biochemical Oxygen Demand CBOD<sub>5</sub>\*\*\*\*: monthly average less than or equal to 8 mg/l.~~

~~f. Turbidity: Daily average of discrete measurements recorded over a 24 hour period less than or equal to 2 nephelometric turbidity units (NTU); corrective action threshold at greater than 5 NTU.~~

##### 2. Level 2:

~~a. Secondary treatment and standard disinfection.~~

~~b. Bacterial standards:~~

~~(1) Fecal coliform\*: monthly geometric mean\*\* less than or equal to 200 colonies/100ml; corrective action threshold at greater than 800 colonies/100 ml; or~~

~~(2) E. coli\*: monthly geometric mean\*\* less than or equal to 126 colonies/100ml; corrective action threshold at greater than 235 colonies/100 ml; or~~

~~(3) Enterococci\*: monthly geometric mean\*\* less than or equal to 35 colonies/100ml; corrective action threshold at greater than 104 colonies/100 ml.~~

~~e. Total Residual Chlorine (TRC)\*\*\*: corrective action threshold at less than 1.0 mg/l\*\*\*\* after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow.~~

~~d. pH 6.0-9.0 standard units.~~

~~e. BOD<sub>5</sub>: monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l; or CBOD<sub>5</sub>\*\*\*\*: monthly average less than or equal to 25 mg/l; maximum weekly average 40 mg/l.~~

~~f. TSS: monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l.~~

~~\* After disinfection.~~

\*\* For the purpose of calculating the geometric mean, bacterial analytical results below the detection level of the analytical method used shall be reported as values equal to the detection level.

\*\*\* Applies only if chlorine is used for disinfection.

\*\*\*\* TRC less than 1.0 mg/l may be authorized by the board if demonstrated to provide comparable disinfection

through a chlorine reduction program in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790).

\*\*\*\*\* Applies only if CBOD<sub>5</sub> is used in lieu of BOD<sub>5</sub>.

[ Table 70-A Treatment and Standards for Reclaimed Water		
	1. Level 1	2. Level 2
a. Treatment	<u>Secondary treatment with filtration and higher-level disinfection.</u>	<u>Secondary treatment and standard disinfection.</u>
b. Bacterial standards	<u>(1) Fecal coliform<sup>1</sup>: monthly geometric mean<sup>2</sup> less than or equal to 14 colonies/100ml; corrective action threshold at greater than 49 colonies/100 ml; or</u>	<u>(1) Fecal coliform<sup>1</sup>: monthly geometric mean<sup>2</sup> less than or equal to 200 colonies/100ml; corrective action threshold at greater than 800 colonies/100 ml; or</u>
	<u>(2) E. coli<sup>1</sup>: monthly geometric mean<sup>2</sup> less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 35 colonies/100 ml; or</u>	<u>(2) E. coli<sup>1</sup>: monthly geometric mean<sup>2</sup> less than or equal to 126 colonies/100 ml; corrective action threshold at greater than 235 colonies/100 ml; or</u>
	<u>(3) Enterococci<sup>1</sup>: monthly geometric mean<sup>2</sup> less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 24 colonies/100 ml.</u>	<u>(3) Enterococci<sup>1</sup>: monthly geometric mean<sup>2</sup> less than or equal to 35 colonies/100 ml; corrective action threshold at greater than 104 colonies/100 ml.</u>
c. Total Residual Chlorine (TRC) <sup>3</sup>	<u>Corrective action threshold at less than 1.0 mg/l<sup>4</sup> after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow.</u>	<u>Corrective action threshold at less than 1.0 mg/l<sup>4</sup> after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow.</u>
d. pH	<u>6.0 – 9.0 standard units</u>	<u>6.0 – 9.0 standard units</u>
e. Five-day Biochemical Oxygen Demand (BOD <sub>5</sub> )	<u>(1) BOD<sub>5</sub>: Monthly average less than or equal to 10 mg/l; or</u> <u>(2) Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>)<sup>5</sup>: monthly average less than or equal to 8 mg/l.</u>	<u>(1) BOD<sub>5</sub>: Monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l; or</u> <u>(2) Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>)<sup>5</sup>: monthly average less than or equal to 25 mg/l; maximum weekly average 40 mg/l.</u>
f. Turbidity <sup>6</sup>	<u>Daily average of discrete measurements recorded over a 24-hour period less than or equal to 2 nephelometric turbidity units (NTU); corrective action threshold at greater than 5 NTU.</u>	
f. Total Suspended Solids (TSS)		<u>Monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l.</u>
<sup>1</sup> After disinfection. <sup>2</sup> For the purpose of calculating the geometric mean, bacterial analytical results below the detection level of the analytical method used shall be reported as values equal to the detection level. <sup>3</sup> Applies only if chlorine is used for disinfection. <sup>4</sup> TRC less than 1.0 mg/l may be authorized by the board if demonstrated to provide comparable disinfection through a chlorine reduction program in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790). <sup>5</sup> Applies only if CBOD <sub>5</sub> is used in lieu of BOD <sub>5</sub> . <sup>6</sup> Where ultraviolet radiation will be used for disinfection of Level 1 reclaimed water, other turbidity standards may apply in accordance with 9VAC25-740-110 A 2 a.		

# Regulations

<u>1. Level 1</u>	
<u>a. Treatment</u>	<u>Secondary treatment with filtration and higher-level disinfection.</u>
<u>b. Bacterial standards</u>	<u>(1) Fecal coliform<sup>1</sup>: monthly geometric mean<sup>2</sup> less than or equal to 14 colonies/100ml; corrective action threshold at greater than 49 colonies/100 ml; or</u>
	<u>(2) E. coli<sup>1</sup>: monthly geometric mean<sup>2</sup> less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 35 colonies/100 ml; or</u>
	<u>(3) Enterococci<sup>1</sup>: monthly geometric mean<sup>2</sup> less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 24 colonies/100 ml.</u>
<u>c. Total Residual Chlorine (TRC)<sup>3</sup></u>	<u>Corrective action threshold at less than 1.0 mg/l<sup>4</sup> after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow.</u>
<u>d. pH</u>	<u>6.0 – 9.0 standard units</u>
<u>e. Five-day Biochemical Oxygen Demand (BOD<sub>5</sub>)</u>	<u>(1) BOD<sub>5</sub>: monthly average less than or equal to 10 mg/l; or</u> <u>(2) Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>)<sup>5</sup>: monthly average less than or equal to 8 mg/l.</u>
<u>f. Turbidity<sup>6</sup></u>	<u>Daily average of discrete measurements recorded over a 24-hour period less than or equal to 2.0 nephelometric turbidity units (NTU); corrective action threshold at greater than 5.0 NTU.</u>
<u>2. Level 2</u>	
<u>a. Treatment</u>	<u>Secondary treatment and standard disinfection.</u>
<u>b. Bacterial standards</u>	<u>(1) Fecal coliform<sup>1</sup>: monthly geometric mean<sup>2</sup> less than or equal to 200 colonies/100ml; corrective action threshold at greater than 800 colonies/100 ml; or</u>
	<u>(2) E. coli<sup>1</sup>: monthly geometric mean<sup>2</sup> less than or equal to 126 colonies/100 ml; corrective action threshold at greater than 235 colonies/100 ml; or</u>
	<u>(3) Enterococci<sup>1</sup>: monthly geometric mean<sup>2</sup> less than or equal to 35 colonies/100 ml; corrective action threshold at greater than 104 colonies/100 ml.</u>
<u>c. Total Residual Chlorine (TRC)<sup>3</sup></u>	<u>Corrective action threshold at less than 1.0 mg/l<sup>4</sup> after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow.</u>
<u>d. pH</u>	<u>6.0 – 9.0 standard units</u>
<u>e. Five-day Biochemical Oxygen Demand (BOD<sub>5</sub>)</u>	<u>(1) BOD<sub>5</sub>: monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l; or</u> <u>(2) Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>)<sup>5</sup>: monthly average less than or equal to 25 mg/l; maximum weekly average 40 mg/l.</u>
<u>f. Total Suspended Solids (TSS)</u>	<u>Monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l. ]</u>

## B. Point of compliance (POC).

~~Excluding the turbidity standard for Level 1 treatment, reclaimed 1. Reclaimed water produced by reclamation systems and SRSs for reuse shall meet all other applicable standards in accordance with this chapter, excluding the turbidity standard for Level 1 treatment, at the point of compliance POC. The point of compliance POC for Level 1 and Level 2 treatment shall be after all reclaimed water treatment and prior to discharge to a reclaimed water distribution system. Where chlorination is used for disinfection of the reclaimed water, the POC for the TRC standard shall be the monitoring location specified in 9VAC25-740-80 A 2. The point of compliance POC for~~

the turbidity standard of Level 1 treatment shall be just upstream of disinfection.

2. Where the board determines that reclaimed water monitoring is required for a system storage facility or a reclaimed water distribution system, the number and location of POCs for these facilities shall be determined on a case-by-case basis and shall be described in the following documents for approval by the board:

a. For system storage facilities other than those considered part of reclaimed water distribution systems, in the operations and maintenance manual of the reclamation system or SRS where the storage facility is located; [ and ]

b. For reclaimed water distribution systems, including system storage facilities considered part of these systems, in the [ ~~Reclaimed Water Management~~ reclaimed water management ] plan pursuant to 9VAC25-740-100 C 1 h [ ~~;~~ ]

e. ~~For both the system storage facility and reclaimed water distribution system when under common ownership or management and within the same service area, in either document described in subdivision 2 a or b of this subsection. ]~~

C. Reclaimed water that fails to comply with the standards shall be managed as follows:

1. Should reclaimed water reach the corrective action threshold (CAT) for turbidity in the standard for Level 1, or for TRC in the standards for Level 1 or 2, whichever applies, the operator of the reclamation system shall immediately initiate a review of treatment operations and data to identify the cause of the CAT monitoring results to bring the reclaimed water back into compliance with the standards. Resampling or diversion shall occur within one hour of first reaching the CAT. Procedures for resampling, operational review and diversion shall be as described in an approved operations and maintenance manual for the reclamation system. If subsequent monitoring results of the resamples collected within one hour of the first CAT monitoring results for turbidity or TRC continue to reach the CAT of the standards, the reclaimed water shall be considered substandard or reject water and shall be diverted to either storage for subsequent additional treatment or retreatment, or discharged to another permitted reuse system requiring a lower level of treatment not less than Level 2 or to a VPDES permitted effluent disposal system provided the reject water meets the effluent limits of the permit. If the reclamation system is unattended, the diversion of reject water shall be initiated and performed with automatic equipment. There shall be no automatic restarts of distribution to reuse until the treatment problem is corrected. Failure to divert the substandard or reject water after one hour of CAT monitoring results shall be considered a violation of this chapter. Upon resuming discharge of reclaimed water to the reclaimed water distribution system for which the CAT was reached, resampling for turbidity or TRC shall occur within one hour to verify proper treatment.

2. Should reclaimed water reach the CAT for bacteria (i.e., fecal coliform, E. coli or enterococci) in the standards for Level 1 or 2, whichever applies, the operator of the reclamation system shall immediately initiate a review of treatment operations and data to identify the cause of the CAT monitoring results to bring the reclaimed water back into compliance with the standards. Procedures for operational review shall be as described in an approved operations and maintenance manual for the reclamation system. Two consecutive bacterial monitoring results that

reach the CAT of the standards shall be considered a violation of this chapter.

3. Repeated, although temporary, failure to comply with all other standards by the reclamation system may be considered a violation of this chapter determined by the frequency and magnitude of the noncompliant monitoring results and other relevant factors. Failure to resample after determination that monitoring results are not in compliance with the standards, to make adjustments to the treatment process to bring the reclaimed water back into compliance with the standards, or to divert substandard or reject water in accordance with subdivision 1 of this subsection shall be considered a violation of this chapter.

D. Treatment or standards other than or in addition to the ~~treatment and standards of 9VAC25-740-70 A~~ in subsection A of this section may be necessary based on the quality and character of the wastewater to be reclaimed or the intended reuse or reuses of the reclaimed water. Such alternative or additional treatment or standards may be exempt from this chapter unless required by the board to protect public health and the environment.

E. Standards for the reclamation of industrial wastewater [ ~~will shall~~ ] be determined on a case-by-case basis relative to the proposed reuse or reuses of the reclaimed water and for the purpose of protecting public health and the environment. Industrial wastewater may also be subject to disinfection requirements of Level 1 or Level 2 if the industrial wastewater contains sewage or is expected to contain organisms pathogenic to humans, such as, but not limited to, wastewater from the production and processing of livestock and poultry. The point of compliance for reclamation standards of industrial wastewater shall also be determined on a case-by-case basis.

**9VAC25-740-80. Reclaimed water monitoring requirements for reuse.**

A. The monitoring requirements for the standards provided under 9VAC25-740-70 A, are as follows:

1. Turbidity analysis;

a. Analysis shall be performed by a continuous, on-line turbidity meter equipped with an automated data logging or recording device and an alarm to notify the operator when the CAT for turbidity in the standard for Level 1 has been reached. Compliance with the average turbidity standard shall be determined daily, based on the arithmetic mean of hourly or more frequent discrete measurements recorded during a 24-hour period. Monitoring for the turbidity CAT shall be continuous.

b. Should the on-line turbidity meter go out of service for either planned or unplanned repair, the permittee shall be allowed to manually collect samples for turbidity analysis at four-hour intervals up to a maximum of five days. Following the five-day period of repair, continuous, on-line monitoring with a turbidity meter shall resume.

# Regulations

2. Sampling and analysis for residual concentrations of disinfectants, including total residual chlorine (TRC):

a. ~~Shall for~~ For Level 1:

(1) Shall be continuous on-line monitoring, equipped with an automated data logging or recording device and an alarm to notify the operator when the CAT for the disinfectant has been reached. For disinfectants other than chlorine, continuous on-line monitoring shall be provided at the point of compliance monitoring. For TRC, continuous on-line monitoring shall be provided at the end of the contact tank or contact period. Monitoring for the TRC CAT shall be continuous.

(2) Should the on-line disinfectant monitoring equipment go out of service for either planned or unplanned repair, the permittee shall be allowed to manually collect samples for disinfectant analysis at four-hour intervals up to a maximum of five days. Following the five-day period of repair, continuous, on-line disinfectant monitoring shall resume.

b. ~~Shall for~~ For Level 2, shall be based on the designated design flow of the reclamation system and be the same sampling type and frequency as specified for sewage treatment works in the Sewage Collection and Treatment Regulations (9VAC25-790). For chemical disinfectants other than TRC, monitoring shall be provided at the point of compliance ~~monitoring~~ in accordance with 9VAC25-740-70 B. For TRC, monitoring shall be provided at the end of the contact tank or contact period.

3. Sampling for TSS and BOD<sub>5</sub> or CBOD<sub>5</sub> shall be at least weekly or more frequently based on the designated design flow of the reclamation system, and shall be the same sampling type and frequency as specified for sewage treatment works in the Sewage Collection and Treatment Regulations (9VAC25-790). Compliance with the monthly average TSS and BOD<sub>5</sub> or CBOD<sub>5</sub> standards shall be determined monthly, based on the arithmetic mean of all samples collected during the month. Compliance with the maximum weekly average TSS and BOD<sub>5</sub> or CBOD<sub>5</sub> standards shall be determined monthly, using the same procedures applied in the VPDES [~~Permit permit~~] program for point source discharges.

4. Sampling for fecal coliform, E. coli or enterococci:

a. Shall for Level 1, be grab samples collected at a time when wastewater characteristics are most representative of the treatment facilities and disinfection processes for water reuse, and at the ~~following~~ frequencies provided in Table 80-A. Compliance with the geometric mean standards for fecal coliform, E. coli, or enterococci shall be determined monthly, based on all bacteriological monitoring results for that month. Monitoring of the CAT for fecal coliform, E. coli, or enterococci shall be based on the bacteriological monitoring results determined for each day a sample is collected.

<u>Table 80-A</u>	
<u>Reclamation System Designated Design Flow (MGD)<sup>(1)</sup></u>	<u>Bacterial Sampling Frequency<sup>(2)</sup></u>
>0.500	Daily with the ability to reduce to no less than four days per week <sup>(3)</sup>
0.050 to 0.500	Four days per week with the ability to reduce to no less than three days per week <sup>(3)</sup>
<0.050	Three days per week with no reduction allowed
<sup>(1)</sup> <u>MGD means million gallons per day.</u> <sup>(2)</sup> <u>For reclamation systems treating municipal wastewater, bacterial samples shall be collected between 10 a.m. and 4 p.m. to coincide with peak flows to the reclamation system. An exception to this requirement may be approved upon demonstration to the board that peak flows to the reclamation system occur outside this period.</u> <sup>(3)</sup> <u>Monitoring frequency may be reduced after demonstrating compliance with bacterial standards for Level 1 and adequate correlation between bacterial monitoring results and measurements for surrogate disinfection parameters, such as TRC and turbidity.</u>	

<sup>(1)</sup>~~MGD means million gallons per day.~~

<sup>(2)</sup>~~For reclamation systems treating municipal wastewater, bacterial samples shall be collected between 10 a.m. and 4 p.m. to coincide with peak flows to the reclamation system. An exception to this requirement may be approved upon demonstration to the board that peak flows to the reclamation system occur outside this period.~~

<sup>(3)</sup>~~Monitoring frequency may be reduced after demonstrating compliance with bacterial standards for Level 1 and adequate correlation between bacterial monitoring results and measurements for surrogate disinfection parameters, such as TRC and turbidity.~~

~~Compliance with the geometric mean standards for fecal coliform, E. coli or enterococci shall be determined monthly, based on all bacteriological monitoring results for that month. Monitoring of the CAT for fecal coliform, E. coli or enterococci shall be based on the bacteriological monitoring results determined for each day a sample is collected.~~

b. Shall for Level 2, be based on the designated design flow of the reclamation system and be the same sampling type and frequency as specified for sewage treatment works in the Sewage Collection and Treatment Regulations (9VAC25-790). Compliance with the geometric mean standard and monitoring of the CAT for fecal coliform, E. coli or enterococci shall be in accordance with the same procedures specified for Level 1 in subdivision A 4 a of this ~~section~~ subsection.

5. Samples for pH shall be grab samples collected at least daily. Compliance with the range of the pH standard shall be determined daily based on the pH of the samples.

B. Samples collected for TSS, BOD<sub>5</sub> or CBOD<sub>5</sub>, and fecal coliform, E. coli or enterococci analyses, shall be analyzed by laboratory methods accepted by the board.

C. A reclamation system that produces reclaimed water intermittently or seasonally shall monitor only when the reclamation system discharges to a reclaimed water distribution system, a ~~non-system~~ nonsystem storage facility, or directly to a reuse.

D. Monitoring of reclaimed water held in system storage for a period greater than 24 hours at a reclamation system or SRS may be required by the board [ (4) ] where [ (i) ] the system storage facility discharges to a reclaimed water distribution system, a nonsystem storage facility, or directly to a reuse; and (ii) [ where ] conditions exist at the facility to degrade the reclaimed water to a quality failing to comply with applicable

minimum reclaimed water standards for the intended reuses of that water. When monitoring of reclaimed water in or from system storage is required, monitoring parameters and frequencies shall be determined by the board on a case-by-case basis.

~~D. E.~~ E. Monitoring other than or in addition to that described under [ ~~9VAC25-740-80~~ subsection ] A [ of this section ] may be required for treatment of reclaimed water that is provided pursuant to 9VAC25-740-70 D and 9VAC25-740-70 E.

**9VAC25-740-90. Minimum standard requirements for reuses of reclaimed water.**

A. Minimum standard requirements for reclaimed water shall be determined, in part, by the reuse or reuses of that water. For specific reuses, the minimum standard requirements of reclaimed water are ~~as follows:~~ provided in Table 90-A.

Table 90-A Minimum Standard Requirements for Reuses of Reclaimed Water		
Reuse Category	Reuse	Minimum Standard Requirements <sup>a</sup>
1. Urban – Unrestricted Access	All types of landscape irrigation in public access areas (i.e., golf courses, cemeteries, public parks, school yards and athletic fields) Toilet flushing <del>nonresidential</del> <sup>b</sup> [ <del>Fire fighting</del> <u>Firefighting</u> ] or protection and fire suppression in <del>nonresidential buildings</del> <sup>b</sup> Outdoor <del>domestic or residential</del> reuse (i.e., lawn watering and noncommercial car washing) <sup>b</sup> Commercial car washes Commercial air conditioning systems	Level 1
2. Irrigation – Unrestricted Access <sup>b,c</sup>	Irrigation for any food crops not commercially processed, including crops eaten raw	Level 1
3. Irrigation – Restricted Access <sup>b,c,d,e</sup>	Irrigation for any food crops commercially processed	Level 2
	Irrigation for nonfood crops and turf, including fodder, fiber and seed crops; pasture for foraging livestock; sod farms; ornamental nurseries; and silviculture	
4. Landscape Impoundments <sup>d,f</sup>	Potential for public access or contact	Level 1
	No potential for public access or contact	Level 2
5. Construction <sup>e</sup>	Soil compaction Dust control Washing aggregate Making concrete <u>Irrigation to establish vegetative erosion control</u> <sup>g</sup>	Level 2

# Regulations

6. Industrial <sup>c</sup>	Commercial laundries <u>Ship ballast<sup>h</sup></u>	Level 1
	Livestock watering <sup>f i</sup> Aquaculture <sup>g i</sup> Stack scrubbing Street washing Boiler feed <u>Ship ballast</u> Once-through cooling <sup>h k</sup> Recirculating cooling towers <sup>h k</sup>	Level 2

<sup>a</sup>For reclaimed industrial wastewater, minimum standards required shall be determined on a case-by-case basis relative to the proposed reuse or reuses.

<sup>b</sup>Reclaimed water treated to Levels 1 or 2 may be used for surface irrigation, including spray irrigation. Reclaimed water treated to Level 2 may be used for spray irrigation if the area to be irrigated restricts access to the public and has appropriate setbacks in accordance with 9VAC25-740-170. Reclaimed water treated to Level 1 or 2 may be used for irrigation of food crops eaten raw, excluding root crops, only when there will be no direct contact (or indirect contact via aerosol carry) between the reclaimed water and edible portions of the crop.

<sup>c</sup>For irrigation with reclaimed water treated to Level 2, the following shall be prohibited unless Level 1 disinfection is provided:

1. Grazing by milking animals on the irrigation reuse site for 15 days after irrigation with reclaimed water ceases, and
2. Harvesting, retail sale or allowing access by the general public to ornamental nursery stock or sod farms for 14 days after irrigation with reclaimed water ceases.

<sup>d</sup>Landscape impoundments may also be used to store reclaimed water for other subsequent reuses of that reclaimed water, such as irrigation, if included in an inventory of reclaimed water storage facilities submitted to the board pursuant to 9VAC25-740-110 C 15.

<sup>e</sup>Worker contact with reclaimed water treated to Level 2 shall be minimized. Level 1 disinfection shall be provided when worker contact with reclaimed water is likely.

<sup>f</sup>Level 1 disinfection shall be provided when the reclaimed water is consumed by milking livestock.

<sup>g</sup>Level 1 disinfection shall be provided for aquaculture production of fish to be consumed raw, such as for sushi.

<sup>h</sup>Windblown spray generated by once-through cooling or recirculating cooling towers using reclaimed water treated to Level 2, shall not reach areas accessible to workers or the public unless Level 1 disinfection is provided. See also setback requirements in 9VAC25-740-170 for open cooling towers.

<sup>a</sup>For reclaimed industrial wastewater, minimum standards required shall be determined on a case-by-case basis relative to the proposed reuse or reuses.

<sup>b</sup>These reuses of reclaimed water are prohibited in accordance with 9VAC25-740-50 B 2 where they would involve the distribution of reclaimed water to a [ ~~one or two family~~ one-family or two-family ] dwelling in order to occur.

<sup>c</sup>Reclaimed water treated to [ ~~Levels Level~~ ] 1 or 2 may be used for surface irrigation, including spray irrigation. Reclaimed water treated to Level 2 may be used for spray irrigation if the area to be irrigated restricts access to the public and has appropriate setbacks in accordance with 9VAC25-740-170. Reclaimed water treated to Level 1 or 2 may be used for irrigation of food crops eaten raw, excluding root crops, only when there will be no direct contact (or indirect contact via aerosol carry) between the reclaimed water and edible portions of the crop.

<sup>d</sup>For irrigation with reclaimed water treated to Level 2, the following shall be prohibited unless Level 1 disinfection is provided:

1. Grazing by milking animals on the irrigation reuse site for 15 days after irrigation with reclaimed water ceases, and
2. Harvesting, retail sale or allowing access by the general public to ornamental nursery stock or sod farms for 14 days after irrigation with reclaimed water ceases.

<sup>e</sup>Worker contact with reclaimed water treated to Level 2 shall be minimized. Level 1 disinfection shall be provided when worker contact with reclaimed water is likely.

<sup>f</sup>Landscape impoundments may also be used to store reclaimed water for other subsequent reuses of that reclaimed water, such as irrigation, if included in an inventory of reclaimed water storage facilities submitted to the board pursuant to 9VAC25-740-110 C 15.

<sup>g</sup>Irrigation with reclaimed water to establish vegetative cover at a construction site shall be subject to requirements for irrigation reuse specified in 9VAC25-740-100 C. Continued irrigation of the same site following construction completion shall be subject to the minimum standard requirements of reuse [ ~~categories~~ category ] 1, 2, or 3 contained in this table, determined by the intended reuse of the irrigated site.

<sup>h</sup>Reuse of reclaimed water for ship ballast shall also comply with applicable federal regulations and standards governing the use and discharge of ship ballast.

<sup>i</sup>Level 1 disinfection shall be provided when the reclaimed water is consumed by milking livestock.

<sup>j</sup>Level 1 disinfection shall be provided for aquaculture production of fish to be consumed raw, such as sushi.

<sup>k</sup>Windblown spray generated by once-through cooling or recirculating cooling towers using reclaimed water treated to Level 2, shall not reach areas accessible to workers or the public unless Level 1 disinfection is provided. See also setback requirements in 9VAC25-740-170 for open cooling towers.

B. For any type of reuse not ~~addressed in this chapter~~ listed in subsection A of this section, including, but not limited to, indirect potable reuse and below-ground drip irrigation reuse; that is newly proposed after October 1, 2008, indirect nonpotable reuse that is newly proposed after [ ~~effective date of amended regulation~~; January 29, 2014, ] or any reuse of reclaimed industrial water, including reuses listed in subsection A of this section, the board may prescribe specific reclaimed water standards and monitoring requirements needed to protect public health and the environment. When establishing these requirements for the proposed reuse, the board shall consider the following factors:

1. The risk of the proposed reuse to public health with specific input from the Virginia Department of Health;
2. The degree of public access and human exposure to reclaimed water by the proposed reuse;
3. The reclaimed water treatment necessary to prevent nuisance conditions by the proposed reuse;
4. The reclaimed water treatment necessary for the proposed reuse to comply with this and other applicable regulations of the board;
5. The potential for improper or unintended use of the reclaimed water;
6. Other federal or state laws, regulations and guidelines that would apply to the proposed reuse;
7. The similarity of the proposed reuse to reuses listed in this chapter with regard to potential impact to public health and the environment;
8. Whether the proposed reuse may be excluded or prohibited by 9VAC25-740-50; and
9. For new indirect potable reuse proposals, residence or transport time, mixing ratios, and other relevant information deemed necessary by the board.

C. For any indirect potable reuse (IPR) project that is newly proposed after [ ~~effective date of amended regulation~~ January 29, 2014 ], the following are required:

1. A multiple barrier approach shall be used in the planning, design, and operation of the project. Multiple barriers to be employed for the project shall be described in the application for a permit in accordance with 9VAC25-740-100 D.
2. All reclaimed water generated by a reclamation system for IPR shall meet, at a minimum, Level 1 reclaimed water standards, reclaimed water standards developed pursuant to subsection B of this section, and any other standards that may apply, including but not limited to, the Water Quality Standards (9VAC25-260) and total maximum daily loads

(TMDLs). Where there is more than one standard for the same pollutant, the more stringent standard shall apply.

3. The public health risks of and the need to impose new or more stringent reclaimed water standards for an IPR project shall be reevaluated with specific input from the Virginia Department of Health upon each renewal of the permit issued to the reclamation system that produces reclaimed water for the project. Factors to be considered in the reevaluation shall include, at a minimum, applicable factors contained in subsection B of this section.

4. All reclamation systems identified as a component of an IPR project in accordance with 9VAC25-740-100 D 1, including pump stations that are part of the reclamation systems, shall meet reliability requirements specified in 9VAC25-740-130 C.

5. VPDES permitted treatment works that have SIUs and provide source water for reclamation and subsequent IPR shall, if required, have a pretreatment program or a program equivalent to a pretreatment program in accordance with 9VAC25-740-150 E.

Part III

Application and Technical Requirements

**9VAC25-740-100. Application for permit.**

A. The need for an owner to obtain a permit or modification or reissuance of an existing permit from the board for a proposed or an existing reclamation system, reclaimed water distribution system, satellite reclamation system (SRS), or, as applicable, water reuse, shall be determined in accordance with 9VAC25-740-30. Where required, permit coverage for these systems or activities shall be provided in accordance with 9VAC25-740-40, contingent upon receipt of a complete application from the owner. The application shall contain supporting documentation and information required by subsections B and C of this section.

B. General information. For projects that involve water reclamation and the distribution of reclaimed water, the following information shall be submitted with an application for a permit. Information required for this subsection may be provided by referencing specific information previously submitted to the board unless changes have occurred that require the submission of new or more current information. For projects that involve exclusively the distribution of reclaimed water, information for only subdivisions 1, 2, and 5 of this subsection shall be submitted with an application for a permit.

1. A description of the design and a site plan showing operations and unit processes of the proposed project, including and as applicable, treatment, storage,



---

# Regulations

---

distribution, reuse and disposal facilities, and reliability features and controls. Treatment works, reclamation systems and reclaimed water distribution systems previously permitted need not be included, unless they are directly tied into the new units or are critical to the understanding of the complete project. Design approaches shall be consistent with accepted engineering practice and any applicable state regulations [ ~~5~~ ]

2. A general location map, showing orientation of the project with reference to at least two geographic features (e.g., numbered roads, named streams or rivers, etc.). A general location map for a reclaimed water distribution system may be included in the map of a service area required in accordance with subdivision C 1 a of this section [ ~~5~~ ]

3. Information regarding each wastewater treatment works that diverts or will divert ~~effluent or~~ source water to the reclamation system to be permitted, including:

- a. All unit processes used for the treatment of wastewater at the facility prior to diversion to the reclamation system,
- b. Any ~~significant industrial users defined in 9VAC25-31-10~~ SIUs that indirectly discharge to the wastewater treatment works; and
- c. Analyses of the ~~effluent or~~ source water to be diverted by the facility to the reclamation system.

4. Information regarding the sewage collection system that diverts or will divert sewage to the ~~satellite reclamation system~~ SRS to be permitted, including:

- a. The name of the sewage collection system and the owner of that system;
- b. Any ~~significant industrial users (SIUs) defined in 9VAC25-31-10~~ SIUs that discharge directly or indirectly to the collection line from which sewage will be diverted to the ~~satellite reclamation system~~, SRS, excluding any downstream SIUs whose discharge has no potential to backflow to the ~~satellite reclamation system~~ SRS intake. This information shall include the location of the SIUs and distance between the SIUs and the ~~satellite reclamation system~~ SRS along the sewage collection line or lines; and
- c. Characterization of the sewage to be diverted from the sewage collection system to the ~~satellite reclamation system~~ SRS at the point of diversion. Analysis of the sewage may be required where SIUs described in subdivision 4 b of this subsection discharge to the sewage collection system.

5. Information regarding each reclamation system or ~~satellite reclamation system~~ SRS to be permitted, including:

- a. The standards specified in 9VAC25-740-70 A to be achieved;

b. Any other physical, chemical, and biological characteristics and constituent concentrations that may affect the intended reuse of the reclaimed water with respect to adverse impacts to public health or the environment; and

c. ~~Design~~ Designated design flow.

6. For the purpose of determining any significant adverse impacts to other beneficial uses, information regarding the VPDES permitted wastewater treatment works or the sewage collection system that [ ~~proposes will provide~~ ] a new or increased diversion of source water to a reclamation system or SRS for the production of reclaimed water [ ~~including~~ and information, as applicable, regarding the SRS that includes ]:

a. The latitude and longitude of the treatment works discharge location to a surface water or the SRS return discharge location in the sewage collection system;

b. The mean monthly discharge of the treatment works or [ return discharge of ] the SRS for each month during the most recent 60 or more consecutive months at the time of application, or where this information is not available, estimated values for the mean monthly discharge of the treatment works or [ return discharge of ] the SRS for each month during a period of 12 consecutive months;

c. The maximum monthly diversion of source water from the treatment works to a reclamation system or from the sewage collection system to a SRS for each month during a period of 12 consecutive months;

d. Pertaining only to sewage collection systems that provide source water, the name of the treatment works at the terminus of the sewage collection system; and

e. The information specified in subdivisions [ ~~5~~ 6 ] a, b, and c of this subsection for each increase in source water diverted by the treatment works or the sewage collection system to a reclamation system or SRS, respectively, among multiple increases to occur in planned phases, and the anticipated dates of the phased increases.

7. Information describing measures to be immediately implemented for the management of wastewater and reclaimed water by a conjunctive system in the event that primary reuses of reclaimed water generated by the system cease or fail, and where the system:

a. Relies primarily or completely on water reclamation and reuse to eliminate wastewater;

b. Relies on:

(1) Irrigation as the primary or only reuse of reclaimed water, or

(2) One or more large end users, each consuming a significant volume of reclaimed water, such that the ability of the conjunctive system to manage wastewater would be adversely impacted if any such end user were

to discontinue receiving reclaimed water from the conjunctive system; and

c. Does not have the ability to implement two or more of the options described in 9VAC25-740-110 C 1.

8. Information required per subdivision 7 of this subsection shall be included in the [ ~~Reclaimed Water Management~~ reclaimed water management ] plan described in subsection C of this section where the conjunctive system is acting as a reclaimed water agent by directly distributing reclaimed water to an end user or end users, including an end user that is also the applicant or permittee.

~~6. 9. Information, if applicable, regarding any type of proposed reuse not listed in this chapter, by which the board can evaluate the need to prescribe specific reclaimed water treatment and monitoring requirements in accordance with 9VAC25-740-90 B; and.~~

~~Information required for subsection B of this section may be provided by referencing specific information previously submitted to the board unless changes have occurred that require the submission of new or more current information.~~

C. Reclaimed water management (RWM) plan.

1. A RWM plan shall be submitted in support of ~~a permit applications~~ application for a new or expanded reclamation systems, satellite reclamation systems system, SRS, or reclaimed water distribution systems that provide system acting as a reclaimed water agent by directly distributing reclaimed water to an end user or end users, including an end user that is also the applicant or permittee. A RWM plan shall not be required for a reclamation system that distributes reclaimed water exclusively for indirect potable reuse. The RWM plan shall contain the following:

a. A description and map of the expected service area to be covered by the RWM plan for the term of the permit for the project (i.e., five years for a VPDES or 10 years for a VPA permit). The map shall identify all reuses according to reuse categories shown in 9VAC25-740-90 A or other categories for reuses that are or shall be authorized pursuant to 9VAC25-740-90 B, and their locations within the service area. The map shall also identify and show the location of all public potable water supply wells and springs, and public water supply intakes, within the boundaries of the service area. The description and map of the service area shall be updated by the permittee with each permit renewal.

b. A current inventory of impoundments, ponds or tanks that are used for system storage of reclaimed water and, as applicable, reject water storage under the control of the permittee, and nonsystem storage located within the service area of the RWM plan in accordance with 9VAC25-740-110 C 15.

c. A water balance that accounts for the volumes of reclaimed water to be generated, stored, reused and discharged (i.e., through a VPDES permitted outfall,

back to a sewage collection system, or otherwise disposed). The water balance shall include projected volumes of seasonal and annual reclaimed water demand for each reuse category.

d. An example of service agreements or contracts to be established by the applicant or permittee with end users regarding implementation of and compliance with the RWM plan. A service agreement or contract shall contain conditions and requirements specified in subdivisions 3 b and c of this subsection and in 9VAC25-740-170 that apply to the particular planned reuse of each end user. Terms of the agreement shall require property owners to report to the applicant or permittee all potable and nonpotable water supply wells on their property and to comply with appropriate setback distances for wells where reclaimed water will be used on the same property. Within the agreement or contract, the applicant or permittee shall also reserve the right to perform routine or periodic inspections of an end user's reclaimed water reuses and storage facilities, and to terminate the agreement or contract and withdraw service for any failure by the end user to comply with the terms and conditions of the agreement or contract if corrective action for such failure is not taken by the end user.

e. A description of monitoring of end users by the applicant or permittee to verify compliance with the terms of their agreements or contracts. Monitoring shall include, at a minimum, metering the volume of reclaimed water consumed by end users.

f. An education and notification program required in accordance with 9VAC25-740-170 A.

g. A cross-connection and backflow prevention program that:

(1) Evaluates the potential for cross-connections of the reclaimed water distribution system to a potable water system and backflow to the reclaimed water distribution system from industrial end users;

(2) Evaluates the public health risks associated with possible backflow from industrial end users;

(3) Describes inspections to be performed by the applicant or permittee at the time end users connect to the reclaimed water distribution system and periodically thereafter to prevent cross-connections to a potable water system and backflow from industrial end users as determined necessary through the program evaluation; ~~and~~

(4) Insures that cross-connection and backflow prevention design criteria specified in 9VAC25-740-110 B for reclaimed water distribution systems are implemented; ~~and~~

~~A (5) Requires a backflow prevention device shall be required on the reclaimed water service connection to an industrial end user, unless evaluation by the cross-~~

---

# Regulations

---

connection and backflow prevention program determines that there is minimal risk to public health associated with possible backflow from the industrial end user or that there will be no backflow from the industrial end user capable of contaminating the reclaimed water supply.

h. A description of how the quality of reclaimed water in the reclaimed water distribution system shall be maintained to meet and, if determined necessary by the board, monitored to verify compliance with the standards minimum standard requirements specified in 9VAC25-740-90 for the intended reuse or reuses of the reclaimed water in accordance with 9VAC25-740-90, excluding CAT standards. Where monitoring of reclaimed water in the distribution system is required, monitoring parameters and frequencies shall be determined by the board on a case-by-case basis.

i. Information specified in subdivision B 7 of this section for conjunctive systems described in subdivision B 8 of this section.

~~h.~~ j. Where the applicant or permittee is the provider of reclaimed water, the exclusive end user of that reclaimed water and is not otherwise excluded under 9VAC25-740-50 A, information for only subdivisions  $\epsilon$  1 a, b<sub>2</sub> and c of this ~~section~~ subsection is required.

2. All irrigation reuses of reclaimed water shall be limited to supplemental irrigation.

3. Nutrient management requirements for irrigation reuse will be established in the RWM plan according to the concentration of total N and total P in the reclaimed water compared to [ "~~Biological Nutrient Removal (BNR)~~" "biological nutrient removal" ] as defined in 9VAC25-740-10.

a. Except as specified in subdivision 4 of this subsection, a nutrient management plan (NMP) shall not be required for irrigation reuse of reclaimed water treated to achieve BNR or nutrient levels below BNR.

b. For bulk irrigation reuse of reclaimed water not treated to achieve BNR, a NMP shall be required of the end user.

(1) Where the applicant or permittee is the end user, the NMP shall be submitted with the RWM plan to the board and shall be the responsibility of the applicant or permittee to properly implement.

(2) Where the end user is other than the applicant or permittee, the NMP shall be required as a condition of the service agreement or contract specified in subdivision  $\epsilon$  1 d of this ~~section~~ subsection between the applicant or permittee and the end user. The end user shall be responsible for obtaining, maintaining and following a current NMP; providing a copy of the most current NMP to the applicant or permittee prior to initiating bulk irrigation reuse of reclaimed water; and providing proof of compliance with the NMP at the request of the permittee.

c. For nonbulk irrigation reuse of reclaimed water not treated to achieve BNR, a NMP shall not be required. However, the RWM plan shall describe other measures to be implemented by the applicant or permittee to manage nutrient loads by nonbulk irrigation reuse of reclaimed water not treated to achieve BNR within the service area. These shall include, but are not limited to the following:

(1) The inclusion of language in the service agreement or contract specified in subdivision  $\epsilon$  1 d of this ~~section~~ subsection, explaining proper use of the reclaimed water by the end user for the purpose of managing nutrients;

~~(2) Reclaimed water metering of individual nonbulk irrigation end users;~~

~~(3)~~ (2) Routine distribution of literature not less than annually, to individual nonbulk irrigation end users addressing the proper use of reclaimed water for irrigation in accordance with 9VAC25-740-170 A; and

~~(4)~~ (3) Monthly monitoring of N and P loads by nonbulk irrigation reuses to the service area of the RWM plan based on the total monthly metered ~~use~~ nonbulk irrigation reuse of reclaimed water for the service area and the monthly average concentrations of total N and total P in the reclaimed water. Results of this monitoring shall be included in the annual report to the board submitted in accordance with 9VAC25-740-200 C.

4. Independent of the reclaimed water nutrient content, a NMP shall be required for a bulk irrigation reuse site where:

a. A wastewater treatment works, reclamation system, ~~satellite reclamation system~~ SRS, or reclaimed water distribution system and the irrigation reuse site or sites are under common ownership or management [ ~~;~~ ] and

b. In addition to irrigation reuse:

(1) There is no option to dispose of the reclaimed water through a VPDES permitted discharge, or

(2) There is an option to dispose of the reclaimed water through a VPDES permitted discharge, but the VPDES permit does not allow discharge of the full nutrient load under design flow (e.g., a treatment works with a VPDES permitted discharge implements water reclamation and reuse in lieu of providing treatment to meet nutrient effluent limits at design flow).

~~The~~ 5. A NMP required per subdivision 4 of this subsection shall be approved by the [ ~~DCR~~ Department of Conservation and Recreation (DCR) ] and submitted with the RWM plan to the board. The applicant or permittee shall be responsible for proper implementation of the NMP.

~~5.~~ 6. If required for a specific irrigation reuse, the NMP shall be prepared by a nutrient management planner certified by [ ~~the~~ ] DCR and shall be maintained current in accordance with the Nutrient Management Training and

Certification Regulations, 4VAC5-15. A copy of the NMP for each irrigation reuse site shall be maintained at the site or at a location central to all sites covered by the plan. Another copy shall be provided to and retained by the applicant or permittee.

~~6.~~ 7. A site plan is required for each bulk irrigation reuse site and area of proposed expansion to an existing irrigation reuse site, displayed on the most current [ USGS U.S. Geological Survey ] topographic maps (7.5 minutes series, where available) and showing the following:

- a. The boundaries of the irrigation site;
- b. The location of all potable and nonpotable water supply wells and springs, public water supply intakes, occupied dwellings, property lines, areas accessible to the public, outdoor eating, drinking and bathing facilities; surface waters, including wetlands; limestone rock outcrops and sinkholes within 250 feet of the irrigation site; and
- c. Setbacks areas around the irrigation site in accordance with 9VAC25-740-170.

~~Where expansion of an existing irrigation site is anticipated, the same information shall be provided for the area of proposed expansion.~~

~~7.~~ 8. The site plan for a bulk irrigation reuse site shall be prepared by:

- a. The applicant or permittee for submission with the RWM plan to the board when the irrigation site is under common ownership or management with a wastewater treatment works, a reclamation system ~~or satellite reclamation system~~, SRS, or reclaimed water distribution system from which it receives reclaimed water for irrigation; or
- b. The bulk irrigation end user for submission with the service agreement or contract between the end user and the applicant or permittee when the irrigation site is not under common ownership or management with a wastewater treatment works, a reclamation system ~~or satellite reclamation system~~, SRS, or reclaimed water distribution system from which it receives reclaimed water for irrigation.

~~8.~~ 9. For the addition of new end users or new reuses not contained in the original RWM plan submitted with the application for a permit, the permittee shall submit to the board for approval an amendment to the RWM plan identifying the new end users not less than 30 days or new reuses prior to connection and reclaimed water service to ~~these~~ the new end users or initiating the new reuses. For each new end user or new reuse, the permittee shall also provide all applicable information required by this subsection C of this section. Amendment of the RWM plan for the addition of new end users or new [ reuse reuses ] after the issuance or reissuance of the permit shall not be considered a modification of the permit unless the new end

users or new reuses will require the addition of different reclaimed water standards, monitoring requirements and conditions not contained in the permit.

D. Indirect potable reuse (IPR). For an application to permit an IPR project, the following additional information shall be submitted by the applicant or permittee to the board:

1. Identification of the following components of an IPR project:

- a. The reclamation system that will produce reclaimed water discharged to the water supply source (WSS);
- b. The WSS to which the reclamation system identified in subdivision 1 a of this subsection will discharge reclaimed water.
- c. The waterworks that will withdraw water from the WSS identified in subdivision 1 b of this subsection to produce potable water.

2. Identification of all uses in addition to IPR of the WSS identified in subdivision 1 of this subsection. Such uses shall be those deemed acceptable by the Virginia Department of Health or the Waterworks [ Regulation Regulations ] (12VAC5-590).

3. A description of multiple barriers to be implemented by the reclamation system or waterworks, or both, to produce water of a quality suitable for IPR. Multiple barriers shall include at a minimum:

a. Source control and protection. This involves the control of contaminants with potential to adversely impact public health by preventing or minimizing the entry of these contaminants into the wastewater collection system prior to reclamation or the WSS prior to withdrawal by the waterworks. Source control and protection shall, at a minimum, address pretreatment requirements for SIUs in accordance with 9VAC25-740-150 E and education requirements in accordance with 9VAC25-740-170 A 1, and shall describe other measures to reduce the introduction of contaminants from domestic sources that may include, but are not limited to, community collection programs for hazardous wastes and unused pharmaceuticals.

b. Effective and reliable treatment. This involves the use of treatment processes at both the reclamation system and the waterworks that, in combination with any natural attenuation provided by the environmental buffer to be described per subdivision 3 c of this subsection, shall reliably achieve the water quality necessary for IPR. A description of reclamation system treatment processes for IPR may be satisfied by referencing application information submitted in accordance with subsection B of this section.

c. Environmental buffers and natural attenuation. This involves the use of an environmental buffer, such as a surface water used as a WSS [ source ], to provide further removal or degradation of certain contaminants when

---

# Regulations

---

exposed to naturally occurring physical, chemical, and biological processes in the environment over time.

d. Monitoring programs. This involves monitoring at progressive stages of treatment or barriers of the project to verify that they are working effectively and reliably to achieve the necessary water quality for IPR.

e. Responses to adverse conditions. To address those circumstances where the reclamation system of the IPR project experiences a catastrophic treatment failure that cannot be corrected by subsequent treatment or barriers, or fails to produce reclaimed water meeting the standards or limits at the point of discharge to the WSS, the application for the IPR project shall contain:

(1) A contingency plan that describes all alternatives to be implemented in lieu of discharging the substandard reclaimed water to the WSS.

(2) A notification program for the reclamation system of the IPR project [ and ] as described in 9VAC25-740-170 A 2.

4. An evaluation of the combined effectiveness of all the barriers described in subdivision 3 of this subsection to achieve the water quality necessary for IPR.

5. Any information deemed necessary by the board to establish reclaimed water standards and monitoring requirements for the IPR project in accordance with 9VAC25-740-90 B. This shall include, but is not limited to, residence or transport times, mixing ratios, and other applicable modeling of the reclamation system discharge or contaminants introduced by the discharge to the WSS.

6. A water balance for the reclamation system that accounts for the volumes of reclaimed water to be generated, stored, discharged to the WSS, and withdrawn for IPR.

7. Any change by the reclamation system to provide reclaimed water for other reuses or end users in addition to IPR shall require submission of a RWM plan in accordance with subdivision C 1 of this section. The water balance for the RWM plan shall include the water balance required per subdivision 6 of this subsection for the IPR project.

8. A copy of the contractual agreement established between the reclamation system and the waterworks of the IPR project, identifying the responsibilities of each party to implement multiple barriers described in accordance with subdivision 3 of this subsection, unless the reclamation system and waterworks are under common ownership or management.

## **9VAC25-740-105. Application for an emergency authorization.**

A. An application for an emergency authorization as described in 9VAC25-740-45 shall include information addressing the following:

1. Contact information of the applicant or permittee including name, mailing address, telephone number, and, if applicable, fax number, and electronic mail address;

2. Name of the city or county where the emergency production, distribution, and reuse of reclaimed water shall occur;

3. Recent and current water use, including monthly water use in the previous calendar year and weekly water use in the previous six months prior to the application. The application shall identify the sources of such water and also identify any water purchased from other water suppliers;

4. A description of the severity of the public water supply emergency, including for reservoirs, an estimate of days of remaining supply at the current rates of use and replenishment; for wells, current production; for intakes, current streamflow;

5. A description of mandatory water conservation measures taken or imposed by the applicant or permittee and the dates when the measures were implemented. For the purposes of obtaining an emergency authorization, mandatory water conservation measures shall include, but are not limited to, the prohibition of lawn and landscape watering, noncommercial vehicle washing, the watering of recreation fields, refilling of swimming pools, and the washing of paved surfaces;

6. An estimate of water savings realized by implementing mandatory water conservation measures;

7. Documentation that the applicant or permittee has exhausted all public water supply management actions that would minimize the threat to public welfare, safety, and health, and would avoid the need to obtain an emergency authorization. This may include among other actions, the acquisition of an Emergency Virginia Water Protection Permit ( [ as provided in ] 9VAC25-210) for a new or increased withdrawal;

8. Any other information demonstrating that public water supply conditions are a substantial threat to public health or safety;

9. Name, address, and permit number of the municipal treatment works that proposes to produce, distribute, or reuse reclaimed water under the emergency authorization;

10. A statement confirming that the municipal treatment works:

a. Does not have SIUs, or

b. Has SIUs and a pretreatment program developed, approved, and maintained in accordance with Part VII (9VAC25-31-730 et seq.) of the VPDES Permit Regulation;

11. Information regarding the design and operation of the treatment works, demonstrating that the facility is currently capable of producing reclaimed water meeting minimum

standard requirements of 9VAC25-740-90 for reuses listed in the application pursuant to subdivision [ ~~42~~ 13 ] of this subsection;

12. Information specified in 9VAC25-740-100 B [ ~~3-d~~ 6 ] regarding the diversion of source water from the treatment works to reclamation and reuse;

13. A list of proposed reuses for reclaimed water produced by the municipal treatment works and an explanation of how these reuses will protect public health and safety under the current public water supply conditions;

14. A description of the system that will be used to distribute reclaimed water from the municipal treatment works to the intended reuses; and

15. A signed and dated certification statement in accordance with signatory requirements of the VPDES Permit Regulation (9VAC25-31) or the VPA Permit Regulation (9VAC25-32), whichever applies to the permit issued to the municipal treatment works.

B. The application for a permit described in 9VAC25-740-100 may be used as an application to issue an emergency authorization where the permit application contains the information required in subsection A of this section.

**9VAC25-740-110. Design criteria.**

A. Reclamation system.

1. The design of systems for the reclamation of municipal wastewater or ~~the effluent~~ source water derived from a municipal wastewater treatment works shall adhere to the standards of design and construction specified in the Sewage Collection and Treatment Regulations (9VAC25-790) and other applicable engineering standards and regulations. Design standards for reclamation systems of industrial wastewater or ~~the effluent~~ source water derived from an industrial wastewater treatment works shall be determined and evaluated on a case-by-case basis.

2. Ultraviolet (UV) disinfection for reclamation systems:

a. For Level 1 reclaimed water:

(1) Designs for UV disinfection shall be validated in accordance with NWRI Ultraviolet Disinfection Guidelines for Drinking Water and Water Reuse, Second Edition (2003) (guidelines) to meet a UV design dosage greater than or equal to 100,000 uWsec/cm<sup>2</sup> (MS-2 dose) under peak flow and a minimum UV transmittance of 55% at 254 nm. A lower UV disinfection dosage may be authorized by the board if demonstrated to meet at least one of the bacteria standards for Level 1 specified in 9VAC25-740-70 A, and where microbial testing is used to validate the efficacy of the UV disinfection dose in accordance with the guidelines. For the lower disinfection dose, the board may develop reclaimed water turbidity standards and minimum UV transmittance requirements that are unique to the UV disinfection process of the reclamation system.

(2) The UV disinfection system shall be designed to supply the minimum dose specified in subdivision 2 a (1) of this subsection at all times. The system may be automated to immediately adjust the UV disinfection dosage in response to changes in the UV system influent reclaimed water flow and quality.

b. UV disinfection for Level 2 reclaimed water shall be designed, constructed, and operated in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790) for UV disinfection of secondary effluent.

B. Reclaimed water distribution system.

1. All reclaimed water distribution systems shall be designed and constructed in accordance with this chapter and applicable sections of the Sewage Collection and Treatment Regulations (9VAC25-790) pertaining to force mains, so that:

- a. Reclaimed water does not come into contact with or otherwise contaminate a potable water system;
- b. The structural integrity of the system is provided and maintained; and
- c. The capability for inspection, maintenance, and testing is maintained.

2. For a reclaimed water distribution system, the following shall be implemented as part of the cross-connection and backflow prevention program submitted with the RWM plan:

- a. There shall be no direct cross-connections between the reclaimed water distribution system and a potable water supply system.
- b. The reclaimed water distribution system shall be in compliance with the cross connection control and backflow prevention requirements of Article [ ~~3~~ (12VAC590-580 4 (12VAC5-590-580 ] et seq.) of Part II of the Commonwealth of Virginia Waterworks Regulations; and, when applicable, the reclaimed water distribution system shall also be in compliance with the Virginia Statewide Building Code, and local building and plumbing codes (13VAC5-63).
- c. Potable water may be used to supplement reclaimed water for a reuse, provided there is an air gap separation of at least eight inches between the potable water and the reclaimed water or a reduced pressure principle backflow prevention device installed at the potable water service connection to the reuse. The installation of the reduced pressure principal backflow prevention device shall allow for proper inspection and testing of the device.
- d. Reclaimed water shall not be returned to the reclaimed water distribution system after the reclaimed water has been delivered to an end user.

---

## Regulations

---

3. In-ground reclaimed water distribution pipelines shall be installed and maintained to achieve minimum separation distance and configurations as follows:

a. No reclaimed water distribution pipeline shall pass within 50 feet of a potable water supply well, potable water supply spring or water supply intake that are part of a regulated waterworks. The same separation distance shall be required between a reclaimed water distribution pipeline and a nonpublic or private potable water supply well or spring, but may be reduced to not less than 35 feet provided special construction and pipe materials are used to obtain adequate protection of the potable water supply.

b. Reclaimed water distribution pipeline shall be separated horizontally by at least 10 feet from a water main. The distance shall be measured edge-to-edge. When local conditions prohibit this horizontal separation, the reclaimed water distribution pipeline may be laid closer provided that the water main is in a separate trench or an undisturbed earth shelf located on one side of the reclaimed water distribution pipeline and the bottom of the water main is at least 18 inches above the top of the reclaimed water distribution pipeline. Where this vertical separation cannot be obtained, the reclaimed water distribution pipeline shall be constructed of water pipe material in accordance with AWWA specifications and pressure tested in place without leakage prior to backfilling. The hydrostatic test shall be conducted in accordance with the AWWA standard (ANSI/AWWA C600-05, effective December 1, 2005) for the pipe material, with a minimum test pressure of 30 psi.

c. Distribution pipeline that conveys Level 1 reclaimed water shall be separated horizontally by at least two feet from a sewer line. The distance shall be measured edge-to-edge. When local conditions prohibit this horizontal separation, the reclaimed water distribution pipeline may be laid closer provided that the sewer line is in a separate trench or an undisturbed earth shelf located on one side of the reclaimed water distribution pipeline and the bottom of the reclaimed water distribution pipeline is at least 18 inches above the top of the sewer line. Where this vertical separation cannot be obtained, either the reclaimed water distribution pipeline or the sewer line shall be constructed of water pipe material in accordance with AWWA specifications and pressure tested in place without leakage prior to backfilling. The hydrostatic test shall be conducted in accordance with the AWWA standard (ANSI/AWWA C600-05, effective December 1, 2005) for the pipe material, with a minimum test pressure of 30 psi.

d. Reclaimed water distribution pipeline shall cross under water main such that the top of the reclaimed water distribution pipeline is at least 18 inches below the bottom of the water main. When local conditions prohibit

this vertical separation, the reclaimed water distribution pipeline shall be constructed of AWWA specified water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790). Where reclaimed water distribution pipeline crosses over water main, the reclaimed water distribution pipeline shall:

(1) Be laid to provide a separation of at least 18 inches between the bottom of the reclaimed water distribution pipeline and the top of the water main.

(2) Be constructed of AWWA approved water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790).

(3) Have adequate structural support to prevent damage to the water main.

(4) Have joints placed equidistant and as far as possible from the water main joints.

e. Sewer line shall cross under distribution pipeline that conveys Level 1 reclaimed water such that the top of the sewer line is at least 18 inches below the bottom of the reclaimed water distribution pipeline. When local conditions prohibit this vertical separation, the sewer line shall be constructed of AWWA specified water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790). Where sewer line crosses over distribution pipeline that conveys Level 1 reclaimed water, the sewer line shall:

(1) Be laid to provide a separation of at least 18 inches between the bottom of the sewer line and the top of the reclaimed water distribution pipeline.

(2) Be constructed of AWWA approved water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790).

(3) Have adequate structural support to prevent damage to the reclaimed water distribution pipeline.

(4) Have joints placed equidistant and as far as possible from the reclaimed water distribution pipeline joints.

f. No reclaimed water distribution pipeline shall pass through or come into contact with any part of a sewer manhole. Distribution pipeline that conveys Level 1 reclaimed water shall be separated horizontally by at least two feet from a sewer manhole whenever possible. The distance shall be measured from the edge of the pipe to the edge of the manhole structure. When local conditions prohibit this horizontal separation, the

manhole shall be of watertight construction and tested in place.

4. No setback distance is required to any nonpotable water supply well and no vertical or horizontal separation distances are required between above-ground reclaimed water pipelines and potable water, sewer or wastewater pipelines.

5. All reclaimed water outlets shall be of a type, or secured in a manner, that permits operation by authorized personnel. Public access to reclaimed water outlets shall be controlled in areas where reclaimed water outlets are accessible to the public as follows:

a. If quick connection couplers are used on above-ground portions of the reclaimed water distribution system, they shall differ materially from those used on the potable water supply.

b. Use of above-ground hose bibs, spigots or other hand-operated connections that are standard on local potable water distribution systems shall be prohibited for use on the local reclaimed water distribution system. If above-ground hose bibs, spigots or other hand-operated connections are used on the reclaimed water distribution system, they must differ materially from those used on the local potable water distribution system and must be clearly distinguishable as reclaimed water connections (i.e., painted purple, valve operation with a special tool) so as not to be mistaken for potable water connections. Where below-grade vaults are used to house reclaimed water connections, the connections in the vault may have standard potable water distribution system thread and bib size services provided the bib valves can be operated only by a special tool. The below-grade vaults shall also be labeled as being part of the reclaimed water distribution system (i.e., painted purple, labeled).

6. Existing potable water distribution systems, sewer and wastewater pipelines collection systems, and irrigation distribution systems may be converted for use as reclaimed water distribution pipelines systems. The Not less than 90 days prior to such conversions, excluding the conversion of irrigation distribution systems that are not under common ownership or management with reclamation systems, SRSs, or reclaimed water distribution systems providing reclaimed water to the irrigation distribution systems, the following information shall be submitted to the board for approval of the conversion:

a. A system conversion plan that contains:

~~a. The (1) Information on the location and identification of the facilities to be converted;~~

~~b. The (2) Information on the location of all connections to the facilities to be converted;~~

~~c. A description of measures to be taken to ensure that existing connections will be eliminated;~~

~~d. Description (3) A description of procedures to be used to ensure that all connections and cross-connections shall be eliminated. This may include physical inspections, dye testing, or other testing procedures;~~

~~e. Description of marking, signing, labeling, or color coding to be used to identify the converted facility as a reclaimed water transmission facility;~~

(4) A description of the physical and operational modifications necessary to convert the existing system to a reclaimed water distribution system that shall comply with applicable design criteria in subsections B and C of this section, and the operations and maintenance requirements of 9VAC25-740-140 D 2;

~~f. Description (5) A description of cleaning and disinfection procedures to be followed before the converted facilities will be placed into operation for reclaimed water distribution. For the conversion of existing sewer and wastewater collection systems, cleaning and disinfection of the system shall be conducted in accordance with AWWA standards (ANSI/AWWA C651-05, effective June 1, 2005). Procedures to dispose of flush water from cleaning or disinfection shall be those described in the operations and maintenance manual of the system for the disposal of flush water from maintenance activities;~~

~~g. Assessment (6) An assessment of the physical condition and integrity of facilities to be converted; and~~

~~h. (7) Reasonable assurance that cross-connections will not result, public health will be protected, and the integrity of potable water, wastewater, and reclaimed water systems will be maintained when the conversion is made.~~

b. An operations and maintenance manual for the system converted to a reclaimed water distribution system in accordance with 9VAC25-740-140 B, containing at a minimum the items specified in 9VAC25-740-140 D.

7. Tank trucks may be used to transport and distribute reclaimed water only if the following requirements are met:

a. The truck is not used to transport potable water that is used for drinking water or food preparation;

b. The truck is not used to transport waters or other fluids that do not meet the requirements of this chapter, unless the tank has been evacuated and properly cleaned prior to the addition of the reclaimed water;

c. The truck is not filled through on-board piping or removable hoses that may subsequently be used to fill tanks with water from a potable water supply; and

d. The reclaimed water contents of the truck are clearly identified as nonpotable water on the truck.

8. Reclaimed water distribution systems shall have the following identification, notification and signage:



---

# Regulations

---

a. ~~All reclaimed~~ Reclaimed water piping with an outer diameter greater than or equal to one inch, installed in-ground after [~~effective date of amended regulation~~] January 29, 2014, ] or above-ground shall ~~have display~~ the words "CAUTION: RECLAIMED WATER - DO NOT DRINK" embossed, integrally stamped, or otherwise affixed to the piping, and shall be identified by one or more of the following methods:

(1) ~~Painting the piping purple (Pantone 522) and stamping the piping with the required caution statement on opposite sides of the pipe, repeated at intervals of three feet or less.~~

(2) ~~Using stenciled pipe~~ (1) Stenciling or stamping the piping with two-inch to three-inch letters on opposite sides of the pipe, piping, placed at intervals of three to four feet. For pipes piping less than two inches in and greater than or equal to one inch outer diameter, lettering shall be at least 5/8 inch, placed on opposite sides of the pipe, piping and repeated at intervals of one foot.

(3) (2) Wrapping the piping with purple (Pantone 522) polyethylene vinyl wrap or adhesive tape, placed longitudinally at three-foot intervals. The width of the wrap or tape shall be at least three inches, and shall display the required caution statement in either white or black lettering.

(4) (3) Permanently affixing purple (Pantone 522) vinyl adhesive tape on top of the piping, parallel to the axis of the pipe, piping, fastened at least every 10 feet to each pipe section, and continuously for the entire length of the piping. The width of the tape shall be at least three inches, and shall display the required caution statement in either white or black lettering.

(4) Using an alternate method that assures the caution statement will be displayed to provide an equivalent degree of public notification and protection if approved by the board.

b. Additional methods, if provided, to identify reclaimed water piping with an outer diameter greater than or equal to one inch (e.g., permanently color coding the piping Pantone 522 purple), shall not obscure any portion of the caution statement required pursuant to subdivision 8 a of this subsection.

c. Reclaimed water piping with an outer diameter less than one inch shall require the following:

(1) Where installed in-ground after [~~effective date of amended regulation~~] January 29, 2014, ] or above ground, the piping shall be permanently color coded purple (Pantone 522). Longitudinal purple striping of the piping may be allowed provided the cumulative width of the stripes is greater than or equal to 25% of the outer pipe diameter.

(2) Where installed within a building or structure, the piping shall have in addition to color coding required per

subdivision 8 c (1) of this subsection, the words "CAUTION: RECLAIMED WATER – DO NOT DRINK" embossed, stenciled, stamped, or affixed with adhesive tape on the piping, placed on opposite sides of the piping, and repeated at intervals of one foot. Lettering of the caution statement shall be of a size easily read by a person with normal vision at a distance of two feet.

b. d. All visible, other above-ground portions of the reclaimed water distribution system including reclaimed water piping [ ; ] valves, outlets (including fire hydrants) and other appurtenances shall be colored color coded, taped, labeled, tagged or otherwise marked to notify the public and employees that the source of the water is reclaimed water, not intended for drinking or food preparation. For reclaimed water treated to Level 2, such notification shall also inform employees to practice good personal hygiene for incidental contact with reclaimed water and the public to avoid contact with the reclaimed water.

e. e. Each mechanical appurtenance of a reclaimed water distribution system shall be colored purple and legibly marked "RECLAIMED WATER" to identify it as a part of the reclaimed water distribution system and to distinguish it from mechanical appurtenances of a potable water distribution system or a wastewater collection system.

d. ~~Existing underground distribution or collection pipelines and appurtenances retrofitted for the purpose of distributing reclaimed water shall be colored coded, taped, labeled, tagged or otherwise identified as described in subdivisions 8 a, b and c of this subsection. This identification need not extend the entire length of the retrofitted reclaimed water distribution system but is required within 10 feet of locations where the distribution system crosses a potable water supply line or sanitary sewer line.~~

e. f. Valve boxes for reclaimed water distribution systems shall be painted purple. Valve covers for reclaimed water distribution lines shall not be interchangeable with potable water supply valve covers.

g. Existing potable water distribution systems, sewer or wastewater collection systems, or irrigation distribution systems that are converted to reclaimed water distribution systems in accordance with subdivision 6 of this subsection after [~~effective date of amended regulation~~] January 29, 2014 ], shall be retrofitted to meet identification, notification, and signage requirements of subdivision 8 of this subsection with the following exceptions:

(1) For converted systems requiring the submission of a conversion plan and an operations and maintenance manual in accordance with subdivision 6 of this subsection, existing in-ground converted piping shall be retrofitted to a distance of not less than 10 feet from

locations where the piping crosses or is crossed by a potable water supply line or sanitary sewer line.

(2) For all other converted systems, identification, notification, and signage requirements specified in subdivision 8 of this subsection for in-ground piping shall not apply.

9. All reclaimed water distribution systems shall be maintained to minimize losses and to ensure safe and reliable conveyance of reclaimed water such that the reclaimed water will not be degraded below the standards, excluding CAT standards, required for the intended reuse or reuses in accordance with 9VAC25-740-90.

C. Storage requirements.

1. To ensure reliable reclamation system operation in accordance with the requirements of this chapter, all reclamation systems shall have the ability to implement one or more of the following options:

- a. Store reclaimed water;
- b. Discharge reclaimed water to another permitted reuse system, if applicable;
- c. Discharge reclaimed water to surface waters of the state under a VPDES permit;
- d. Suspend all or a portion of water reclamation for planned periods; or
- e. In the case of a satellite reclamation system, discharge reclaimed water into the sewage collection system from which it received [ source ] water for reclamation.

2. Storage for reclaimed water shall be required only when subdivision 1 b, c, or d of this subsection or, as applicable, subdivision 1 e of this subsection are not available or approved by the board.

3. Separate, off-line storage shall be provided for reject water of the reclamation system unless the reject water can be diverted to another permitted reuse system, discharged to surface waters of the state under a VPDES permit, returned directly to an appropriate point of treatment in the reclamation system, or in the case of a satellite reclamation system, sent to the sewage collection system from which the reclamation system received water for reclamation. Where reject water is stored, provisions shall be incorporated into the design of the reclamation system to distribute the reject water from storage to other parts of the reclamation system for additional or repeated treatment.

4. Storage for reject water may also be used for emergency storage to ensure Reliability Class I reliability of the reclamation system in accordance with 9VAC25-740-130.

5. Reject water and reclaimed water may be stored in [ ~~water-tight~~ watertight ] tanks placed above-ground or in-ground. Labeling of tanks used for reject water storage, system storage or nonsystem storage shall be in accordance with 9VAC25-740-160 B, and shall, at a minimum,

identify the contents of each tank as either reject water or reclaimed water.

6. For all impoundments or ponds that are used for reject water storage or system storage, with the exception of impoundments and ponds specified in subdivision 7 of this subsection, the following are required:

a. A minimum two-foot freeboard shall be maintained at all times. Any emergency discharge or overflow device and the disposition of the overflow discharge shall be identified in the engineering report.

b. There shall be a minimum two-foot separation distance between the bottom of the impoundment or pond and the seasonal high water table.

c. The impoundment or pond shall have a properly designed and installed synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness. Synthetic liners shall be installed in accordance with the manufacturer's specifications and recommendations. The soil liner shall be composed of separate lifts not to exceed six inches. The maximum coefficient of permeability for the synthetic and soil liners shall not exceed  $1 \times 10^{-6}$  cm/sec and  $1 \times 10^{-7}$  cm/sec, respectively. A plan of quality assurance and quality control which substantiates the adequacy of the liner and its installation shall be included in or shall accompany the preliminary engineering report or supporting documentation for the CTC. Documentation of quality assurance and quality control activities on liner installation along with permeability test results, shall be submitted with the statement of construction completion to the board.

d. If the requirements of [ subdivision ~~subdivision~~ ] 6 b or c of this subsection cannot be met, the board may allow use of the impoundment or pond for storage provided that a groundwater monitoring plan for the facility is submitted to the board for review and approval. The plan shall identify the direction of groundwater flow and the proposed location and depth of groundwater monitoring wells at the location of the impoundment or pond, parameters to be monitored, a monitoring schedule, and procedures for proper sample collection and handling.

e. The design of the impoundment or pond shall prevent the entry of surface water or storm water runoff from outside the facility embankment or berm.

f. Where the embankment of the impoundment or pond is composed of soil, the embankment shall have:

- (1) A top width of at least five feet;
- (2) Interior and exterior slopes no steeper than one foot vertical to three feet horizontal unless alternate methods of slope stabilization are used;
- (3) Shallow-rooted vegetative cover or other soil stabilization to prevent erosion; and

---

# Regulations

---

(4) Erosion stops and water seals installed on all piping that penetrates the embankment.

g. There shall be routine maintenance of the impoundment or pond liner, embankments and access areas.

h. Impoundments and ponds shall be sited to avoid areas of uneven subsidence, sinkholes, or unstable soils unless provisions are made for their correction. Results from field and laboratory tests from an adequate number of test borings and soil samples shall be the basis for computations pertaining to permeability and stability analyses.

i. Impoundments or ponds shall not be located on a floodplain unless protected from inundation or damage by a 100-year frequency flood event.

j. There shall be a minimum setback distance measured horizontally from the perimeter of the storage impoundment or pond to potable water supply wells and springs, and public water supply intakes, of 100 feet for storage of Level 1 reclaimed water and 200 feet for storage of Level 2 reclaimed water or reject water.

7. Reject water storage and system storage impoundments or ponds that exist upon October 1, 2008, shall be exempt from the design, construction, and operation requirements specified in subdivision 6 of this subsection until such time these facilities are modified or expanded, or unless they have failed to comply with other existing regulatory or permitting requirements.

8. The capacity of reject water storage and system storage facilities, including impoundments, ponds or tanks, shall be as follows:

a. For reject water, the capacity of the storage facility shall, at a minimum, be the volume equal to the ~~average daily permitted~~ designated design flow of the reclamation system unless other options exist for immediate disposal or retreatment of the reject water in addition to storage.

b. For reclaimed water, the capacity of the storage facility shall be determined by the seasonal variability in demand, intended reuses with intermittent, variable demand, such as fire protection or fighting; and the availability of other options to generate or manage reclaimed water as specified in subdivision 1 of this subsection.

(1) Where there is no or minimal seasonal variability in demand and no other options are available for alternative generation or management of all or a portion of the reclaimed water, the capacity of the storage facility shall, at a minimum, be the volume equal to three times that portion of ~~reclaimed water average daily~~ the reclamation system designated design flow for which no other options to generate or manage the reclaimed water from the reclamation system are permitted.

(2) Where there is seasonal variability in demand and no other options are available for alternative generation or management of all or a portion of the reclaimed water during periods of low seasonal demand, storage facilities shall have sufficient storage capacity to assure the retention of the reclaimed water under conditions and circumstances that preclude reuse. The methods, assumptions and calculations used to determine the system storage requirements shall be provided and justified in the preliminary engineering report or supporting documentation for the CTC. Analytical means of determining system storage requirements, such as water balance calculations or computer hydrological programs, shall be used and shall account for all water inputs into the system. Analysis shall be based on site-specific data. Irrigation efficiencies or rainfall efficiencies shall not be used in storage volume determinations.

9. Requirements specified in subdivision 6 of this subsection shall not apply to ~~lakes~~, impoundments or ponds used for nonsystem storage with the exception of those specified in subdivision 11 of this subsection.

10. Landscape impoundments may also be used for nonsystem storage of reclaimed water prior to another subsequent reuse, such as irrigation.

11. Impoundments or ponds used for nonsystem storage of reclaimed water, including landscape impoundments, for subsequent irrigation reuse on sites under common ownership or management with the reclamation system or satellite reclamation system that provides reclaimed water to the sites, shall comply with the design, construction and operation requirements specified in subdivision 6 of this subsection.

12. For ~~lakes~~, impoundments or ponds used for nonsystem storage of reclaimed water, the following setback distances shall apply:

a. There shall be a 50-foot minimum setback distance measured horizontally from the perimeter of the ~~lake~~, impoundment or pond to property lines.

b. For an impoundment or pond with a liner meeting the requirements specified in subdivision 6 c of this subsection, there shall be a minimum setback distance measured horizontally from the perimeter of the storage impoundment or pond to potable water supply wells and springs, and public water supply intakes, of 100 feet for storage of Level 1 reclaimed water and 200 feet for storage of Level 2 reclaimed water.

c. For an unlined impoundment or pond, there shall be a minimum setback distance measured horizontally from the perimeter of the storage impoundment or pond to potable water supply wells and springs, and public water supply intakes, of 200 feet for storage of Level 1 reclaimed water and 400 feet for storage of Level 2 reclaimed water.

13. Where more than one setback distance applies to storage for reclaimed water or reject water, the greater setback distance shall govern.

14. ~~All Reclaimed water system storage facilities, including landscape impoundments used for nonsystem storage,~~ shall be designed and operated to prevent a discharge to surface waters of the state except in the event of a storm greater than the 25-year 24-hour storm. Reclaimed water nonsystem storage facilities, including landscape impoundments used for nonsystem storage, shall be designed and operated to prevent a discharge to surface waters of the state, except in the event of a storm greater than the 10-year, 24-hour storm.

15. Permittees shall maintain current inventories of reject water storage, system storage and nonsystem storage facilities located within the service area of the RWM plan. An inventory or a revised inventory shall be submitted as part of the RWM plan in the permit application. For the addition of new storage facilities to an inventory after permit issuance, the permittee shall submit to the board an amended inventory at least 30 days before reclaimed water will be introduced into the new storage facilities. An inventory of reject water storage, system storage and nonsystem storage facilities shall include the following:

- a. Name or identifier for each storage facility;
- b. Location of each storage facility (including latitude and longitude);
- c. Function of each storage facility (i.e., reject water storage, system storage or nonsystem storage);
- d. Type of each storage facility (i.e., covered tank, uncovered tank, lined pond, unlined pond, etc.); and
- e. Location (latitude and longitude) and distance of the nearest potable water supply well and spring, and public water supply intake, to each storage facility within 450 feet of that facility.

16. Storage requirements as specified in this subsection shall not apply to reclaimed water storage facilities provided at the site of an industrial end user where such facilities are regulated by an existing water permit issued by the board to the industrial end user, or the industrial end user is also the generator of reclaimed water stored in the facilities and is excluded under 9VAC25-740-50 A.

**9VAC25-740-120. Construction requirements.**

**A. Preliminary engineering report and pilot study.**

1. A preliminary engineering report shall be submitted for new water reclamation projects and for modification or expansion of existing reclamation systems, ~~satellite reclamation systems~~ SRSs, and reclaimed water distributions systems. At the request of the applicant or permittee, the board may waive the need for a preliminary engineering report or portions of a preliminary engineering report for modification or expansion of an existing reclamation system, ~~satellite reclamation system~~ SRS, or

reclaimed water distributions system based on the scope of the proposed project.

2. A pilot study shall be required where treatment is proposed for a reclamation system of an IPR project.

a. The pilot study shall demonstrate the ability of selected treatment processes to:

(1) Meet, at a minimum, the reclaimed water standards prescribed for the IPR project in accordance with 9VAC25-740-90 C, and

(2) Generate a consistent and reliable supply of reclaimed water for the IPR project.

b. The pilot study shall quantify and characterize the quality of source water provided for reclamation and reclaimed water generated by the treatment processes of the reclamation system for a period of not less than 365 days unless reduced by the board in accordance with subdivision 2 [ d c ] of this subsection.

c. At the request of the applicant or permittee, the board may reduce the pilot study duration specified in subdivision 2 b of this subsection or the pilot study scope where the following are met:

(1) The applicant or permittee provides a detailed plan of study for the board's review and approval before initiating the pilot study, and

(2) The detailed plan of study justifies to the satisfaction of the board that a pilot study of shorter duration or reduced scope will be sufficient to achieve the requirements of subdivision 2 a of this subsection. For the purpose of reducing the duration or scope of a pilot study, results of previous pilot studies and operating experiences of similar water reclamation and IPR projects may be used as part of the demonstration required pursuant to subdivision 2 a of this subsection.

d. Results of the pilot study shall be submitted to the board for review.

**B. Certificate to construct and certificate to operate.**

1. No owner shall cause or allow the construction, expansion or modification of a reclamation system or ~~satellite reclamation system~~ SRS except in compliance with a certificate to construct (CTC) from the board unless otherwise provided for by this chapter. Furthermore, no owner shall cause or allow any reclamation system or ~~satellite reclamation system~~ SRS to be operated except in compliance with a certificate to operate (CTO) issued by the board, which authorizes the operation of the reclamation system or ~~satellite reclamation system~~ SRS [ 1 ] unless otherwise provided for by this chapter. The need for a CTC and CTO for modifications shall be determined by the board on a case-by-case basis. Conditions may be imposed on the issuance of any CTC or CTO, and no reclamation system or ~~satellite reclamation system~~ SRS may be constructed, modified, or operated in violation of these conditions.

---

# Regulations

---

## 2. CTC.

a. Upon approval of the proposed design by the board, including any submitted plans and specifications, if required, the board will issue a CTC to the owner of such approval to construct or modify his reclamation system or ~~satellite reclamation system~~ SRS in accordance with the approved plans and specifications.

b. Any deviations from the approved design or the submitted plans and specifications significantly affecting hydraulic conditions (flow profile), unit operations capacity, the functioning of the reclamation system or ~~satellite reclamation system~~ SRS, or the quality of the reclaimed water, must be approved by the board before any such changes are made.

## 3. CTO.

a. Upon completion of the construction or modification of the reclamation system or ~~satellite reclamation system~~ SRS, the owner shall submit to the board a Statement of Construction Completion signed by a licensed professional engineer stating that the construction work has been completed in accordance with the approved plans and specifications, or revised only in accordance with subdivision 2 b of this subsection. This statement shall be based upon inspections of the reclamation system or ~~satellite reclamation system~~ SRS during and after construction or modifications that are adequate to ensure the truth of the statement.

b. Upon receipt of the construction completion statement, the board may issue a final CTO. However, the board may delay the granting of the CTO pending inspection, or satisfactory evaluation of reclaimed water test results, to ensure that the work has been satisfactorily completed.

c. A conditional CTO may be issued specifying final approval conditions, with specific time periods for completion of unfinished work, revisions to the operations and maintenance manual, or other appropriate items. The board may issue a conditional CTO to owners of a reclamation system or ~~satellite reclamation system~~ SRS for which the required information for completion of construction has not been received. Such CTOs will contain appropriate conditions requiring the completion of any unfinished or incomplete work including subsequent submission of the statement of completion of construction.

d. ~~Consideration will be given to issuance of an~~ An interim CTO may be issued to individual unit operations of the treatment system so as to allow utilization of these unit operations prior to completion of the total project. A final CTO shall be issued upon verification that the requirements of this chapter have been complied with.

e. Within 30 days after placing a new or modified reclamation system or ~~satellite reclamation system~~ SRS into operation, the board may require reclaimed water

~~produced~~ should by the system to be sampled and tested in a manner sufficient to demonstrate compliance with approved specifications and permit requirements. The board shall be notified of the time and place of the tests, and shall be sent the results of the tests for evaluation as part of the final CTO.

f. Within 90 days of placing the new or modified reclamation system or ~~satellite reclamation system~~ SRS into operation, the owner shall submit a new or revised operations and maintenance manual for the water reclamation system, ~~satellite reclamation system~~ SRS, or both, ~~as applicable, to be~~ if covered by the same permit. The manual shall contain information as specified in 9VAC25-740-140.

g. The board may amend or reissue a CTO where there is a change in the manner of treatment or the source of water that is reclaimed at the permitted location, or for any other cause incidental to the protection of the public health and welfare, provided notice is given to the owner.

### **9VAC25-740-130. Operator requirements and system reliability.**

A. Operator requirements. In accordance with the Virginia Board for Waterworks and Wastewater Works Operators [ and Onsite Sewage System Professionals ] Regulations (18VAC160-20), each reclamation system shall be assigned a classification based on the treatment processes used to reclaim water and the design capacity of the facility. The classification of both the reclamation system and the operator in responsible charge shall be the same as that specified in the Sewage Collection and Treatment Regulations (9VAC25-790) for sewage treatment works with similar treatment processes and design capacities. The reclamation system shall be manned while in operation and under the supervision of the operator in responsible charge unless the system is equipped with remote monitoring and, as applicable, automated diversion of substandard or reject water in accordance with 9VAC25-740-70 C 1 [ a ].

B. Reliability Class I reliability as defined in 9VAC25-740-10 is required for Level 1 reclamation systems ~~and~~, satellite reclamation systems, and for pump stations considered part of these systems, unless there is a permitted alternate treatment ~~or~~, discharge or disposal system available ~~that has with~~ sufficient capacity to handle any reclaimed water flows that do not meet the reclaimed water standards of this chapter or performance criteria established in the operations and maintenance manual.

C. Reliability Class I, as defined in 9VAC25-740-10, is required for a reclamation system identified as a component of an IPR project in accordance with 9VAC25-740-100 D 1, including pump stations that are part of the reclamation system. No exception or variance shall be granted for this requirement.

C. D. For independent reclamation systems and systems consisting of an industrial wastewater treatment works and

reclamation system, the applicability of Reliability Class I reliability requirements as specified in the Sewage Collection and Treatment Regulations (9VAC25-790), shall be determined by the board for each proposed or existing system.

~~D.~~ E. The board may approve alternative measures to achieve Reliability Class I reliability specified in the Sewage Collection and Treatment Regulations (9VAC25-790) and this chapter if the applicant or permittee can demonstrate in the engineering report, using accepted and appropriate engineering principles and practices, that the alternative measures will achieve a level of reliability equivalent to Reliability Class I reliability.

**9VAC25-740-140. Operations and maintenance.**

A. The permittee shall develop and submit to the board an operations and maintenance manual in accordance with 9VAC25-740-120 B 3 f for each reclamation system, ~~satellite reclamation system SRS~~, or combination of these facilities covered by the same permit. The permittee shall maintain the manual and any changes in the practices and procedures followed by the permittee shall be documented and submitted to the board within 90 days of the effective date of the changes.

B. For each reclaimed water distribution system, the permittee shall develop an operations and maintenance manual to be made available at a location central to the system. The permittee shall maintain the manual and include any changes in the practices and procedures followed by the permittee in the manual. The operations and maintenance manual for a reclaimed water distribution system may be included in the operations and maintenance manual described in subsection A of this section where the reclaimed water distribution system and a reclamation system or ~~satellite reclamation system SRS~~, or all these facilities are covered by the same permit.

C. For a reclamation system authorized under the permit of a wastewater treatment works that provides flow to the reclamation system, the operations and maintenance manual of the reclamation system may be made a part of the operations and maintenance manual for the wastewater treatment works.

D. The operations and maintenance manual is a set of detailed instructions developed to facilitate the operator's understanding of operational constraints and maintenance requirements for the reclamation system, ~~satellite reclamation system SRS~~, or reclaimed water distribution system; and the monitoring and reporting requirements specified in the permit issued for each system. The scope and content of the manual will be determined by the complexity of the system or systems described by the manual.

1. For a reclamation system or ~~satellite reclamation system SRS~~, the operations and maintenance manual shall, at a minimum, contain the following:

- a. A description of unit treatment processes within the reclamation system or ~~satellite reclamation system SRS~~ and step-by-step instructions for the operation of these processes;
- b. Routine maintenance and schedules of maintenance for each unit treatment process in the system;
- c. The criteria used to make continuous determinations of the acceptability of the reclaimed water being produced and shall include set points for parameters measured by continuous on-line monitoring equipment;
- d. Descriptions of sampling and monitoring procedures and record keeping that comply with the requirements of this chapter and any applicable permit conditions;
- e. The physical steps and procedures to be followed by the operator when substandard water is being produced, including resampling and operational review in accordance with 9VAC25-740-70 C;
- f. The physical steps and procedures to be followed by the operator when the treatment works returns to normal operation and acceptable quality reclaimed water is again being produced;
- g. Procedures to be followed during a period when an operator is not present at the treatment works;
- h. Information necessary for the proper management of sludge or residuals from reclamation treatment that is not specifically requested in the application for a VPDES or VPA permit; and
- i. A contingency plan to eliminate or minimize the potential for untreated or inadequately treated water to be delivered to reuse areas. The plan shall, as applicable, reference and coordinate with the education and notification program specified in 9VAC25-740-170 A for any release of untreated or inadequately treated water to the reclaimed water distribution system.

2. For a reclaimed water distribution system, the operations and maintenance manual shall, at a minimum, contain the following:

- a. A map of the distribution system, a description of all components within the distribution system, and step-by-step instructions for the operation of specific mechanical components;
- b. Routine and unplanned inspection of the distribution system, including required inspections for the cross-connection and backflow prevention program as specified in 9VAC25-740-100 C 1 g;
- c. Routine maintenance and schedules of maintenance for all components of the distribution system. Maintenance shall include, but is not be limited to, initial and routine flushing of the distribution system, measures to prevent or minimize corrosion, fouling and clogging of distribution lines; and detection and repair of broken

---

# Regulations

---

distribution lines, flow meters or pumping equipment; and

d. Procedures to ~~handle~~:

(1) Handle and dispose of any wastes or wastewater generated by maintenance of the distribution system in a manner protective of the environment;

(2) Prevent the discharge of reclaimed or flush water from distribution system maintenance activities to:

(a) Storm drains;

(b) State waters unless otherwise authorized by the board; and

(c) Sanitary sewers unless allowed under local sewer use ordinances and authorized by the board; and

(3) Collect and, as applicable, retreat reclaimed water or treat flush water from distribution system maintenance activities for a subsequent reuse or use approved by the board.

E. The permittee shall review and revise the operations and maintenance manual, as needed and appropriate, to ensure that the manual contains procedures and criteria addressing the requirements of subsection D of this section for satisfactory system performance. Any revision to the manual shall be reviewed and approved by the board.

F. The permittee of a reclamation system, ~~satellite reclamation system SRS~~, or reclaimed water distribution system shall be responsible for making the facility protective of the environment and public health at all times, including periods of inactivation or closure. Included in the operations and maintenance manual for the reclamation system, ~~satellite reclamation system SRS~~, or reclaimed water distribution system, the permittee shall submit a plan for inactivation or closure of the facility, specifying what steps will be taken to protect the environment and public health.

G. ~~Where a reclamation system or satellite reclamation system and a bulk irrigation reuse site or sites are~~ is under common ownership or management with a reclamation system or SRS that generates reclaimed water applied to the site, the operations and maintenance manual for the reclamation system or ~~satellite reclamation system SRS~~ shall include the following:

1. Measurements and calculations used to determine supplemental irrigation rates of reclaimed water for the irrigation reuse sites;
2. Operating procedures of the irrigation system;
3. Routine maintenance required for the continued design performance of the irrigation system and reuse sites;
4. Identification and routine maintenance of reclaimed water storage facilities dedicated to bulk irrigation reuse;
5. Schedules for harvesting and crop removal at the irrigation reuse sites;

6. An inventory of spare parts to be maintained for the irrigation system; and

7. Any other information essential to the operation of the irrigation system and reuse sites in accordance with the requirements of this chapter.

## **9VAC25-740-150. Management of pollutants from significant industrial users.**

A. A reclamation system that receives ~~effluent source water from a wastewater treatment works having significant industrial users (SIUs) as defined by the VPDES Permit Regulation (9VAC25-31-10)~~, SIUs shall not be permitted to produce reclaimed water treated to meeting Level 1 or for reuse in areas accessible to the public or where human contact with the reclaimed water is likely standards, unless the wastewater treatment works providing effluent to the reclamation system is:

1. ~~A~~ The wastewater treatment works providing source water to the reclamation system is a publicly owned treatment works (POTW) as defined in the VPDES Permit Regulation (9VAC25-31-10), that and has a pretreatment program required by and developed, approved and maintained in accordance with procedures described in Part VII of the VPDES Permit Regulation (9VAC25-31-730 through 9VAC25-31-900) et seq.; or

2. ~~Any other POTW or privately owned treatment works as defined in the VPDES Permit Regulation (9VAC25-31-10), with either a VPA or VPDES permit that has developed a program to manage pollutants of concern discharged by SIUs, equivalent to a pretreatment program required in the VPDES Permit Regulation for qualifying POTWs. The reclamation system has evaluated source water from the treatment works for pollutants of concern discharged by SIUs to the treatment works, and has confirmed that such pollutants shall not interfere with the ability of the wastewater treatment works to produce source water suitable for the production of reclaimed water meeting Level 1 standards and any other standards required in accordance with 9VAC25-740-70 D. All such evaluations by the reclamation system shall be submitted to the board for review and approval, and shall be repeated for each new SIU that proposes to discharge to the treatment works prior to commencing such discharge. The reclamation system shall maintain a current inventory of SIUs discharging to the treatment works.~~

B. The permittee of a reclamation system authorized to produce reclaimed water treated to Level 1 ~~or for reuse in areas accessible to the public or where human contact is likely~~, shall establish a contractual agreement with all ~~wastewater~~ treatment works providing ~~effluent or~~ source water to the reclamation system unless the reclamation system and the treatment works are authorized by the same permit. The purpose of the contractual agreement shall be to ensure that reclaimed water discharged from the reclamation system is safe for use in areas accessible to the public or

~~where human contact is likely. Prior to~~ The contractual agreement shall, at a minimum, require the treatment works to notify the reclamation system of all SIUs that discharge to the treatment works. Upon execution of the contractual agreement, a draft copy of the contract agreement shall be provided to the Board for review and approval. A contractual agreement will not be required where the permittee of the reclamation system is also the permittee of the wastewater treatment system that provides effluent or source water to the reclamation system board.

C. A satellite reclamation system (SRS) that receives municipal wastewater or sewage from a sewage collection system pipeline with contributions from SIU discharges, excluding any SIUs whose discharge has no potential to reach the SRS intake, shall not be permitted to produce reclaimed water meeting Level 1 standards, unless the SRS has evaluated pollutants of concern discharged by the SIUs and has confirmed that such pollutants shall not interfere with the ability of the SRS to produce reclaimed water meeting Level 1 standards and any other standards required in accordance with [9VAC24-740-70 9VAC25-740-70] D. All such evaluations by the SRS shall be submitted to the board for review and approval, and shall be repeated for each new SIU that proposes to discharge to the sewage collection system and whose discharge has the potential to reach the SRS intake prior to commencing such discharge. The SRS shall maintain a current inventory of all SIUs that discharge pollutants of concern to the sewage collection system capable of reaching the intake of the SRS.

D. The permittee of a SRS authorized to produce reclaimed water treated to Level 1 shall establish a contractual agreement with the sewage collection system providing sewage to the SRS. The contractual agreement shall, at a minimum, require the sewage collection system to notify the SRS of all SIUs that discharge to the sewage collection system. Upon execution of the contractual agreement, a copy of the agreement shall be provided to the board.

E. Any VPDES permitted treatment works with SIUs that provides source water for reclamation and subsequent indirect potable reuse shall have the following:

1. For publicly owned treatment works, a pretreatment program where required by the VPDES Permit Regulation or deemed necessary by the board [ , developed ] in accordance with procedures described in Part VII (9VAC25-31-730 et seq.) of the VPDES Permit Regulation.
2. For all other treatment works, a program equivalent to a pretreatment program as described in Part VII (9VAC25-31-730 et seq.) of the VPDES Permit Regulation, if deemed necessary by the board.

**9VAC25-740-160. Access control and advisory signs.**

A. There shall be no uncontrolled public access to reclamation systems, ~~satellite reclamation systems~~ SRSs, and system storage facilities. Access to any wastewater treatment

works directly associated with a reclamation system or ~~satellite reclamation system~~ SRS shall be controlled in accordance with the Sewage [ 7 ] Collection and Treatment Regulations (9VAC25-790). System storage ponds shall be enclosed with a fence or otherwise designed with appropriate features to discourage the entry of animals and unauthorized persons.

B. Where advisory signs or placards are required as described in subsections C and D of this section or 9VAC25-740-110 C 5 for above-ground storage facilities, each sign shall state, at a minimum, "CAUTION: RECLAIMED WATER – DO NOT DRINK" and have the equivalent standard international symbol for [ ~~non-potable~~ nonpotable ] water. The size of the sign and lettering used shall be such that it can be easily read by a person with normal vision at a distance of 50 feet. Alternate signage and wording that assures an equivalent degree of public notification and protection may be accepted by the board.

C. For all reuses of reclaimed water treated to Level 2, fencing around the site boundary is not required but public access shall be restricted and advisory. Advisory signs shall be posted around reuse areas or reuse site boundaries. The advisory signs, and shall additionally state the nature of the reuse and no trespassing. Fencing around the site boundary is not required.

D. Advisory For all reuses of reclaimed water treated to Level 1, advisory signs or placards for all reuses of reclaimed water treated to Level 1 shall be posted within and at the boundaries of reuse areas. The advisory signs or placards shall additionally state the nature of the reuse. Examples of some notification methods that may be used by permittees include posting advisory signs at entrances to residential neighborhoods where reclaimed water is used for landscape irrigation and posting advisory signs at the entrance to a golf course and at the first and tenth tees.

E. Advisory signs shall be posted adjacent to impoundments or ponds, including landscape impoundments, used for nonsystem storage of reclaimed water.

F. For industrial reuses, advisory signs shall be posted around those areas of the industrial site where reclaimed water is used and at the main entrances to the industrial site to notify employees and the visiting public of the reclaimed water reuse. Access control beyond what is normally provided by the industry is not required.

**9VAC25-740-170. Use area requirements.**

A. Education and notification program. An education and notification program (program) shall be developed and submitted with the RWM [ ~~Plan~~ plan ] in accordance with 9VAC25-740-100 C 1 for reuses that require Level 1 reclaimed water, will be in areas accessible to the public, or are likely to have human contact. For indirect potable reuse (IPR) projects that do not require a RWM plan, the program shall be submitted with the application to permit the project in



---

# Regulations

---

accordance with 9VAC25-740-100 D. The program shall be the responsibility of the permittee to implement.

1. Education. The ~~purpose of the~~ education component of the program ~~is to ensure that~~ shall:

a. ~~For end users and the public likely to have contact with reclaimed water, provide information:~~

~~(1) To ensure that they are informed of the origin, nature, and characteristics of the reclaimed water; the manner in which the reclaimed water can be used safely; and uses for which the reclaimed water is prohibited or limited. The program shall describe all modes of communication to be used to educate and inform, including, but not limited to, meetings, distribution of written information, the news media (i.e., news papers, radio, television or the internet), and advisory signs as described in 9VAC25-740-160. Program education for:~~

~~(2) To individual end users shall be, at the time of their initial connection to the reclaimed water distribution system and, which may be provided in the service agreement or contract with the permittee established in accordance with 9VAC25-740-100 C 1 d- [ ; ] and~~

~~For nonbulk irrigation reuse of reclaimed water not treated to achieve BNR, education of individual end users shall be, at a minimum, annually (3) To individual end users, annually or more often after the reclaimed water distribution system is placed into operation for nonbulk irrigation reuse of reclaimed water not treated to achieve biological nutrient removal (BNR).~~

b. ~~For IPR projects, provide information to generators of source water for reclamation and IPR that are other than SIUs. This information shall describe methods and practices to avoid or reduce the introduction of contaminants from domestic and commercial sources into the wastewater collection system prior to reclamation and shall be provided to individual generators annually or more often after the reclamation system is placed into operation.~~

c. ~~Describe all modes of communication to be used to educate and inform, including, but not limited to, meetings, distribution of written information, the news media (i.e., newspapers, radio, television, or the Internet), and advisory signs as described in 9VAC25-740-160.~~

2. Notification. The notification component of the program shall contain procedures to notify end users and the affected public of ~~treatment failures at the reclamation system discharges of substandard reclaimed water to reuse that can adversely impact human health, or result in the~~ loss of reclaimed water service ~~due to planned or unplanned causes.~~

a. Notifications required for discharge of substandard reclaimed water to reuse.

(1) For reuses other than IPR. Where treatment of the reclaimed water fails more than once during a seven-day

period to comply with Level 1 disinfection or other standards developed in accordance with 9VAC25-740-70 D or 9VAC25-740-70 E for the protection of human health, and the [ ~~non-compliant~~ noncompliant ] reclaimed water has been discharged to ~~the~~ a reclaimed water distribution system or directly to a reuse, the permittee shall notify the end user of the treatment failures and advise the end user of precautions to be taken to protect ~~public~~ human health when using the reclaimed water in areas accessible to the public or where human contact with the reclaimed water is likely. These precautions shall be implemented for a period of seven days or greater depending on the frequency and magnitude of the treatment failure.

(2) For IPR. Where treatment of the reclaimed water fails at any time to comply with standards specified in 9VAC25-740-90 C and is discharged to the water supply source (WSS), the permittee shall notify the owner or management of the waterworks that withdraws water from the affected WSS of the time, duration, volume, and pollutant characteristics of the noncompliant discharge within a period of less than or equal to half the shortest determined travel time between the reclamation system discharge and the waterworks intake, but in no case greater than eight hours. Such notification shall be implemented for a period of seven days or greater depending on the frequency and magnitude of the noncompliant reclaimed water discharge and the ability of subsequent multiple barriers as described in the permit application of the IPR project to mitigate the impact of the discharge on the WSS.

b. Notifications required for loss of service.

(1) For reuses other than IPR. Where reclaimed water service to end users will be interrupted due to planned causes, such as scheduled maintenance or repairs, the permittee shall provide advance notice to end users of the anticipated date and duration of the interrupted service. Where reclaimed water service to end users is disrupted by unplanned causes, such as an upset at the reclamation system, the permittee shall notify end users and the affected public of the disrupted service if it [ ~~can not~~ cannot ] or will not be restored within eight hours of discovery.

(2) For IPR. Where the discharge of the reclamation system to the WSS will be interrupted due to planned causes, such as scheduled maintenance or repairs, the permittee shall provide advance notice to the owner or management of the waterworks that withdraws water from the WSS of the anticipated date, duration, and cause for the interrupted discharge. Where the discharge of the reclamation system is interrupted by unplanned causes, such as an upset at the reclamation system, the permittee shall notify the waterworks owner or management of the

interrupted discharge if the discharge cannot or will not be restored within eight hours of initial occurrence.

c. The notification component of the program shall describe all modes of communication that may be used to provide the notifications specified in subdivisions 2 a and b of this subsection. Modes of communication may include, but are not limited to, those described in subdivision 1 c of this subsection for the education component of the education and notification program.

B. Reclaimed water shall be used in a manner that is consistent with this chapter and with the conditions of the VPDES or VPA permit, such that public health and the environmental shall be protected.

C. Reclaimed water delivered to end users shall ~~be of acceptable quality~~ comply with reclaimed water standards required for the intended reuses at the point of delivery to end users.

D. There shall be no nuisance conditions resulting from the distribution, use, or storage of reclaimed water.

E. For all irrigation reuses of reclaimed water, the following shall be required:

1. There shall be no application of reclaimed water to the ground when it is saturated, frozen or covered with ice or snow, and during periods of rainfall.
2. The chosen method of irrigation shall minimize human contact with the reclaimed water.
3. Reclaimed water shall be prevented from coming into contact with drinking fountains, water coolers, or eating surfaces.

F. For bulk irrigation reuse of reclaimed water, the following shall be required:

1. Irrigation systems shall be designed, installed and adjusted to:
  - a. Provide uniform distribution of the reclaimed water over the irrigation site;
  - b. Prevent ponding or pooling of reclaimed water at the irrigation site;
  - c. Facilitate maintenance and harvesting of irrigated areas and ~~precludes~~ preclude damage to the irrigation system from the use of maintenance or harvesting equipment;
  - d. Prevent aerosol carry-over from the irrigation site to areas beyond the setback distances described in subsection H of this section; and
  - e. Prevent clogging from algae or suspended solids.
2. All pipes, pumps, valve boxes and outlets of the irrigation system shall be designed, installed, and identified in accordance with 9VAC25-740-110 B.
3. Any reclaimed water runoff shall be confined to the irrigation reuse site unless authorized by the board.

G. Overspray of surface waters, including wetlands, from irrigation or other reuses of reclaimed water is prohibited.

H. Setback distances for irrigation reuses of reclaimed water.

1. For sites irrigated with reclaimed water treated to Level 1, the ~~following~~ setback distances provided in Table 170-H1 are required:
  - a. ~~Potable water supply wells and springs, and public water supply intakes—100 feet~~
  - b. ~~Nonpotable water supply wells—10 feet~~
  - e. ~~Limestone rock outcrops and sinkholes—50 feet~~

<u>Table 170-H1</u> <u>Setback Distances for Irrigation Reuses of Reclaimed Water Treated to Level 1</u>	
<u>[ Feature Requiring Setback ]</u>	<u>Setback Distance ]</u>
<u>[ a. ] Potable water supply wells and springs and public water supply intakes</u>	<u>100 feet</u>
<u>[ b. ] Nonpotable water supply wells</u>	<u>10 feet</u>
<u>[ c. ] Limestone rock outcrops and sinkholes</u>	<u>50 feet</u>

2. For sites irrigated with reclaimed water treated to Level 1, no setback distances are required from occupied dwellings and outdoor eating, drinking and bathing facilities. However, aerosol formation shall be minimized within 100 feet of occupied dwellings and outdoor eating, drinking and bathing facilities through the use of low trajectory nozzles for spray irrigation, above-ground drip irrigation, or other means.

3. For sites irrigated with reclaimed water treated to Level 2, the ~~following~~ setback distances provided in Table 170-H2 are required:

- a. ~~Potable water supply wells and springs, and public water supply intakes—200 feet~~
- b. ~~Nonpotable water supply wells—10 feet~~
- e. ~~Surface waters, including wetlands—50 feet~~
- d. ~~Occupied dwellings—200 feet~~
- e. ~~Property lines and areas accessible to the public—100 feet~~
- f. ~~Limestone rock outcrops and sinkholes—50 feet~~

<u>Table 170-H2</u> <u>Setback Distances for Irrigation Reuses of Reclaimed Water Treated to Level 2</u>	
<u>[ Feature Requiring Setback ]</u>	<u>Setback Distance ]</u>

# Regulations

[ a. ] <u>Potable water supply wells and springs and public water supply intakes</u>	<u>200 feet</u>
[ b. ] <u>Nonpotable water supply wells</u>	<u>10 feet</u>
[ c. ] <u>Surface waters, including wetlands</u>	<u>50 feet</u>
[ d. ] <u>Occupied dwellings</u>	<u>200 feet</u>
[ e. ] <u>Property lines and areas accessible to the public</u>	<u>100 feet</u>
[ f. ] <u>Limestone rock outcrops and sinkholes</u>	<u>50 feet</u>

4. For sites irrigated with reclaimed water treated to Level 2, the setback distances may be reduced as follows:

- a. Up to but not exceeding 50% from occupied dwellings and areas accessible to the public if it can be demonstrated that alternative measures shall be implemented to provide an equivalent level of public health protection. Such measures shall include, but are not limited to, disinfection of the reclaimed water equivalent to Level 1, application of the reclaimed water by methods that minimize aerosol formation (e.g., low trajectory nozzles for spray irrigation, above-ground drip irrigation), installation of permanent physical barriers to prevent migration of aerosols from the reclaimed water irrigation site, or any combination thereof. Written consent of affected landowners is required to reduce setback distances from occupied dwellings.
- b. Up to 100 % from property lines with written consent from adjacent landowners.
- c. To but not less than 100 feet from potable water supply wells and springs, or public water supply intakes if it can be demonstrated that disinfection of the reclaimed water is equivalent to Level 1 and there are no other constituents of the reclaimed water present in quantities sufficient to be harmful to human health.
- d. To but not less than 25 feet from surface waters, including wetlands, where reclaimed water shall be applied by methods that minimize aerosol formation (e.g., low trajectory nozzles for spray irrigation, above-ground drip irrigation); or permanent physical barriers are installed to prevent the migration of aerosols from the reclaimed water irrigation site to surface waters.

5. Application of reclaimed water shall not occur during winds of sufficient strength to cause overspray or aerosol drift into or beyond the buffer zones or setbacks specified in subdivisions 1 through 4 of this subsection.

~~5.~~ 6. For irrigation reuses where more than one setback distance may apply, the greater setback distance shall govern.

~~6.~~ 7. Unless specifically stated otherwise, all setback distances shall be measured horizontally.

I. Minimum separation distances for in-ground reclaimed water distribution pipelines specified in 9VAC25-740-110 B 3, shall apply to in-ground piping for irrigation systems of reclaimed water.

J. A setback distance of 100 feet horizontally shall be maintained from indoor aesthetic features (i.e., decorative waterfalls or fountains) that use reclaimed water treated to Level 1, to adjacent indoor public eating and drinking facilities where the aesthetic features have the potential to create aerosols and eating and drinking facilities are within the same room or building space.

K. A setback distance of 300 feet horizontally shall be provided from an open cooling tower to the site property line where reclaimed water treated to Level 2 is used in the tower. No setback distance shall be required from an open cooling tower to the site property line where a drift or mist eliminator is installed and properly operated or reclaimed water treated to Level 1 disinfection standards is used in the tower. Treatment of the reclaimed water to Level 1 disinfection standards may be provided by the industrial end user through the contract or agreement established by the permittee in accordance with 9VAC25-740-100 C 1 d.

## **9VAC25-740-180. Operational flow requirements.**

A. When the monthly average flow into a reclamation system or ~~satellite reclamation system SRS~~ reaches 95% of the designated design capacity flow authorized by the VPDES or VPA permit issued to that system for each month of any three-month period, the permittee shall within 30 days notify the board in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

~~1-~~ B. The plan of action described in subsection A of this section shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem that could be reasonably anticipated, resulting from high flows entering the reclamation system or ~~satellite reclamation system SRS~~.

~~2-~~ C. Upon receipt of the permittee's plan of action described in subsection A of this section, the board shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

~~3-~~ D. Failure to timely submit an adequate plan of action in accordance with subsection A of this section shall be deemed a violation of the permit.

~~4-~~ E. Nothing herein shall in any way impair the authority of the board to take enforcement action under § 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.

**9VAC25-740-200. Reporting.**

A. Permittees of water reclamation systems and ~~satellite reclamation systems SRSs~~ shall submit a monthly monitoring report to the board. The report shall include monitoring results for parameters contained in the VPDES or VPA permit to demonstrate compliance with applicable reclaimed water standards of this chapter.

B. Interruption or loss of reclaimed water supply or discharge of any untreated or partially treated water that fails to comply with standards specified in the VPDES or VPA permit to the service area of intended reuse, shall be reported in accordance with procedures specified in the permit. This report shall also contain a description of any notification provided in accordance with 9VAC25-740-170 A 2.

C. Permittees of reclaimed water distribution systems shall submit an annual report to the board on or before February 10 of the following year. The annual report shall, at a minimum:

1. Estimate the volume of reclaimed water distributed to the service area of the RWM plan, reported as monthly totals for a 12-month period from January 1 through December 31;
2. Provide for reclaimed water not treated to achieve BNR that is used within the service area of the RWM plan, the monthly average concentrations of total N and total P in the reclaimed water, an estimate of the monthly total volume of reclaimed water used for nonbulk irrigation and for bulk irrigation, the monthly total nutrient loads (N and P) to the service area resulting from nonbulk irrigation reuse and from bulk irrigation reuse, and the area in active reuse for nonbulk irrigation and for bulk irrigation within the service area, all reported for a 12-month period from January 1 through December 31; and
3. Provide a summary of ongoing education and notification program activities, including copies of education materials, as required by 9VAC25-740-170 A.

**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 from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

**FORMS (9VAC25-740)**

~~Water Reclamation and Reuse Addendum to an Application for a Virginia Pollutant Discharge Elimination System Permit or a Virginia Pollution Abatement Permit, 6/1/2009.~~

~~{Water Reclamation and Reuse Addendum to an Application for a Virginia Pollutant Discharge Elimination System Permit or a Virginia Pollution Abatement Permit and Instructions (undated).~~

[Water Reclamation and Reuse Addendum to an Application for a Virginia Pollutant Discharge Elimination System Permit \(1/29/2014\) \]](#)

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-740)

Installation of Ductile-Iron Water Mains and Their Appurtenances, ANSI/AWWA C600-05 (Revision of ANSI/AWWA C600-99), effective December 1, 2005, American Water Works Association.

Ultraviolet Disinfection Guidelines for Drinking Water and Water Reuse, Second Edition (May 2003), National Water Research Institute, 10500 Ellis Avenue, P.O. Box 20865, Fountain Valley, California 92728; www.nwri-usa.org.

Disinfecting Water Mains, ANSI/AWWA C651-05, effective June 1, 2005, American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado, 80235; www.awwa.org.

VA.R. Doc. No. R11-2622; Filed December 2, 2013, 9:54 a.m.



**TITLE 12. HEALTH**

**STATE BOARD OF HEALTH**

**Fast-Track Regulation**

**Title of Regulation: 12VAC20-10. Guidelines for Public Participation in Developing Regulations (repealing 12VAC20-10-10 through 12VAC20-10-130).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 29, 2014.

Effective Date: February 17, 2014.

Agency Contact: Carrie Eddy, Senior Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 527-4502, or email [carrie.eddy@vdh.virginia.gov](mailto:carrie.eddy@vdh.virginia.gov).

Basis: Chapter 83 of the 2002 Acts of Assembly abolished the Virginia Health Planning Board (VHPB) and transferred authority for the certificate of public need program to the State Board of Health. Section 32.1-12 of the Code of Virginia authorizes the State Board of Health to make, adopt, promulgate, and enforce such regulations as may be necessary to carry out the provisions of Title 32.1 of the Code of Virginia and other laws of the Commonwealth administered by it, the Commissioner of Health, or the Department of Health.

Purpose: The State Board of Health has a public participation guidelines regulation (12VAC5-11) to use when adopting regulations. This regulatory chapter is obsolete and is not necessary to protect the health, safety, or welfare of citizens;

---

# Regulations

---

therefore, the department is taking action to repeal the entire chapter.

Rationale for Using Fast-Track Process: Since the department did not receive a direct legislative mandate to repeal the VHPB regulations, the department has chosen the fast-track rulemaking process to expedite the repeal of this chapter. As the VHPB no longer exists and the State Board of Health has public participation guidelines, this action is not expected to be controversial. Public participation will not be compromised by the repeal of this chapter.

Substance: The regulatory chapter no longer serves its intended purpose; therefore, the department is taking action to repeal the entire chapter. The State Board of Health has public participation guidelines that can be amended should there be a need to adopt regulations in the future.

Issues: Governor McDonnell instructed all regulatory agencies "to conduct a comprehensive review of regulations currently in place and repeal regulations that are unnecessary or no longer in use...." In keeping with this goal, this action is advantageous to the public, the agency and the Commonwealth as it removes an unnecessary regulation from the Virginia Administrative Code. There are no disadvantages to the public, the agency, or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. As the originally designated governing board for the Virginia Certificate of Public Need Program, the Virginia Health Planning Board (VHPB) last met in 1991. Chapter 83 of the 2002 Acts of Assembly assigned the functions of the VHPB to the State Board of Health. The State Board of Health therefore proposes to repeal these obsolete regulations, which pertain to the defunct Virginia Health Planning Board.

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

Estimated Economic Impact. These regulations pertain to a long-defunct board. Repealing these regulations would be beneficial in that it would help eliminate potential confusion by readers who might be lead to believe that there is an existing Virginia Health Planning Board.

Businesses and Entities Affected. The proposed repeal of these regulations will not directly affect any businesses or entities beyond eliminating potential confusion by those who might otherwise be mislead into believing that there is an existing Virginia Health Planning Board.

Localities Particularly Affected. The proposed repeal does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed repeal will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal will not significantly affect costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal does not adversely affect small businesses.

Real Estate Development Costs. The proposed repeal does not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency Response to Economic Impact Analysis: The Department of Health concurs with the Department of Planning and Budget's economic assessment and that the assessment is true and accurate.

## Summary:

*Chapter 83 of the 2002 Acts of Assembly abolished the Virginia Health Planning Board (VHPB) and transferred regulatory authority for the certificate of public need program to the State Board of Health. As the VHPB no longer exists and the State Board of Health has promulgated its own set of Public Participation Guidelines, the entire chapter is repealed.*

VA.R. Doc. No. R14-3695; Filed December 6, 2013, 2:34 p.m.

## **Fast-Track Regulation**

Title of Regulation: **12VAC20-20. Regulations for Designating Health Planning Regions (repealing 12VAC20-20-10 through 12VAC20-20-110).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 29, 2014.

Effective Date: February 17, 2014.

Agency Contact: Carrie Eddy, Senior Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 527-4502, or email carrie.eddy@vdh.virginia.gov.

Basis: Chapter 83 of the 2002 Acts of Assembly abolished the Virginia Health Planning Board (VHPB) and transferred authority for the certificate of public need program (COPN) to the State Board of Health. Section 32.1-12 of the Code of Virginia authorizes the State Board of Health to make, adopt, promulgate, and enforce such regulations as may be necessary to carry out the provisions of Title 32.1 of the Code of Virginia and other laws of the Commonwealth administered by it, the Commissioner of Health, or the Department of Health.

Purpose: This regulatory chapter no longer serves its intended purpose and is not necessary to protect the health, safety, or welfare of citizens; therefore, the department is taking action to repeal the entire chapter. Chapter 83 of the 2002 Acts of Assembly transferred oversight of the health planning regions (HPRs) to the department. Over the succeeding years, four of the five designated HPRs ceased operation, no longer able to meet financial obligations to remain operationally viable. Chapter 175 of the 2009 Acts of Assembly and Chapter 646 of the 2010 Acts of Assembly authorize the Department of Health to conduct local public hearings in the review of requests for COPNs and convey responsibility for notifying local governments of pending reviews when no regional health planning agency had been designated. As the VHPB no longer exists and this chapter was duplicative of law under the VHPB, the department is taking this action to repeal the entire regulatory chapter 12VAC20-20.

Rationale for Using Fast-Track Process: The regulation has not been enforced since 2002, when the VHPB was abolished (Chapter 83, 2002 Acts of Assembly). Since the department did not receive a direct legislative mandate to repeal the VHPB regulations, the department has chosen the fast-track rulemaking process to expedite the repeal of this chapter. As the VHPB no longer exists and this chapter was duplicative of law under the VHPB, the department is taking this action to repeal the chapter.

Substance: The regulatory chapter is duplicative of statutory provisions and no longer serves its intended purpose; therefore, the department is taking action to repeal the entire chapter. The department has the authority to promulgate regulations should there be a need in the future.

Issues: Governor McDonnell instructed all regulatory agencies "to conduct a comprehensive review of regulations currently in place and repeal regulations that are unnecessary or no longer in use...." In keeping with this goal, this action is

advantageous to the public, the agency, and the Commonwealth as it removes an unnecessary regulation from the Virginia Administrative Code. There are no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. As the originally designated governing board for the Virginia Certificate of Public Need Program, the Virginia Health Planning Board (VHPB) last met in 1991. Chapter 83 of the 2002 Acts of Assembly assigned the functions of the VHPB to the State Board of Health. The State Board of Health therefore proposes to repeal these obsolete regulations, which pertain to the defunct Virginia Health Planning Board.

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

Estimated Economic Impact. These regulations pertain to a long-defunct board. Repealing these regulations would be beneficial in that it would help eliminate potential confusion by readers who might be lead to believe that there is an existing Virginia Health Planning Board.

Businesses and Entities Affected. The proposed repeal of these regulations will not directly affect any businesses or entities beyond eliminating potential confusion by those who might otherwise be mislead into believing that there is an existing Virginia Health Planning Board.

Localities Particularly Affected. The proposed repeal does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed repeal will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal will not significantly affect costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal does not adversely affect small businesses.

Real Estate Development Costs. The proposed repeal does not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with

---

# Regulations

---

the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency Response to Economic Impact Analysis: The Department of Health concurs with the Department of Planning and Budget's economic assessment and that the assessment is true and accurate.

Summary:

*Chapter 83 of the 2002 Acts of Assembly abolished the Virginia Health Planning Board (VHPB) and transferred regulatory authority for the certificate of public need program to the State Board of Health. As the VHPB no longer exists and this chapter is duplicative of applicable statutory provisions, the entire chapter is repealed.*

VA.R. Doc. No. R14-3696; Filed December 6, 2013, 2:34 p.m.

## Fast-Track Regulation

Title of Regulation: **12VAC20-30. Regulations Governing the Regional Health Planning Boards (repealing 12VAC20-30-10 through 12VAC20-30-100).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 29, 2014.

Effective Date: February 17, 2014.

Agency Contact: Carrie Eddy, Senior Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 257-4502, or email [carrie.eddy@vdh.virginia.gov](mailto:carrie.eddy@vdh.virginia.gov).

Basis: Chapter 83 of the 2002 Acts of Assembly abolished the Virginia Health Planning Board (VHPB) and transferred authority for the certificate of public need program (COPN) to the State Board of Health. Section 32.1-12 of the Code of Virginia authorizes the State Board of Health to make, adopt, promulgate, and enforce such regulations as may be necessary to carry out the provisions of Title 32.1 of the Code of Virginia and other laws of the Commonwealth administered by it, the Commissioner of Health, or the Department of Health.

Purpose: This regulatory chapter no longer serves its intended purpose and is not necessary to protect the health, safety, or

welfare of citizens; therefore, the department is taking action to repeal the entire chapter. Chapter 83 of the 2002 Acts of Assembly transferred oversight of the health planning regions (HPRs) to the department. Over the succeeding years, four of the five designated HPRs ceased operation, no longer able to meet financial obligations to remain operationally viable. Chapter 175 of the 2009 Acts of Assembly and Chapter 646 of the 2010 Acts of Assembly authorize the Department of Health to conduct local public hearings in the review of requests for COPNs and convey responsibility for notifying local governments of pending reviews when no regional health planning agency had been designated. As the VHPB no longer exists and this chapter was duplicative of law under the VHPB, the department is taking this action to repeal the entire regulatory chapter 12VAC20-30.

Rationale for Using Fast-Track Process: The regulation has not been enforced since 2002, when the VHPB was abolished (Chapter 83, 2002 Acts of Assembly). Since the department did not receive a direct legislative mandate to repeal the VHPB regulations, the department has chosen the fast-track rulemaking process to expedite the repeal of this chapter. As the VHPB no longer exists and this chapter was duplicative of law under the VHPB, the department is taking this action to repeal the chapter.

Substance: The regulatory chapter is duplicative of statutory provisions and no longer serves its intended purpose; therefore, the department is taking action to repeal the entire chapter. The department has the authority to promulgate regulations should there be a need in the future.

Issues: Governor McDonnell instructed all regulatory agencies "to conduct a comprehensive review of regulations currently in place and repeal regulations that are unnecessary or no longer in use...." In keeping with this goal, this action is advantageous to the public, the agency, and the Commonwealth as it removes an unnecessary regulation from the Virginia Administrative Code. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the originally designated governing board for the Virginia Certificate of Public Need Program, the Virginia Health Planning Board (VHPB) last met in 1991. Chapter 83 of the 2002 Acts of Assembly assigned the functions of the VHPB to the State Board of Health. The State Board of Health therefore proposes to repeal these obsolete regulations, which pertain to the defunct Virginia Health Planning Board.

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

Estimated Economic Impact. These regulations pertain to a long-defunct board. Repealing these regulations would be beneficial in that it would help eliminate potential confusion by readers who might be lead to believe that there is an existing Virginia Health Planning Board.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not directly affect any businesses or entities beyond eliminating potential confusion by those who might otherwise be misled into believing that there is an existing Virginia Health Planning Board.

**Localities Particularly Affected.** The proposed repeal does not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposed repeal will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal will not significantly affect costs for small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal does not adversely affect small businesses.

**Real Estate Development Costs.** The proposed repeal does not affect real estate development costs.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

**Agency Response to Economic Impact Analysis:** The Department of Health concurs with the Department of Planning and Budget's economic assessment and that the assessment is true and accurate.

**Summary:**

*Chapter 83 of the 2002 Acts of Assembly abolished the Virginia Health Planning Board (VHPB) and transferred*

*regulatory authority for the certificate of public need program to the State Board of Health. As the VHPB no longer exists and this chapter is duplicative of applicable statutory provisions, the entire chapter is repealed.*

VA.R. Doc. No. R14-3697; Filed December 6, 2013, 2:35 p.m.

**Fast-Track Regulation**

**Title of Regulation:** 12VAC20-40. Regulations for Designating Regional Health Planning Agencies (repealing 12VAC20-40-10 through 12VAC20-40-150).

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** January 29, 2014.

**Effective Date:** February 17, 2014.

**Agency Contact:** Carrie Eddy, Senior Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 257-4502, or email carrie.eddy@vdh.virginia.gov.

**Basis:** Chapter 83 of the 2002 Acts of Assembly abolished the Virginia Health Planning Board (VHPB) and transferred authority for the certificate of public need program (COPN) to the State Board of Health. Section 32.1-12 of the Code of Virginia authorizes the State Board of Health to make, adopt, promulgate, and enforce such regulations as may be necessary to carry out the provisions of Title 32.1 of the Code of Virginia and other laws of the Commonwealth administered by it, the Commissioner of Health, or the Department of Health.

**Purpose:** This regulatory chapter no longer serves its intended purpose and is not necessary to protect the health, safety, or welfare of citizens; therefore, the department is taking action to repeal the entire chapter. Chapter 83 of the 2002 Acts of Assembly transferred oversight of the health planning regions (HPRs) to the department. Over the succeeding years, four of the five designated HPRs ceased operation, no longer able to meet financial obligations to remain operationally viable. Chapter 175 of the 2009 Acts of Assembly and Chapter 646 of the 2010 Acts of Assembly authorize the Department of Health to conduct local public hearings in the review of requests for COPNs and convey responsibility for notifying local governments of pending reviews when no regional health planning agency had been designated. As the VHPB no longer exists and this chapter was duplicative of law under the VHPB, the department is taking this action to repeal the entire regulatory chapter 12VAC20-40.

**Rationale for Using Fast-Track Process:** The regulation has not been enforced since 2002, when the VHPB was abolished (Chapter 83, 2002 Acts of Assembly). Since the department did not receive a direct legislative mandate to repeal the VHPB regulations, the department has chosen the fast-track rulemaking process to expedite the repeal of this chapter. As the VHPB no longer exists and this chapter was duplicative of



---

# Regulations

---

law under the VHPB, the department is taking this action to repeal the chapter.

**Substance:** The regulatory chapter is duplicative of statutory provisions and no longer serves its intended purpose; therefore, the department is taking action to repeal the entire chapter. The department has the authority to promulgate regulations should there be a need in the future.

**Issues:** Governor McDonnell instructed all regulatory agencies "to conduct a comprehensive review of regulations currently in place and repeal regulations that are unnecessary or no longer in use...." In keeping with this goal, this action is advantageous to the public, the agency, and the Commonwealth as it removes an unnecessary regulation from the Virginia Administrative Code. There are no disadvantages to the public or the Commonwealth.

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

**Summary of the Proposed Amendments to Regulation.** As the originally designated governing board for the Virginia Certificate of Public Need Program, the Virginia Health Planning Board (VHPB) last met in 1991. Chapter 83 of the 2002 Acts of Assembly assigned the functions of the VHPB to the State Board of Health. The State Board of Health therefore proposes to repeal these obsolete regulations, which pertain to the defunct Virginia Health Planning Board.

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

**Estimated Economic Impact.** These regulations pertain to a long-defunct board. Repealing these regulations would be beneficial in that it would help eliminate potential confusion by readers who might be lead to believe that there is an existing Virginia Health Planning Board.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not directly affect any businesses or entities beyond eliminating potential confusion by those who might otherwise be mislead into believing that there is an existing Virginia Health Planning Board.

**Localities Particularly Affected.** The proposed repeal does not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposed repeal will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal will not significantly affect costs for small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal does not adversely affect small businesses.

**Real Estate Development Costs.** The proposed repeal does not affect real estate development costs.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

**Agency Response to Economic Impact Analysis:** The Department of Health concurs with the Department of Planning and Budget's economic assessment and that the assessment is true and accurate.

## Summary:

*Chapter 83 of the 2002 Acts of Assembly abolished the Virginia Health Planning Board (VHPB) and transferred regulatory authority for the certificate of public need program to the State Board of Health. As the VHPB no longer exists and this chapter is duplicative of applicable statutory provisions, the entire chapter is repealed.*

VA.R. Doc. No. R14-3698; Filed December 6, 2013, 2:36 p.m.

## **Fast-Track Regulation**

**Title of Regulation:** **12VAC20-50. Administration of State Funding for Regional Health Planning (repealing 12VAC20-50-10 through 12VAC20-50-140).**

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** January 29, 2014.

**Effective Date:** February 17, 2014.

**Agency Contact:** Carrie Eddy, Senior Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 257-4502, or email [carrie.eddy@vdh.virginia.gov](mailto:carrie.eddy@vdh.virginia.gov).

**Basis:** Chapter 83 of the 2002 Acts of Assembly abolished the Virginia Health Planning Board (VHPB) and transferred authority for the certificate of public need program (COPN) to the State Board of Health. Section 32.1-12 of the Code of Virginia authorizes the State Board of Health to make, adopt, promulgate, and enforce such regulations as may be necessary to carry out the provisions of Title 32.1 of the Code of Virginia and other laws of the Commonwealth administered by it, the Commissioner of Health, or the Department of Health.

**Purpose:** This regulatory chapter no longer serves its intended purpose and is not necessary to protect the health, safety, or welfare of citizens; therefore, the department is taking action to repeal the entire chapter. Chapter 83 of the 2002 Acts of Assembly transferred oversight of the health planning regions (HPRs) to the department. Over the succeeding years, four of the five designated HPRs ceased operation, no longer able to meet financial obligations to remain operationally viable. Chapter 175 of the 2009 Acts of Assembly and Chapter 646 of the 2010 Acts of Assembly authorize the Department of Health to conduct local public hearings in the review of requests for COPNs and convey responsibility for notifying local governments of pending reviews when no regional health planning agency had been designated. As the VHPB no longer exists and this chapter was duplicative of law under the VHPB, the department is taking this action to repeal the entire regulatory chapter 12VAC20-50.

**Rationale for Using Fast-Track Process:** The regulation has not been enforced since 2002, when the VHPB was abolished (Chapter 83, 2002 Acts of Assembly). Since the department did not receive a direct legislative mandate to repeal the VHPB regulations, the department has chosen the fast-track rulemaking process to expedite the repeal of this chapter. As the VHPB no longer exists and this chapter was duplicative of law under the VHPB, the department is taking this action to repeal the chapter.

**Substance:** The regulatory chapter is duplicative of statutory provisions and no longer serves its intended purpose; therefore, the department is taking action to repeal the entire chapter. The department has the authority to promulgate regulations should there be a need in the future.

**Issues:** Governor McDonnell instructed all regulatory agencies "to conduct a comprehensive review of regulations currently in place and repeal regulations that are unnecessary or no longer in use...." In keeping with this goal, this action is advantageous to the public, the agency, and the Commonwealth as it removes an unnecessary regulation from the Virginia Administrative Code. There are no disadvantages to the public or the Commonwealth.

**Department of Planning and Budget's Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. As the originally designated governing board for the Virginia Certificate of Public Need Program, the Virginia Health

Planning Board (VHPB) last met in 1991. Chapter 83 of the 2002 Acts of Assembly assigned the functions of the VHPB to the State Board of Health. The State Board of Health therefore proposes to repeal these obsolete regulations, which pertain to the defunct Virginia Health Planning Board.

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

**Estimated Economic Impact.** These regulations pertain to a long-defunct board. Repealing these regulations would be beneficial in that it would help eliminate potential confusion by readers who might be lead to believe that there is an existing Virginia Health Planning Board.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not directly affect any businesses or entities beyond eliminating potential confusion by those who might otherwise be mislead into believing that there is an existing Virginia Health Planning Board.

**Localities Particularly Affected.** The proposed repeal does not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposed repeal will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal will not significantly affect costs for small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal does not adversely affect small businesses.

**Real Estate Development Costs.** The proposed repeal does not affect real estate development costs.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable

---

# Regulations

---

effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency Response to Economic Impact Analysis: The Department of Health concurs with the Department of Planning and Budget's economic assessment and that the assessment is true and accurate.

Summary:

*Chapter 83 of the 2002 Acts of Assembly abolished the Virginia Health Planning Board (VHPB) and transferred regulatory authority for the certificate of public need program to the State Board of Health. As the VHPB no longer exists and this chapter is duplicative of applicable statutory provisions, the entire chapter is repealed.*

V.A.R. Doc. No. R14-3699; Filed December 6, 2013, 2:36 p.m.

---

◆ ————— ◆

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

#### Proposed Regulation

Title of Regulation: **18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (amending 18VAC10-20-10, 18VAC10-20-17 through 18VAC10-20-400, 18VAC10-20-420 through 18VAC10-20-795; adding 18VAC10-20-87, 18VAC10-20-425, 18VAC10-20-495, 18VAC10-20-515, 18VAC10-20-575, 18VAC10-20-627; repealing 18VAC10-20-540, 18VAC10-20-600).**

Statutory Authority: §§ 54.1-201 and 54.1-404 of the Code of Virginia.

Public Hearing Information:

January 9, 2014 - 2 p.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Board Room 1, Richmond, VA 23233

Public Comment Deadline: February 28, 2014.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

Basis: Section 54.1-201 of the Code of Virginia authorizes the Board for Architects, Professional Engineers, Land

Surveyors, Certified Interior Designers and Landscape Architects to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the board.

Section 54.1-404 A of the Code of Virginia authorizes the board to promulgate regulations "governing its own organization, the professional qualifications of applicants, the requirements necessary for passing examinations in whole or in part, the proper conduct of its examinations, the implementation of exemptions from license requirements, and the proper discharge of its duties."

Executive Order 14 (2010) requires that each existing regulation be reviewed at least once every four years by the promulgating agency unless specifically exempted from periodic review by the Governor.

Purpose: Architects, professional engineers, land surveyors, certified interior designers, and landscape architects have complex requirements for licensure and certification regarding entry and professional conduct. The complexity of these requirements results from the nature of these professions. Questions often arise from both regulants and applicants in an array of situations. The board is proposing these amendments to ensure that these requirements are the most up-to-date requirements for what is necessary for each profession. Further, the board's intention is to simplify the existing regulatory language to make entry and performance requirements as clear as possible for both regulants and other members of the public.

The purpose of the proposed regulations is to focus solely on a general but comprehensive review of the existing regulations. The review eliminates duplicative language, simplifies the explanations of requirements, and ultimately produces regulations that effectively protect the health, safety, and welfare of the public and that will be more easily read and understood by the public.

Substance: The majority of sections are amended to read more clearly. In addition to the clarifying changes made throughout the regulations, the following changes are proposed:

18VAC10-20-10 - remove unnecessary language and add language to a definition to make the term applicable to both applicants and regulants.

18VAC10-20-17 - amend for consistency with the definitions section and remove the fixed fee for a wall certificate.

18VAC10-20-20 - relocate each specific profession's exam requirements to its specific section of the regulations and divide larger text into smaller, more concise subsections of text for ease of understanding the general entry requirements.

18VAC10-20-25 - require that the reference be someone known to the applicant more recently than contacts from over five years ago.

18VAC10-20-55 - clarify specifically which applicants are required to submit a TOEFL exam score with an application.

18VAC10-20-87 - add to affirmatively identify the expiration date of all initial licenses, certificates, and registrations. Licenses, certificates, and registrations that are renewed or reinstated currently have an established expiration date in 18VAC10-20-670 and 18VAC10-20-680, respectively.

18VAC10-20-90, 18VAC10-20-170, 18VAC10-20-280 - clarify the type of application for the profession.

18VAC10-20-120 - identify the most current "Handbook for Interns and Architects," which establishes experience requirements for architects.

18VAC10-20-130, 18VAC10-20-220 - clarify the purpose of providing a reference.

18VAC10-20-160 - clarify the definition of "Related science curriculum."

18VAC10-20-190, 18VAC10-20-210 - establish the standard by which coursework will be determined to be equivalent to a degree with ABET accreditation.

18VAC10-20-230 - clarify which degrees may be considered to be approved by the board.

18VAC10-20-240 - implement the use of a table to more easily distinguish qualifying from nonqualifying experience based on a category.

18VAC10-20-260, 18VAC10-20-350 - relocate language specific to the exam deadline from 18VAC10-20-20 and add language requiring that applicants who do not pass the exam within three years from their approval must demonstrate proof of educational activities to be eligible for the exam once again.

18VAC10-20-295 - clarify the definitions of the two types of surveying experience and make them consistent as applicable to the type of surveying.

18VAC10-20-300 - reduce the experience requirement for those applicants with a board-approved undergraduate degree in a field unrelated to surveying.

18VAC10-20-310 - remove obsolete language pertaining to entry requirements for surveyor photogrammetrists under an expired "grandfather" provision.

18VAC10-20-340 - clarify which individuals must verify an applicant's experience.

18VAC10-20-360 - clarify licensure requirements for surveyor photogrammetrists applying via comity. The new language addresses the requirements for those applicants licensed in other states before, during, and after the board's period for grandfathering.

18VAC10-20-370 - remove duplicative language pertaining to the sealing and signing requirement.

18VAC10-20-395 - update citation of the board's regulations.

18VAC10-20-400, 18VAC10-20-470 - clarify the type of application for the profession.

18VAC10-20-420 - provide examples to help individuals understand the application of the board's calculations regarding education and experience credits.

18VAC10-20-425 - add section to further determine an applicant's competence and integrity to practice landscape architecture, previously a certification, now a licensed profession. The requirement for references already exists in the current regulations for architects and professional engineers.

18VAC10-20-460 - divide the large paragraph definition into concise, individual components. The definition of "diversified experience" is amended.

18VAC10-20-490 - relocate a requirement previously contained in a definition from 18VAC10-20-460.

18VAC10-20-495 - add relocated exam language from 18VAC10-20-20 to this section.

18VAC10-20-510, 18VAC10-20-570 - add a definition to eliminate confusion between a board-issued registration and a certificate of registration issued by the Virginia State Corporation Commission.

18VAC10-20-515, 18VAC10-20-575, 18VAC10-20-627 - add to clarify which businesses must apply to the board for a registration.

18VAC10-20-520, 18VAC10-20-580, 18VAC10-20-630 - clarify the type of application for the business and relocate the reinstatement fee information to 18VAC10-20-680 with all other reinstatement information.

18VAC10-20-530, 18VAC10-20-590 - remove language taken directly from the Code of Virginia and replace with citation references.

18VAC10-20-540 - repeal because requirements are relocated to new 18VAC10-20-515 and current 18VAC10-20-770.

18VAC10-20-600 - repeal because requirements are contained in new 18VAC10-20-575 and current 18VAC10-20-770.

18VAC10-20-670, 18VAC10-20-680 - add language (i) establishing a regulator's rights under the Administrative Process Act and (ii) authorizing the board to withhold renewal, reinstatement, examination, or other services from regulators who fail to pay penalties or other fees owed to the board.

18VAC10-20-687 - remove an improper citation reference to 18VAC10-20-683.

---

# Regulations

---

18VAC10-20-740 - relocate language containing requirements from the definition of "direct control and personal supervision" from 18VAC10-20-10 to this section.

18VAC10-20-750 - eliminate duplicative language.

18VAC10-20-760 - remove obsolete language and add language to clarify which documents must be sealed for a project involving multiple professionals performing work on different aspects of the project.

18VAC10-20-770 - relocate language from 18VAC10-20-540 and 18VAC10-20-600 to this section.

18VAC10-20-790 - add language to clarify the board's authority to sanction regulants for failing to maintain good moral character as defined in 18VAC10-20-10 and remove duplicative language.

Issues: The primary advantage to the public is that buildings and site plans will continue to be developed by minimally competent professionals. Further, regulants and applicants within the various industries of these professions will be able read the board's regulations with greater clarity and understanding. The added clarity of the language in the proposed regulations will facilitate a quicker and more efficient process for applicants and regulants by enhancing their understanding of their individual requirements. Further, consumers in the public, as well as regulators from related agencies, will have a better understanding of the requirements of these professionals, which will also allow them to conduct their business with greater efficiency.

The primary advantage to the Commonwealth will be the continued successful regulation of minimally competent individuals working as architects, professional engineers, land surveyors, certified interior designers, and landscape architects throughout Virginia. No disadvantage has been identified.

The board, housed within the Department of Professional and Occupational Regulation, has frequent interactions with the Department of Housing and Community Development, the Department of Transportation, the State Corporation Commission, the Virginia Society of Professional Engineers, the American Council of Engineering Companies, the American Institute of Architects, the Virginia Association of Surveyors, the American Society of Landscape Architects, as well as numerous other local government agencies, national and local organizations, colleges and universities. Interaction with these agencies and organizations often requires information contained in the regulations. The clarification of the proposed language will facilitate greater understanding of the board's requirements for all involved.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape

Architects (the Board) proposes to 1) reduce from three to two years the experience requirement for surveyor-in-training designation applicants who have a Board-approved undergraduate degree in a field unrelated to surveying, 2) withhold renewal, reinstatement, examination, or other services for regulants who fail to pay penalties or other fees owed to the Board resulting from a consent or final order, 3) remove the amount of the duplicate wall certificate fee from the regulations so that it could be updated without having to go through the regulatory review process, 4) require applicants for professional engineer license, land surveyor license, engineer-in-training designation, and surveyor-in-training designation, who do not pass the exam within three years from their approval, to demonstrate proof of educational activities to be eligible for the exam once again, 5) require that the references for architects, engineers, and landscape architects license applicants be someone who has known the applicant within the last five years, 6) add new language addressing the requirements for those applicants licensed in other states before, during, and after the Board's period for grandfathering, and 7) eliminate duplicative language, clarify existing requirements, update citations, and improve clarity by reorganizing several sections of regulatory text.

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

Estimated Economic Impact. This regulatory action results from a general review of the regulation and is designed to be a comprehensive overhaul that eliminates duplicative language, clarifies existing requirements, updates citations, and improves clarity by reorganizing several sections of regulatory text. While many of the changes are technical in nature and are not expected to produce significant economic effects, several of the proposed changes are substantive.

One of the proposed changes will reduce from three to two years the experience requirement for surveyor-in-training designation applicants who have a Board-approved undergraduate degree in a field unrelated to surveying. Currently, someone with a four year related degree only needs one year experience for a total of five years combined education and experience and someone with a related associate degree needs four years of experience for a total of six years. Under the current rules, someone with an unrelated undergraduate degree must have three years of experience for a total of seven years which is one more year than the requirements for someone with an associate degree. According to the Department of Professional and Occupational Regulation (DPOR), looking at the combined total of education and experience, the Board believes that three years of experience is excessive for someone with an unrelated undergraduate degree.

The main benefit of the change will accrue to the individuals who are applying for surveyor-in-training designation with a Board-approved undergraduate degree in a field unrelated to surveying. However, DPOR does not have a mechanism for

tracking how many people may be affected by this particular change. Under the proposed regulations, affected individuals will be eligible for surveyor-in-training designation one year earlier than it would have otherwise been. Thus, if the designation allows someone to earn higher income compared to someone without the designation, affected individuals are expected to enjoy higher income for an additional year than they otherwise would.

In addition, the Board proposes to withhold renewal, reinstatement, examination, or other services for regulants who fail to pay penalties or other fees owed to the Board resulting from a consent or final order. Since the beginning of 2009, the Board has imposed a total of \$35,200 in monetary penalties and administrative costs in 34 cases. The main benefit of this change is to ensure that regulants maintain compliance with the consent and final orders before being authorized any further regulatory status by the Board through renewal, reinstatement, examination, or other services. The main cost is to put the regulant in a situation that either he does not operate or operates without a current license, certificate, or registration.

Another proposed change will remove the amount of the duplicate wall certificate fee from the regulations so that it could be updated without having to go through the regulatory review process when DPOR amends the amount of this fee. Unlike the other fees the Board assesses, the duplicate wall certificate fee is a department-wide service fee and established by DPOR for all of the Boards under its jurisdiction. This fee was increased to \$35 from \$25 in 2009 by DPOR, but the Board could not implement this change at that time because the regulations contained the amount as \$25. The Board proposes to replace the amount \$25 with the department fee so that it could be updated automatically whenever DPOR amends the amount of this fee.

Since the current department-wide fee is \$35, regulants will pay an additional \$10 for duplicate wall certificates. DPOR estimates that duplicative wall certificates are requested less than 25 times in a year. Thus, this proposed change is expected to increase the Board's revenues up to \$250 annually. This change will help the Board maintain its revenues timely and automatically at a level commensurate with its administrative costs associated with issuance of duplicate wall certificates.

In addition, the proposed changes will require applicants for professional engineer license, land surveyor license, engineer-in-training designation, and surveyor-in-training designation, who do not pass the exam within three years from their approval, to demonstrate proof of educational activities to be eligible for the exam once again. According to DPOR, the contents of these exams are protected. The intent of this requirement is to protect the integrity of the national exam by preventing individuals from continuously sitting for the exam merely in an effort to copy exam questions and answers for unlawful distribution to future exam candidates.

According to DPOR, any educational activity related to the profession would be acceptable. These educational activities are available for free from some sources or may cost up to several hundred dollars from some providers.

Moreover, the proposed changes will require that the references for architects, engineers, and landscape architects license applicants be someone who has known the applicant within the last five years. According to DPOR, a friend, colleague, professor, or other person, serving as a reference from more than five years ago, is less likely to be knowledgeable of an applicant's present day character. A more recent reference is expected to give a more accurate depiction of an applicant's current character. On the other hand, this requirement will reduce the pool of potential references to the people who have known the applicant within the last five years and may add to the administrative costs of the overall application process.

Pursuant to Chapters 359 and 440 of the 2005 Acts of Assembly, the Board also proposes to add new language addressing the requirements for those applicants licensed in other states before, during, and after the Board's period for grandfathering. The Board's rule is that applicants for licensure by comity meet the criteria that were in effect in Virginia at the time the other state issued a license to the applicant. Prior to December 1, 2009, applicants for surveyor photogrammetrist were required to have 8 years of combined education and experience. After December 1, 2009, combined years of education and experience have been reduced to 5-7 years. Since this change has already been in effect, no significant economic effect is expected upon promulgation of these proposed changes.

Finally, remaining changes eliminate duplicative language, clarify existing requirements, update citations, and improve clarity by reorganizing several sections of regulatory text. None of these changes are expected to create significant economic impacts other than improving the clarity of the regulations.

**Businesses and Entities Affected.** There are approximately 3,300 businesses and 36,000 individuals are regulated under these regulations.

**Localities Particularly Affected.** The proposed regulations apply throughout the Commonwealth.

**Projected Impact on Employment.** Reducing the experience requirement for some surveyor-in-training designation applicants is expected to increase the supply of professionals with the designation and decrease the supply of professionals without the designation. However, this change is unlikely to have a significant impact on current employment level.

**Effects on the Use and Value of Private Property.** The proposed changes are not expected to have a significant effect on the use and value of private property.

**Small Businesses: Costs and Other Effects.** According to DPOR, most, if not all of the affected businesses may be

---

# Regulations

---

considered as small businesses. Thus, the cost and other effects of the proposed changes on small businesses are the same as discussed above. Reducing the experience requirement for some surveyor-in-training designation applicants are expected to benefit regulants while other changes (i.e., withholding certain services to regulants who owe fees to the board, increasing the amount of the fee for wall certificates, requiring proof of educational activities under certain circumstances, and requiring more recent contact with references) are expected to add to the compliance costs.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** There is no known alternative method that minimizes the adverse impact on small businesses while accomplishing the same goals.

**Real Estate Development Costs.** The proposed changes are not expected to have a significant effect on the real estate development costs.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

**Agency's Response to Economic Impact Analysis:** Generally concur with the following exceptions:

The board does not agree with DPB's assertion that the requirement of current references within the last five years will add to the administrative costs of the overall application process. Applicants are only required to list three references, and the board contends that an applicant should have an easier time of locating recent references than tracking down older references.

The board does not agree with DPB's assertion that withholding services from regulants who owe fees, increasing the fee for wall certificates, and requiring more recent references will add to the compliance costs. The withholding of services is based on board costs and monetary penalties already assessed to a regulant through a final or consent order. These orders are the result of a regulant's violation of regulation or statute, which could potentially endanger the health, safety, or welfare of the public. The board's mission is to protect the health, safety, and welfare of the public and, to ensure that, the board requires compliance with these orders before granting continued licensure.

The increase in fees for wall certificates is for duplicates only and was an agency wide initiative, not a board-level decision. The first wall certificate is already part of the licensing fee and is provided at no additional charge.

**Summary:**

*The proposed amendments (i) reduce from three to two years the experience requirement for surveyor-in-training designation applicants who have a board-approved undergraduate degree in a field unrelated to surveying; (ii) withhold renewal, reinstatement, examination, or other services for regulants who fail to pay penalties or other fees owed to the board resulting from a consent or final order; (iii) remove the amount of the duplicate wall certificate fee from the regulations to allow the fee to be updated without having to go through the regulatory review process; (iv) require applicants for professional engineer license, land surveyor license, engineer-in-training designation, and surveyor-in-training designation, who do not pass the exam within three years from their approval, to demonstrate proof of educational activities to be eligible for the exam once again; (v) require that the references for architects, engineers, and landscape architects license applicants be someone who has known the applicant within the last five years; (vi) clarify licensure requirements for surveyor photogrammetrists applying via comity by addressing the requirements for those applicants licensed in other states before, during, and after the board's period for grandfathering; and (vii) eliminate duplicative language, clarify existing requirements, update citations, and improve clarity by reorganizing several sections of regulatory text.*

Part I

General

**18VAC10-20-10. Definitions.**

Section 54.1-400 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

Architect

Board

Certified interior designer

~~Interior design by a certified interior designer (when used in this chapter, interior design shall only be applicable to interior design performed by a certified interior designer).~~

Land surveyor. When used in this chapter, land surveyor shall include surveyor photogrammetrist unless stated otherwise or the context requires a different meaning.

Landscape architect

Practice of architecture

Practice of engineering

Practice of land surveying

Practice of landscape architecture

Professional engineer

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:

"Application" means a completed application with the appropriate fee and any other required documentation, including, but not limited to, references, employment experience verification, degree verification, and verification of examination and licensure or certification.

"Certified" means an individual holding a valid certification issued by the board ~~that has not been suspended, revoked, or surrendered, and is currently registered with the board to practice in the Commonwealth in accordance with § 54.1-405 or 54.1-414 of the Code of Virginia and in good standing.~~

"Comity" means the recognition of licenses or certificates issued by other states, ~~the District of Columbia, or any territory or possession or other jurisdictions~~ of the United States as permitted by § 54.1-103 C of the Code of Virginia.

"Department" means the Department of Professional and Occupational Regulation.

~~"Direct control and personal supervision" shall be that degree of supervision by a person overseeing the work of another whereby the supervisor has both control over and detailed professional knowledge of the work prepared under his supervision and words and phrases of similar import mean that the professional shall have control over the decisions on technical matters of policy and design, and exercises his professional judgment in all professional matters that are embodied in the work and the drawings, specifications, or other documents involved in the work; and the professional has exercised critical examination and evaluation of an employee's, consultant's, subcontractor's, or project team members' work product, during and after preparation, for purposes of compliance with applicable laws, codes, ordinances, regulations and usual and customary standards of care pertaining to professional practice. Further, it is that degree of control a professional is required to maintain over decisions made personally or by others over which the professional exercises direct control and personal supervision.~~

~~"Direct control and personal supervision" also includes the following:~~

~~1. The degree of control necessary for a professional to be in direct control and personal supervision shall be such that the professional:~~

~~a. Personally makes professional decisions or reviews and approves proposed decisions prior to their implementation, including the consideration of alternatives, whenever professional decisions that could affect the health, safety, and welfare of the public are made; and~~

~~b. Determines the validity and applicability of recommendations prior to their incorporation into the work, including the qualifications of those making the recommendations.~~

~~2. Professional decisions that must be made by and are the responsibility of the professional in direct control and personal supervision are those decisions concerning permanent or temporary work that could affect the health, safety, and welfare of the public, and may include, but are not limited to, the following:~~

~~a. The selection of alternatives to be investigated and the comparison of alternatives for designed work; and~~

~~b. The selection or development of design standards and materials to be used.~~

~~3. A professional shall be able to clearly define the scope and degree of direct control and personal supervision and how it was exercised and to demonstrate that the professional was answerable within said scope and degree of direct control and personal supervision necessary for the work for which the professional has signed and sealed; and~~

~~4. No sole proprietorship, partnership, corporation, limited liability company, joint venture, professional corporation, professional limited liability corporation, or other entity shall practice, or offer to practice, any profession regulated under this chapter unless there is a resident professional for that service providing direct control and personal supervision of such service in each separate office in which such service is performed or offered to be performed.~~

"Direct control and personal supervision" means supervision by a professional who oversees and is responsible for the work of another individual.

"Good moral character" may be established if the applicant or regulant:

1. Has not been convicted of a felony or misdemeanor that has a reasonable relationship to the functions of the employment or category for which the license or certification is sought would render the applicant unfit or unsuited to engage in the occupation or profession applied for in accordance with § 54.1-204 of the Code of Virginia;

2. Has not, within 10 years of application for licensure, certification, or registration, committed any act involving



---

# Regulations

---

dishonesty, fraud, misrepresentation, breach of fiduciary duty, negligence, or incompetence reasonably related to ~~the applicant's proposed area of practice;~~

a. The proposed area of practice within 10 years prior to application for licensure, certification, or registration, or

b. The area of practice related to licensure, certification, or registration by the board while under the authority of the board.

3. Has not engaged in fraud or misrepresentation in connection with the application for licensure, certification, or registration, or related examination;

4. Has not had a license, certification or registration revoked or suspended for cause by this state Commonwealth or by any other jurisdiction, or surrendered a license, certificate, or registration in lieu of disciplinary action; or

5. Has not practiced without the required license, registration, or certification in this state Commonwealth or in another jurisdiction within the five years immediately preceding the filing of the application for licensure, certification, or registration by this Commonwealth; ~~or,~~

~~6. Has not, within 10 years of application for licensure, certification, or registration, committed an act that would constitute unprofessional conduct, as set forth in Part XII of this chapter.~~

"Good standing" means a current or active license, certificate, or registration issued by a regulatory body that is not revoked, suspended, or surrendered.

"Licensed" means an individual who holds a valid license issued by the board ~~that has not been suspended, or revoked, or surrendered and who is currently registered with the board to practice in the Commonwealth in accordance with § 54.1-405 of the Code of Virginia.~~

"Place of business" means any location ~~which offers to practice or practices that, through licensed or certified professionals, offers or provides~~ the services of architecture, engineering, land surveying, landscape architecture, ~~or certified interior design, or any combination thereof.~~ A temporary field office established and utilized for the duration of a specific project shall not qualify as a place of business under this chapter.

"Profession" means the practice of architecture, engineering, land surveying, landscape architecture, or certified interior design.

"Professional" means an architect, professional engineer, land surveyor, landscape architect, or interior designer who is ~~licensed or certified, as appropriate,~~ holds a valid license or certificate issued by the board pursuant to the provisions of this chapter and is in good standing with the board to practice his profession in this Commonwealth.

"Registrant" means a business ~~currently registered with the board~~ holding a valid registration issued by the board, and in

good standing, to offer or provide one or more of the professions regulated by the board.

"Regulant" means ~~a licensee, certificate holder or registrant an architect, professional engineer, land surveyor, or landscape architect holding a valid license issued by the board; an interior designer holding a valid certification issued by the board; or a registrant.~~

"Resident" means physically present ~~in said~~ at the place of business a majority of ~~the its~~ operating hours ~~of the place of business.~~

"Responsible person" means the ~~individual~~ professional named by the ~~entity~~ registrant to be responsible and have control of the registrant's regulated services offered, ~~or rendered, or both, by the entity.~~ A professional can only be the responsible person for the professions indicated on his license or certification.

"Surveyor photogrammetrist" means a person who by reason of specialized knowledge in the area of photogrammetry has been granted a license by the board to survey land in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia for the determination of topography, contours ~~and/or,~~ or location of planimetric features using photogrammetric methods or similar remote sensing technology.

## **18VAC10-20-17. Replacement of wall certificate.**

Any ~~licensee or certificate holder~~ professional may obtain a replacement for a lost, destroyed, or damaged wall certificate upon submission of a \$25 department fee accompanied by a written request indicating that the certificate was lost, destroyed, or damaged. Multiple copies may be available at the discretion of the board or its agent.

### Part II

#### General Entry Requirements

## **18VAC10-20-20. General application requirements.**

~~A. All applicants~~ Applicants must be of good moral character.

~~B. 1. Except as otherwise provided in subdivisions 2 and 3 of this subsection, a fully documented application shall be submitted by applicants seeking consideration for licensure, certification or registration to be received in the board's office no later than 130 days prior to the scheduled examination. The date the fully documented application is received in the board's office shall determine if an application has been received by the deadline set by the board. All applications shall be completed in accordance with the instructions contained herein and on the application. Applications will not be considered complete until all required documents are received by the board. All applications, accompanying materials and references become the property of the board upon receipt by the board.~~

~~2. Applicants for the Fundamentals of Engineering examination who are applying pursuant to subdivision 1 of 18VAC10-20-190 may submit applications to be received~~

~~in the board's office no later than 60 days prior to the scheduled examination.~~

~~3. Applicants for the Fundamentals of Land Surveying examination who are applying pursuant to subdivision 1 of 18VAC10-20-300 may submit applications to be received in the board's office no later than 60 days prior to the scheduled examination.~~

~~4. Applicants for the National Council of Interior Design Qualification (NCIDQ) examination shall apply directly to NCIDQ for the examination.~~

B. Applications shall be completed in accordance with instructions contained in this section and on the application.

C. Applications for licensure requiring an exam shall be received in the board's office by the application deadline established in Part III (18VAC10-20-90 et seq.) of this chapter for each profession's exam. The date the fully documented application is received in the board's office shall determine if the application has been received on time. Applications, accompanying materials, and references become the property of the board upon receipt by the board.

D. Applicants shall meet applicable all entry requirements at the time application is made.

~~D. Applicants who have been found ineligible for any reason may request further consideration by submitting in writing evidence of additional qualifications, training or experience. No additional fee will be required provided the requirements for licensure, certification or registration are met within a period of three years from the date the original application is received by the board. After such period, a new application shall be required.~~

E. Applicants shall provide the board with all required documentation and fees to complete the application for licensure or certification no later than three years from the date of the board's receipt of the initial application fee. Applications that remain incomplete after that time will no longer be processed by the board and the applicant shall submit a new application.

~~E. F. The board may make further inquiries and investigations with respect to the qualifications of an applicant and all an applicant's qualifications and documentation and information to confirm or amplify information supplied. The board may also require a personal interview with an applicant.~~

F. G. Failure of an applicant to comply with a written request from the board for additional evidence or information within 60 days of receiving such notice, except in such instances where the board has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.

G. Applicants shall be held to the standards of practice and conduct as set forth in this chapter.

H. Applicants who do not meet the requirements of 18VAC10-20-20 or 18VAC10-20-40 may be approved

following consideration by the board in accordance with the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia)

### **18VAC10-20-25. References.**

In addition to the requirements found in 18VAC10-20-130 and 18VAC10-20-220, and 18VAC10-20-425, as applicable, references that are submitted as part of an application must comply with the following:

1. Written references shall be no more than one year old at the time the application is received ~~by the board~~ in the board's office;

2. ~~Individuals who provide references may not also verify experience; and~~

3. 2. The individual providing the reference must have known the applicant for at least one year;

3. The individual providing the reference must have known the applicant within the last five years from the date of application to the board; and

4. Individuals who provide references shall not also verify experience.

### **18VAC10-20-35. Experience.**

All experience or training requirements contained in this chapter ~~are based on the applicant working a minimum of 35 hours per week. All applications will be evaluated against the experience or training requirements will be evaluated by this standard based on the rate of an applicant working a minimum of 35 hours per week.~~ Any experience gained at a rate of less than 35 hours per week may be prorated ~~in~~ at the sole discretion of the board.

### **18VAC10-20-40. Good standing of applicants.**

A. ~~An applicant~~ Applicants currently licensed, certified, or registered to practice architecture, engineering, land surveying, landscape architecture, or interior design in another jurisdiction shall be in good standing in every jurisdiction where licensed, certified, or registered, and.

B. Applicants shall not have had a license, certificate, or registration to practice architecture, engineering, land surveying, landscape architecture, or interior design that was suspended, revoked, or surrendered in connection with a disciplinary action or have been the subject of discipline in another a disciplinary action in any jurisdiction. An applicant who was formerly licensed, certified, or registered to practice architecture, engineering, land surveying, landscape architecture, or interior design in another jurisdiction shall not have had a license, certificate, or registration suspended, revoked, or surrendered in connection with a disciplinary action or have been the subject of discipline in another jurisdiction.

~~B. Applicants who do not meet the requirements of subsection A of this section may be approved following consideration by the board in accordance with the provisions of Administrative Process Act of the Code of Virginia.~~

---

# Regulations

---

## **18VAC10-20-50. Transfer of scores to other boards.**

The board, ~~in~~ at its discretion and upon proper application, may forward the grades achieved by an applicant in the various ~~examinations~~ exams given under the board's jurisdiction to any other duly constituted registration board for use in evaluating ~~such~~ the applicant's eligibility for registration within ~~such~~ another board's jurisdiction or evaluation of ~~such~~ the applicant's national certification. An applicant requesting ~~transfer of that his score be transferred to~~ another registration board shall state his reason for ~~requesting transfer in writing~~ the request in writing.

## **18VAC10-20-55. Language and comprehension.**

~~Every applicant applying~~ Applicants for licensure or certification shall be able to speak and write English to the satisfaction of the board. Applicants whose primary language ~~is~~ has not always been English, or who have not graduated from a college or university in which English is the language of instruction, ~~including, but not limited to, those born in a non-English speaking country,~~ shall submit to the board a Test of English as a Foreign Language (TOEFL) Internet-based Test (TOEFL iBT) score report ~~to the board, and a Test of Spoken English (TSE) score report to the board.~~ Score reports shall not be over two years old at the time of application and, ~~to support the application,~~ must reflect a score acceptable to the board.

## **18VAC10-20-70. Modifications to examination administration.**

The board and the department support and comply with the provisions of the Americans with Disabilities Act (ADA), 42 USC § 12101 et seq. Contracts between the board, department, and vendors for examinations contain provisions for compliance with the ADA. Requests for accommodations must be in writing and received ~~by the board in the board's office~~ within a reasonable time before the examination. The board may require a report from a medical professional along with supporting data confirming the nature and extent of the disability. ~~It is the responsibility of the applicant to provide~~ The applicant is responsible for providing the required information in a timely manner ~~and including the costs for providing such the information are the responsibility of the applicant.~~ The board or its agents will determine, consistent with applicable law, ~~what, if any, any accommodations will~~ to be made.

## **18VAC10-20-75. Conduct at examination.**

~~Examinees~~ Applicants approved for an exam will be given specific instructions as to the conduct of each division of the exam at the exam site. ~~Examinees~~ Applicants are required to follow these instructions to assure fair and equal treatment to all ~~examinees~~ applicants during the course of the ~~examination~~ exam. Evidence of misconduct may result in removal from the ~~examination~~ exam site, voided ~~examination~~ exam scores, or both.

## **18VAC10-20-85. Examination on regulations.**

~~All applicants for licensure or certification must achieve a passing score on a board-supplied examination pertaining to the board's regulations and relevant statutes. The examination will be provided as part of the application. The board shall provide applicants with an exam on its regulations and statutes. All applicants for licensure or certification must achieve a passing score on this exam.~~

## **18VAC10-20-87. Expiration of initial licenses, certificates, and registrations.**

A. Initial licenses, certificates, and registrations shall expire as follows:

1. Individual licenses and certificates shall be valid for two years from the last day of the month in which they are issued.
2. Registrations for professional corporations, professional limited liability companies, and business entities shall expire on December 31 of the odd-numbered year following issuance.
3. Registrations for branch offices shall expire the last day of February of the even-numbered year following issuance.

B. Licenses, certificates, and registrations shall expire in accordance with this section unless renewed pursuant to 18VAC10-20-670 or reinstated pursuant to 18VAC10-20-680.

### Part III

### Qualifications for Licensing of Architects

## **18VAC10-20-90. Fee schedule.**

All fees are nonrefundable and shall not be prorated.

<u>Application for Initial Architect License</u>	\$75
<u>Application for Architect License by Comity</u>	\$75
Renewal	\$55

## **18VAC10-20-110. Education.**

A. ~~All applicants~~ Applicants for original licensure shall hold a professional degree in architecture from a program accredited by the National Architectural Accrediting Board (NAAB) ~~not later than two years after the applicant's graduation from said program. The degree program must have been accredited by NAAB no later than two years after the date of the applicant's graduation from the program.~~

B. ~~Foreign degrees must be evaluated for equivalency to a NAAB-accredited degree~~ Applicants seeking credit for a degree or coursework that is not NAAB-accredited, whether foreign or domestic, shall have that degree or coursework evaluated for equivalency to a NAAB-accredited professional degree in architecture. The board reserves the right to reject, for good cause, any evaluation submitted. Any cost of translation and evaluation shall be borne by the applicant.

## **18VAC10-20-120. Experience.**

~~A. The successful completion of Applicants for original licensure shall successfully complete the National Council of Architectural Registration Boards (NCARB) Intern Development Program (IDP) shall be required of all applicants for original licensure. IDP training requirements shall be in accordance with NCARB's Handbook for Interns and Architects, 2008-2009 Intern Development Program Guidelines, December 2013 Edition.~~

~~B. All applicants~~ Applicants must have a minimum of 36 months experience/training in architecture. Any experience/training of less than eight consecutive weeks will not be considered in satisfying this requirement.

~~C. All applicants must have a minimum of 12 months experience/training in architecture~~ Of the 36 months of required experience/training in architecture, at least 12 months shall have been obtained as an employee in the office of a licensed architect. An organization will be considered to be an office of a licensed architect if:

1. The architectural practice of the organization in which the applicant works is under the charge of a person practicing as a principal, where a principal is a licensed architect in charge of an organization's architectural practice either alone or with other licensed architects, and the applicant works under the direct supervision of a licensed architect; and
2. The practice of the organization encompasses the comprehensive practice of architecture, including the categories set forth in the NCARB IDP requirements.

## **18VAC10-20-130. References.**

~~Eligibility for licensure is determined in part by the applicant's demonstrated competence and integrity to engage in the practice of architecture. Applicants shall submit three references with the application, all of whom are which shall be from currently licensed architects in a state or other jurisdiction or territory of the United States or a province of Canada. In addition to the requirements found in 18VAC10-20-25, these professionals shall the applicant shall only submit references from licensed architects who have personal knowledge of the applicant's architectural experience that demonstrates the applicant's competence and integrity.~~

## **18VAC10-20-140. Examination.**

~~A. All applicants~~ The board is a member board of NCARB and is authorized to make available the NCARB-prepared exam. Applicants for original licensure in Virginia are required to pass an NCARB prepared examination. Provided all other requirements are met, a license as an architect will be issued upon passing the NCARB examination this exam. An applicant shall be admitted to the NCARB-prepared examination prior to completing the experience requirements contained in 18VAC10-20-120 if the applicant is otherwise qualified and provided the applicant is enrolled in the NCARB IDP.

~~B. The Virginia board is a member board of NCARB and as such is authorized to make available the NCARB-prepared examination.~~

~~B. Applications for original licensure shall be approved by the board before applicants will be allowed to sit for the exam. Applicants who have satisfied the requirements of 18VAC10-20-110 and 18VAC10-20-130 and who are currently enrolled in the NCARB IDP shall be admitted to the exam.~~

~~C. Applicants approved by the board to sit for the exam shall register and submit the required exam fee and follow NCARB procedures when taking the exam. Applicants not properly registered will not be allowed to sit for the exam.~~

~~D. Applicants approved to sit for the exam shall be eligible for a period of three years from the date of their initial approval. Applicants who do not pass all sections of the exam during their eligibility period are no longer eligible to sit for the exam. To become exam-eligible again, applicants shall reapply to the board as follows:~~

1. Applicants who have taken at least one section of the exam and who reapply to the board no later than six months after the end of their eligibility may be approved to sit for the exam for an additional three years. The original application requirements shall apply.
2. Applicants who do not meet the criteria of subdivision 1 of this subsection shall reapply to the board and meet all entry requirements current at the time of reapplication.

~~E. Applicants will be notified by the board of whether they passed or failed the exam. The exam may not be reviewed by applicants. Exam scores are final and not subject to change.~~

~~F. Grading of the examination exam shall be in accordance with the national grading procedure administered by NCARB. The board shall utilize the scoring procedures recommended by NCARB. Grades for each division of the examination exam passed on or after January 1, 2006, shall be valid in accordance with the procedure established by NCARB.~~

~~D. The NCARB prepared examination will be offered at least once a year at a time designated by the board.~~

~~E. G. The board may approve transfer credits for parts of the NCARB prepared examination exam taken and passed in accordance with national standards.~~

~~H. Applicants who have been approved for and subsequently pass the exam and who have satisfied 18VAC10-20-120 shall be issued an architect license.~~

~~F. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee. Applicants not properly registered will not be allowed into the examination site.~~

~~G. Applicants approved to sit for the examination shall follow NCARB procedures.~~

~~H. Examinees will be notified by the board of passing or failing the examination.~~

---

# Regulations

---

~~1. Should an applicant fail to pass the NCARB prepared examination within three years after being approved to sit for the examination, the applicant must reapply. If the applicant has not been taking the examination on a continuous basis during the three year eligibility period, or fails to reapply within six months after the end of the three year eligibility period, or both, then the applicant shall meet the entry requirements current at the time of reapplication.~~

## **18VAC10-20-150. Licensure by comity.**

~~A. Any person who is or has been licensed in another state, jurisdiction, possession or territory of the United States, or a province of Canada, may be granted a license provided that:~~

- ~~1. The applicant meets all the requirements for licensing in Virginia that were in effect at the time of the original licensure or the applicant possesses an NCARB certificate; and~~
- ~~2. The applicant holds an active valid license in good standing in another state, jurisdiction, possession or territory of the United States, or a province of Canada.~~

~~If the applicant does not possess an NCARB certificate, or does not meet the requirements for licensure in Virginia that were in effect at the time of original licensure, the applicant shall be required to meet the entry requirements current at the time the completed application for comity is received in the board's office.~~

~~B. Applicants licensed in foreign countries other than Canada may be granted a license in Virginia based on an NCARB certificate.~~

A. Applicants who hold a valid active license in another state or other jurisdiction of the United States, a province of Canada, or another foreign country may be granted a license provided that:

1. They possess an NCARB certificate; or
2. They met the requirements for licensure in Virginia that were in effect at the time they were originally licensed.

B. Applicants who do not satisfy the requirements of subsection A of this section shall meet the entry requirements for initial licensure pursuant to this chapter.

### Part IV

#### Qualifications for Licensing of Professional Engineers

## **18VAC10-20-160. Definitions.**

The following words, terms, and phrases when used in this part shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:

"ABET" means the Accreditation Board for Engineering and Technology.

"Approved engineering curriculum" means an undergraduate engineering curriculum of four years or more, or a graduate engineering curriculum, approved by the board. ABET-approved engineering EAC curricula are approved by the board. Curricula that are accredited by ABET not later than

two years after an applicant's graduation shall be deemed as ABET-approved.

"Approved engineering technology curriculum" means an undergraduate engineering technology curriculum of four years or more approved by the board. ABET-approved engineering technology TAC curricula of four years or more are approved by the board. Curricula that are accredited by ABET not later than two years after an applicant's graduation shall be deemed as ABET-approved.

"EAC" means Engineering Accreditation Commission.

"Engineer-in-training (EIT)" or "EIT" means an applicant who has completed any one of several combinations of education, or education and experience, and has passed the Fundamentals of Engineering examination exam.

"Related science curriculum" includes, but is not limited to, a four-year curriculum in biology, chemistry, geology, geophysics, mathematics, physics, or other curriculum approved by the board. Curricula must have a minimum of six semester hours of mathematics courses beyond algebra and trigonometry and a minimum of six semester hours of science courses in calculus-based physics in order to be considered a related science curriculum.

"Qualifying engineering experience" means a record of progressive experience on engineering work during which the applicant has made a practical utilization of acquired knowledge and has demonstrated progressive improvement, growth, and development through the utilization of that knowledge as revealed in the complexity and technical detail of the applicant's work product or work record. The applicant must show progressive assumption of greater individual responsibility for the work product over the relevant period. The progressive experience on engineering work shall be of a grade and character that indicates to the board that the applicant is minimally competent to practice engineering. Qualifying engineering experience shall be progressive in complexity and based on a knowledge of engineering mathematics, physical and applied sciences, properties of materials, and fundamental principles of engineering design.

"TAC" means Technology Accreditation Commission.

## **18VAC10-20-170. Fee schedule.**

All fees are nonrefundable and shall not be prorated.

<del>Fundamentals of Engineering Application for</del> <u>Engineer-in-Training Designation</u>	\$30
<del>Principles of Engineering Application for</del> <u>Initial Professional Engineer License</u>	\$60
<u>Application for Professional Engineer</u> <u>License by Comity</u>	\$60
Renewal	\$80
Comity	\$60
<del>FE/PE out of state proctor</del>	\$100

**18VAC10-20-190. Requirements for the Fundamentals of Engineering (FE) exam.**

In order to be approved to sit for the ~~FE examination~~ Fundamentals of Engineering (FE) exam, ~~an applicant~~ applicants must satisfy one of the following subsections (A through E) of this section. Applicants shall:

EDUCATIONAL REQUIREMENTS	NUMBER OF REQUIRED YEARS OF QUALIFYING ENGINEERING EXPERIENCE
<p><del>1. (i) Enrolled in an ABET accredited undergraduate curriculum and within 12 months of completion of degree requirements or (ii) enrolled in an ABET accredited master's or doctorate curriculum, or enrolled in a graduate curriculum that is ABET accredited at the undergraduate level at the institution at which the graduate degree is being sought, and within six months of completion of graduate degree requirements. In order to be considered pursuant to clause (i) or (ii) of this subdivision, all applications must be accompanied by a certificate of good standing from the dean of the engineering school.</del></p> <p><u>A. Student applicants.</u></p> <p><u>1. Be enrolled in an ABET-accredited undergraduate EAC or TAC curriculum, have 12 months or less remaining before completion of the degree, and provide a certificate of good standing from the dean of the engineering school or his designee;</u></p> <p><u>2. Be enrolled in an ABET-accredited graduate or doctorate EAC or TAC curriculum, have six months or less remaining before completion of the degree, and provide a certificate of good standing from the dean of the engineering school or his designee; or</u></p> <p><u>3. Be enrolled in a graduate curriculum that is ABET-accredited TAC or EAC at the undergraduate level at the institution at which the graduate degree is being sought, have six months or less remaining before completion of the degree, and provide a certificate of good standing from the dean of the engineering school or his designee.</u></p>	0
<p><del>2. Graduated</del> <u>B. Have graduated</u> from an approved engineering or an approved engineering technology curriculum.</p>	0
<p><del>3. Obtained an undergraduate engineering degree of four years or more from an institution in a curriculum without ABET accreditation and obtained a master's or doctorate engineering degree from an institution in a curriculum that is ABET accredited at the undergraduate level.</del></p> <p><u>C. Dual degree holders.</u></p> <p><u>1. Have graduated from a non-ABET-accredited undergraduate engineering curriculum of four years or more; and</u></p> <p><u>2. Have graduated from a graduate or doctorate engineering curriculum that is ABET accredited at the undergraduate level.</u></p>	0
<p><del>4. Graduated</del> <u>D. Have graduated</u> from a nonapproved engineering curriculum or from a related science curriculum of four years or more.</p>	2
<p><del>5. Not meeting any of the above requirements, but who, in the judgment of the board, has</del> <u>E. Have obtained, by documented academic coursework,</u> the equivalent of <del>such</del> education by <del>documented academic course work</del> that meets the requirements of ABET accreditation for the baccalaureate engineering technology curricula. <u>Whether an education is considered to be equivalent shall be determined by the judgment of the board.</u></p>	6

**18VAC10-20-200. Requirements for engineer-in-training (EIT) designation.**

An applicant who is qualified to sit for the ~~FE examination~~ under subdivision 1 of 18VAC10-20-190 must provide verification of his degree prior to receiving the EIT designation. All other applicants who qualify to sit for the ~~FE examination~~ under subdivisions 2 through 5 of 18VAC10-20-190 will receive the EIT designation upon achieving a passing examination score as established by the National Council of Examiners for Engineering and Surveying (NCEES). Upon passing the FE exam, an applicant who qualified for the exam under 18VAC10-20-190 A will receive the EIT designation only after he provides

# Regulations

verification of his degree to the board. All other applicants will receive the EIT designation upon passing the FE exam. The EIT designation will remain valid indefinitely.

## 18VAC10-20-210. Requirements for the Principles and Practice of Engineering (PE) examination exam.

In order to be approved to sit for the PE examination, an applicant must satisfy one of the following Principles and Practice of Engineering (PE) exam, applicants shall satisfy one of the subsections (A through F) within this section. Applicants shall:

EDUCATIONAL REQUIREMENTS	EIT REQUIRED?	NUMBER OF REQUIRED YEARS OF QUALIFYING ENGINEERING EXPERIENCE
<del>1. Graduated</del> <u>A. Have graduated</u> from an approved engineering curriculum.	YES	4
<del>2. Graduated from an ABET-accredited undergraduate engineering curriculum and awarded a doctorate degree in engineering from an engineering curriculum which is ABET-accredited at the undergraduate level.</del> <u>B. Dual degree holders.</u> <u>1. Have graduated from an ABET-accredited undergraduate engineering curriculum; and</u> <u>2. Have graduated from a doctorate engineering curriculum that is ABET accredited at the undergraduate level.</u>	NO	4
<del>3. Graduated</del> <u>C. Have graduated</u> from a nonapproved engineering curriculum of four years or more, a related science curriculum, or an approved engineering technology curriculum.	YES	6
<del>4. Graduated</del> <u>D. Have graduated</u> from a nonapproved engineering technology curriculum of four years or more.	YES	10
<del>5. Not meeting any of the above requirements, but who, in the judgment of the board, has</del> <u>E. Have obtained, by documented academic coursework, the equivalent of such education by documented academic course work that meets that requirements of ABET accreditation for the baccalaureate engineering technology curricula. Whether an education is considered to be equivalent shall be determined by the judgment of the board.</u>	YES	10
<del>6. Graduated</del> <u>F. Have graduated</u> from an engineering, engineering technology, or related science curriculum of four years or more.	NO	20

## 18VAC10-20-215. Requirements for the PE license.

~~In order to obtain the Professional Engineer license, an applicant must satisfy the requirements of at least one subsection of 18VAC10-20-210 and pass the PE examination. An applicant will receive his license to practice engineering upon achieving a passing examination score as established by NCEES.~~

~~An applicant who has satisfied the requirements of this chapter will receive the professional engineer license upon successful completion of the PE exam.~~

## 18VAC10-20-220. References.

~~In addition to the requirements found in 18VAC10-20-25, applicants shall satisfy one of the following:~~

~~1. Applicants for the Fundamentals of Engineering examination only shall provide one reference from a professional engineer, or from the dean of the engineering school or a departmental professor in the school attended by the applicant, or an immediate work supervisor.~~

~~1. An applicant for the Fundamentals of Engineering exam shall provide one reference that indicates his personal integrity from one of the following:~~

- ~~a. A professional engineer;~~
- ~~b. The dean, or his designee, of the engineering school attended by the applicant; or~~
- ~~c. An immediate work supervisor.~~

~~2. Applicants An applicant for the Principles and Practice of Engineering examination must indicate competence and~~

~~integrity to engage in the engineering profession by submitting exam shall submit three references from professional engineers currently licensed in a another state, territory, or possession or other jurisdiction of the United States, or the District of Columbia, each having personal knowledge of the applicant's. The applicant shall only submit references given by professional engineers who have personal knowledge of the applicant's competence and integrity relative to his engineering experience.~~

3. ~~Applicants~~ An applicant for licensure by comity must indicate competence and integrity to engage in the engineering profession by submitting shall submit three references from professional engineers currently licensed in a another state, territory, or possession other jurisdiction of the United States, ~~each having personal knowledge of the applicant's.~~ The applicant shall only submit references given by professional engineers who have personal knowledge of the applicant's competence and integrity relative to his engineering experience.

**18VAC10-20-230. Education.**

A. ~~Any~~ An applicant who has earned is seeking credit for a degree that is not ABET accredited TAC or EAC and was earned from an institution outside the United States, shall have the degree authenticated and evaluated by an educational credential evaluation service ~~or by ABET if credit for such education is sought, unless the applicant has also earned an equivalent or higher level engineering degree from a United States institution where the program has been accredited by ABET. If the evaluation is rigorous and meets appropriate ABET accreditation standards, the board may consider the degree as an approved engineering curriculum or approved engineering technology curriculum.~~ The board reserves the right to reject, for good cause, any evaluation submitted by the applicant.

B. ~~Except for those degrees~~ Degrees earned from an institution outside within the United States and subject to the provisions of subsection A of this section, all for any nonapproved engineering curriculums curriculum, related science curriculums, and curriculum, or nonapproved engineering technology curriculums curriculum of four years or more shall be from an accredited college or university that is approved or accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education.

**18VAC10-20-240. Experience.**

~~Applicants shall submit a written narrative or narratives, on the board provided application form, A. Each applicant shall complete the board's Professional Engineer and Engineer-in-Training Experience Verification Form, 0402 20EXP documenting all of the applicant's his engineering experience. Such narrative or narratives shall: The information provided on the form shall clearly describe the engineering work or~~

~~research that the applicant he personally performed; delineate the role of the applicant his role in any group engineering activity; provide an overall description of the nature and scope of his work; and include a detailed description of the engineering work personally performed by the applicant him. Experience in claims consulting, drafting, estimating, and field surveying are considered nonqualifying.~~

B. In general, the required experience shall be applied as follows:

1. ~~Construction experience, in order to be qualifying, must include a demonstrated use of engineering computation and problem solving skills. The mere execution as a contractor of work designed by others, the supervision of construction, and similar nonengineering tasks will not be considered qualifying experience.~~

2. ~~Military experience, in order to be qualifying must have been spent in engineering work and must be of a character substantially equivalent to that required in the civilian sector for like work. Nonengineering military training and supervision will not be considered qualifying experience.~~

3. ~~Sales experience, in order to be qualifying, must include a demonstrated use of engineering computational and problem solving skills. The mere selection of data or equipment from a company catalogue or similar publication or database will not be considered qualifying experience.~~

4. ~~Industrial experience, in order to be qualifying, should be directed toward the identification and solution of practice problems in the applicant's area of engineering specialization. This experience should include engineering analysis of existing systems or the design of new ones.~~

5. ~~Engineering experience gained by successfully completing a graduate engineering degree or by engineering teaching in an institution approved by the board may be deemed qualifying engineering experience.~~

a. ~~Successful completion of a master's or doctorate degree in an engineering curriculum may be accepted as one year of equivalent engineering experience credit.~~

b. ~~For teaching experience to be considered by the board, the applicant must have taught in an engineering curriculum approved by the board and must have been employed in the grade of instructor or higher.~~

6. ~~Engineering experience gained during a board-approved co-op program may be deemed qualifying engineering experience to a maximum of one year of credit.~~

7. ~~The board, in its sole discretion, may permit partial credit, not to exceed 1/2 of that required, for approved qualifying engineering experience obtained prior to graduation from an engineering curriculum.~~



# Regulations

<u>Type of Experience</u>	<u>Qualifying</u>	<u>Nonqualifying</u>
<u>1. Construction experience.</u>	<u>A demonstrated use of engineering computation and problem-solving skills.</u>	<u>The mere execution as a contractor of work designed by others, the supervision of construction, and similar nonengineering tasks.</u>
<u>2. Military experience.</u>	<u>Engineering of a character substantially equivalent to that required in the civilian sector for similar work.</u>	<u>Nonengineering military training and supervision.</u>
<u>3. Sales experience.</u>	<u>A demonstrated use of engineering computational and problem-solving skills.</u>	<u>The mere selection of data or equipment from a company catalogue, similar publication, or database.</u>
<u>4. Industrial experience.</u>	<u>Work directed toward the identification and solution of practice problems in the applicant's area of engineering specialization including engineering analysis of existing systems or the design of new ones.</u>	<u>The mere performance of maintenance of existing systems, replacement of parts or components, and other nonengineering tasks.</u>
<u>5. Graduate or doctorate's degree.</u>	<u>The successful completion of a graduate or doctorate degree in an engineering curriculum may be accepted as one year of equivalent engineering experience credit.</u>	<u>Research conducted as part of a graduate or doctorate degree shall not count as additional experience if credit for the degree is granted pursuant to 18VAC10-20-190 or 18VAC10-20-210.</u>
<u>6. Teaching.</u>	<u>For teaching experience to be considered qualifying by the board, the applicant shall have taught in an engineering curriculum approved by the board and shall have been employed in the grade of instructor or higher.</u>	
<u>7. Co-op program.</u>	<u>Engineering experience gained during a board-approved co-op program may be deemed qualifying engineering experience to a maximum of one year of credit.</u>	
<u>8. General.</u>		<u>Experience in claims consulting, drafting, estimating, and field surveying.</u>

C. The board, in its sole discretion, may permit partial credit for approved qualifying engineering experience obtained prior to graduation from an engineering curriculum. Partial credit shall not exceed one-half of that required for any method of initial licensure.

## **18VAC10-20-260. Examinations.**

A. The Virginia board is a member board of NCEES and as such is authorized to administer the NCEES examinations.

B. The Fundamentals of Engineering examination consists of an NCEES exam on the fundamentals of engineering.

C. The Principles and Practice of Engineering examination consists of an NCEES exam on applied engineering.

A. Applications for original licensure or EIT designation shall be received by the board in accordance with the following deadlines:

1. Students applying pursuant to 18VAC10-20-190 A shall submit their application to be received in the board's office no later than 60 days prior to the scheduled exam.

2. All other applications shall be received in the board's office no later than 130 days prior to the scheduled exam.

B. The board is a member board of the National Council of Examiners for Engineering and Surveying (NCEES) and is authorized to administer the NCEES exams including the

Fundamentals of Engineering exam and the Principles and Practice of Engineering exam.

~~D. Unless otherwise stated, applicants~~ C. Applicants approved by the board to sit for an examination exam shall register and submit the required examination exam fee to be received in the board office, or by the board's designee, at a time designated by the board and shall follow NCEES procedures. Applicants not properly registered will not be allowed into the examination site to sit for the exam.

~~E. A candidate~~ D. Applicants eligible for admission to both parts of the examination exams must first successfully complete the fundamentals of engineering examination Fundamentals of Engineering exam before being admitted to the principles and practice of engineering examination Principles and Practice of Engineering exam.

~~F. Should an applicant fail to pass an examination within three years after being approved to sit for an examination the applicant must reapply and meet all current entry requirements at the time of reapplication.~~

~~G. The examination may not be reviewed by the candidates, Examination scores are final and are not subject to change.~~

E. The exam may not be reviewed by applicants. Unless authorized by NCEES rules and procedures, exam scores are final and are not subject to change.

F. Applicants approved to sit for the exam shall be eligible for a period of three years from the date of their initial approval. Applicants who do not pass the exam during their eligibility period are no longer eligible to sit for the exam. To become exam-eligible again, applicants shall reapply to the board and meet all current entry requirements at the time of reapplication. In addition to meeting current entry requirements upon reapplication, applicants shall demonstrate successful completion of 16 hours of educational activities that meet the requirements of 18VAC10-20-683 E and F.

**18VAC10-20-270. Licensure by comity.**

~~A person in good standing and holding a valid license to engage in the practice of engineering in another state, the District of Columbia, or any territory or possession of the United States may be licensed, provided the applicant submits verifiable documentation to the board that the education, experience, and examination requirements by which the applicant was first licensed in the original jurisdiction were substantially equivalent to those existing in Virginia at the time of the applicant's original licensure. No person shall be so licensed, however, who has not passed an examination in another jurisdiction that was substantially equivalent to that approved by the board at the time of the applicant's original licensure. If the applicant does not meet the requirements for licensure in Virginia that were in effect at the time of original licensure, the applicant shall be required to meet the entry requirements current at the time the completed application for comity is received in the board's office.~~

A. Applicants holding a valid license to practice engineering in other states or jurisdictions of the United States may be licensed provided they satisfy the provisions of this subsection. Applicants shall:

1. Submit to the board verifiable documentation that the education, experience, and exam requirements by which they were first licensed in the original jurisdiction were substantially equivalent to the requirements in Virginia at the same time;
2. Have passed an exam in another jurisdiction that was substantially equivalent to that approved by the board at the time of their original licensure;
3. Be in good standing in all jurisdictions where they are currently licensed; and
4. Satisfy all other requirements of this chapter.

B. Applicants who do not meet the requirements for licensure in Virginia that were in effect at the time of their original licensure shall be required to meet the entry requirements current at the time their completed application for comity is received in the board's office.

Part V

Qualifications for Licensing and Standards of Procedure for Land Surveyors

**18VAC10-20-280. Fee schedule.**

All fees are nonrefundable and shall not be prorated.

Application for <del>Fundamentals of Land Surveying</del> <u>Surveyor-in-Training Designation</u>	\$60
Application for <del>Principles and Practice of Land Surveying</del> <u>Initial Land Surveyor License</u>	\$90
Application for <u>Initial</u> Surveyor Photogrammetrist <u>License</u>	\$90
Application for <u>Initial</u> Land Surveyor B <u>License</u>	\$90
<u>Application for License by Comity</u>	\$90
Renewal	\$90
Comity	\$90
Out of state proctor	\$100

**18VAC10-20-295. Definitions.**

"Absolute horizontal positional accuracy" means the value expressed in feet or meters that represents the uncertainty due to systematic and random errors in measurements in the location of any point on a survey relative to the defined datum at the 95% confidence level.

"Approved land surveying experience" means ~~a record of~~ progressive and diversified training and experience under the direct control and personal supervision of a licensed land surveyor, ~~or an individual authorized by statute to practice~~

---

# Regulations

---

land surveying, on land surveying work during which the applicant has made practical utilization of acquired knowledge and has demonstrated continuous improvement, growth, and development through the utilization of that knowledge as revealed in the complexity and technical detail of the applicant's work product or work record. The applicant must show continuous assumption of greater individual responsibility for the work product over the relevant period. The progressive experience on land surveying work shall be of a grade and character that indicates to the board that the applicant is minimally competent to practice land surveying. This experience shall have been acquired in positions requiring the exercise of independent judgment, initiative, and professional skill in the office and field and written verification of such work experience shall be on forms provided by the board. Experience may be gained either prior to or after education is obtained. Notwithstanding the definition of "approved land surveying experience," the requirements set forth in 18VAC10-20-310 shall not be waived.

"Approved photogrammetric surveying or similar remote sensing technology experience" means progressive and diversified training and experience in photogrammetric land surveying or similar remote sensing technology under the supervision and direction direct control and personal supervision of a licensed land surveyor; or licensed surveyor photogrammetrist, or under the supervision and direction of an individual authorized by statute to practice land surveying or photogrammetry. This experience shall have been acquired in positions requiring the exercise of independent judgment, initiative and professional skill in the office and field and written verification of such work experience shall be on forms provided by the board. Experience may be gained either prior to or after education is obtained. Notwithstanding the definition of "approved photogrammetric surveying or similar remote sensing technology experience," the requirements set forth in 18VAC10-20-310 shall not be waived.

"Relative horizontal positional accuracy" means the value expressed in feet or meters that represents the uncertainty due to random errors in measurements in the location of any point on a survey relative to any other point on the same survey at the 95% confidence level.

## **18VAC10-20-300. Requirements for surveyor-in-training (SIT) designation.**

A. In order to be approved to sit for the Fundamentals of Land Surveying ~~examination~~ (FLS) exam, ~~an applicant applicants~~ must satisfy one of the following:

1. ~~An applicant who has graduated from, or is~~ Be enrolled in; a board-approved or ABET-accredited surveying or surveying technology curriculum ~~of four years or more approved by the board and is within, have~~ 12 months ~~of or less remaining before~~ completion of degree requirements shall be admitted to an examination in the Fundamentals of Land Surveying, ~~provided the applicant is otherwise~~

qualified. Upon passing such examination, and providing evidence of graduation, the applicant shall receive the SIT designation, provided the applicant is otherwise qualified. For those applicants who are within 12 months of completion of degree requirements, their application must be accompanied by, and provide a certificate of good standing from the dean of the school or his designee;

2. ~~An applicant who has graduated from a curriculum~~ Have earned an undergraduate degree from a board-approved or ABET-accredited surveying or surveying technology curriculum;

3. ~~Have earned a board-approved undergraduate degree related to surveying of four years or more approved by the board and with possess~~ a minimum of one year of approved land surveying experience ~~shall be admitted to an examination in the Fundamentals of Land Surveying, provided the applicant is otherwise qualified. Upon passing such examination, the applicant shall receive the SIT designation, provided the applicant is otherwise qualified~~;

3. ~~An applicant who has~~ 4. Have earned at least a four year bachelor's a board-approved undergraduate degree in a field unrelated to surveying approved by the board and with possess a minimum of ~~three~~ two years of approved land surveying experience ~~shall be admitted to an examination in the Fundamentals of Land Surveying, provided the applicant is otherwise qualified. Upon passing such examination, the applicant shall receive the SIT designation, provided the applicant is otherwise qualified~~;

4. ~~An applicant who has graduated from a~~ 5. Have earned a board-approved associate's degree related to surveying curriculum of two years or more approved by the board with and possess a minimum of four years of approved land surveying experience ~~shall be admitted to an examination in the Fundamentals of Land Surveying, provided the applicant is otherwise qualified. Upon passing such examination, the applicant shall receive the SIT designation, provided the applicant is otherwise qualified~~;

5. ~~An applicant who has~~ 6. Have successfully completed a board-approved survey apprenticeship program ~~approved by the board with. The apprenticeship program shall include~~ a minimum of 480 hours of surveying-related classroom instruction with a minimum of six years of approved land surveying experience ~~shall be admitted to an examination in the Fundamentals of Land Surveying, provided the applicant is otherwise qualified. Upon passing such examination, the applicant shall receive the SIT designation, provided the applicant is otherwise qualified~~; or

6. ~~An applicant who has~~ 7. Have graduated from high school and who has with evidence of successful completion of courses in algebra, geometry and trigonometry with, and possess a minimum of eight years of approved land surveying experience ~~shall be admitted to an examination in the Fundamentals of Land Surveying,~~

provided the applicant is otherwise qualified. Upon passing such examination, the applicant shall receive the SIT designation, provided the applicant is otherwise qualified.

7. Applicants who have accumulated college credits may apply credit hours approved by the board to help meet the experience requirement. A maximum of one year of experience credit will be given for each 40 semester hours approved college credit.

B. Applicants seeking approval to sit for the FLS exam pursuant to subdivisions A 3 through 7 of this section may apply board-approved college credits to help meet the experience requirement. The maximum rate of college credit substitution for experience shall be one year of experience credit for each 40 hours of board-approved college credits completed. College credits applicable toward the completion of any degree used to satisfy a requirement of subsection A of this section shall not be eligible for experience substitution.

C. An applicant who qualified for the FLS exam under subdivision A 1 of this section will be issued the SIT designation upon the board's receipt of the applicant's degree verification. All other applicants shall receive the SIT designation upon passing the FLS exam.

**18VAC10-20-310. Requirements for a licensed land surveyor or surveyor photogrammetrist the land surveyor and surveyor photogrammetrist licenses.**

A. Land surveyor license.

1. An SIT who, after meeting has met the requirements of 18VAC10-20-300; and has a minimum of four years of approved land surveying experience, and has been land surveying under the direct control and personal supervision of a licensed land surveyor, shall be admitted to approved to sit for an examination exam in the Principles and Practice of Land Surveying and the Virginia state specific examination, provided the applicant is otherwise qualified. Upon passing such examination, the applicant shall be granted a license to practice land surveying, provided the applicant is otherwise qualified Virginia-specific land surveying exam.

2. A qualified applicant shall be granted a license to practice land surveying upon passing both exams.

B. An SIT who, after meeting the requirements of 18VAC10 20 300, has a specific record of four years of approved photogrammetric surveying or similar remote sensing technology experience of which a minimum of three years experience has been progressive in complexity and has been on photogrammetric surveying or similar remote sensing technology projects under the supervision of a licensed land surveyor or licensed surveyor photogrammetrist shall be admitted to a board approved surveyor photogrammetrist examination and the Virginia state specific examination. Upon passing such examinations, the applicant shall be granted a license to practice photogrammetric surveying, provided the applicant is otherwise qualified.

B. Surveyor photogrammetrist license.

1. An SIT who has met the requirements of 18VAC10-20-300 and has a minimum of four years of approved photogrammetric surveying or similar remote sensing technology experience shall be approved to sit for the board-approved surveyor photogrammetrist exam and the Virginia-specific photogrammetrist exam.

2. A qualified applicant shall be granted a license to practice photogrammetric surveying upon passing both exams.

C. In lieu of the provisions of subsection B of this section, any person presently providing photogrammetric or similar remote sensing technology services with any combination of at least eight years of board approved education and progressive experience in photogrammetry or similar remote sensing technology, four or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards or National Standard for Spatial Data Accuracy, or equivalent, may be licensed to practice photogrammetric surveying provided an individual submits an application to the board that provides evidence to the satisfaction of the board of the following:

1. The applicant submits to the board certified proof of graduation from high school or high school equivalency that is acceptable to the board, both with evidence of successful completion of courses in algebra, geometry and trigonometry either by transcript or examination, or certified proof of a related higher degree of education, or other evidence of progressive related higher education acceptable to the board;

2. The applicant submits to the board satisfactory proof and evidence of employment as a photogrammetrist or similar remote sensing technology in responsible charge as defined in 18VAC10 20 310 D providing such services within any of the 50 states, the District of Columbia, or any territory or possession of the United States. Evidence of employment shall include verification of the applicant's progressive experience by his supervisor and by the applicant's clients of the applicant's personal involvement in a minimum of five projects;

3. The applicant must submit three references with the application, all of whom shall be licensed land surveyors in a state or territory of the United States;

4. The applicant shall certify that they have read and understood Chapter 4 (§ 54.1 400 et seq.) of Title 54.1 and Chapter 17 (§ 55 287 et seq.) of Title 55 of the Code of Virginia, and this chapter; and

5. The applicant shall apply to the board and submit an application fee for licensure within one year of December 1, 2008 or until such time as the examinations required by 18VAC10 20 310 B are available, whichever is later. After December 1, 2009, or when the examinations required by subsection B of this section become available,

---

# Regulations

---

whichever is later, no person shall be eligible to apply for licensure as a surveyor photogrammetrist pursuant to this section.

~~D. Within the context of subsection C of this section, responsible charge of photogrammetric or similar remote sensing technology mapping projects means technical supervision of:~~

- ~~1. Assessing the project needs and constraints and accuracies;~~
- ~~2. Creating the project plan including determining data standards;~~
- ~~3. Creating overall project specifications;~~
- ~~4. Determining flight lines and appropriate photogrammetric control required for project accuracies and constraints;~~
- ~~5. Reviewing and approval of aerotriangulation results, prior to map compilation and certification of the final report of project control;~~
- ~~6. Determining the appropriate features to be collected, how they are to be collected, annotated, stored;~~
- ~~7. Editing and reviewing of collected data and features;~~
- ~~8. Reviewing of equipment, technology, and procedures that meet project requirements;~~
- ~~9. Determining final data standards and quality control for a project;~~
- ~~10. Reviewing and approving the final map products, deliverables, files, and spatial data;~~
- ~~11. Checking and editing final map data for specified completeness and accuracies including project reports, metadata, and any associated databases;~~
- ~~12. Project management; and~~
- ~~13. Other duties requiring decision making, control, influence, and accountability of the project.~~

~~E. Any person licensed pursuant to the terms of subsection B or C of this section shall be licensed as a surveyor photogrammetrist.~~

## **18VAC10-20-320. Requirements for a licensed the land surveyor B license.**

~~A. An applicant shall hold a valid license as a land surveyor and present satisfactory evidence of a minimum of two years of land surveying experience that is progressive in complexity in land surveyor B land surveying, as defined in § 54.1-408 of the Code of Virginia, under the direct control and personal supervision of a licensed land surveyor B or professional engineer.;~~

1. Hold a valid license as a land surveyor for two years;
2. Present satisfactory evidence of a minimum of two years of land surveying experience that is progressive in complexity in land surveyor B land surveying, as provided in § 54.1-408 of the Code of Virginia, under the direct

control and personal supervision of a licensed land surveyor B or professional engineer;

3. Present satisfactory evidence of having passed college-level courses in hydrology and hydraulics that are acceptable to the board; and

4. Pass an exam developed by the board.

~~B. An applicant shall also present satisfactory evidence of having passed college level courses in hydraulics acceptable to the board.~~

~~C. An applicant shall pass an examination as developed by the board. Upon passing such examination, the applicant shall be granted a license as a Land Surveyor B, provided the applicant is otherwise qualified.~~

B. A qualified applicant shall be issued a land surveyor B license upon passing the board-developed exam.

## **18VAC10-20-330. Education.**

~~Any An applicant who has attended is seeking credit for a degree earned from an institution outside of the United States shall have his degree authenticated and evaluated by an education evaluation service approved by the board if credit for such education is sought. The board reserves the right to reject, for good cause, any evaluation submitted by the applicant. Any cost of evaluation shall be borne by the applicant.~~

## **18VAC10-20-340. Experience standards.**

~~An applicant shall submit written verification from each employment engagement In order to demonstrate meeting the experience requirements of 18VAC10-20-300, 18VAC-10-20-310, and 18VAC10-20-320, applicants shall document experience that has been gained under the direct control and personal supervision of a licensed land surveyor, or licensed surveyor photogrammetrist or an individual authorized by statute to practice land surveying on forms provided by the board to be considered by the board as approved land surveying experience on the appropriate board-provided forms. Experience shall be verified by a licensed land surveyor or licensed surveyor photogrammetrist and will be evaluated by the board in accordance with 18VAC10-20-35.~~

## **18VAC10-20-350. Examinations.**

~~A. The Fundamentals of Land Surveying examination consists of the National Council of Examiners for Engineering and Surveying (NCEES) examination on the fundamentals of land surveying.~~

~~B. The Principles and Practice of Land Surveying examination consists of an NCEES examination on applied land surveying, or a board approved surveyor photogrammetrist examination, and a Virginia state specific examination.~~

A. Applications for original licensure shall be received by the board in accordance with the following deadlines:

1. Applications for the SIT designation submitted pursuant to 18VAC10-20-300 A shall be received in the board's office no later than 60 days prior to the scheduled exam.

2. All other applications shall be received in the board's office no later than 130 days prior to the scheduled exam.

B. The board is a member board of the National Council of Examiners for Engineering and Surveying (NCEES) and is authorized to administer the NCEES exams including the Fundamentals of Land Surveying exam and the Principles and Practice of Land Surveying exam. Applicants approved to sit for the exam shall follow NCEES procedures.

C. The examination exam for land surveying under § 54.1-408 of the Code of Virginia (Land Surveyor B) surveyor B shall be given at times designated by the board.

D. Unless otherwise stated, applicants approved to sit for an examination exam must register and submit the required examination exam fee to be received in the board office, or by the board's designee, at a time designated by the board. Applicants not properly registered will not be allowed into the examination site to sit for the exam.

E. Applicants shall be notified by the board of passing or failing the examination but shall not be notified of actual scores. Only the board and its staff shall have access to examination papers, scores, and answer sheets. Examinations may not be reviewed. The exam shall not be reviewed by applicants. Unless authorized by NCEES rules and procedures, exam scores are final and are not subject to change.

F. Should the applicant fail to pass an examination within Applicants approved to sit for the exam shall be eligible for a period of three years after being authorized to take the examination, the applicant must reapply and meet from the date of their initial approval. Applicants who do not pass the exam during their eligibility period are no longer eligible to sit for the exam. To become exam-eligible again, applicants shall reapply to the board and meet all current entry requirements at the time of reapplication. In addition to meeting the current entry requirements upon reapplication, applicants shall demonstrate successful completion of 16 hours of educational activities that meet the requirements of 18VAC10-20-683 E and F.

### **18VAC10-20-360. Licensure by comity.**

A. A person in good standing and holding a valid license to engage in the practice of land surveying in another state, the District of Columbia, or any territory or possession of the United States may be licensed, provided the applicant submits verifiable documentation to the board that the education, experience, and examination requirements by which the applicant was first licensed in the original jurisdiction were substantially equivalent to those existing in Virginia at the time of the applicant's original licensure. No person shall be so licensed, however, who has not passed an examination in another jurisdiction that was substantially equivalent to that

approved by the board at the time of the applicant's original licensure. If the applicant does not meet the requirements for licensure in Virginia that were in effect at the time of original licensure, the applicant shall be required to meet the entry requirements current at the time the completed application for comity is received in the board's office. All applicants shall be required to pass a written Virginia state specific examination. The examination shall include questions on law, procedures and practices pertaining to land surveying in Virginia.

B. A person holding a current license to engage in the practice of land surveying or photogrammetric surveying issued to the applicant by other states, the District of Columbia or any territory or possession of the United States based on requirements that do not conflict with and are at least as rigorous as the provisions contained in 18VAC10-20-310 C may be licensed as a surveyor photogrammetrist without further examination, except for the Virginia state examination, provided that the applicant was originally licensed prior to the ending date of the provisions contained in 18VAC10-20-310 C.

A. Applicants holding a valid license to practice land surveying in another state or other jurisdiction of the United States may be licensed as a land surveyor in Virginia. To become licensed, applicants shall:

1. Submit to the board verifiable documentation that the education, experience, and exam requirements by which they were first licensed in the original jurisdiction were substantially equivalent to the requirements in Virginia at the same time;
2. Have passed an exam in another jurisdiction that was substantially equivalent to that approved by the board at the time of the original licensure;
3. Be in good standing in all jurisdictions where licensed;
4. Pass a Virginia-specific exam; and
5. Satisfy all other requirements of this chapter.

B. Applicants who do not meet the requirements for licensure in Virginia that were in effect at the time of their original licensure shall be required to meet the entry requirements current at the time the completed application for comity is received in the board's office.

C. Applicants holding a current license to practice land surveying or photogrammetric surveying issued by another state or other jurisdiction of the United States may be licensed in Virginia as a surveyor photogrammetrist provided they meet one of the following criteria:

1. Applicants who were originally licensed prior to December 1, 2009, shall meet the requirements of the board's regulations effective December 1, 2008, and pass the Virginia-specific exam; or
2. Applicants who were originally licensed on or after December 1, 2009, shall meet the requirements of the

---

# Regulations

---

board's regulations effective at the time of original licensure and pass the Virginia-specific exam.

## **18VAC10-20-370. Minimum standards and procedures for land boundary surveying practice.**

A. The minimum standards and procedures set forth in this section are to be used for land boundary surveys performed in the Commonwealth of Virginia. The application of the professional's seal, signature and date as required by these regulations shall be evidence that the land boundary survey is correct to the best of the professional's knowledge, information, and belief, and complies with the minimum standards and procedures set forth in this chapter.

B. Research procedure. The professional shall search the land records for the proper description of the land to be surveyed and obtain the description of adjoining land(s) as it pertains to the common boundaries. The professional shall have the additional responsibility to utilize such other available data pertinent to the survey being performed from any other known ~~sources(s)~~ sources. Evidence found, from all known sources, including evidence found in the field, shall be carefully compared in order to aid in the establishment of the correct boundaries of the land being surveyed. The professional shall clearly identify on the plats, maps, and reports inconsistencies found in the research of common boundaries between the land being surveyed and the adjoining land(s). It is not the intent of this regulation to require the professional to research the question of title or encumbrances on the land involved.

### C. Minimum field procedures.

1. Angular measurement. Angle measurements made for traverse or land boundary survey lines will be made by using a properly adjusted transit-type instrument which allows a direct reading to a minimum accuracy of 30 seconds of arc or metric equivalent. The number of angles turned at a given station or corner will be the number which, in the judgment of the professional, can be used to substantiate the average true angle considering the condition of the instrument being used and the existing field conditions.

2. Linear measurement. Distance measurement for the lines of traverse or lines of the land boundary survey shall be made with metal tapes which have been checked and are properly calibrated as to incremental distances, or with properly calibrated electronic distance measuring equipment following instructions and procedures established by the manufacturer of such equipment. All linear measurements shall be reduced to the horizontal plane, and other necessary corrections shall be performed before using such linear measurements for computing purposes.

3. Field traverse and land boundary closure and accuracy standards. For a land boundary survey located in a rural area, the maximum permissible error of closure for a field traverse shall be one part in 10,000 (1/10,000). The

attendant angular closure shall be that which will sustain the one part in 10,000 (1/10,000) maximum error of closure. For a land boundary survey located in an urban area, the maximum permissible error of closure for a traverse shall be one part in 20,000 (1/20,000). The attendant angular closure shall be that which will sustain the one part in 20,000 (1/20,000) maximum error of closure.

The maximum permissible positional uncertainty based on the 95% confidence level of any independent boundary corner or independent point located on a boundary that has been established by utilizing global positioning systems shall not exceed the positional tolerance of 0.07 feet (or 20 mm + 50 ppm).

4. Monumentation. As a requisite for completion of the work product, each land boundary survey of a tract or parcel of land shall be monumented with objects made of permanent material at all corners and changes of direction on the land boundary with the exceptions of meanders, such as meanders of streams, tidelands, lakes, swamps and prescriptive rights-of-way, and each such monument, other than a natural monument, shall, when physically feasible, be identified by a temporary witness marker. Where it is not physically feasible to set actual corners, appropriate reference monuments shall be set, preferably on line, and the location of each shall be shown on the plat or map of the land boundary.

All boundaries, both exterior and interior, of the original survey for any division or partition of land shall be monumented in accordance with the provisions of this subdivision, when such monumentation is not otherwise regulated by the provisions of a local subdivision ordinance.

5. For land boundary surveys providing for a division when only the division, in lieu of the entire parcel, is being surveyed, any new corners established along existing property lines shall require that those existing property lines be established through their entire length. This shall include the recovery or reestablishment of the existing corners for each end of the existing property lines.

### D. Office procedures.

1. Computations. The computation of field work data shall be accomplished by using the mathematical routines that produce closures and mathematical results that can be compared with descriptions and data of record. Such computations shall be used to determine the final land boundary of the land involved.

2. Plats and maps. The following information shall be shown on all ~~plats or maps, or both,~~ plats and maps used to depict the results of the land boundary survey:

a. The title of the land boundary plat identifying the land surveyed and showing the district, town, and county or city in which the land is located and scale of drawing.

- b. The name of the owner of record and ~~deed book reference where the acquisition was recorded~~ recording references.
- c. Names of all adjoining owners of record with ~~deed book~~ recording references, or ~~subdivision lot designations with subdivision name and lot designations and recording references~~.
- d. ~~The professional shall clearly note inconsistencies~~ Inconsistencies found in the research of common boundaries between the land being surveyed and the adjoining land(s). The inconsistencies shall be clearly noted by the professional.
- e. Names of highways and roads with route number, and widths of right-of-way, or distance to the center of the physical pavement and pavement width, name of railroads, streams adjoining, crossing, or in close proximity to the boundary and other prominent or well-known objects that are informative as to the location of the land boundary.
- f. A distance to the nearest road intersection, or prominent or well-known object. In cases of remote areas, a scaled position with the latitude and longitude must be provided.
- g. Items crossing any property lines such as, but not limited to, physical encroachments, and evidence of easements such as utilities and other physical features pertinent to the boundary of the property.
- h. Bearings of all property lines and meanders to nearest 10 seconds of arc or metric equivalent.
- i. Adequate curve data to accomplish mathematical closures.
- j. Distances of all property lines and meanders to the nearest one hundredth (.01) of a foot or metric equivalent.
- k. Pursuant to subdivision C 5 of this section, the bearing and distances from the new corners to the existing corners on each end of the existing property lines.
- l. For property located in rural areas, area to the nearest hundredth (.01) of an acre or metric equivalent.
- m. For property located in urban areas, area to the nearest square foot or thousandth (0.001) of an acre or metric equivalent.
- n. North arrow and source of meridian used for the survey.
- o. For interior surveys, a reference bearing and distance to a property corner of an adjoining owner or other prominent object, including, but not limited to, intersecting streets or roads.
- p. Tax map designation or geographic parcel identification number if available.
- q. Description of each monument found and each monument set by the professional.

r. A statement that the land boundary survey shown is based on a current field survey or a compilation from deeds, plats, surveys by others, or combination thereof. If the land boundary shown is a compilation from deeds or plats, or a survey by others, the title of the plat shall clearly depict that the plat does not represent a current land boundary survey. ~~The application of the land surveyor's seal, signature and date shall constitute compliance with all the current standards of a land boundary survey as of the date of the application of signature unless otherwise clearly stated in the title of the plat that the plat is to be construed otherwise.~~

s. A statement as to whether ~~or not~~ a current title report has been furnished to the professional.

~~t. If the land boundaries shown on the plat are the result of a compilation from deed or plats, or both, or based on a survey by others, that fact will be clearly stated and the title of the plat shall clearly depict that the plat does not represent a current land boundary survey.~~

~~u. t.~~ t. A statement as to whether any or all easements are shown on the plat.

~~v. u.~~ u. Name and address of the land surveyor or the registered business.

~~w. v.~~ v. The professional's seal, signature and date.

3. Metes and bounds description. The professional shall prepare a metes and bounds description in narrative form, if requested by the client or his agent, for completion of any newly performed land boundary survey. The description shall reflect all metes and bounds, the area of the property described, all pertinent monumentation, names of record owners or other appropriate identification of all adjoining, and any other data or information deemed as warranted to properly describe the property. Customarily, the metes and bounds shall be recited in a clockwise direction around the property. The professional shall clearly identify in the metes and bounds description any inconsistencies found in the research of common boundaries between land being surveyed and the adjoining land(s). For subdivisions, the professional shall prepare a metes and bounds description in narrative form for only the exterior boundaries of the property.

No metes and bounds description shall be required for the verification or resetting of the corners of a lot or other parcel of land in accordance with a previously performed land boundary survey, such as a lot in a subdivision where it is unnecessary to revise the record boundaries of the lot.

**18VAC10-20-380. Minimum standards and procedures for surveys determining the location of physical improvements; field procedures; office procedures.**

A. The following minimum standards and procedures are to be used for surveys determining the location of physical improvements on any parcel of land or lot containing less than two acres or metric equivalent (sometimes also known as



---

# Regulations

---

"building location survey," "house location surveys," "physical surveys," and the like) in the Commonwealth of Virginia. The application of the professional's seal, signature and date as required by these regulations shall be evidence that the survey determining the location of physical improvements is correct to the best of the professional's knowledge, information, and belief, and complies with the minimum standards and procedures set forth in this chapter.

B. The professional shall determine the position of the lot or parcel of land in accordance with the intent of the original survey and shall set or verify permanent monumentation at each corner of the property, consistent with the monumentation provisions of subdivision C 4 of 18VAC10-20-370. All such monumentation, other than natural monumentation, shall, when physically feasible, be identified by temporary witness markers.

When the professional finds discrepancies of sufficient magnitude to warrant, in his opinion, the performance of a land boundary survey (pursuant to the provisions of 18VAC10-20-370), he shall so inform the client or the client's agent that such land boundary survey is deemed warranted as a requisite to completion of the physical improvements survey.

The location of the following shall be determined in the field:

1. Fences in near proximity to the land boundary lines and other fences which may reflect lines of occupancy or possession.
2. Other physical improvements on the property and all man-made or installed structures, including buildings, stoops, porches, chimneys, visible evidence of underground features (such as manholes, catch basins, telephone pedestals, power transformers, etc.), utility lines and poles.
3. Cemeteries, if known or disclosed in the process of performing the survey; roads or travelways crossing the property which serve other properties; and streams, creeks, and other defined drainage ways.
4. Other visible evidence of physical encroachment on the property.

C. The plat reflecting the work product shall be drawn to scale and shall show the following, unless requested otherwise by the client and so noted on the plat:

1. The bearings and distances for the boundaries and the area of the lot or parcel of land shall be shown in accordance with record data, unless a current, new land boundary survey has been performed in conjunction with the physical improvements survey. If needed to produce a closed polygon, the meander lines necessary to verify locations of streams, tidelands, lakes and swamps shall be shown. All bearings shall be shown in a clockwise direction, unless otherwise indicated.
2. North arrow, in accordance with record data.

3. Fences in the near proximity to the land boundary lines and other fences which may reflect lines of occupancy or possession.

4. Improvements and other pertinent features on the property as located in the field pursuant to subsection B of this section.

5. Physical encroachment, including fences, across a property line shall be identified and dimensioned with respect to the property line.

6. ~~On parcels where compliance with restriction is in question, provide the~~ The closest dimension (to the nearest 0.1 foot or metric equivalent) from the front property line, side property line, and if pertinent, rear property line to the principal walls of each building. Also, all principal building dimensions (to the nearest 0.1 foot or metric equivalent).

7. Building street address numbers, as displayed on the premises, or so noted if no numbers are displayed.

8. Stoops, decks, porches, chimneys, balconies, floor projections, and other similar type features.

9. Street name(s), as posted or currently identified, and as per record data, if different from posted name.

10. Distance to nearest intersection from a property corner, based upon record data. If not available from record data, distance to nearest intersection may be determined from best available data, and so qualified.

11. Building restriction or setback line(s) per restrictive covenants, if shown or noted on the record subdivision plat.

12. The caption or title of the plat shall include the type of survey performed; lot number, block number, section number, and name of subdivision, as appropriate, or if not in a subdivision, the name(s) of the record owner; town or county, or city; date of survey; and scale of drawing.

13. Adjoining property identification.

14. Easements and other encumbrances set forth on the record subdivision plat, and those otherwise known to the professional.

15. A statement as to whether or not a current title report has been furnished to the professional.

16. ~~The professional shall clearly note inconsistencies found in the research of common boundaries between the land being surveyed and the adjoining land(s)~~ Inconsistencies found in the research or field work of common boundaries between the land being surveyed and the adjoining land(s) shall be clearly noted.

17. Professional's seal, signature and date.

18. Name and address of the land surveyor or registered business.

~~D. Notwithstanding the monumentation provisions of subsection B of this section or any other provision of these~~

~~regulations, a professional, in performing a physical improvements survey, shall not be required to set corner monumentation on any property when corner monumentation is otherwise required to be set pursuant to the provisions of a local subdivision ordinance as mandated by § 15.2-2240 of the Code of Virginia, or by subdivision A 7 of § 15.2-2241 of the Code of Virginia, or where the placing of such monumentation is covered by a surety bond, cash escrow, set-aside letter, letter of credit, or other performance guaranty. When monumentation is not required, the surveyor shall clearly note on the plat "no corner markers set" and the reason to include name of guarantors.~~

~~E. Notwithstanding anything to the contrary in this chapter, this chapter shall be construed as to comply in all respects with § 54.1-407 of the Code of Virginia.~~

D. In performing a physical improvements survey, a professional shall not be required to set corner monumentation on any property when:

1. It is otherwise required to be set pursuant to the provisions of a local subdivision ordinance as mandated by § 15.2-2240 of the Code of Virginia or by subdivision A 7 of § 15.2-2241 of the Code of Virginia;
2. Its placement is covered by a surety bond, cash escrow, set-aside letter, letter of credit, or other performance guaranty; or
3. Exempt by § 54.1-407 of the Code of Virginia.

E. A professional performing a physical improvements survey when monumentation is not required as stated in subsection D of this section shall clearly note on the plat "no corner markers set," the reason why it is not required, and the name of guarantors.

**18VAC10-20-382. Minimum standards and procedures for surveys determining topography; field procedures; office procedures.**

A. The minimum standards and procedures set forth in this section are to be used for topographic surveys performed in the Commonwealth of Virginia pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia. The application of the professional's seal, signature, and date as required by these regulations shall be evidence that the topographic survey is correct to the best of the professional's knowledge and belief, and complies with the minimum standards and procedures.

B. Minimum field and office procedures. The following information shall be shown on, or contained in, all plats, maps, or digital geospatial data including metadata used to depict the results of the topographic survey:

1. Physical improvements on the property, all man-made or installed structures, as well as visible evidence of underground features (such as manholes, catch basins, telephone pedestals, power transformers, etc.), and utility lines and poles shall be shown or depicted when they are visible based on the methodology and scale. ~~If the~~

~~methodology or scale prevents the depiction of physical improvements on the property, all man made or installed structures, as well as visible evidence of underground features (such as manholes, catch basins, telephone pedestals, power transformers, etc.), and utility lines and poles, then such notice shall be clearly stated on or contained in the map, plat, or digital geospatial data including metadata. If the methodology or scale prevents depiction of the above, then notice shall be clearly stated on or contained in the map, plat, or digital geospatial data including metadata indicating the improvements that are not depicted.~~

2. Elevations shall be provided as spot elevations, contours, or digital terrain models.

3. Onsite, or in close proximity, bench mark(s) shall be established with reference to vertical datum, preferably North American Vertical Datum (NAVD), and shown in the correct location.

4. The title of the topographic survey identifying the land surveyed and showing the state, county or city in which property is located.

5. Name of the individual or entity for whom the survey is being performed.

6. Date, graphic scale, numerical scale, and contour interval of plat, map, or digital geospatial data including metadata.

~~7. Depiction and definition of north~~ North arrow and source of meridian used for the survey.

8. Names of highways, streets and named waterways shall be shown.

9. The horizontal and vertical unit of measurement, coordinate system, and datums, including adjustments if applicable.

~~10. The following minimum positional accuracies shall be met:~~

10. A statement, in the following form, shall be shown on or contained in plats, maps, or digital geospatial data including metadata:

This \_\_\_\_\_ (provide description of the project) was completed under the direct and responsible charge of \_\_\_\_\_ (Name of Professional) from an actual  Ground or  Airborne (check the one that is applicable) survey made under my supervision. that the imagery and/or original data was obtained on \_\_\_\_\_ (Date); and that this plat, map, or digital geospatial data including metadata meets minimum accuracy standards unless otherwise noted.

C. Minimum positional accuracies shall be met in accordance with the tables in subdivisions 1, 2, and 3 of this subsection. These tables are not intended to be acceptable in all situations, and the professional shall be responsible to perform the work to the appropriate quality and extent that is

# Regulations

prudent or warranted under the existing field conditions and circumstances. Metric or other unit of measurements shall meet an equivalent positional accuracy. Map or plat scales, or contour intervals, other than those defined in these tables shall meet an equivalent positional accuracy. The minimum positional accuracy tables are as follows

~~a.~~ 1. Scale and contour interval combinations.

Map or Plat Scale	Contour Interval	
1" = 20'	1 or 2 feet	
1" = 30'	1 or 2 feet	
1" = 40'	1 or 2 feet	
1" = 50'	1 or 2 feet	
1" = 100'	1 or 2 feet	
1" = 200'	2, 4 or 5 feet	
1" = 400'	4, 5 or 10 feet	

  

~~b.~~ 2. Vertical accuracy standards.

	Contours - Vertical Positional Accuracy	Spot Elevations - Vertical Positional Accuracy
Contour line 1' interval	± 0.60 feet	± 0.30 feet
Contour line 2' interval	± 1.19 feet	± 0.60 feet
Contour line 4' interval	± 2.38 feet	± 1.19 feet
Contour line 5' interval	± 2.98 feet	± 1.49 feet
Contour line 10' interval	± 5.96 feet	± 2.98 feet

Positional Accuracy is given at the 95% confidence level.

~~c.~~ 3. Horizontal accuracy standards.

Well defined ground points - Horizontal (Radial) Positional Accuracy

Map or Plat Scale	Absolute Horizontal Positional Accuracy	Relative Horizontal Positional Accuracy
1" = 20'	± 0.8 feet	± 0.20 feet
1" = 30'	± 1.1 feet	± 0.30 feet
1" = 40'	± 1.5 feet	± 0.40 feet
1" = 50'	± 1.9 feet	± 0.50 feet

1" = 100'	± 3.8 feet	± 1.00 feet
1" = 200'	± 7.6 feet	± 2.00 feet
1" = 400'	± 15.2 feet	± 4.00 feet

Positional Accuracy is given at the 95% confidence level.

~~The accuracy standards tables as shown are not intended to be acceptable in all situations. The professional shall be responsible to perform the work to the appropriate quality and extent that is prudent or warranted under the existing field conditions and circumstances.~~

~~Metric or other unit of measurements shall meet an equivalent positional accuracy.~~

~~Map or plat scales, or contour intervals, other than those defined in these tables shall meet an equivalent positional accuracy.~~

~~11. A statement, in the following form, shall be shown on or contained in plats, maps, or digital geospatial data including metadata:~~

~~This \_\_\_\_\_ (provide description of the project) was completed under the direct and responsible charge of, \_\_\_\_\_ (Name of Surveyor or Surveyor Photogrammetrist) Professional from an actual  Ground or  Airborne (check the one that is applicable) survey made under my supervision; that the imagery and/or original data was obtained on \_\_\_\_\_ (Date); and that this plat, map, or digital geospatial data including metadata meets minimum accuracy standards unless otherwise noted.~~

**18VAC10-20-390. Geodetic surveys.**

All geodetic surveys, including, but not limited to, the determination and publication of horizontal and vertical values utilizing Global Positioning Systems (GPS), which relate to the practice of land surveying as defined in § 54.1-400 of the Code of Virginia, shall be performed under the direct control and personal supervision of a licensed land surveyor professional as defined in Part I (18VAC10-20-10 et seq.) of these regulations.

**18VAC10-20-395. Standard of care.**

In no event may the requirements contained in ~~18VAC10-20-280~~ 18VAC10-20-370 through 18VAC10-20-392 be interpreted or construed to require the professional to perform work of a lesser quality or quantity than that which is prudent or warranted under the existing field conditions and circumstances.

Part VI

Qualifications for ~~Certification~~ Licensing of Landscape Architects

**18VAC10-20-400. Fee schedule.**

All fees are nonrefundable and shall not be prorated.

Application for <u>Initial Landscape Architect License</u>	\$125
--	-------

<u>Application for Landscape Architect License by Comity</u>	\$125
Renewal	\$110
Out-of-state proctor	\$100

**18VAC10-20-420. Requirements for certification licensure.**

~~The education or experience, or both, and examination requirements for licensure as a landscape architect are as follows:~~ A. Applicants for licensure as a landscape architect shall satisfy the requirements of subsection B or C of this section.

~~1. B. An applicant who has graduated from an accredited a landscape architecture curriculum approved accredited by the Landscape Architectural Accreditation Board (LAAB) must meet the following requirements for licensure as a landscape architect shall have:~~

- ~~a. Passed a CLARB prepared examination; and~~
- ~~b. 1. Obtained a minimum of 36 months of experience/training with a minimum of 12 months under the direct control and personal supervision of a landscape architect and the other 24 months under the direct control and personal supervision of a landscape architect, architect, professional engineer, or land surveyor, in accordance with the experience credits portion of the Landscape Architect Equivalency Table. An applicant who has graduated from an accredited landscape architecture curriculum approved by the Landscape Architectural Accreditation Board shall be admitted to a CLARB prepared examination prior to completing the 36 month experience requirement, if the applicant is otherwise qualified. experience as follows:~~
  - ~~a. A minimum of 12 months of experience under the direct control and personal supervision of a licensed or certified landscape architect; and~~
  - ~~b. The remaining 24 months of experience under the direct control and personal supervision of a licensed or certified landscape architect or a licensed architect, professional engineer, or land surveyor, in accordance~~

with the LANDSCAPE ARCHITECTS EXPERIENCE CREDIT TABLE; and

2. Passed all sections of the Council of Landscape Architectural Registration Board (CLARB)-prepared exam.

~~2. An applicant who has obtained eight years of combined education and experience, evaluated in accordance with the Landscape Architect Equivalency Table, shall be admitted to a CLARB prepared examination or equivalent approved by the board. Upon passing such examination, the applicant shall be licensed as a landscape architect, if otherwise qualified.~~

C. Applicants who have not graduated from a LAAB-accredited landscape architecture curriculum shall have obtained a minimum of eight years of combined education and work experience in accordance with this subsection.

1. Only semester and quarter hours with passing grades shall be accepted. Credit shall be calculated as follows:

- a. 32 semester credit hours or 48 quarter credit hours shall be worth one year.
- b. Fractions greater than or equal to one half-year, but less than one year, will be counted as one-half year.
- c. Fractions smaller than one half-year will not be counted.

2. The maximum years indicated in subdivisions a through d of the LANDSCAPE ARCHITECTS EDUCATION CREDIT TABLE shall apply regardless of the length of the degree program.

3. All applicants shall have a minimum of two years of experience under the direct control and personal supervision of a licensed or certified landscape architect.

4. Education and experience shall be evaluated against the LANDSCAPE ARCHITECTS EDUCATION CREDIT TABLE and the LANDSCAPE ARCHITECTS EXPERIENCE CREDIT TABLE to determine if an applicant has met the minimum eight years required in this subsection.

LANDSCAPE ARCHITECT EQUIVALENCY TABLE. TABLE OF EQUIVALENTS FOR EDUCATION AND EXPERIENCE.					
DESCRIPTIONS	Education Credits			Experience Credits	
	First 2 Years	Succeeding Years	Max. Credit Allowed	Credit Allowed	Max. Credit Allowed
<del>A 1. Degree from an LAAB accredited landscape architectural curriculum.</del>	100%	100%	5 years		
<del>A 2. Credits toward a degree in landscape architecture from an accredited school of landscape architecture.</del>	100%	100%	4 years		

# Regulations

A-3. Degree in landscape architecture or credits toward that degree from a nonaccredited school of landscape architecture.	100%	100%	4 years		
A-4. Degree or credits toward that degree in an allied professional discipline, i.e., architecture, civil engineering, environmental science, approved by the board.	75%	100%	3 years		
A-5. Any other bachelor degree or credits toward that degree.	50%	75%	2 years		
A-6. Qualifying experience in landscape architecture under the direct supervision of a landscape architect.				100%	no limit
A-7. Qualifying experience directly related to landscape architecture when under the direct supervision of an architect, professional engineer, or land surveyor.				50%	4 years

## EXPLANATION OF REQUIREMENTS

B-1. Education Credits. Education credits shall be subject to the following conditions:

B-1.1. Applicants with a degree specified in A-1 through A-5 will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program.

B-1.2. With a passing grade, 32 semester credit hours or 48 quarter hours is considered to be one year. Fractions greater than one-half year will be counted one-half year and smaller fractions will not be counted.

B-2. Experience Credits. Experience credits shall be subject to the following conditions:

B-2.1. Every applicant without an LAAB-accredited degree must earn at least two years of experience credit under category A-6. Every applicant with an LAAB-accredited degree must earn at least one year of experience credit under category A-6.

## LANDSCAPE ARCHITECTS EDUCATION CREDIT TABLE

Categories	Values	Examples
a. Credits completed applicable toward a LAAB-accredited degree.	Credit shall be given at the rate of 100% with a maximum of four years allowable.	<p><u>An applicant has 86 semester hours of credit.</u>  <u>Calculation:</u>            ♦ <math>86/32 = 2.6875</math> years            ♦ 100% credit for a maximum of four years (<math>2.6875 \times 100\% = 2.6875</math> years)            ♦ 0.6875 is <math>\geq 0.5</math> years, which is worth 0.5 years.</p> <p><u>Final result: 86 semester hours equals 2.5 years.</u></p>
b. A degree in landscape architecture, or credits completed applicable toward a degree in landscape architecture, from a non-LAAB-accredited curriculum.		
c. A degree, or credits completed applicable toward a degree, in an allied professional discipline approved by the	Credit shall be given at the rate of 75% for the first two years and 100% for	<p><u>An applicant has 101 semester hours of credit.</u>  <u>Calculation:</u></p>

<p><u>board (i.e., architecture, civil engineering, environmental science).</u></p>	<p><u>succeeding years with a maximum of three years allowable.</u></p>	<p>◆ <math>101/32 = 3.15625</math> years                  ◆ <u>75% credit for the first two years (2 x 75% = 1.5 years)</u>                  ◆ <u>100% credit for succeeding years (1.15625 x 100% = 1.15625 years)</u>                  ◆ <math>1.5 + 1.15625 = 2.65625</math> years.                  ◆ <u>0.65625 is &gt; 0.5 years, which is worth 0.5 years</u></p> <p><u>Final result: 101 semester hours equals 2.5 years.</u></p>
<p><u>d. Any other undergraduate degree or credits completed applicable toward that degree.</u></p>	<p><u>Credit shall be given at the rate of 50% for the first two years and 75% for succeeding years with a maximum of two years allowable.</u></p>	<p><u>An applicant has 95 semester hours of credit.</u>                  Calculation:                  ◆ <math>95/32 = 2.96875</math> years                  ◆ <u>50% credit for the first two years (2 x 50% = 1 year)</u>                  ◆ <u>75% credit for succeeding years (.96875 x 75% = .72656 years)</u>                  ◆ <math>1 + .72656 = 1.72656</math> years.                  ◆ <u>0.72656 is &gt; 0.5 years, which is worth 0.5 years.</u></p> <p><u>Final result: 95 semester hours equals 1.5 years.</u></p>

**LANDSCAPE ARCHITECTS EXPERIENCE CREDIT TABLE**

Categories	Values	Examples
<p><u>e. Experience gained under the direct control and personal supervision of a licensed or certified landscape architect.</u></p>	<p><u>Credit shall be given at the rate of 100% of work experience gained with no maximum.</u></p>	<p><u>An applicant worked under a landscape architect for 3.7 years.</u>                  Calculation:  <math>3.7 \text{ years} \times 100\% = 3.7 \text{ years (no maximum)}</math></p> <p><u>Final result: An applicant with 3.7 years of work experience will be credited for the entire 3.7 years.</u></p>
<p><u>f. Experience gained under the direct control and personal supervision of a licensed architect, professional engineer, or land surveyor.</u></p>	<p><u>Credit shall be given at the rate of 50% of work experience gained with a maximum of four years allowable.</u></p>	<p><u>An applicant has worked under a land surveyor for eight years or more.</u>                  Calculation:  <math>8 \text{ years} \times 50\% = 4 \text{ years}</math></p> <p><u>Final result: eight years or more of experience is worth only four years based on the maximum allowable.</u></p>

**18VAC10-20-425. References.**

In addition to the requirements found in 18VAC10-20-25, applicants shall submit three references with the application,

each from a currently licensed landscape architect in another state or other jurisdiction of the United States. An applicant shall only submit references from landscape architects who

---

# Regulations

---

have personal knowledge of his competence and integrity relative to his landscape architectural experience.

## **18VAC10-20-430. Experience standard.**

Qualifying landscape architectural training and experience shall be progressive in complexity and based on a knowledge of natural, physical and mathematical sciences, and the principles and methodology of landscape architecture.

## **18VAC10-20-440. Examination.**

~~A. All applicants for original licensure in Virginia are required to pass the CLARB prepared examination.~~

A. Applicants with a LAAB-accredited degree may be approved to sit for the exam prior to completing the 36-month experience requirement contained in 18VAC10-20-420 A 1.

B. The Virginia board is a member of the Council of Landscape Architectural Registration Boards (CLARB) and as such is authorized to administer the CLARB examinations exams. All applicants for original licensure in Virginia are required to pass the CLARB-prepared exam.

~~C. The CLARB prepared examination will be offered at least once per year at a time designated by the board.~~

C. Applicants approved to sit for the exam shall register and submit the required exam fee to be received in the board office, or by the board's designee. Applicants not properly registered will not be allowed to sit for the exam.

D. Grading of the examination exam shall be in accordance with the national grading procedures established by CLARB. The board shall adopt the scoring procedures recommended by CLARB.

~~E. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee to be received in the board office, or by the board's designee, at a time designated by the board. Applicants not properly registered will not be allowed into the examination site.~~

~~F. Examinees will~~ E. Applicants shall be advised only of their passing or failing score and the CLARB minimum passing ~~or failing~~ score.

~~Only the board and its staff shall have access to examination papers, scores, and answer sheets.~~

~~G. F.~~ Upon written request to the board within 30 days of receiving examination exam results, examinees applicants will be permitted to view the performance problems contained within the section that they failed. Examination Exam appeals are permitted in accordance with the CLARB score verification process.

~~H. Should an applicant fail to pass an examination within three years after being approved to sit for an examination, the applicant must reapply and meet all current entry requirements at the time of reapplication. If the applicant has not been taking the examination on a continuous basis during the three year eligibility period, or fails to reapply within six months after the end of the three year eligibility period, or~~

~~both, then the applicant shall meet the entry requirements current at the time of reapplication.~~

G. Applicants approved to sit for the exam shall be eligible for a period of three years from the date of their initial approval. Applicants who do not pass all sections of the exam during their eligibility period are no longer eligible to sit for the exam. To become exam-eligible again, applicants shall reapply to the board as follows:

1. Applicants who have taken at least one section of the exam and who reapply to the board no later than six months after the end of their eligibility may be approved to sit for the exam for an additional three years. The original application requirements shall apply.

2. Applicants who do not meet the criteria of subdivision 1 of this subsection shall reapply to the board and meet all entry requirements current at the time of reapplication.

## **18VAC10-20-450. Certification Licensure by comity.**

~~A person holding a current license to engage in the practice of landscape architecture, issued to the applicant by other states, the District of Columbia, or any territory or possession of the United States based on requirements that do not conflict with and are at least as rigorous as these regulations and supporting statutes of this board that were in effect at the time of original licensure, may be licensed without further examination. No person shall be so licensed, however, who has not passed an examination in another jurisdiction that was substantially equivalent to that approved by the board at that time. If the applicant does not meet the requirements for licensure in Virginia that were in effect at the time of original licensure, the applicant shall be required to meet the entry requirements current at the time the completed application for comity is received in the board's office or shall hold a CLARB certificate.~~

A. Applicants with a valid license in good standing to practice landscape architecture issued by another state or other jurisdiction of the United States may be licensed by the board without further examination provided they:

1. Were issued the original license based on requirements that do not conflict with and that are substantially equivalent to the board's regulations that were in effect at the time of original licensure; and

2. Passed an exam in another jurisdiction that was substantially equivalent to that approved by the board at that time; or

3. Possess a CLARB certificate.

B. Applicants who do not qualify under subsection A of this section shall be required to meet current entry requirements at the time the application for comity is received in the board's office.

Part VII  
Qualifications for ~~Certification~~ Certifying of Interior Designers

<u>Application for Initial Interior Designer Certification</u>	\$45
<u>Application for Interior Designer Certification by Comity</u>	\$45
Renewal	\$45

**18VAC10-20-460. Definitions.**

The following words, terms, and phrases when used in this part shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings.

"CIDA" means the Council for Interior Design Accreditation (CIDA), formerly known as the Foundation of Interior Design Education Research (FIDER).

"Diversified experience" includes the identification, research and creative solution of problems pertaining to the function and quality of the interior environment including, but not limited to, code analysis, fire safety consideration, and barrier free evaluations that relate to the health, safety, and welfare of the public.

"Monitored experience" means diversified experience in interior design under the direct control and personal supervision of a certified or licensed interior designer, an architect, or a professional engineer.

"Professional program approved by the board" means ~~(i) a minimum of a four-year degree in an interior design program that has been evaluated and is deemed by the board to be substantially equivalent, at the time of the applicant's graduation, to a four year interior design degree program from an institution accredited by the Council for Interior Design Accreditation (CIDA), formerly known as the Foundation of Interior Design Education Research (FIDER) or (ii) a master's degree in interior design plus a four year degree, the combination of which has been evaluated and is deemed by the board to be substantially equivalent, at the time of the applicant's graduation, to a four year degree program from an institution accredited by CIDA, formerly known as FIDER. Any cost of evaluation shall be borne by the applicant. The board reserves the right to reject, for good cause, any evaluation submitted. an evaluated degree or combination of evaluated degrees as follows:~~

1. A minimum of an undergraduate degree in an interior design program that is deemed by the board to be substantially equivalent to an undergraduate degree in interior design from a CIDA-accredited institution at the time of the applicant's graduation; or
2. A graduate degree in interior design plus an undergraduate degree that is a combination deemed by the board to be substantially equivalent to an undergraduate degree program from a CIDA-accredited institution at the time of the applicant's graduation.

For the purposes of this definition, a degree program that met CIDA accreditation requirements not later than two years after the date of the applicant's graduation shall be determined to be CIDA accredited.

**18VAC10-20-470. Fee schedule.**

All fees are nonrefundable and shall not be prorated.

**18VAC10-20-490. Requirements for certification.**

~~The education, experience and examination requirements for certification as an interior designer are as follows:~~

A. Applicants shall meet one of the following education requirements:

~~1. The applicant shall be a graduate of four year professional degree program accredited by CIDA, formerly known as FIDER, not later than one year after the applicant's graduation from said program, or an equivalent accrediting organization, or a professional program approved by the board; have a minimum of two years of monitored experience; and have passed the board-approved examination for certification as an interior designer.~~

~~2. Monitored experience gained under the direct control and personal supervision of a professional engineer shall be reduced by 50%. The total experience credit for such experience shall not exceed six months.~~

1. Have graduated from a program accredited by CIDA;
2. Have graduated from a program accredited by an organization equivalent to CIDA; or
3. Have graduated from a professional degree program approved by the board.

B. Applicants shall possess a minimum of two years of monitored experience. Any monitored experience gained under the direct control and personal supervision of a professional engineer shall be reduced by 50% and shall not account for more than six months of the two years required by this subsection.

C. Applicants shall have passed the board-approved exam and provide documentation acceptable to the board verifying that the exam has been passed.

D. Any cost of evaluation of degrees shall be borne by the applicant. The board reserves the right to reject, for good cause, any evaluation submitted.

**18VAC10-20-495. Examination.**

A. The National Council of Interior Design Qualification (NCIDQ) exam is approved by the board.

B. Applicants shall apply directly to NCIDQ for the exam.

**18VAC10-20-505. Certification by comity.**

~~A person in good standing and holding a valid license or certificate to engage in the practice of interior design in another state, the District of Columbia, or any territory or possession of the United States may be certified provided the applicant submits verifiable documentation to the board that~~



---

# Regulations

---

~~the education, experience, and examination requirements by which the applicant was first licensed or certified in the original jurisdiction were equal to those existing in Virginia at the time of the applicant's original licensure or certification. No person shall be so certified, however, who has not passed an examination in another jurisdiction that was equivalent to that approved by the board at the time of the applicant's original licensure or certification. If the applicant does not meet the requirements for certification in this state that were in effect at the time of original licensure or certification, the applicant shall be required to meet the entry requirements current at the time the completed application for comity is received in the board's office. Upon receipt of such satisfactory evidence and provided all other requirements of this chapter are complied with, a certificate shall be issued to the applicant.~~

An applicant with a valid license or certificate in another state or country or the District of Columbia may be issued a certificate if he provides satisfactory evidence to the board that:

1. The license or certificate was issued based on qualifications equal to those required by this chapter as of the date the application is received by the board; and
2. The license or certificate is in good standing.

## Part VIII

### Qualifications for Registration as a Professional Corporation

#### **18VAC10-20-510. Definitions.**

Section 13.1-543 of the Code of Virginia provides the definition of the following term:

Professional Corporation ("P.C.")

The following words, terms, and phrases when used in this part shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:

"Employee" of a corporation, for purposes of stock ownership, is a person regularly employed by the corporation who devotes 60% or more of his gainfully employed time to that of the corporation.

"Registration" means a certificate of authority issued by the board to transact business in Virginia pursuant to § 13.1-549 of the Code of Virginia.

#### **18VAC10-20-515. Registration required.**

Any professional corporation offering or rendering professional services in the Commonwealth of Virginia shall register with the board. Professional services shall include architecture, engineering, land surveying, landscape architecture, or interior design.

#### **18VAC10-20-520. Fee schedule.**

All fees are nonrefundable and shall not be prorated.

<u>Application for professional corporation registration</u>	\$30
<u>Designation Application for professional</u>	\$30

corporation branch office registration

Renewal of professional corporation registration \$25

Renewal of professional corporation branch office registration \$25

Reinstatement of branch office \$30

## Part VIII

### Qualifications for Registration as a Professional Corporation

#### **18VAC10-20-530. Application requirements.**

~~A. All applicants shall have been be incorporated in the Commonwealth of Virginia or, if a foreign professional corporation, shall have obtained a certificate of authority to conduct business in Virginia from the State Corporation Commission in accordance with § 13.1-544.2 of the Code of Virginia. The corporation shall be in good standing with the State Corporation Commission at the time of application to the board office and at all times when the board registration is in effect.~~

~~B. Each application shall include certified true copies of the certificate of incorporation issued by the state of incorporation (in Virginia, such certificate issued by the State Corporation Commission), articles of incorporation, bylaws and charter, and, if a foreign professional corporation, the certificate of authority issued by the State Corporation Commission.~~

B. Each application shall include:

1. For applicants incorporated in Virginia, the applicant shall provide a copy of its articles of incorporation, bylaws, or charter, and the certificate of incorporation issued by the Virginia State Corporation Commission.

2. For applicants incorporated in a state other than Virginia, the applicant shall provide a copy of its articles of incorporation, bylaws, or charter, the certificate of incorporation issued by the foreign state of incorporation, and the certificate of authority issued by the Virginia State Corporation Commission.

~~C. Articles of incorporation and or bylaws. The following statements are required:~~

~~1. The articles of incorporation or bylaws shall specifically state that cumulative voting is prohibited.~~

~~2. Pursuant to § 13.1-549 of the Code of Virginia, the bylaws of a corporation rendering the services of architects, professional engineers, land surveyors, or landscape architects or using the title of certified interior designers, or any combination thereof, shall provide that not less than two thirds of its capital stock shall be issued to individuals duly licensed to render the services of architect, professional engineer, land surveyor, or landscape architect or to individuals legally authorized to use the title of certified interior designer. Similarly, for those corporations using the title of certified interior~~

~~designers and providing the services of architects, professional engineers or land surveyors, or any combination thereof, the bylaws shall provide that not less than two-thirds of the capital stock of the corporation shall be held by individuals who are duly licensed. The bylaws shall further provide that the remainder of said stock may be issued only to and held by individuals who are employees of the corporation whether or not such employees are licensed to render professional services or authorized to use a title. Notwithstanding the above limitations, the bylaws may provide that the corporation may issue its stock to a partnership each of the partners of which is duly licensed or otherwise legally authorized to render the same professional services as those for which the corporation was incorporated.~~

2. The bylaws shall affirmatively state that the professional corporation meets the requirements of § 13.1-549 of the Code of Virginia.

3. The bylaws shall state that nonlicensed or noncertified individuals will not have a voice or standing in any matter affecting the practice of the corporation requiring professional expertise, ~~or~~ in any matter constituting professional practice, or both.

~~D. Board of directors. A corporation may elect to its board of directors not more than one-third of its members who are employees of the corporation and are not authorized to render professional services.~~

~~At least two-thirds of the board of directors shall be licensed to render the services of an architect, professional engineer, land surveyor, or landscape architect or be duly certified to use the title of certified interior designer, or any combination thereof.~~

~~At least one director currently licensed or certified in each profession offered or practiced shall be resident at the business to provide effective supervision and control of the final professional product. D. The board of directors shall meet the following requirements:~~

1. A corporation may not elect to its board of directors more than one-third of its members who are employees of the corporation and are not authorized to render professional services;

2. At least two-thirds of the board of directors shall be licensed to render the services of an architect, professional engineer, land surveyor, or landscape architect or be duly certified to use the title of certified interior designer, or any combination thereof; and

3. At least one director, currently licensed or certified in each profession offered or practiced, shall be resident at the business to provide effective supervision and control of the final professional product.

E. Joint ownership of stock. Any type of joint ownership of the stock of the corporation is prohibited. Ownership of stock by nonlicensed or noncertified employees shall not entitle

those employees to vote in any matter affecting the practice of the professions herein regulated.

F. The name of the business and any assumed, fictitious, trading as, or doing business as names of the firm shall be disclosed on the application.

G. Branch offices. If professional services are offered or rendered in a branch office, a separate branch office designation form shall be completed for each branch office. Responsible persons shall be designated in accordance with this chapter. At least one currently licensed or certified responsible person in each profession offered or practiced at each branch office shall be resident at each branch office to provide effective supervision and control of the final professional product. Any branch office offering or rendering professional services shall complete a branch office registration application from the board. Each branch office shall have a responsible person resident at the branch office for each profession offered or rendered.

**18VAC10-20-540. Certificates of authority. (Repealed.)**

~~Certificates of authority shall be issued by the board. The certificate of authority will permit a corporation to practice only the professions shown on its certificate of authority.~~

**18VAC10-20-550. Foreign corporations.**

A. The bylaws shall state that the foreign corporation's activities in Virginia shall be limited to rendering the services of architects, professional engineers, land surveyors, landscape architects ~~and~~, certified interior designers, or any combination thereof. ~~A foreign corporation must meet every requirement of this chapter except the requirement that two-thirds of its stockholders be licensed or certified to perform the professional service in Virginia.~~

B. Foreign corporations shall not be required to have two-thirds of its stockholders be licensed or certified to perform professional services in Virginia but must meet all other requirements of this chapter.

~~The corporation~~ C. Foreign corporations shall provide the name, address, and Virginia license or certificate number of each stockholder or employee of the corporation who will be offering or providing the professional service(s) services in Virginia.

**18VAC10-20-560. Amendments and changes.**

A. Amendments to charter, articles of incorporation or bylaws. A corporation holding a ~~certificate of authority registration~~ to practice in one or in any combination of the professions covered in these regulations shall file with the board, within 30 days of its adoption, a ~~certified true~~ copy of any amendment to the articles of incorporation, bylaws or charter.

~~B. Change in directors or shareholders. In the event there is a change in corporate directors or shareholders, whether the change is temporary or permanent and whether it may be caused by death, resignation or otherwise, the certificate of authority shall be limited to that professional practice~~

---

# Regulations

---

~~permitted by those pertinent licenses or certificates held by the remaining directors and shareholders of the corporation unless an employee of the firm holds the appropriate license or certificate and is competent to render such professional services. In the event that such change results in noncompliance with the requirements of this chapter and applicable statutes relating to ownership of capital stock or composition of the board of directors, the certificate of authority shall be suspended until such time as the corporation comes into compliance with this chapter. The corporation shall notify the board within 30 days of any such change. The following shall apply to the board-issued registration upon the event of any change in directors or shareholders whether the change is temporary or permanent, caused by death, resignation, or otherwise:~~

1. The professional corporation shall notify the board within 30 days of any change in its directors or shareholders;

2. In the event of a change in the corporate directors or shareholders, the board-issued registration shall be limited to the professional practices permitted by those pertinent licenses or certificates held by the remaining directors and shareholders of the corporation unless an employee of the firm holds the appropriate license or certificate and is competent to render such professional services; and

3. In the event that a change results in the professional corporation's noncompliance with the requirements of this chapter and applicable statutes relating to ownership of capital stock or composition of the board of directors, the board-issued registration shall be automatically suspended until such time as the corporation comes into compliance with this chapter.

C. Change of name, address and place of business. ~~Any change of name (including assumed names), address, place of business in Virginia, or responsible person(s) of the profession(s) practiced or offered at each place of business shall be reported to the board by the registered entity within 30 days of such an occurrence. In addition, any licensed or certified employee responsible for such practice shall notify the board in writing of any changes of his employment status within 30 days of such change. The professional corporation shall notify the board, in writing, within 30 days of any of the following changes at each place of business:~~

1. Any change of name (including assumed names), address, place of business in Virginia, or responsible person of the profession offered or practiced; and

2. Any change in the employment status of a licensed or certified employee responsible for professional practice.

## Part IX

### Qualifications for Registration as a Professional Limited Liability Company

#### **18VAC10-20-570. Definitions.**

Section 13.1-1102 of the Code of Virginia provides the definition of the following term:

Professional Limited Liability Company ("P.L.C.," "PLC," "P.L.L.C.," or "PLLC")

The following words, terms, and phrases when used in this part shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:

"Manager" is a person or persons designated by the members of a limited liability company to manage the professional limited liability company as provided in the articles of organization or an operating agreement, and who is duly licensed or otherwise legally authorized to render one or more of the professional services of architects, professional engineers, land surveyors, landscape architects, or certified interior designers in the Commonwealth of Virginia.

"Member" means an individual or professional business entity that owns an interest in a professional limited liability company.

"Registration" means a certificate of authority issued by the board to transact business in Virginia pursuant to § 13.1-1111 of the Code of Virginia.

#### **18VAC10-20-575. Registration required.**

Any professional limited liability company offering or rendering professional services in the Commonwealth of Virginia shall register with the board. Professional services shall include architecture, engineering, land surveying, landscape architecture, and interior design.

#### **18VAC10-20-580. Fee schedule.**

All fees are nonrefundable and shall not be prorated.

<u>Application for professional limited liability company registration</u>	\$100
<u>Designation Application for professional limited liability company branch office registration</u>	\$50
<u>Renewal of professional limited liability company registration</u>	\$50
<u>Renewal of professional limited liability company branch office registration</u>	\$50
<u>Reinstatement of branch office</u>	\$30

#### **18VAC10-20-590. Application requirements.**

A. All applicants shall have ~~obtained~~ a certificate of organization in the Commonwealth of Virginia or, if a foreign professional limited liability company, shall have ~~obtained~~ a certificate of ~~registration~~ authority to conduct business in

Virginia from the State Corporation Commission, in accordance with § 13.1-1105 of the Code of Virginia. The company shall be in good standing with the State Corporation Commission at the time of application to the board office and at all times when the board registration is in effect.

~~B. Each application shall include a certified true copy of the certificate of organization or, if a foreign professional limited liability company, a certificate of registration issued by the State Corporation Commission. Each application must also include certified true copies~~ a copy of the articles of organization, or operating agreement, or both. Applications shall also include additional information as follows:

1. Applicants organized as a professional limited liability company in Virginia shall provide a copy of the certificate of organization.

2. Applicants organized as a professional limited liability company in a state other than Virginia shall provide a copy of the certificate of authority issued by the Virginia State Corporation Commission.

~~C. Each application shall include a written affirmative affidavit that attests to the following inclusions to the articles~~ Articles of organization or operating agreement.

1. The articles of organization or operating agreement shall state the specific purpose of the professional limited liability company.

~~2. Pursuant to § 13.1-1111 of the Code of Virginia, the articles of organization or operating agreement shall provide that not less than two thirds of the membership interests of a PLLC rendering the services of architects, professional engineers, land surveyors, or landscape architects or using the title of certified interior designers, or any combination thereof, shall be held by individuals duly licensed or professional business entities legally authorized to render the services of architects, professional engineers, land surveyors, or landscape architects or by individuals or professional business entities legally authorized to use the title of certified interior designers. Similarly, for those PLLCs using the title of certified interior designers and providing the services of architects, professional engineers, or land surveyors, or any combination thereof, the articles of organization or operating agreement shall provide that not less than two thirds of the membership interests of the company shall be held by individuals who are duly licensed. The articles of organization or operating agreement shall further provide that the remainder of the membership interests of the PLLC may be held only by individuals who are employees of the PLLC whether or not those employees are licensed to render professional services or authorized to use a title~~

2. The articles of organization or operating agreement shall affirmatively state that the professional limited liability company meets the requirements of § 13.1-1111 of the Code of Virginia.

3. The articles of organization or operating agreement shall attest that all members, managers, employees and agents who render professional services of architects, professional engineers, land surveyors, or landscape architects, or use the title of certified interior designers, are duly licensed or certified to provide those services.

4. The person executing the affidavit shall sign it and state beneath his signature his name and the capacity in which he signs. If the person signing the affidavit is not a manager of the PLLC, the affidavit shall also state that the individual has been authorized by the members of the PLLC to execute the affidavit for the benefit of the company.

#### D. Management of the PLLC.

1. Pursuant to § 13.1-1118 of the Code of Virginia, unless the articles of organization or operating agreement provides for management of the PLLC by a manager or managers, management of the PLLC shall be vested in its members.

~~If the articles of organization or an operating agreement provides for management of the PLLC by a manager or managers, the manager or managers~~ 2. Any manager or member must be an individual or individuals duly licensed or otherwise legally authorized to render the same professional services within the Commonwealth for which the company was formed. These members or managers shall be the only members or managers authorized to supervise and direct the provision of professional services within the Commonwealth.

~~Only members or managers duly licensed or otherwise legally authorized to render the same professional services within this Commonwealth shall supervise and direct the provision of professional services within this Commonwealth.~~

3. At least one member or manager currently licensed or certified in each profession offered or practiced shall be resident at the business to provide effective supervision and control of the final professional product.

E. The name of the business and any assumed, fictitious, trading as, or doing business as names of the firm shall be disclosed on the application.

~~F. If professional services are offered or rendered in a branch office, a separate branch office designation form shall be completed for each branch office. Responsible persons shall be designated in accordance with this chapter. At least one currently licensed or certified responsible person in each profession offered or practiced at each branch office shall be resident at each branch office to provide effective supervision and control of the final professional product. Any branch office offering or rendering professional services shall complete a branch office registration application from the board. Each branch office shall have a resident responsible person at the branch office for each profession offered or rendered.~~

---

# Regulations

---

## **18VAC10-20-600. Certificates of authority. (Repealed.)**

~~A certificate of authority shall be issued by the board. The certificate of authority will permit a PLLC to practice only the professions shown on its certificate of authority.~~

## **18VAC10-20-610. Foreign professional limited liability companies.**

A. The articles of organization or operating agreement shall state that the PLLC's activities in Virginia shall be limited to rendering the professional services of architects, professional engineers, land surveyors, landscape architects, and certified interior designers, or any combination thereof.

B. The foreign company ~~must~~ PLLC shall meet every requirement of ~~this chapter~~ § 13.1-1111 of the Code of Virginia except for the requirement that two-thirds of its members and managers be licensed or certified to perform the professional service in this Commonwealth.

C. The PLLC shall provide the name, address, and Virginia license or certificate number of each manager or member who will be providing the professional service(s) in Virginia.

## **18VAC10-20-620. Amendments to articles of organization, operating agreements or certificate of organization; change in managers or members; change in name, address and place of business and changes.**

A. A PLLC holding a ~~certificate of authority~~ registration to practice ~~in one or~~ in any combination of the professions covered in these regulations shall file with the board, ~~within 30 days of its adoption,~~ a ~~certified true~~ copy of any amendment to the articles of organization, operating agreement, or certificate of organization within 30 days of its adoption.

B. ~~In the event there is a change of managers or members of the PLLC, whether the change is temporary or permanent and whether it may be caused by death, resignation, or otherwise, the certificate of authority shall be automatically modified to be limited to that professional practice permitted by those pertinent licenses or certificates held by the remaining managers or members of the PLLC unless an employee of the PLLC holds the appropriate license or certificate and is competent to render such professional services. Unless otherwise provided, in the event that such change results in noncompliance with the requirements of this chapter and applicable statutes relating to ownership of the membership interests, the certificate of authority shall be automatically suspended until such time as the PLLC comes into compliance with these regulations. The PLLC shall notify the board within 30 days of any such change.~~

No member of the PLLC may transfer or sell its membership interest in the company, except to the company, or unless at least two-thirds of the remaining membership interest is held by individuals or professional business entities duly licensed or otherwise authorized to render the professional services of the company.

B. Change of managers or members of the PLLC. The following shall apply to the board-issued registration upon the event of any change in members or managers whether the change is temporary or permanent, caused by death, resignation, or otherwise:

1. The PLLC shall notify the board within 30 days of any change in its members or managers.

2. In the event of a change in the members or managers, the board-issued registration shall be limited to the professional practices consistent with the licenses or certificates held by the remaining members or managers of the PLLC unless an employee of the firm holds the appropriate license or certificate and is competent to render such professional services; and

3. In the event that a change results in the PLLC's noncompliance with the requirements of this chapter and applicable statutes relating to ownership of the membership interests, the board-issued registration shall be automatically suspended until such time as the PLLC comes into compliance with this chapter.

~~C.~~ Any change of name (including assumed names), address, place of business in Virginia, registered agent, or responsible person(s) of the profession(s) practiced or offered shall be reported by the registered entity to the board within 30 days of such an occurrence. In addition, any licensed or certified employee responsible for such practice shall notify the board in writing of any changes of his employment status within 30 days of such change.

C. Change of name, address, or place of business. The PLLC shall notify the board, in writing, within 30 days of any of the following changes at each place of business:

1. Any change of name (including assumed names), address, place of business in Virginia, or responsible person of the profession offered or practiced; and

2. Any change in the employment status of a licensed or certified employee responsible for professional practice.

### Part X

### Qualifications for Registration as a Business Entity Other Than a Professional Corporation and Professional Limited Liability Company

## **18VAC10-20-627. Registration required.**

Any business entity, which is not a professional corporation or professional limited liability company but is offering or practicing architectural, engineering, surveying, landscape architectural, or interior design services in the Commonwealth of Virginia, shall register with the board.

**18VAC10-20-630. Fee schedule.**

All fees are nonrefundable and shall not be prorated.

Application for business entity registration	\$100
<del>Designation</del> Application for business entity branch office registration	\$50
Renewal of business entity registration	\$50
Renewal of business entity branch office registration	\$50
Reinstatement of branch office	\$30

**Part X**

**Qualifications for Registration as a Business Entity Other Than a Professional Corporation and Professional Limited Liability Company**

**18VAC10-20-640. Application requirements.**

A. In accordance with § 54.1-411 of the Code of Virginia, any entity that is not a PC, PLLC, or sole proprietorship that does not employ other individuals for which licensing is required shall register with the board. This includes, but is not limited to, any corporation, partnership, limited liability company, or other entity, including but not limited to joint ventures, shall register with the board on a form approved by the board or nonprofits.

B. ~~If a partnership or limited partnership, a Partnerships. Applications registration as a partnership shall include a copy of the partnership agreement shall be included with the application. The partnership agreement, which shall state that all professional services of the partnership shall be under the direct control and personal supervision of a licensed or certified professional.~~

~~The limited partnership application shall also include a C. Limited partnerships. Applications for registration as a limited partnership shall include:~~

1. A copy of the partnership agreement that shall state that all professional services of the limited partnership shall be under the direct control and personal supervision of duly licensed or certified professionals; and

2. A copy of the certificate of limited partnership issued by the Virginia State Corporation Commission. ~~If a foreign limited partnership for applicants organized in Virginia or, if organized as a foreign limited partnership, a certification of registration of the foreign limited partnership issued by the Virginia State Corporation Commission shall be required in lieu of the certificate of limited partnership.~~

~~C. If a corporation, the application shall include copies D. Corporations. Applications for registration as a corporation shall include:~~

1. A copy of the certificate of incorporation issued by the Virginia State Corporation Commission articles of incorporation, bylaws and, or charter; and

~~If a foreign corporation, a 2. A copy of the certificate of incorporation issued by the Virginia State Corporation Commission if organized in Virginia or, if organized as a foreign corporation, a copy of the certificate of authority issued by the Virginia State Corporation Commission shall be required in lieu of the certification of incorporation.~~

~~D. If a limited liability company, the application E. Limited liability companies. Applications for registration as a limited liability company shall include a copy of the certificate of organization issued by the State Corporation Commission if organized in Virginia or, and, if organized as a foreign limited liability company, a certified true copy of the certificate of authority issued by the Virginia State Corporation Commission.~~

~~E. F. If professional architectural, engineering, surveying, landscape architectural, or interior design services are offered or rendered in a branch office, a separate branch office designation form shall be completed for each branch office. Responsible persons resident Resident responsible persons shall be designated for each branch office in accordance with this chapter.~~

~~F. G. The name of the business and any assumed, fictitious, trading as, or doing business as names of the firm shall be disclosed on the application.~~

**18VAC10-20-660. Change of status.**

A. Any changes of status, including, but not limited to, change in entity, name (including assumed names), address, place of business or responsible persons at each place of business, shall be reported to the board by the registered entity within 30 days of such an the occurrence. In addition, any licensed or certified employee responsible for such practice shall notify the board in writing of any changes of his employment status within 30 days of such the change.

B. In the event there is a change in the responsible person, whether the change is temporary or permanent and whether it may be caused by death, resignation or otherwise, the registration shall be automatically modified to be limited to that professional practice permitted by the remaining licensed or certified employees, or shall be automatically suspended until such time as the entity comes into compliance with these regulations.

**Part XI**

**Renewal and Reinstatement**

**18VAC10-20-670. Expiration and renewal Renewal.**

~~A. Prior to the expiration date shown on the license, certificate or registration, licenses, certificates or registrations shall be renewed for a two year period upon completion of a renewal application and payment of a fee established by the board. Registrations for professional corporations, professional limited liability companies and business entities shall expire on December 31 of each odd numbered year. Branch office registrations expire the last day of February of each even numbered year. If the renewal fee for a branch~~

---

# Regulations

---

office is not received by the board within 30 days following the expiration date noted on the registration, a reinstatement fee of \$25 will be required in addition to the renewal fee. Branch offices may not renew until the main office registration is properly renewed.

B. Failure to receive a renewal notice and application shall not relieve the regulant of the responsibility to renew. If the regulant fails to receive the renewal notice, a copy of the license, certificate or registration may be submitted with the required fee as an application for renewal.

C. By submitting the renewal fee, an applicant for renewal is certifying continued compliance with the Standards of Practice and Conduct as established by the board. In addition, by submitting the renewal fee, applicants to renew a license are certifying that they comply with the continuing education requirements as contained in this chapter.

D. Board discretion to deny renewal. The board may deny renewal of a license, certificate or registration for the same reasons as it may refuse initial licensure, certification or registration or discipline a regulant or for noncompliance with the continuing education requirements as contained in this chapter.

E. If the renewal fee is not received by the board within 30 days following the expiration date noted on the license, certificate or registration, a late renewal fee equal to the regular fee plus \$25 shall be required, unless a reinstatement fee is otherwise noted.

A. Individuals and organizations shall not practice with an expired license, certificate, or registration. The following time frames shall determine the required fees for renewal based on the date the fee is received in the board's office:

1. If the renewal fee is received by the board by the expiration date of the license, certificate, or registration, no additional fee shall be required to renew.

2. If the renewal fee is not received by the board within 30 days following the expiration date of the branch office registration, the registration shall be subject to the requirements of 18VAC10-20-680.

3. If the renewal fee is not received by the board within 30 days following the expiration date of the license, certificate, or nonbranch office registration, a \$25 late fee shall be required in addition to the renewal fee.

4. If the renewal fee and applicable late fee are not received by the board within six months following the expiration date of the license, certificate, or nonbranch office registration, the reinstatement fee shall be required pursuant to 18VAC10-20-680.

B. Upon receipt of the required fee, licenses, certificates, and registrations not currently sanctioned by the board shall be renewed for a two-year period from their previous expiration date.

C. Branch offices shall not renew or reinstate until the main office registration is properly renewed or reinstated.

D. The board may deny renewal of a license, certificate, or registration for the same reasons as it may refuse initial licensure, certification, or registration or for the same reasons that it may discipline a regulant for noncompliance with the standards of practice and conduct as well as the continuing education requirements contained in this chapter. The regulant has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

E. By submitting the renewal fee, the regulant is certifying continued compliance with the standards of practice and conduct as established by the board. In addition, by submitting the renewal fee, licensees are certifying their compliance with the continuing education requirements as contained in this chapter.

F. Failure to receive a renewal notice shall not relieve the regulant of the responsibility to renew. In the absence of a renewal notice, the regulant may submit a copy of the license, certificate, or registration with the required fee for renewal.

G. A license, certificate, or registration that is renewed shall be regarded as having been current without interruption and under the authority of the board.

H. Failure to pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in a delay or withholding of services provided by the department such as, but not limited to, renewal, reinstatement, processing a new application, or exam administration.

## **18VAC10-20-680. Reinstatement.**

A. If the license, certificate or registration has expired for six months or more, but less than five years, the regulant shall be required to submit a reinstatement application, which shall be evaluated by the board to determine if the applicant meets the renewal requirements. In addition, a reinstatement fee equal to the regular renewal fee plus \$100 shall be required. In addition, individual license holders applying for reinstatement are required to provide evidence of compliance with the continuing education requirements as contained in this chapter.

B. If the license, certificate or registration has expired for five years or more, an application for reinstatement shall be required, which shall be evaluated by the board to determine if the applicant remains qualified to be a regulant of the board, and a reinstatement fee equal to the regular renewal fee plus \$250 shall be submitted. In addition, the board may require an individual applicant to submit to an examination. In addition, individual license holders applying for reinstatement are required to provide evidence of compliance with the continuing education requirements as contained in this chapter.

C. Board discretion to deny reinstatement. The board may deny reinstatement of a license, certificate or registration for the same reasons as it may refuse initial licensure,

certification or registration or discipline a regulant or for noncompliance with the continuing education requirements as contained in this chapter.

D. The date the renewal application and fee are received in the office of the board shall determine whether a license, certificate or registration shall be renewed without late renewal or reinstatement, or shall be subject to reinstatement application procedures.

E. A license, certificate or registration that is reinstated shall be regarded as having been continuously licensed, certified or registered without interruption. Therefore, the license, certificate or registration holder who is not subject to the licensure for life provisions of § 54.1-405 of the Code of Virginia shall remain under the disciplinary authority of the board during the entire period and shall be accountable for his activities during the period. A license, certificate or registration that is not reinstated and is not subject to the licensure for life provisions of § 54.1-405 of the Code of Virginia shall be regarded as unlicensed, uncertified or unregistered from the expiration date forward. Nothing in this chapter shall divest the board of its authority to discipline a license, certificate or registration holder for a violation of the law or regulation during the period of time for which the regulant was licensed, certified or registered.

A. Applicants whose license, certificate, or nonbranch office registration has expired for more than six months, and applicants whose branch office registration has expired for more than 30 days, shall be required to submit a reinstatement application, which shall be evaluated by the board to determine if the applicant remains qualified to be a regulant of the board.

B. The board may deny reinstatement of a license, certificate, or registration for the same reasons as it may refuse initial licensure, certification, or registration or for the same reasons that it may discipline a regulant for noncompliance with the standards of practice and conduct, as well as the continuing education requirements, contained in this chapter. The applicant has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. The date the reinstatement fee is received in the board's office shall determine the amount to be paid pursuant to the following requirements:

1. Branch office registrations that have expired for more than 30 days shall require a reinstatement fee that shall equal the renewal fee plus \$30.
2. Licenses, certificates, and nonbranch office registrations that have expired for more than six months, but less than five years, shall require a reinstatement fee that shall equal the renewal fee plus \$100.
3. Licenses, certificates, and nonbranch office registrations that have expired for more than five years shall require a

reinstatement fee that shall equal the renewal fee plus \$250.

D. Architects, professional engineers, land surveyors, surveyor photogrammetrists, and landscape architects applying for reinstatement shall provide evidence of compliance with the continuing education requirements of this chapter.

E. The board may require an exam for architects, professional engineers, land surveyors, surveyor photogrammetrists, landscape architects, and interior designers whose license or certificate has expired for more than five years.

F. Licensees shall remain under the disciplinary authority of the board at all times, regardless of whether the license is reinstated, pursuant to § 54.1-405 of the Code of Virginia.

G. A certificate or registration holder who reinstates shall be regarded as having been current and without interruption and under the authority of the board.

H. Failure to pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in a delay or withholding of services provided by the department such as, but not limited to, renewal, reinstatement, processing a new application, or exam administration.

**18VAC10-20-683. Continuing education requirements for renewal or reinstatement.**

A. Individuals whose licenses expire or who apply to reinstate after March 31, 2010, shall be required to comply with the continuing education provisions of this chapter.

B. Individuals are required to complete at least 16 continuing education credit hours of approved continuing education activities for any license renewal or reinstatement.

C. Continuing education activities shall be deemed to be approved provided the following criteria are met:

1. Content and subject matter. Continuing education activities must be related to practice of the profession of the license being renewed, have a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the licensee's area of practice as defined in Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia. The required continuing education credit hours may be in areas related to business practices, including project management, risk management, and ethics, which have demonstrated relevance to the licensee's area of practice as defined in Chapter 4 of Title 54.1 of the Code of Virginia.
2. Curriculum. The curriculum of the continuing education activity must be consistent with the purpose and objective of the continuing education activity.
3. Sponsors and instructors. Sponsors of continuing education activities must have sufficient resources to provide the continuing education activity and



---

# Regulations

---

documentation of completion of the continuing education activity to those individuals who successfully complete the continuing education activity. Course instructors must be competent in the subject being taught, either by education or experience.

4. Methods of instruction for continuing education courses. The method of instruction must be consistent with the purpose and objective of the continuing education activity.

5. Computation of credit.

a. Fifty contact minutes shall equal one continuing education credit hour. For a continuing education course or activity in which individual segments are less than 50 minutes, the sum of the segments shall be totaled for computation of continuing education credit hours for that continuing education course or activity.

b. The sponsor of the continuing education activity must have predetermined the number of continuing education credit hours that an activity shall take to complete. A licensee cannot claim credit for more than the predetermined number of continuing education credit hours if the licensee took more than the predetermined number of hours to complete the continuing education activity.

e. One semester credit hour of approved college credit shall equal 15 continuing education credit hours and one quarter credit hour of approved college credit shall equal 10 continuing education credit hours.

d. For self directed continuing education activity, there must be an assessment by the sponsor at the conclusion of the activity to verify that the individual has achieved the purpose and objective of the continuing education activity; credit will not be awarded if the individual has not successfully achieved the purpose and objective of the continuing education activity based upon the results of the assessment.

e. A licensee may be granted credit for the initial development or substantial updating of a continuing education activity or his initial teaching of a course that otherwise meets the requirements of this chapter at twice the amount of credit that students of the course or activity would receive. Additional credit for subsequent offerings of the course or activity with the same content will not be permitted.

f. A licensee will not receive credit for completing the same continuing education activity with the same content more than once during the license period immediately prior to the expiration date of the license for renewal or during the two years immediately prior to the date of receipt of a complete reinstatement application.

D. 1. Only continuing education activities completed during the license period immediately prior to the expiration date of the license shall be acceptable in order to renew the license. Continuing education activities utilized to satisfy the

continuing education requirements to renew a license shall be valid only for that renewal and shall not be accepted for any subsequent renewal cycles or reinstatement of that license.

2. Individuals shall maintain records of completion of continuing education activities that comply with the requirements of this chapter for three years from the date of expiration of the license for which the continuing education activities are being used to renew the license. Individuals shall provide such records to the board or its duly authorized agents upon request.

E. Notwithstanding the provisions of subsection D of this section, continuing education activities completed during a licensing renewal cycle to satisfy the continuing education requirements of the preceding licensing renewal cycle shall be valid only for that preceding license renewal cycle and shall not be accepted for any subsequent renewal cycles or reinstatement.

F. 1. Each individual license holder applying for reinstatement shall provide, as part of his reinstatement application, evidence of compliance with the continuing education requirements of this chapter. The completion date of continuing education activities submitted in support of a reinstatement application shall not be more than two years old as of the date a complete reinstatement application is received by the board.

2. Continuing education activities utilized to satisfy the continuing education requirements in order to reinstate a license shall be valid only for that reinstatement and shall not be accepted for any subsequent renewal cycles or reinstatement.

G. Periodically, the board may conduct a random audit of its licensees who have applied for renewal to determine compliance. Licensees who are selected for audit shall provide all documentation of all continuing education activities utilized to renew their license within 21 calendar days of receiving notification of audit.

A. Licensees are required to complete 16 hours of continuing education (CE) pursuant to the provisions of this section for any renewal or reinstatement.

B. CE for renewal shall be completed during the two-year license period immediately prior to the expiration date of the license and shall be valid for that renewal only; additional hours over 16 hours shall not be valid for subsequent renewal.

C. CE for reinstatement shall be completed during the two years immediately prior to the date of the board's receipt of a reinstatement application and shall be valid for that reinstatement only; additional hours over 16 hours shall not be valid for subsequent reinstatement.

D. Licensees shall maintain records of completion of CE used to renew a license for three years from the date of expiration of the license. Licensees shall provide those records to the board or its authorized agents upon request.

E. CE activities completed by licensees may be accepted by the board provided the activity:

1. Consists of content and subject matter related to the practice of the profession;
2. Has a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the licensee's area of practice and may be in areas related to business practices, including project management, risk management, and ethics, that have demonstrated relevance to the licensee's area of practice as defined in § 54.1-400 of the Code of Virginia;
3. Is taught by instructors who are competent in the subject matter, either by education or experience, for those activities involving an interaction with an instructor;
4. If self-directed, contains an assessment by the sponsor at the conclusion of the activity that verifies that the licensee has successfully achieved the purpose and objective of the activity; and
5. Results in documentation that verifies the licensee's successful completion of the activity.

F. Computation of credit.

1. Fifty contact minutes shall equal one hour of CE. For activities that consist of segments that are less than 50 minutes, those segments shall be totaled for computation of CE for that activity.
2. One semester hour of college credit shall equal 15 hours of CE and one-quarter hour of college credit shall equal 10 hours of CE.
3. The number of hours required to successfully complete any CE activity must have been predetermined by the sponsor. A licensee shall not claim more credit for any CE activity than the number of hours that was predetermined by the sponsor at the time the activity was completed.
4. CE may be granted for the initial development, substantial updating, or the initial teaching of a CE activity that meets the requirements of this chapter at twice the amount of credit that participants receive. CE claimed pursuant to this subdivision shall not be claimed for subsequent offerings of the same activity.
5. A licensee applying for renewal shall not receive credit for completing a CE activity with the same content more than once during the two years prior to license expiration.
6. A licensee applying for reinstatement shall not receive credit more than once for completing a CE activity with the same content during the two years immediately prior to the date of the board's receipt of his reinstatement application.

G. The board may periodically conduct a random audit of its licensees who have applied for renewal to determine compliance. Licensees who are selected for audit shall provide all documentation of all CE activities utilized to renew their license within 21 calendar days of the date of the board's notification of audit.

H. If the board determines that CE was not obtained properly to renew or reinstate a license, the licensee shall be required to make up the deficiency to satisfy the 16-hour CE requirement for that license renewal or reinstatement. Any CE activity use to satisfy the deficiency shall not be applied to his current license CE requirement or any subsequent renewal or reinstatement.

**18VAC10-20-687. Exemptions and waivers.**

Pursuant to § 54.1-404.2 of the Code of Virginia, the board may grant exemptions ~~or to~~, waive, or reduce the number of continuing education activities required in cases of certified illness or undue hardship. However, such exemptions, waivers, or reductions shall not relieve the individual of ~~their~~ his obligation to comply with any other requirements of this chapter including, but not limited to, the provisions of 18VAC10-20-670; ~~or 18VAC10-20-680; or 18VAC10-20-683.~~

Part XII

Standards of Practice and Conduct

**18VAC10-20-690. Responsibility to the public.**

The primary obligation of the ~~professional~~ regulant is to the public. The ~~professional~~ regulant shall recognize that the health, safety, and welfare of the general public are dependent upon professional judgments, decisions, and practices. If the ~~professional~~ regulant is overruled ~~under~~ resulting in circumstances when the health, safety, ~~and or~~ welfare, or any combination thereof, of the public ~~are~~ is endangered, the ~~professional~~ regulant shall inform the employer ~~or~~, client, and appropriate authorities in writing of the possible consequences ~~and notify appropriate authorities.~~

**18VAC10-20-700. Public statements.**

A. The ~~professional~~ regulant shall be truthful in all professional matters. ~~The professional and~~ shall include all relevant ~~and pertinent~~ information in professional reports, statements, or testimony, which shall include the date indicating when such information was current.

B. When serving as an expert or technical witness, the ~~professional~~ regulant shall express an opinion only when it is based on an adequate knowledge of the facts in the issue, ~~on~~ and a background of competence in the subject matter, ~~and upon honest conviction.~~

C. Except when appearing as an expert witness in court or in an administrative proceeding when the parties are represented by counsel, the ~~professional~~ regulant shall issue no statements, reports, criticisms, or arguments on matters relating to professional practice ~~which that~~ are inspired by or paid for by ~~an interested party or parties~~ persons, unless the regulant has prefaced the comment by disclosing any self-interest and the identities of the ~~party or parties~~ all persons on whose behalf the ~~professional~~ regulant is speaking, ~~and by revealing any self interest.~~

---

# Regulations

---

~~C. D. A professional regulant shall not knowingly make a materially false statement or fail deliberately to disclose withhold a material fact requested in connection with his application for licensure, certification, registration, renewal, or reinstatement.~~

~~D. A professional shall not knowingly make a materially false statement or fail to deliberately disclose a material fact requested in connection with an application submitted to the board by any individual or business entity for licensure, certification, registration, renewal or reinstatement.~~

## **18VAC10-20-710. Conflicts of interest.**

A. The regulant shall promptly and fully inform an employer or client of any business association, interest, or circumstance which may influence the ~~professional's~~ regulant's judgment or the quality of service.

B. The regulant shall not accept compensation, financial or otherwise, from more than one ~~party~~ person for services on or pertaining to the same project, unless the circumstances are fully disclosed ~~to~~, and agreed to in writing by ~~all interested parties in writing~~ persons.

C. The regulant shall ~~neither not~~ solicit ~~nor~~ or accept financial or other valuable consideration from material or equipment suppliers for specifying their products or services.

D. The regulant shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other ~~parties~~ persons dealing with a client or employer in connection with work for which the regulant is responsible.

## **18VAC10-20-720. Solicitation of work or employment.**

A. In the course of soliciting work ~~from~~, or employment ~~by~~, a public authority the regulant shall not directly or indirectly:

~~1. The regulant shall not give Give, solicit, or receive, either directly or indirectly, any gratuity, contribution, or unlawful consideration to unlawfully influence the award of a contract by a public authority, or that may reasonably be construed as having the effect of intending to influence the awarding of such a contract. The regulant shall not offer or provide any gift or other valuable consideration in order to secure work. The regulant shall not pay a commission, percentage, or brokerage fee in order to secure work, except to a full-time employee or established commercial or marketing agency retained by them.;~~

~~2. Give, solicit, or receive any gratuity, contribution, or consideration that may reasonably be construed as an intention to influence the awarding of a contract; or~~

~~3. Offer or provide any gift or other valuable consideration in order to secure work.~~

B. The regulant shall not pay, directly or indirectly, a commission, percentage, or brokerage fee to a potential or existing client in order to secure work.

~~2. C. The regulant shall not falsify or permit knowingly allow misrepresentation of his or an associate's academic or professional qualifications or work, nor shall the regulant~~

~~misrepresent the degree of responsibility for prior assignments. Materials used in the solicitation of employment shall not misrepresent facts concerning employers, employees, associates, joint ventures or past accomplishments of any kind.;~~

~~1. Academic or professional qualifications or work; or~~

~~2. Degree of responsibility for prior assignments.~~

D. Materials used in the solicitation of employment shall not misrepresent facts concerning employers, employees, associates, joint ventures, or past accomplishments of any kind.

## **18VAC10-20-730. Competency for assignments.**

A. The ~~professional~~ regulant shall undertake to perform professional assignments only when qualified by education ~~or~~, experience, or both, and licensed or certified in the profession involved. ~~Licensed professionals~~ Regulants may perform assignments related to interior design provided they do not hold themselves out as certified in this profession unless they are so certified by this board. The ~~professional~~ regulant may accept an assignment requiring education or experience outside of the field of the ~~professional's~~ regulant's competence, but only to the extent that services are restricted to those phases of the project in which the ~~professional~~ regulant is qualified. All other phases of such project shall be the responsibility of licensed or certified associates, consultants or employees.

B. A ~~professional~~ regulant shall not misrepresent to a prospective or existing client or employer his qualifications and the scope of his responsibility in connection with work for which he is claiming credit.

C. The ~~professional~~ regulant shall adhere to the minimum standards and requirements pertaining to the practice of his own profession, as well as other professions if incidental work is performed.

## **18VAC10-20-740. Professional responsibility.**

A. Unless exempt by statute, all architectural, engineering, land surveying, landscape architectural, and interior design work must be completed by a professional or a person performing the work who is under the direct control and personal supervision of a professional.

B. A professional shall be able to clearly define his scope and degree of direct control and personal supervision, clearly define how it was exercised, and demonstrate that he was responsible within that capacity for the work that he has sealed, signed, and dated. For the work prepared under his supervision, a professional shall:

1. Have detailed professional knowledge of the work;

2. Exercise the degree of direct control over work that includes:

a. Having control over decisions on technical matters of policy and design;

b. Personally making professional decisions or the review and approval of proposed decisions prior to implementation, including the consideration of alternatives to be investigated and compared for designed work, whenever professional decisions are made that could affect the health, safety, and welfare of the public involving permanent or temporary work;

c. The selection or development of design standards and materials to be used; and

d. Determining the validity and applicability of recommendations prior to incorporation into the work, including the qualifications of those making the recommendations.

3. Have exercised his professional judgment in all professional matters that are embodied in the work and the drawings, specifications, or other documents involved in the work; and

4. Have exercised critical examination and evaluation of an employee's, consultant's, subcontractor's, or project team member's work product, during and after preparation, for purposes of compliance with applicable laws, codes, ordinances, regulations, and usual and customary standards of care pertaining to professional practice.

~~A. C.~~ The regulant shall not knowingly associate in a business venture with, or permit the use of ~~the regulant's~~ his name, by any person or firm when there is reason to believe that person or firm is engaging in activity of a fraudulent or dishonest nature or is violating statutes or any of these regulations.

~~B. D.~~ A regulant who has direct knowledge or reason to believe that any individual, or firm may have violated or may currently be violating any of these provisions, or the provisions of Chapters 7 (§ 13.1-542.1 et seq.) and 13 (§ 13.1-1100 et seq.) of Title 13.1 or Chapters 1 (§ 54.1-100 et seq.) through 4 (§ 54.1-400 et seq.) of Title 54.1 ~~or Chapters 7 and 13 of Title 13.1~~ of the Code of Virginia, shall immediately inform the board in writing and shall cooperate in furnishing any further information or assistance that may be required by the board or any of its agents.

~~C. The E.~~ Upon request by the board or any of its agents, the regulant shall, ~~upon request or demand,~~ produce to the board, or any of its agents, any plan, document, book, record or copy thereof in his or its possession any plan, plat, document, sketch, book, record, or copy thereof concerning a transaction covered by this chapter, and shall cooperate in the investigation of a complaint filed with the board against a regulant.

~~D. A F.~~ Except as authorized by 18VAC10-20-760 A 2, a regulant shall not utilize the design, drawings, specifications, or work of another regulant to complete ~~the design, drawings, specifications, or work,~~ or to replicate like design, drawings, specifications, or any work without the knowledge and

written consent of the person or organization that owns the design, drawings, specifications, or work.

~~E. A professional who has received permission to modify or otherwise utilize the designs, drawings, specifications, or work of another professional pursuant to subsection D of this section may seal that work only after a thorough review of the design, drawings, specifications, or work to the extent that full responsibility shall be assumed for all design, drawings, specifications, or work.~~

~~F. The information contained in recorded plats or surveys may be utilized by another professional without permission. If modifications are made to the plats or surveys, the professional must conduct a thorough review and verification of the work to the extent that full responsibility shall be assumed for any changes or modifications to the plats or surveys.~~

G. Utilization and modification of work.

1. A regulant who utilizes the designs, drawings, specifications, or work of another regulant pursuant to 18VAC10-20-740 F or 18VAC10-20-760 A 2, or who modifies any plats or surveys, shall conduct a thorough review of the work to verify that it has been accomplished to the same extent that would have been done under the direct control and personal supervision of the regulant affixing the professional seal, signature, and date. The regulant shall assume full responsibility for any changes or modifications to the work.

2. The information contained in recorded plats or surveys may be utilized by another regulant without permission.

### **18VAC10-20-750. Good standing in other jurisdictions.**

A. A regulant licensed, certified, or registered to practice architecture, engineering, land surveying, landscape architecture, or interior design in ~~other jurisdictions~~ any jurisdiction shall be in good standing in every jurisdiction where licensed, certified, or registered.

B. A regulant who has received a reprimand, civil penalty, or monetary penalty, or whose license, certificate or registration is revoked, suspended, denied, or surrendered as a result of a disciplinary action by ~~another any~~ jurisdiction, shall be subject to discipline by the board if the regulant's action constitutes a violation of the provisions of Chapters 1 (§ 54.1-100 et seq.) through 4 (§ 54.1-400 et seq.) of Title 54.1, or Chapters 7 (§ 13.1-542 et seq.) and 13 (§ 13.1-1100 et seq.) of Title 13.1 of the Code of Virginia, ~~or the regulations adopted by the board~~ notify the board of such action within 30 days.

~~C. A regulant who has received a reprimand, civil penalty, or monetary penalty, or whose license, certificate or registration is revoked, suspended, denied, or surrendered as a result of a disciplinary action by another jurisdiction, must notify the board of such action within 30 days.~~

---

# Regulations

---

## 18VAC10-20-760. Use of seal.

A. The application of a professional seal, signature, and date shall indicate that the professional has exercised direct control and personal supervision over the work to which it is affixed. Therefore, no professional shall affix a name, seal or certification to a plat, design, specification or other work constituting the practice of the professions regulated which has been prepared by an unlicensed or uncertified person unless such work was performed under the direct control and personal supervision of the professional while said unlicensed or uncertified person was an employee of the same firm as the professional or was under written contract to the same firm that employs the professional. If the original professional of record is no longer employed by the regulant or is otherwise unable to seal completed professional work, such work may be sealed by another professional, but only after a thorough review of the work by the professional affixing the professional seal. The application of the seal, signature, and date also indicates the professional's acceptance of responsibility for the work shown thereon.

1. No professional shall affix a seal, signature, and date or certification to a plan, plat, document, sketch, or other work constituting the practice of the professions regulated that has been prepared by an unlicensed or uncertified person unless such work was performed under the direct control and personal supervision of the professional while the unlicensed or uncertified person was an employee of the same firm as the professional or was under written contract to the same firm that employs the professional.

2. If the original professional of record is no longer able to seal, sign, and date completed professional work, such work may be sealed, signed, and dated by another qualified professional pursuant to the standards established in 18VAC10-20-740 G 1.

B. An appropriately licensed or certified professional shall apply a seal to final and complete original cover sheets of plans, drawings, plats, technical reports and specifications and to each original sheet of plans, drawings or plats, prepared by the professional or someone under his direct control and personal supervision.

### B. Documents to be sealed.

1. ~~All seal imprints on the cover or first sheet of final documents shall bear an original signature and date. "Final Documents" are completed documents or copies submitted on a client's behalf for approval by authorities or recordation. In such cases, the cover sheet of the documents or copies shall contain a list of drawings or plats included in the set on which a seal, original signature and date shall be affixed for all regulated disciplines. Every page of the submission, other than the cover, may be~~

~~reproduced from originals which contain the seal, original signature and date by each discipline responsible for the work.~~

1. All final documents, including original cover sheet of plans, plats, documents, sketches, technical reports, and specifications, and each original sheet of plans, plats, or drawings prepared by the professional, or someone under his direct control and personal supervision, shall be sealed, signed, and dated by the professional. All final documents shall also bear the professional's name or firm name, address, and project name. Final documents are completed documents or copies submitted on a client's behalf for approval by authorities, for construction, or for recordation.

2. For projects involving multiple sets of plans from multiple professionals involved in the same project, each professional shall seal, sign, and date the final documents for the work component that he completed or that was completed under his direct control and personal supervision. Any professional responsible for the entire project shall seal, sign, and date the cover sheet of the aggregate collection of final documents for the project.

a. C. An electronic seal, signature, and date are permitted to be used in lieu of an original seal, signature, and date when the following criteria, and all other requirements of this section, are met:

- (1) 1. It is a unique identification of the professional;
- (2) 2. It is verifiable; and
- (3) 3. It is under the professional's direct control.

b. ~~A professional should not seal original documents made of mylar, linen, sepia, or other materials, or that are transmitted electronically, which can be changed by the person or entity with whom the documents are filed, unless the professional accompanies such documents with a signed and sealed letter making the recipient of such documents aware that copies of the original documents as designed by the professional have been retained by the professional and that the professional cannot assume responsibility for any subsequent changes to the reproducible original documents that are not made by the professional or those working under his direct control and personal supervision.~~

2. D. Incomplete plans, plats, documents, and sketches, whether advance or preliminary copies, shall be so identified on the plan, plat, document, or sketch and need not be sealed, signed or dated. Advance or preliminary copies of incomplete plans, plats, documents, and sketches must be clearly identified as not complete but need not be sealed, signed, or dated.

3. ~~All plans, drawings or plats prepared by the professional shall bear the professional's name or firm name, address and project name.~~

4. The seal of each professional responsible for each profession shall be used and shall be on each document that was prepared under the professional's direction and for which that professional is responsible. If one of the exemptions found in § 54.1-402 of the Code of Virginia is applicable, a professional licensed or certified by this board shall nevertheless apply his seal to the exempt work.

5. Application of the seal and signature indicates acceptance of responsibility for work shown thereon.

E. All work performed by a professional who is licensed or certified by this board, including work that is exempt from licensure pursuant to § 54.1-402 of the Code of Virginia, shall be sealed, signed, and dated pursuant to subsection B of this section.

6. F. The original seal shall conform in detail and size to the design illustrated below and shall be two inches in diameter. The designs below may not be shown to scale:



\*The number referred to is the last six-digit number as shown on the license or certificate. The number is permanent. Leading zeros contained in the six-digit number may be omitted from the seal.

**18VAC10-20-770. Organization and styling of practice.**

A. A firm shall offer or practice only the professions shown on its board-issued registration.

B. Nothing shall be contained in the name, letterhead or other styling of a professional practice implying a relationship, ability or condition which does not exist.

Professional services that the firm is not properly registered to provide ~~may~~ shall not be included in the name.

C. An assumed, fictitious or corporate name shall not be misleading as to the identity, responsibility or status of those practicing ~~thereunder~~ professionals employed or contracted by the registrant. ~~Advertisements, signs, letterheads, business~~

---

# Regulations

---

~~cards, directories~~ Any advertisement, sign, letterhead, business card, directory, or any other form of representation shall avoid any reference to any service that cannot be provided for under a resident responsible person.

## **18VAC10-20-780. Professional required at each place of business.**

~~A. Any legal entity or professional regulant~~ maintaining a place of business ~~from which the entity or professional that offers or provides practices~~ architectural, engineering, land surveying, landscape architectural, or certified interior design services in Virginia, shall name at least one responsible person for each profession offered or practiced at each place of business ~~a resident, responsible person. The named resident, responsible person must hold a current valid Virginia license or certificate in the profession being offered or practiced.~~

~~Each named professional~~ B. A resident responsible person designated by the firm shall exercise direct control and personal supervision of the work being offered or practiced at the each place of business for which he is named. Each ~~named professional shall be responsible for only one location at a time. A named professional~~ A resident responsible person may be responsible for more than one location provided that he is resident at the each place of business during a majority of the its operating hours of operation at each location.

## **18VAC10-20-790. Sanctions.**

~~A. No~~ A license, certificate, or registration shall not be ~~suspended or revoked, nor shall any regulant be fined sanctioned~~ unless a majority of the eligible voting members of the entire board ~~who are eligible to vote, vote for the action. The board may discipline or sanction, or both, any license holder, certificate holder, or the holder of a certificate of authority or registration~~ regulant if the board finds that:

1. The regulant failed to maintain good moral character pursuant to the definition in 18VAC10-20-10.
2. The license, certification, or registration was obtained or renewed through fraud or misrepresentation;
2. 3. The regulant has been found guilty by the board, or by a court of competent legal jurisdiction, of any material misrepresentation in the course of professional practice, or has been convicted, pleaded guilty or has been found guilty, regardless of adjudication or deferred adjudication, of any felony or misdemeanor ~~which that~~, in the judgment of the board, adversely affects the regulant's ability to perform satisfactorily within the regulated discipline. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. The board shall review the conviction pursuant to the provisions of § 54.1-204 of the Code of Virginia;
3. 4. The regulant is guilty of professional incompetence, negligence, or gross negligence;
4. 5. The regulant has abused drugs or alcohol to the extent that professional competence is adversely affected;

5. 6. The licensee regulant fails to comply, or misrepresents any information pertaining to their compliance, with any of the continuing education requirements as contained in this chapter;

6. 7. The regulant violates any standard of practice and conduct; as defined in this chapter; or

7. 8. The regulant violates or induces others to violate any provision of Chapters 7 (§ 13.1-542.1 et seq.) and 13 (§ 13.1-1100 et seq.) of Title 13.1 or Chapters 1 (§ 54.1-100 et seq.) through 4 (§ 54.1-400 et seq.) of Title 54.1 or Chapters 7 and 13 of Title 13.1 of the Code of Virginia, or any other statute applicable to the practice of the professions herein regulated, or any provision of by this chapter.

~~B. If evidence is furnished to the board which creates doubt as to the competency of a regulant to perform professional assignments, the board may require the regulant to prove competence by interview, presentation or examination. Failure to appear before the board, pass an examination, or otherwise demonstrate competency to the board shall be grounds for revocation or suspension of the license, certification or registration.~~

## **18VAC10-20-795. Change of address.**

All regulants shall notify the board in writing of any change of address, ~~in writing~~, within 30 days of making the change. When submitting a change of address, ~~any regulant~~ regulants holding more than one license, certificate, or registration shall inform the board of all licenses, certificates or registrations each affected by the change. ~~A physical address is required. A post office box will not be accepted in lieu of a physical address.~~

DOCUMENTS INCORPORATED BY REFERENCE (18VAC10-20)

~~Handbook for Interns and Architects, 2008 2009 Edition, National Council of Architectural Registration Boards, 1801 K Street, NW, Suite 1100 K, Washington, DC 20006, www.ncarb.org.~~

[Intern Development Program Guidelines, December 2013, National Council of Architectural Registration Boards, 1801 K Street NW, Suite 700 K, Washington, DC 20006 \(http://www.ncarb.org\)](#)

V.A.R. Doc. No. R11-2357; Filed December 3, 2013, 12:52 p.m.

---

## GENERAL NOTICES/ERRATA

---

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### **Total Maximum Daily Load Study for Aarons Creek, North Fork Aarons Creek, Big Bluewing Creek, Coleman Creek, Little Coleman Creek, Little Buffalo Creek, Hyco River, and Beech Creek in Halifax County and Mecklenburg County**

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on a water quality study for these streams on Thursday, January 9, 2014.

The meeting will start at 7 p.m. in the Midway Volunteer Fire Department located at 10801 Bill Tuck Highway, Virgilina, VA 24598. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Aarons Creek (VAC-L73R\_AAR01A00) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

North Fork Aarons Creek (VAC-L73R\_AAR02A10) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Big Bluewing Creek (VAC-L74R\_BLU01A08) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Coleman Creek (VAC-L74R\_CLB01A06) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Little Coleman Creek (VAC-L74R\_LOL01A06) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Little Buffalo Creek (VAC-L76R\_LFF01A00) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Hyco River (VAC-L74R\_HYC02A06) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Beech Creek (VAC-L75R\_BEE01A98) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Coleman Creek (VAC-L74R\_CLB01A06) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the aquatic life use. The impairment is based on benthic macroinvertebrate bioassessments.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent Water Quality Assessment Reports.

During the study, DEQ will develop a TMDL for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from January 9, 2014, to February 10, 2014. For additional information or to submit comments, contact Paula Nash, Virginia Department of Environmental Quality, Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-6216, or email paula.nash@deq.virginia.gov.

#### **Total Maximum Daily Load Study of Crooked Run, Stephens Run, West Run, Happy Creek, Manassas Run, Willow Brook, Borden Marsh Run, and Long Branch in Frederick, Warren, and Clarke Counties**

Public meetings: A meeting will be held Thursday, January 9, 2014, at 6:30 p.m. at the North Warren Fire Hall, 266 Rockland Court, Front Royal, VA 22630. This meeting will be open to the public and all are welcome. In the case of inclement weather, please contact Tara Sieber at (540) 574-7870.

Purpose of notice: The Department of Environmental Quality (DEQ) and its contractors, Virginia Tech's Biological Systems Engineering Department, will present preliminary data for the development of a water quality study known as a total maximum daily load (TMDL) for Crooked Run and its tributaries, including Stephens Run and West Run, Happy



## General Notices/Errata

Creek, Manassas Run, Willow Brook, Borden Marsh Run and Long Branch. This is an opportunity for local residents to share information about the area and its local streams. A public comment period from January 9, 2014, through February 10, 2014, will follow the meetings.

Meeting description: A public meeting will be held to introduce the local community to the water quality improvement process in Virginia, known as the TMDL process, invite its participation and solicit its contributions, and review the next steps. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

Description of study: Several streams in the Shenandoah River watershed do not meet Virginia's water quality standards due to excessive bacteria and have been placed on the 2006, 2008, and 2010 § 303(d) TMDL Priority List and Report as impaired. The bacteria standard preserves the "primary contact (recreational or swimming)" designated use for Virginia waterways. Excessive bacteria levels may pose a threat to human health. This water quality study reports on the sources of bacterial contamination and recommends reductions to meet 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. Virginia agencies are working to identify sources of bacterial contamination in the tributaries to the Shenandoah River, which will include the following waterways:

Stream	County	Length (miles)	Impairment
Crooked Run	Frederick/Warren	8.87 mi	Bacteria (E. coli)
Stephens Run	Frederick	0.95 mi	
West Run	Frederick/Warren	6.12 mi	
Happy Creek	Warren	8.42 mi	
Manassas Run	Warren	9.15 mi	
Willow Brook	Warren	3.95 mi	
Borden Marsh Run	Clarke/Warren	9.46 mi	
Long Branch	Clarke	3.63 mi	

In addition, Happy Creek does not host a healthy and diverse population of aquatic life, and subsequently was listed as impaired for the "general benthic (aquatic life)" water quality standard. This water quality TMDL study will review all data collected and determine the cause of the benthic impairment through a weight of evidence approach. Reductions and a TMDL for the cause of the impairment will be developed.

Stream	County	Length (miles)	Impairment
Happy Creek	Warren	8.42 mi	aquatic life

In addition, Crooked Run and Stephens Run have very low dissolved oxygen (DO) levels and therefore were listed as impaired for the DO water quality standard. This water quality TMDL study will review all data collected and determine the cause of the low DO levels through a weight of evidence approach. Reductions and a TMDL for the cause of the impairment will be developed.

Stream	County	Length (miles)	Impairment
Crooked Run	Frederick/Warren	8.87 mi	DO

How to comment: The public comment period for these public meetings will end on February 10, 2014. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to: Tara Sieber, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email [tara.sieber@deq.virginia.gov](mailto:tara.sieber@deq.virginia.gov).

DEPARTMENT OF HEALTH

**January 1, 2014**

**Drinking Water Construction Funding Workshops**

VDH will offer funding informational meetings at six locations throughout the state. Attendance is on a first come basis and is limited to 50 people at each location.

Material will focus on Drinking Water Construction funding available through VDH. The Drinking Water State Revolving Loan Fund (DWSRF) Program and the Water Supply Assistance Grant Fund (WSAG) Program will be discussed. You will be asked for your specific suggestions and opinions.

You will be advised on program updates and then guided through program criteria, program applications, and the project scheduling steps needed for smooth project implementation.

If you plan to attend, please return the form below by February 3, 2014 so we may properly plan the meeting. You may mail it to Theresa Hewlett at 109 Governor Street, 6th Floor, Richmond, VA 23219 or fax at 804/864-7521. If you have any questions, please call Theresa Hewlett at 804/864-7501.

---

I (we) wish to attend the meeting indicated below: **NOTE THAT THE CHESTERFIELD WORKSHOP IS IN THE AFTERNOON!!**

- Danville** 9:00 a.m.-12:00 p.m., Wednesday, February 5, 2014 at the Pittsylvania/Danville Health District's Auditorium, 326 Taylor Drive, 2<sup>nd</sup> Floor, Danville, VA.
- Abingdon** 9:00 a.m.-12:00 p.m., Thursday, February 6, 2014 at the Southwest VA Higher Education Center, Room 240, Abingdon, VA
- Lexington** 9:00 a.m.-12:00 p.m., Friday, February 7, 2014 at the Virginia Military Institute's Preston Library, Turman Room, Lexington, VA
- Chesterfield** 1:00 p.m.-4:00 p.m., Monday, February 10, 2014 at the Chesterfield County Health Department's Multi-purpose Room, 9501 Lucy Corr Circle, Chesterfield, VA.
- Suffolk Area** 9:00 a.m.-12:00 p.m., Tuesday, February 11, 2014 at the Town of Windsor's Municipal Building Counsel Chamber, 8 East Windsor Blvd., Windsor, VA. (Isle of Wight County)
- Culpeper** 9:00 a.m.-12:00 p.m., Wednesday, February 12, 2014 at the County of Culpeper's Board of Supervisors Room (rear entrance to Administration Bldg. and 3-hr. parking across the street), 302 North Main Street, Culpeper, VA

There will be \_\_\_\_\_ person(s) in my party as follows:

Name	Address	Phone/email/FAX	Representing
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

---

## General Notices/Errata

---

### January 1, 2014 - DRINKING WATER STATE REVOLVING FUNDS

The Virginia Department of Health (VDH) is pleased to announce several opportunities for funding drinking water infrastructure. All applications may be submitted year round; however, VDH will conduct two rounds of evaluations for offers on April 1, 2014, and September 2, 2014. Applications postmarked/received after either due date will be considered for funding in the following round. Funding is made possible by the Drinking Water State Revolving Fund (DWSRF) Program and the Water Supply Assistance Grant (WSAG) Fund Program (if funds are available). VDH anticipates a funding level of \$20 million. The FY 2015 DWSRF Intended Use Plan will be developed using public input on these issues.

(1) Construction Funds - Private and public owners of community waterworks and nonprofit noncommunity waterworks are eligible to apply for construction funds. VDH makes selections based on criteria described in the DWSRF Program Design Manual, such as existing public health problems, noncompliance, affordability, regionalization, the availability of matching funds, etc. Readiness to proceed with construction is a key element. A Preliminary Engineering Report must be submitted if required by VDH. An instruction packet and Construction Project Schedule are included.

(2) Set-Aside Suggestion Forms - Anyone has the opportunity to suggest new or continuing set-aside (nonconstruction) activities. Set-aside funds help VDH assist waterworks owners to prepare for future drinking water challenges and assure the sustainability of safe drinking water.

(3) 1452(k) Source Water Protection Initiatives - This provision allows VDH to loan money for activities to protect important drinking water resources. Loan funds are available to (1) community and nonprofit noncommunity waterworks to acquire land/conservation easements and (2) community waterworks, only, to establish local, voluntary incentive-based protection measures.

(4) Planning and Design Grants - Private and public owners of community waterworks are eligible to apply for these grant funds. Grants can be up to \$50,000 per project for small, financially stressed, community waterworks serving fewer than 10,000 persons. Eligible projects may include preliminary engineering planning, design of plans and specifications, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, or other similar technical assistance projects. These funds could assist the waterworks owner in future submittals for construction funds.

The VDH's DWSRF Program Design Manual describes the features of the above opportunities for funding. After receiving public input, VDH will develop a draft of an

intended use plan for public review and comment. When developed, the intended use plan draft will describe specific details for use of the funds. A public meeting is planned, and written comments will be accepted before VDH submits a final version to the US Environmental Protection Agency for approval.

Request applications, set-aside suggestion forms, Program Design Manuals, and information from Steven Pellei, PE, FCAP Director, telephone (804) 864-7500, FAX (804) 864-7521, or by writing to Virginia Department of Health, Office of Drinking Water, 109 Governor Street, 6th Floor, Richmond, VA 23219. Any comments can be directed to Mr. Pellei. The materials are also accessible on the VDH website at <http://www.vdh.virginia.gov/odw/financial/dwffundingprogramdetails.htm>.

\* \* \*

### January 1, 2014 - WATER SUPPLY ASSISTANCE GRANT FUNDING

The 1999 General Assembly created the Water Supply Assistance Grant (WSAG) Fund in § 32.1-171.2 of the Code of Virginia. The purpose of the WSAG is to make grant funds available to localities and owners of waterworks to assist in the provision of drinking water.

The Virginia Department of Health (VDH) does not anticipate WSAG funds being made available at the present time. If WSAG funds are made available, VDH will implement the following WSAG requirements (applicants use the same forms and follow the same guidelines and deadlines for the Drinking Water State Revolving Fund Program):

(1) Small Project Construction Grants - Funding for small project construction may be available for projects whose total project cost does not exceed \$150,000. Eligible activities may include but not be limited to upgrade or construction of well or spring sources, waterlines, storage tanks, and treatment.

The applicant submits the current VDH construction application to VDH. To promote coordination of funding and streamline the process for applicants, grants are prioritized in accordance with rating criteria of the current Drinking Water State Revolving Fund (DWSRF) Program. For WSAG purposes only, up to 30 extra points are added to the VDH rating criteria relative to the Stress Index rank. Preference is given to community waterworks. This priority system ensures that all eligible acute or chronic health/Safe Drinking Water Act compliance projects are funded before any other eligible project.

(2) Surface Water Development or Improvement Grants - Funding for community waterworks surface source water development or improvement activities. The application cannot exceed \$200,000. The applicant submits the current

construction application to VDH. In ranking of applications, preference is given to those that address problems of small, community waterworks with multi-jurisdictional support. Eligible activities may include: land purchase, options to purchase land, general site development costs, and dam upgrade and construction.

(3) Planning and Design Grants - Funding for waterworks planning and design needs. The application cannot exceed \$50,000.

In ranking of applications, preference is given to those that address problems of small, community waterworks with multi-jurisdictional support. The applicant submits the current VDH planning and design application to VDH. To promote coordination of funding and streamline the process for applicants, grants are prioritized in accordance with rating criteria of the current DWSRF Program. For WSAG funding purposes only, up to 50 extra points are added to the DWSRF rating criteria relative to the Stress Index rank.

Eligible activities may include but not be limited to capacity building activities addressing regionalization or consolidation, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, income surveys, preliminary engineering planning, design and preparation of plans and specifications, or other similar technical assistance projects.

The VDH's WSAG Program Guidelines describes the features of the above opportunities for funding. Request the applications or program guidelines from Steve Pellei, PE, FCAP Director, by telephone (804) 864-7500, FAX (804) 864-7521, or by writing to Virginia Department of Health, Office of Drinking Water, 109 Governor Street, 6th Floor, Richmond, VA 23219. The applications are also accessible on the VDH website at <http://www.vdh.virginia.gov/odw/financial/dwffundingprogramdetails.htm>.

### VIRGINIA CODE COMMISSION

#### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/connect/commonwealth-calendar>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in

the print version of the Virginia Administrative Code is available at

<http://register.dls.virginia.gov/documents/cumulatab.pdf>.

**Filing Material for Publication in the Virginia Register of Regulations:** Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

